US Army Corps of Engineers ®
Fort Worth District

Public Notice

Subject: U.S. Army Corps of Engineers Fort Worth District Regulatory Role in Activities Associated with Oil and Natural Gas Production and Development of Class II Injection Wells and Pipelines

Date: December 6, 2012

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

SUBJECT: U.S. Army Corps of Engineers Regulatory Role in Activities Associated with Oil and Natural Gas Production and Development of Class II Injection Wells

The purpose of this public notice is to advise you of the U.S. Army Corps of Engineers (USACE) regulatory role as it applies to activities associated with oil and natural gas production and distribution, and development of Class II injection wells. Through our regulatory authorities, the USACE is charged with protecting the nation's regulated aquatic resources while allowing reasonable and necessary development that impacts those resources to go forward. Our intent is to develop and maintain an open dialogue with those in the oil and gas industry to provide early coordination during project planning to ensure that project related impacts to regulated aquatic resources are appropriately avoided, minimized, and/or mitigated to ensure the proposals are in compliance with applicable regulatory requirements.

Under Section 404 of the Clean Water Act (33 USC 1344), the USACE regulates the discharge of dredged or fill material into Waters of the United States (U.S.). Under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403), the USACE has regulatory authority over all work or structures in, over, or under navigable waters. The Fort District has several rivers subjects to Section 10 of the Rivers and Harbors Act.

Waters of the U.S. are defined in 33 CFR 328 and may include lakes, rivers, streams (ephemeral, intermittent, perennial), mudflats, vegetated shallows, ditches, ponds, and wetlands. While some rivers, streams, lakes and wetlands are clearly jurisdictional waters, in many instances, the USACE can only make the determination of whether an aquatic resource is a water of the U.S. after a site-specific analysis. The presence of drought conditions in no way diminishes the extent and location of federal jurisdiction with respect to waters of the U.S., i.e. just because an area may appear as dry land, does not mean that it is no longer regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

Certain activities associated with oil and natural gas production and distribution, and development of Class II injection wells, include impacts to aquatic resources that require authorization from the USACE prior to initiating work. Regulated impacts to aquatic resources from these activities would include the discharge of dredged or fill material within waters of the U.S. associated with, but not limited to, construction of utility line crossings, access roads (including upgrades to existing roads), distribution pipelines, well pads, production facilities, water impoundments, and intake and outfall structures. To expedite application processing and to ensure regulatory compliance, the U.S. Army Corps of Engineers is providing this summary of existing regulations that may streamline many of these energy related activities along with Application Submittal Forms developed by the Fort Worth District.

Many of the existing nationwide permits (NWPs) and Regional General Permits (RGPs) have scopes of work and thresholds that may allow applicants to construct proposed projects without delay or waiting for an authorization. However, depending upon the size and location of your proposed work, you may be required to provide an application or preconstruction notification (PCN) for our review and authorization of your project prior to work in waters of the U.S. and in some instances, compensatory mitigation may be required. Please note that all General and Regional Conditions, including compliance with the Endangered Species Act and Section 106 of the National Historic Preservation Act also apply. Projects which may affect endangered species, critical habitat, or may have an effect on historic properties require a pre-construction notification prior to beginning construction. For more information regarding each of the following permitting options go to www.swf.usace.army.mil/missions/regulatory/permitting. These permits do not authorize any damage to private property, invasion of property rights, or any infringement of federal, state, or local laws or regulations.

NWP 12 Utility Line Activities

Nationwide Permit 12 may be used for activities associated with the construction, repair, and the removal of utility lines and associated facilities in waters of the U.S., provided the activity does not result in the loss of greater than ½-acre of waters of the U.S. for each single and complete project.

Utility lines: This NWP authorizes the construction, maintenance, and repair of utility lines including intake and outfall structures, and the associated excavation, backfill, or bedding for the utility lines. Utility lines are defined as any pipe of pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance for any purpose and any cable, line, or wire for the transmission of electrical energy or communications.

Other work authorized by this permit includes the construction of utility line substations, foundations for overhead utility line towers, poles, and anchors, and access roads for the construction and maintenance of utility lines.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the U.S., excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the U.S.; (6) permanent access roads are constructed above grade in waters of the U.S. for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the U.S. with impervious materials. (See general condition 31.) (Sections 10 and 404) NWP 12 Application Form

NWP 14 Linear Transportation Projects

NWP 14 is for activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the U.S. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the U.S. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the U.S. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the U.S. exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404) NWP 14 Application Form

NWP 39 Commercial and Institutional Developments

NWP 39 authorizes discharges of dredged or fill material into non-tidal waters of the U.S. for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines and storm water management facilities. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and construction of pads for oil and gas wells (see page 10223 of the Feb. 21, 2012 Federal Register).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the U.S., including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. A drilling termination restoration plan shall be provided as part of the preconstruction notification.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities. NWP 39 Application Form

RGP-11 Exploration and Production Wells

Regional general permit-11 was developed for use in the Fort Worth District, Albuquerque District, and Tulsa District for projects in Texas and Louisiana. Work authorized by this RGP is limited to the discharge of dredged or fill material into waters of the U.S., including wetlands, and work in, or affecting navigable waters of the U.S., associated with the construction and operation of exploration and production wells for oil, gas, and water and their supporting fills and structures. Activities that may be authorized by this RGP include, but are not limited to, the construction of drilling pads, reserve and mud pits, access roads, dikes, levees, and production facilities, production and storage facilities, gathering pipelines, coffer dams, equipment ramps, borrow pits, disposal areas, and staging areas associated with exploration and production wells. Impacts to waters of the U.S., including wetlands, shall be avoided and minimized through the use of practicable alternatives. Stream channelization is not allowed. For the purpose of this RGP, stream channelization is the manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. Realignment of

streams that is not stream channelization is allowed only if no practicable alternative exists and appropriate compensatory mitigation is provided, and is restricted to a maximum of 500 linear feet. Appropriate and practicable compensatory mitigation shall be required for unavoidable adverse impacts to waters of the U.S. This RGP does not authorize activities that would have more than minimal adverse impacts on the aquatic environment or cause more than minimal reduction in the reach of waters of the U.S. Application Form

Standard Individual Permits

Oil and gas activities that do not qualify for authorization under the General Permit program may qualify for authorization by Standard Individual Permit (IP). Authorization under IP may be obtained only through application with the USACE. These permits are issued for activities that have more than minimal adverse impacts to waters of the U.S. and evaluation of each permit application involves more thorough review of the potential environmental and socioeconomic effects of the proposed activity. Application Form

The USACE does not regulate the subsurface drilling or hydraulic fracturing operation themselves, unless the operation is beneath navigable waters or involves a discharge of fill such as drilling mud into a water of the United States. Further, the USACE has no jurisdiction over the treatment and discharge of effluents associated with the operation such as wastewater.

It will be extremely beneficial for applicants to utilize a qualified professional delineator/consultant to identify any aquatic resources that may be present within the project review area. The delineator/consultant should perform a formal delineation to flag, locate, describe, and map all aquatic resources (wetlands, streams, swales, ditches, conveyances, culverts, etc.). Wetlands must be delineated in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and appropriate Regional Supplement. Upon receipt of the completed delineation report, the USACE will verify the location and boundaries of aquatic resources identified in the report and will prepare either an approved or preliminary jurisdictional determination. Note that only the USACE has the authority to determine the jurisdictional status of an identified aquatic resource. The completed delineation report may be submitted to the USACE prior to or concurrently with the Department of the Army permit application.

Should work begin in an area which is within Department of the Army jurisdiction without proper authorization, you may incur a violation of Federal law. If that happens, your project may be stopped, a full or partial restoration of the jurisdictional area may be required, and/or you may be subject to civil penalties. If a project is suspected to be under construction without the proper authorizations, you may anonymously report it using the Alleged Violation Report Form.

The Fort Worth District strongly advises that any prospective party associated with oil and natural gas production or distribution, or development of Class II injection wells within Texas,

contact the appropriate USACE District staff as early as possible in the planning process to discuss the proposal and potential permit requirements. Requesting a pre-application meeting with the appropriate staff is the ideal means of obtaining preliminary feedback on proposed projects. See the map and contact information for staff in the Fort Worth, Galveston, Tulsa and Albuquerque Districts with regulatory responsibilities for these types of projects in the state of Texas.

Fort Worth District Office, CESWF-PER-R, P.O. Box 17300, Fort Worth, TX 76102-0300
Telephone: 817-886-1731, Website: www.swf.usace.army.mil/missions/regulatory

Galveston District Office, Regulatory Branch, P.O. Box 1229, Galveston, TX 77553-1229
Telephone: 409-766-3930, Email: ceswg-pe-r@usace.army.mil
Website: www.swg.usace.army.mil/missions/permits

Tulsa District Office Regulatory Office, CESWT-RO 1645 South 101st East Ave., Tulsa, OK 74128-4609, Telephone: 918-669-7401Email: CESWT-RO@swt03.usace.army.mil
Website: www.swt.usace.army.mil/missions/regulatory

Albuquerque District Office, 505 South Main Street, Suite 142, Las Cruces, NM 88001
Telephone: 575-556-9939, Email: CESPA-RD-TX@usace.army.mil
Website: www.spa.usace.army.mil/missions/regulatoryprogramandpermits

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