

Compliance and Enforcement

Neil Lebsock
Project Manager
CESWF-DE-RC
Fort Worth District

July 24, 2014



®



Hooray, A Permit!



DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF

July 24, 2014

Regulatory Division

SUBJECT: Project Number SWF-2014-00404

Mr. Whomever
819 Taylor Street
Fort Worth, Texas 76020

Dear Mr. Whomever:

This letter is in regard to information received July 23, 2014 concerning a proposal to construct a commercial development in Fort Worth, Texas. This project has been assigned Project Number SWF-2014-00404. Please include this number in all future correspondence concerning this project.

Under Section 404 of the Clean Water Act the U. S. Army Corps of Engineers (USACE) regulates the discharge of dredged and fill material into waters of the United States, including wetlands. USACE responsibility under Section 10 of the Rivers and Harbors Act of 1899 is to regulate any work in, or affecting, navigable waters of the United States. Based on the description of the proposed work, and other information available to us, we have determined this project will involve activities subject to the requirements of Section 404 and Section 10. The USACE based this decision on a preliminary jurisdictional determination that there are waters of the United States on the project site.

We have reviewed this project under the pre-construction notification procedures of Nationwide Permit General Condition 31 (Federal Register, Vol. 77, No. 34, Tuesday, February 21, 2012). We have determined this project is authorized by Nationwide Permit 39 for Commercial and Institutional Developments. To use this permit, the permittee must ensure the work is in compliance with the specifications and conditions listed on the enclosures and the special condition(s) listed below.

1.
Failure to comply with these specifications and conditions invalidates the authorization and may result in a violation of the Clean Water Act.

We have determined the proposed activity would comply with all the terms and conditions of Nationwide Permit 39 and that the adverse environmental effects of the proposed project would be minimal both individually and cumulatively. Therefore, we are waiving the 300-linear foot limit for loss of streambed in this case.

Our verification for the construction of this activity under this nationwide permit is valid until March 18, 2017, unless prior to that date the nationwide permit is suspended, revoked, or

- But...what next?



Seen this?

PERMIT COMPLIANCE CERTIFICATION

U.S. Army Corps of Engineers Project Number:

Permit Number:

Name of Permittee:

Date of Issuance:

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

Regulatory Branch
CESWF-PER-R
U.S. Army Corps of Engineers
P.O. Box 17300
Fort Worth, Texas 76102-0300

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit was completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date



Regulatory Guidance Letter

No. 08-03 Date: 10 October 2008

- Purpose: To provide guidance on minimum monitoring requirements for compensatory mitigation projects involving restoration, establishment, and/or enhancement of aquatic resources.
- Why the RGL? A GAO study determined that many project files requiring mitigation lacked monitoring reports despite the fact that such reports were required. Additionally, a lack of clearly stated objectives and performance standards in the mitigation plan made it difficult to determine whether the goal of no net loss of wetland resources was achieved.
- The guidance sets monitoring guidelines for performance standards, monitoring timeframe, and monitoring reports.



Annual Monitoring Report Form

U.S. Army Corps of Engineers (USACE) Fort Worth District



Annual Monitoring Report Form

This form includes the required elements of an annual monitoring report for compensatory mitigation projects, mitigation bank sites, and in-lieu fee project sites in accordance with the final rule on compensatory mitigation published April 10, 2008 (see 33 CFR 332.6) and Regulatory Guidance Letter 08-03 published October 10, 2008. Please consult instructions included at the end prior to completing this form.

Contents

- Background for Annual Monitoring Reports
- Part I: Project Overview
- Part II: Requirements
- Part III: Summary Data
- Part IV: Maps and Plan
- Part V: Conclusions
- Part VI: Mitigation Bank Items
- Part VII: Attachments
- Instructions

BACKGROUND FOR ANNUAL MONITORING REPORTS

The final rule on compensatory mitigation states the following (see 33 CFR 332.6):

Monitoring the compensatory mitigation project site is necessary to determine if the project is meeting its performance standards, and to determine if measures (i.e., remedial actions) are necessary to ensure that the compensatory mitigation project is accomplishing its objectives. The submission of monitoring reports to assess the development and condition of the compensatory mitigation project is required, but the content and level of detail for those monitoring reports must be commensurate with the scale and scope of the compensatory mitigation project, as well as the compensatory mitigation project type. The mitigation plan must address the monitoring requirements for the compensatory mitigation project, including the parameters to be monitored, the length of the monitoring period, the party responsible for conducting the monitoring, the frequency for submitting monitoring reports to the district engineer, and the party responsible for submitting those monitoring reports to the district engineer.

The district engineer must determine the information to be included in monitoring reports. This information must be sufficient for the district engineer to determine how the compensatory mitigation project is progressing towards meeting its performance standards, and may include plans (such as as-built plans), maps, and photographs to illustrate site conditions. Monitoring reports may also include the results of functional, condition, or other assessments used to provide quantitative or qualitative measures of the functions provided by the compensatory mitigation project site.

The permittee or sponsor is responsible for submitting monitoring reports in accordance with the special conditions of the Department of the Army permit or the terms of the instrument. Failure to submit monitoring reports in a timely manner may result in compliance action by the district engineer.

Monitoring reports must be provided by the district engineer to interested federal, tribal, state, and local resource agencies, and the public, upon request.

http://media.swf.usace.army.mil/pubdata/envIRON/regulatory/permitting/mitigationtemplates/USACE_Monitoring_Report_Form_Final_Protected.doc



So what does the Corps do with all those monitoring reports?

- Review
- Check for progress
- Determine if the mitigation area has succeeded.
- Determine when in the process to schedule a field compliance inspection



FY14 Compliance Inspections

Current as of July 23, 2014

Performance Measures Report by District

Org	Performance Measure	FY	QTR	Target	Numerator	Denominator	Percent
SWF	1. INDIVIDUAL PERMIT COMPLIANCE	2014	4	10%	11	52	21.15%
SWF	2. GENERAL PERMIT COMPLIANCE	2014	4	10%	96	904	10.62%
SWF	3. MITIGATION SITE COMPLIANCE	2014	4	10%	23	203	11.33%

- Target = the % Congress has funded us to inspect
- Numerator = site visits conducted
- Denominator = last FYs issued permits
 - ▶ *mitigation site denominator is for PRMs only and spans the previous 5 years



Non-Compliance Actions

- These can occur on the project site (i.e. lack of BMPs, etc.).
- These can also occur at the PRMs (i.e. survival rates drop).
- Ignoring special conditions or missing important dates or words, such as...
 - 1. The permittee shall implement and abide by the mitigation plan titled, "XYZ Plan " by Mr. Whomever, dated July 23, 2014, except where changes are necessary to comply with the special condition listed below. The permittee shall implement the mitigation plan concurrently with the construction of the project and complete the initial construction and plantings associated with the mitigation work prior to completion of construction of the project. Completion of all elements of this mitigation plan is a requirement of this permit.
 - 2. The permittee shall debit 1.1 credits from the Mitigation Bank in compliance with the provisions of the "Mitigation Banking Instrument Agreement," dated July 24, 2014. This debit shall compensate off-site for unavoidable adverse project impacts that would not be compensated for by on-site mitigation. The permittee shall complete the mitigation bank transaction and provide documentation to the USACE that the transaction has occurred prior to commencing any ground-disturbing activity within waters of the United States.



Enforcement Perspective

- ▶ Resolve enforcement actions through gaining compliance.
- ▶ Seek stronger enforcement when a violation is severe, or the violation is willful, flagrant, or knowing.
- ▶ Fines do not necessarily repair environmental damage
- ▶ Fines may have deterrent value
- ▶ Restoration is the first remedy considered



Alleged Violation Report Form



US Army Corps of Engineers Fort Worth District, Regulatory Branch ALLEGED VIOLATION REPORT FORM

Please complete this form as accurately and completely as possible. Date of Report: _____
You may attach extra pages as needed.

Alleged Violator Name: _____

Address: _____

City, State, Zip Code: _____

Telephone Number(s): _____

Description of Work: (Circle) *Filling Dredging Road Construction Stream Diversion* Other: (Describe)

(attach pictures, _____
if available) _____

Purpose of Work (if known): _____

Equipment used: (e.g., backhoe, bulldozer, dump truck, etc) _____

Material Discharged: (Circle) *Dirt Gravel Rocks Concrete Trees* Other: _____

Location Information: _____

(attach map and _____
mark site location) _____

Latitude/Longitude: _____ Waterway Name: _____

Date work began, if known: _____ Is work ongoing? _____

Any additional information which may be helpful: (including other Federal, State or local agencies contacted)

Do you wish to remain anonymous? YES / NO Are you available for additional questions? YES / NO
You do not have to fill out this portion if you wish to remain anonymous and do not wish to be contacted.

Your Name & Address: _____

Phone Number: _____ Email address: _____

Mail to: U.S. Army Corps of Engineers, Fort Worth District, Regulatory Branch, Room 3A37
P.O. Box 17300, Fort Worth, Texas 76102-0300



The End

