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CHUCK CARR BROWN, Ph.D.
SECRETARY

State of Louisiana

DEPARTMENT OF ENVIRONMENTAL QUALITY ENVIRONMENTAL SERVICES

DEC 15 2020

Mr. Martin S. Mayer
Chief, Regulatory Branch
US Army Corps of Engineers, New Orleans District
Attn: Brenda Archer
CEMVN-ODR
7400 Leake Avenue
New Orleans, Louisiana 70118

AI No.: 149056
Activity No.: CER20200001

RE: Water Quality Certification WQC 200929-01
Proposal to Reissue and Modify Nationwide Permits
State of Louisiana

Dear Mr. Mayer:

The Louisiana Department of Environmental Quality, Office of Environmental Services (LDEQ), provides with this correspondence water quality certification approval and reissuance of the U.S. Army Corps of Engineers (Corps) Nationwide Permits (NWP), general conditions, and definitions with some modification as proposed in the *Federal Register* (Vol. 85 No. 179) as published September 15, 2020. The request for the pre-filling meeting was received September 14, 2020. On October 27, 2020, the New Orleans District of the Corps requested water quality certification under Section 401 of the Clean Water Act for the issuance of those NWPs that may result in a discharge in water of the United States in the State of Louisiana.

LDEQ has reviewed the Corps' Proposal to Reissuance and Modify the Nationwide Permits, as published in the referenced *Federal Register* and hereby issues WQC 200929-01 with the attached Nationwide Permit (NWP) Regional Conditions for the following NWPs:

- | | | | |
|--------|--------|--------|--------|
| NWP 3 | NWP 18 | NWP 33 | NWP 46 |
| NWP 4 | NWP 19 | NWP 34 | NWP 48 |
| NWP 5 | NWP 20 | NWP 36 | NWP 49 |
| NWP 6 | NWP 21 | NWP 37 | NWP 50 |
| NWP 7 | NWP 22 | NWP 38 | NWP 51 |
| NWP 12 | NWP 23 | NWP 40 | NWP 52 |
| NWP 13 | NWP 25 | NWP 41 | NWP 53 |
| NWP 14 | NWP 27 | NWP 42 | NWP 54 |
| NWP 15 | NWP 30 | NWP 43 | NWP C |
| NWP 16 | NWP 31 | NWP 44 | NWP D |
| NWP 17 | NWP 32 | NWP 45 | NWP E |

LDEQ denies 401 Water Quality Certification to the reissuance of NWP 29 except those associated with construction or expansion of a single residence pursuant to the attached State of Louisiana Nationwide Permit Regional Conditions.

Louisiana Revised Statutes, RS 30:2074 provides the Secretary of the Louisiana Department of Environmental Quality (LDEQ) authority to process all applications for certifications for federal or state licenses or permits and to establish such standards, guidelines, or criteria as he deems necessary or appropriate to prohibit, control, or abate water pollution. With that authority, the State of Louisiana's Surface Water Quality Standards are set forth in LAC 33:IX, Chapter 11.

In accordance with LAC 33:IX.1109.A.1, the state of Louisiana's Antidegradation Policy requires that all waters of the state, including interstate, intrastate, and coastal waters, and any portions thereof, whose existing water quality standards exceeds the specifications of the approved water quality standards or otherwise supports an unusual abundance and diversity of fish and wildlife sources, will be maintained at their existing high quality. Furthermore, LAC: IX.1109.A.2 states "The administrative authority shall not approve any wastewater discharge or certify any activity for a federal permit that would impair water quality or use of state waters, including waters in the Natural or and Scenic Rivers System that are waters of the state."

Louisiana's water quality standards include both numeric and general criteria. General criteria shall apply at all times to the surface waters of the state, including wetlands, whether they are identified in the standards or not. (LAC 33:IX.1113.B.) LAC 33:IX.1113.B.1.d reiterates this by stating, "All waters shall be free from such concentrations of substances attributable to wastewater or other discharges sufficient to:

Additionally, LAC 33:IX.1113.B.5 states "No substances shall be present in the waters of the state or the sediments underlying said waters in quantities that alone or in combination will be toxic to human, plant, or animal life or significantly increase health risks due to exposure to the substances or consumption of contaminated fish or other aquatic life."

Based on the information provided in the notice, it is the opinion of LDEQ that the Nationwide Permit NWP 29 could have potential adverse effects on water quality or fail to comply with State water quality standards as provided for un LAC 33:IX. Chapter 11, and should be considered for certification on a case-by-case basis. Therefore, certification for NWP 29 is denied..

LDEQ has denied 401 Water Quality Certification to the reissuance of NWP 39.

Based on the information provided in the notice, it is the opinion of LDEQ that the Nationwide Permit NWP 39 could have potential adverse effects on water quality or fail to comply with State water quality standards as provided for un LAC 33:IX. Chapter 11, and should be considered for certification on a case-by-case basis. Therefore, certification for this NWP is denied.

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Should you have any questions concerning any part of this certification, please contact Elizabeth Hill at (225) 219-3225 or by email at elizabeth.hill@la.gov. Please reference Agency Interest (AI) number 149056 and Water Quality Certification 200929-01 on all future correspondence to this Department to ensure all correspondence regarding this subject is properly filed into the Department's Electronic Document Management System.

Sincerely,



Elliott B. Vega
Assistant Secretary

Attachment

c: IO-W

ec: Brenda.A.Archer@usace.army.mil

1. STATE OF LOUISIANA

2. NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS

Proposed 2020 NWP Louisiana Regional Conditions

PART I - REGIONAL CONDITIONS FOR ALL NWPS:

Regional Condition 1. No regulated activity may cause the permanent loss or the conversion of greater than ½ acre of cypress swamp and/or cypress-tupelo swamp.

Regional Condition 2. No regulated activity may cause the permanent loss or the conversion of greater than ½ acre of coastal prairie, pine savanna, and/or pitcher plant bogs.

Regional Condition 3. No regulated activity is authorized under any NWP permit which has been determined to have an adverse impact upon a federal or state designated rookery and/or bird sanctuary.

Regional Condition 4. Dredged and/or fill material placed within wetlands and other waters must be free of contaminants, to the best of the applicant's knowledge.

Regional Condition 5. For work within the Louisiana Coastal Zone and/or the Outer Continental Shelf off Louisiana;

- a. The New Orleans District's Programmatic General Permit (PGP) generally supersedes the Nationwide Permit authorization for regulated activities located within the Louisiana Coastal Zone as incorporated within the New Orleans Corps District boundaries. Projects typically will not qualify for a Nationwide Permit if they qualify for the Programmatic General Permit.
- b. A joint permit application for work must first be submitted to the Louisiana Department of Natural Resources, Office of Coastal Management (OCM). OCM will then forward the request to the Corps of Engineers-New Orleans District.
- c. NWP requests that have not received a Coastal Use Permit or other consistency determination from the OCM would be processed by the Corps. However any granted authorization may be conditioned to require the applicant to obtain appropriate authorization from OCM before the NWP is valid.

Regional Condition 6. A pre-construction notification, as defined under nationwide general condition 32, will be provided for all regulated activities, excluding Nationwide 20, that

- a. Adversely affects greater than 1/10 acre of wetlands, and/or;
- b. Adversely impacts a Louisiana designated Natural and Scenic River or a state or federal wetland/wildlife management area and/or refuge.

Regional Condition 7, Supplement to General Condition 2 – Aquatic Life Movement. To support compliance with General Condition 2 of the NWP, culverts must be sufficiently sized to maintain expected high water flows and be installed at a sufficient depth to maintain low flows to sustain the movement of aquatic species.

PART II - REGIONAL CONDITIONS FOR SPECIFIC NWPS

NWP 1. *Aids to Navigation:*
No regional conditions are proposed.

NWP 2. *Structures in Artificial Canals:*
No regional conditions are proposed.

NWP 3. *Maintenance:*
No regional conditions are proposed.

NWP 4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities:*
No regional conditions are proposed.

NWP 5. *Scientific Measurement Devices:*
Pre-construction notification, as defined under nationwide general condition 32, is required for all weirs and flumes in any water of the United States.

NWP 6. *Survey Activities:*
No regional conditions are proposed.

NWP 7. *Outfall Structures and Associated Intake Structures:*
Activities that include the construction of intake structures must include adequate fish exclusion screening devices.

NWP 8. *Oil and Gas Structures on the Outer Continental Shelf:*
No regional conditions are proposed.

NWP 9. *Structures in Fleeting and Anchorage Areas:*
No regional conditions are proposed.

NWP 10. *Mooring Buoys:*
No regional conditions are proposed.

NWP 11. *Temporary Recreational Structures:*
No regional conditions are proposed.

NWP 12. *Oil or Natural Gas Pipeline Activities:*
Pre-Construction Notification, as defined under nationwide general condition 32, is required for regulated **pipeline activities within tidal waters** regardless of impact acreage. The U.S. Environmental Protection Agency and National Marine Fisheries Service will be forwarded a copy of the Pre-Construction Notification..

A 50-foot gap shall be required for every 500 linear feet of sidecast material resulting from trench excavation activities associated with pipeline construction. Under certain circumstances the gap intervals may be modified. Additionally, no fill shall be placed in a manner which would impede natural watercourses.

NWP 13. *Bank Stabilization:*
Rip-rap material shall be free of protruding reinforcement material (i.e., rebar). Such material may pose a hazard to navigation and recreational uses.

NWP 14. *Linear Transportation Projects:*
Pre-Construction Notification, as defined under nationwide general condition 32, is required for all regulated **linear transportation crossings within tidal waters** regardless of impact acreage. The U.S. Environmental Protection Agency and National Marine Fisheries Service will be forwarded a copy of the Pre-Construction Notification.

NWP 15. *U.S. Coast Guard Approved Bridges:*
No regional conditions are proposed.

NWP 16. *Return Water from Upland Contained Disposal Areas:*
No regional conditions are proposed.

NWP 17. *Hydropower Projects:*
No regional conditions are in proposed.

NWP 18. *Minor Discharges:*
No regional conditions are proposed.

NWP 19. *Minor Dredging:*
No regional conditions are proposed.

NWP 20. *Response Operations for Oil and Hazardous Substances:*
No regional conditions are proposed.

NWP 21. *Surface Coal Mining Activities:*
No regional conditions are proposed.

NWP 22. *Removal of Vessels:*
No regional conditions are proposed.

NWP 23. *Approved Categorical Exclusions:*
No regional conditions are proposed.

NWP 24. *Indian Tribe or State Administered Section 404 Programs:*
Not applicable in the State of Louisiana.

NWP 25. *Structural Discharges:*
No regional conditions are proposed.

NWP 26. (Reserved)

NWP 27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities:*
No regulated activities shall be authorized that would convert tidal wetlands to another aquatic habitat type.

NWP 28. *Modifications of Existing Marinas:*
No regional conditions are proposed.

NWP 29. *Residential Developments:*
No regional conditions are proposed.

NWP 30. *Moist Soil Management for Wildlife:*
No regional conditions are proposed.

NWP 31. *Maintenance of Existing Flood Control Facilities:*
No regional conditions are proposed.

NWP 32. *Completed Enforcement Actions:*
No regional conditions are proposed.

NWP 33. *Temporary Construction, Access and Dewatering:*
No regional conditions are proposed.

NWP 34. *Cranberry Production Activities:*
Not applicable within the State of Louisiana.

NWP 35. *Maintenance Dredging of Existing Basins:*

No regional conditions are proposed.

NWP 36. *Boat Ramps:*

No regional conditions are proposed.

NWP 37. *Emergency Watershed Protection and Rehabilitation:*

No regional conditions are proposed.

NWP 38. *Cleanup of Hazardous and Toxic Waste:*

No regional conditions are proposed.

NWP 39. *Commercial and Institutional Developments:*

No regional conditions are proposed.

NWP 40. *Agricultural Activities:*

No regional conditions are proposed.

NWP 41. *Reshaping Existing Drainage Ditches:*

No regional conditions are proposed.

NWP 42. *Recreational Facilities:*

No regional conditions are proposed.

NWP 43. *Stormwater Management Facilities:*

Regulated activities which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Navigation Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

NWP 44. *Mining Activities:*

Regulated activities which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

NWP 45. *Repair of Uplands Damaged by Discrete Events:*

No regional conditions are proposed.

NWP 46. *Discharges in Ditches:*

No regional conditions are proposed.

NWP 47. *[Reserved]*

NWP 48. *Existing Commercial Shellfish Aquaculture Activities:*

No regional conditions are proposed.

NWP 49. *Coal Remining Activities:*

No regional conditions are proposed.

NWP 50. *Underground Coal Mining Activities:*

No regional conditions are proposed.

NWP 51. *Land-Based Renewable Energy Generation Facilities:*

No regional conditions are proposed.

NWP 52. *Water-Based Renewable Energy Generation Pilot Projects:*

No regional conditions are proposed.

NWP-53. *Removal of Low-Head Dams*

No regional conditions are proposed.

NWP-54. *Living Shorelines*

No regional conditions are proposed.

New NWP A. *Seaweed Mariculture Activities*

No regional conditions are proposed.

New NWP B. *Finfish Mariculture Activities*

No regional conditions are proposed.

New NWP C. *Electric Utility Line and Telecommunication Activities*

No regional conditions are proposed.

New NWP D. *Utility Line Activities for Water and Other Substances*

No regional conditions are proposed.

New NWP E. *Water Reclamation and Reuse Facilities*

No regional conditions are proposed.

PART III - WATER QUALITY REGIONAL NWPS CONDITIONS FOR "INDIAN COUNTRY" LANDS

The Environmental Protection Agency (EPA) is the agency required to address water quality certification of the 2020 nationwide permits (NWP) in Indian country¹ where a tribe has not received treatment in the same manner as a state for the Clean Water Act (CWA) Section 401 program. Tribes which have received treatment in the same manner as a state (TAS) for the water quality standards and §401 certification programs and which have EPA-approved water quality standards will be contacted by the Corps of Engineers for the water quality certification process. EPA is the agency required to address water quality certification for tribes that have not received TAS for the water quality standards and 401 certification programs. At this time, no Indian tribes in Louisiana have CWA Section 401 authority.

1. The permittee shall conduct all work in such a manner to comply with all U.S. Army Corps of Engineers §404 permit conditions.
2. The permittee shall keep a copy of this certification with conditions at the project site during all phases of construction. All contractors or subcontractors involved in the project must be provided a copy of this certification prior to commencement of activities.
3. All heavy equipment used in the project areas shall be steam cleaned before the start of the project and inspected daily for leaks. Leaking equipment must not be used in or near surface water or in a wetland area. Equipment shall be parked outside the waterbody when not in use.
4. All fuels, oil, hydraulic fluid, or other substances of this nature must not be stored, temporarily or otherwise, within the normal floodplain or the wetland. A secondary containment system for these items shall be used in the event the primary containment system leaks. Refueling or servicing of equipment must not take place within 100 feet of any watercourse or within the wetland area.
5. The construction area shall be protected such that a runoff event will not move soil or contaminants to surface water or away from the construction site. These measures shall be in place prior to the commencement of activities and inspected daily.
6. Temporary mats must be placed on stream banks, riparian areas, and wetlands, to minimize impacts to soil and vegetation from heavy equipment. Temporary access roads must be restored to pre-project conditions.

¹ "Indian Country", as defined in 18 U.S.C. 1151, means: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

7. All asphalt, concrete, and other construction materials must be properly handled and contained to prevent releases to the stream channels. All concrete that is to be poured must be fully contained in mortar-tight forms to prevent accidental releases to surface water or ground water. No discharge of any concrete to surface water or ground water may occur. Dumping of waste materials near watercourses is strictly prohibited.

8. Work in a stream channel should be limited to periods of no flow when practicable, and must be limited to periods of low flow. Avoid working within the channel during spring runoff or summer thunderstorm season.

9. When working in a stream channel, flowing water must be temporarily diverted around the work area to minimize sedimentation and turbidity problems. Acceptable diversion structures are non-erosive and include (but are not limited to) sand bags, water bladders, concrete barriers lined with plastic, and flumes.

10. The permittee shall restore all areas disturbed by construction activities to pre-project conditions. This shall include restoration of surface contours, stabilization of the soil, and restoration of appropriate native vegetation to establish permanent cover.