



US Army Corps
of Engineers
Fort Worth District

Public Notice

Number: CESWF-95-LOP-2

Activity: Excavation Activities

Date Issued: July 7, 1995

This public notice is to inform you of the issuance of the Letter of Permission procedure listed above.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

Fort Worth District
Regulatory Branch
PO Box 17300
Fort Worth, TX 76102-0300
(817)978-2681

Albuquerque District
El Paso Regulatory Office
PO Box 6096
Fort Bliss, TX 79906-0096
(915)568-1359

Galveston District
Regulatory Branch
PO Box 1229
Galveston, TX 77553-1229
(409) 766-3930

Tulsa District
Regulatory Branch
PO Box 61
Tulsa, OK 74121-0061
(918)669-7400

LETTER OF PERMISSION PROCEDURE

EXCAVATION ACTIVITIES

Interested parties are hereby notified that, in accordance with Title 33 CFR 325.2(e), published in the Federal Register on November 13, 1986, the Albuquerque, Fort Worth, Galveston, and Tulsa districts of the U.S. Army Corps of Engineers (USACE) have adopted a Letter of Permission (LOP) procedure for authorizing the work described herein, within the state of Texas. Each LOP issued will include the general conditions identified herein by reference and appropriate case-specific provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require authorization by individual permit. However, compliance with this LOP procedure, including the general conditions, does not guarantee authorization of the work by LOP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this LOP are prohibited unless authorized by a separate permit.

On August 25, 1993, the USACE and Environmental Protection Agency (EPA) revised their regulations with respect to the types of activities subject to regulation under Section 404 of the Clean Water Act (CWA). Under the revised definition of discharges of dredged or fill material, such activities as mechanical land clearing, ditching, channelization, dredging, and other excavation activities include discharges when performed in waters of the United States and are regulated under Section 404 of the CWA when they would have the effect of destroying or degrading waters of the United States, including wetlands. As a result of this revision, many excavation activities that were not regulated under Section 404 prior to August 25, 1993, now require Department of the Army authorization. The purpose of this procedure is to expedite Section 404 authorization for the activities described below when they would not pose substantial adverse individual or cumulative impacts on the aquatic environment.

SCOPE OF WORK:

Work authorized by LOP under this procedure is limited to discharges of dredged or fill material associated with excavation activities in waters of the United States, including navigable waters of the United States. Activities that may be authorized by LOP under this procedure include, but are not limited to, removal of accumulated sediment at road crossings, construction and maintenance dredging of boat slips, channels, and intake and outfall structures, mining of sand and gravel, and work associated with these activities, such as temporary coffer dams. This procedure may be used to authorize the disposal of material excavated under authority of an LOP into waters of the United States provided the purpose of the disposal is not land reclamation. Impacts to waters of the United States, including wetlands, shall be avoided or minimized through the use of practicable alternatives. Reasonable compensation for unavoidable adverse impacts to waters of the United States shall be required. Work that would have substantial adverse impacts on the aquatic environment or cause a substantial reduction in the reach of waters of the United States shall not be authorized by LOP under this procedure.

LOCATION OF WORK:

This LOP procedure shall apply to work in all waters of the United States, including navigable waters of the United States, within the state of Texas.

WATER QUALITY CERTIFICATION:

The Texas Natural Resource Conservation Commission (TNRCC) and the Railroad Commission of Texas (RCT) have certified the discharges authorized by this permit pursuant to Section 401 of the Clean Water Act.

AUTHORIZATION FROM OTHER AGENCIES:

The permittee is responsible for obtaining any additional federal, state, or local permits that may be required, which include, but are not limited to:

1. When streambed materials such as sand, shell, gravel and marl are to be disturbed or removed from state-owned waters in Texas, the permittee may be required to obtain a permit from the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744.
2. Activities outside the permit area of the USACE that may affect a federally listed endangered or threatened species or its critical habitat could require permits from the U.S. Fish and Wildlife Service to prevent a violation of the Endangered Species Act under Section 9.
3. All activities in Texas located on lands under the jurisdiction of the Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495, must have prior approval from that office.
4. Any work on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that authority or agency.
5. Projects involving government property on USACE reservoirs will require submission of detailed design information to the reservoir manager and the manager's approval of the proposed activity.
6. Activities within a 100-year floodplain may require a permit from the local floodplain administrator or the TNRCC. In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.
7. Construction activity, including clearing, grading, and excavation, that would disturb five or more acres of land area may require an National Pollutant Discharge Elimination System permit from the EPA, Region 6, Water Management Division (6W-EA), 1445 Ross Avenue, Dallas, Texas 75202.
8. Activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including the transportation of oil or gas prior to the refining of such oil or the use of such gas in manufacturing or as a fuel, as described in Tex. Nat. Res. Code Ann. 91.101, may require authorization from the Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.
9. The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official. Proposed activities affecting an international water in Texas, including the Rio Grande, Amistad Reservoir, Falcon Lake, and tributaries of the Rio Grande, may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 N. Mesa Street, El Paso, Texas 79902.

10. The construction, operation and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a hydro-power project may require a license from the Federal Energy Regulatory Commission, 3125 Presidential Parkway, Suite 300, Atlanta, Georgia 30340.

CONDITIONS OF THE LETTER OF PERMISSION:

In addition to limitations discussed in the scope of work, projects authorized by LOP are subject to the general conditions contained in Appendix A.

APPLICATION PROCEDURES:

An application for authorization of work under this LOP procedure must include a written description of the entire project, proposed work schedule, and the address and telephone number of a point of contact who can be reached during working hours. The information may be submitted on an Application for Department of the Army Permit form (ENG Form 4345) or in any other form convenient to the applicant. A description of the project must include at least the following information, as applicable:

1. A vicinity map showing the location of the entire project, including all disposal site(s).
2. Plan and typical cross-section views of the proposed work.
3. A description of the type, amount, and location of all permanent and temporary fills and excavations that would be located in waters of the United States, including adjacent wetlands. A description of each disposal site shall also be included.
4. A statement disclosing whether any species listed as threatened or endangered under the Endangered Species Act might be affected by, or found in the vicinity of, the proposed project should be included. Direct coordination with the U.S. Fish and Wildlife Service (FWS) regarding the entire project is encouraged. A written response from the FWS should be included in the application whenever possible.
5. Any other available relevant information, such as information regarding cultural resources, the proximity of the project to ecologically sensitive areas, results of previous sediment sampling, and project impacts on local/regional hydrology.

Address applications and inquiries regarding proposed activities to the district office within whose boundaries the proposed project falls (see Appendix B):

Fort Worth District: Regulatory Branch, U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF-OD-R, P.O. Box 17300, Fort Worth, TX 76102-0300, or telephone the Regulatory Branch at (817) 886-1745

Albuquerque District: El Paso Regulatory Office, U.S. Army Corps of Engineers, Albuquerque District, ATTN: CESWA-CO-R-EP, P.O. Box 6096,

Fort Bliss, TX 79906-0096, or telephone the Regulatory Office at (915) 568-1359

Galveston District: Regulatory Branch, U.S. Army Corps of Engineers, Galveston District, ATTN: CESWG-CO-R, P.O. Box 1229, Galveston, TX 77552-1229, or telephone the Regulatory Branch at (409) 766-3930

Tulsa District: Regulatory Branch, U.S. Army Corps of Engineers, Tulsa District, ATTN: CESWT-OD-R, P.O. Box 61, Tulsa, OK 74121-0061, or telephone the Regulatory Branch at (918) 669-7401

This procedure will also suffice as the LOP application for work proposed in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899.

EVALUATION PROCEDURES:

Prior to authorizing any project, the USACE shall coordinate with the EPA, FWS, Texas Parks and Wildlife Department, either the TNRCC or RCT, depending on the nature of the proposed activities, and, for projects that would be located within the boundaries of the Galveston District, the National Marine Fisheries Service to obtain their concurrence with authorizing the proposed work under this LOP procedure. Should one of the appropriate agencies not concur, the proposed work would require authorization by individual permit. A verbal or written response from each contacted agency is required to complete the interagency coordination process. Pre-application coordination with these agencies through the USACE is highly recommended.

Work may not proceed prior to written notification that the District Engineer has issued an LOP. It is the applicant's responsibility to insure that the authorized project meets the terms and conditions set forth in the LOP; failure to abide by them will constitute a violation of the Clean Water Act and/or the Rivers and Harbors Act of 1899. Projects outside the scope of this LOP procedure may be considered for authorization by individual permit.

This LOP procedure shall become effective on the date of the signature of the District Engineers, or their authorized representative.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:
FOR THE DISTRICT ENGINEERS:

7 July 1995
Date

Wayne A. Lea

Joseph G. Graf
Colonel, Corps of Engineers
District Engineer
Fort Worth District

Gary R. Burroughs
Lieutenant Colonel, EN
District Engineer
Albuquerque District

Robert B. Gatlin
Colonel, Corps of Engineers
District Engineer
Galveston District

Otis Williams
Colonel, U.S. Army
District Engineer
Tulsa District

APPENDIX A

CONDITIONS OF LETTERS OF PERMISSION ISSUED UNDER "LETTER OF PERMISSION PROCEDURE, EXCAVATION ACTIVITIES"

GENERAL CONDITIONS:

1. In issuing an LOP, the Department of the Army relies in part on the information provided by the permittee. If that information proves to be false, incomplete, or inaccurate, the LOP may be revoked.
2. Projects authorized by LOP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.
3. An LOP should not be considered as an approval of the design features of any authorized project or an implication that such is considered adequate for the purpose intended; a Department of the Army LOP merely expresses the consent of the Federal Government to the proposed work insofar as public rights are concerned. An LOP does not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. Nor does it relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located and to address all non-encroachment restrictions within a regulatory floodway of such local jurisdiction as identified by the Federal Emergency Management Agency.
4. This LOP procedure may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the District Engineer that immediate suspension of the project would be in the public interest.
5. Any modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim for damages against the United States.
6. An LOP does not authorize the interference with any existing or proposed Federal project, and the permittee shall not be entitled to compensation for damage or injury to the authorized structures or activities that may result from existing or future operations undertaken by the United States in the public interest.
7. No attempt shall be made by the permittee to prevent the full and free public use of all navigable waters of the United States, at or adjacent to the authorized project.
8. There shall be no unreasonable interference with navigation by the existence or use of the permanent and temporary authorized structures.
9. The permittee shall make every reasonable effort to conduct the authorized activities in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, and trees, particularly mast-producing trees such as oaks and hickories.

10. The permittee shall allow the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary to assure that the activity being performed under this authorization is in accordance with the terms and conditions prescribed herein.
11. Impacts on cultural resources listed, or eligible for listing, in the National Register of Historic Places (NRHP), shall be taken into account by the U.S. Army Corps of Engineers (USACE) prior to the initiation of work. If previously unknown cultural resource sites are encountered during work authorized by LOP, the appropriate USACE district shall be notified and the sites avoided until the USACE can assess their eligibility for listing in the NRHP. Sites determined to be eligible for listing in the NRHP shall be mitigated in consultation with the USACE. Cultural resources include prehistoric and historic archeological sites, and areas or structures of cultural interest which occur in the permit area.
12. Appropriate erosion and siltation controls shall be used and maintained in effective operating condition during construction, and all exposed soil shall be permanently stabilized at the earliest practicable date.
13. All temporary fills shall be removed in their entirety.
14. All construction activities in federally maintained channels and/or waterways shall be coordinated for required setback distances with the appropriate USACE area or district office prior to application for an LOP.
15. Heavy equipment working in wetlands shall be placed on mats, or other measures shall be taken to minimize disturbances to soil.
16. No authorization will be granted for an activity that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Permittees shall notify the District Engineer if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
17. The project shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area.

Attachment 1 - Dredge and Fill Certification
USCOE Excavation Letter of Permission
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WORK DESCRIPTION: As described in public notices dated March 20, 1995.

SPECIAL PROVISIONS: None

GENERAL: This certification, issued pursuant to the requirements of Title 30, Texas Administrative Code, Chapter 279, is restricted to the work described in the application or joint public notice and shall expire 5 years from the date of issuance of the Corps of Engineer (COE) permit. This certification may be extended to any minor revision of the COE permit when such change(s) would not result in an impact on water quality. The TNRCC reserves the right to require full joint public notice on a request for minor revision. The applicant is hereby placed on notice that any activity conducted pursuant to the COE permit which results in a violation of the state's surface water quality standards may result in an enforcement proceeding being initiated by the TNRCC or a successor agency.

STANDARD PROVISIONS: These following provisions attach to any permit issued by the Corps of Engineers and shall be followed by the permittee or any employee, agent, contractor or subcontractor of the permittee during any phase of work authorized by a Corps permit.

1. The water quality of wetlands shall be maintained in accordance with all applicable provisions of the Texas Surface Water Quality Standards including the General, Narrative and Numerical Criteria.
2. The applicant shall not engage in any activity which will cause surface waters to be toxic to man, aquatic life or to terrestrial life.
3. Permittee shall employ measures to control spills of fuels, lubricants, or any other materials to prevent them from entering a watercourse. All spills shall be promptly reported to the TNRCC, Emergency Spill Response, at (512) 463-7727.
4. Sanitary wastes shall be retained for disposal in some legal manner. Marinas and similar operations which harbor boats equipped with marine sanitation devices shall provide state/federal permitted treatment facilities or pump out facilities for ultimate transfer to a permitted treatment facility. Additionally, marinas shall display signs in appropriate locations advising boat owners that the discharge of sewage from a marine sanitation device to waters in the state is a violation of state and federal law.
5. Materials resulting from the destruction of existing structures shall be removed from the water or areas adjacent to the water and disposed of in some legal manner.
6. A discharge shall not cause substantial and persistent changes from ambient conditions of turbidity or color. The use of silt screens or other appropriate methods is encouraged to confine suspended particulates.
7. The placement of any material in a watercourse or wetlands shall be avoided and placed there only with the approval of the Corps when no other reasonable alternative is available. If work

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within a wetland is unavoidable, gouging or rutting of the substrate is prohibited. Heavy equipment shall be placed on mats to protect the substrate from gouging and rutting if necessary.

8. Dredge Material Placement: Dredged sediments shall be placed in such a manner as to prevent any sediment runoff onto any adjacent property not owned by the applicant. Liquid runoff from the disposal area shall be retained on-site or shall be filtered and returned to the watercourse from which the dredged materials were removed. Except for material placement authorized by this permit, sediments from the project shall be placed in such a manner as to prevent any sediment runoff into waters in the state, including wetlands.
9. If contaminated spoil that was not anticipated or provided for in the permit application is encountered during dredging, dredging operations shall be immediately terminated and the TNRCC, Emergency Spill Response, shall be contacted at (512) 463-7727. Dredging activities shall not be resumed until authorized by the Commission.
10. Contaminated water, soil or any other material shall not be allowed to enter a watercourse. Noncontaminated stormwater from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
11. Stormwater runoff from construction activities (US EPA Category X) are governed by the requirements of the US Environmental Protection Agency. Applications to apply for a general permit are to be obtained from Region 6, US EPA at (214) 665-7185.
12. Upon completion of earthwork operations all temporary fills shall be removed from the watercourse/wetland and areas disturbed during construction shall be seeded, riprapped, or given some other type of protection to minimize subsequent soil erosion. Any fill material shall be clean and of such composition that it will not adversely effect the biological, chemical or physical properties of the receiving waters.
13. Disturbance to vegetation will be limited to only what is absolutely necessary. After construction, all disturbed areas will be revegetated to approximate the pre-disturbance native plant assemblage.
14. Where the control of weeds, insects and other undesirable species is deemed necessary by the permittee, control methods which are nontoxic to aquatic life or human health shall be employed when the activity is located in or in close proximity to water, including wetlands.
15. Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the water, or otherwise interfere with reasonable use of the water in the state.

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16. Surface water shall be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms or putrescible sludge deposits or sediment layers which adversely affect benthic biota or any lawful uses.
17. Surface waters shall be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the untimely filling of reservoirs, lakes and bays.
18. The work of the applicant shall be conducted such that surface waters are maintained in an aesthetically attractive condition, foaming or frothing of a persistent nature is avoided and surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse.
19. This certification shall not be deemed as fulfilling the applicant's/permittee's responsibility to obtain additional authorization/approval from other local, state or federal regulatory agencies having special/specific authority to preserve and/or protect resources within the area where the work will occur.