



**US Army Corps
of Engineers** ®
Fort Worth District

Public Notice

Number: CESWF-97-LOP-1

Activity: Activities at Certain Reservoirs and Federal and State
Sponsored Projects

Date: October 6, 1998

The purpose of this public notice is to inform you of the issuance of the Letter of Permission procedure identified 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 Division
PO Box 17300
Fort Worth, TX 76102-0300
(817)886-1731

Albuquerque District
Regulatory Field Office
505 S. Main St. Suite 142
Las Cruces, NM 88001
(575)556-0039

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

Tulsa District
Regulatory Office
2488 East 81st Street
Tulsa, OK 74137
(918) 669-7400

LETTER OF PERMISSION PROCEDURE

ACTIVITIES AT CERTAIN RESERVOIRS AND FEDERAL AND STATE SPONSORED PROJECTS

Interested parties are hereby notified that, in accordance with Title 33 CFR 325.2(e)(1), published in the Federal Register on November 13, 1986, the U. S. Army Corps of Engineers (USACE), Fort Worth, Albuquerque, Galveston, and Tulsa Districts, have adopted a Letter of Permission (LOP) procedure for authorizing the work described herein in the State of Texas. 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. Each LOP issued will include the general conditions identified herein by reference and 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 the 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.

SCOPE OF WORK

Work that may be authorized by LOP using this procedure includes any activity at a USACE, Bureau of Reclamation, state river authority, regional water district, city, county, or utility reservoir, including, but not limited to, bank stabilization, beach nourishment, property protection, and sediment removal. Work authorized by LOP may also include any projects conducted, sponsored, or funded, in whole or in part, by the USACE, U. S. Fish and Wildlife Service (FWS), U. S. Environmental Protection Agency (EPA), Natural Resources Conservation Service (NRCS), Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), or the Texas Water Development Board. Activities associated with such programs as the Water Resources Development Act of 1986, as amended, Section 1135 Project Modifications for Improvement of Environment, Partners for Wildlife, the North American Waterfowl Management Plan, and the Wetlands Reserve Program and activities at National Wildlife Refuges, State Wildlife Management Areas, and State Parks are eligible for authorization 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, in the State of Texas.

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.

WATER QUALITY CERTIFICATION

The TCEQ has certified pursuant to Section 401 of the Clean Water Act, for the activities for which they are responsible, that the LOP procedure would not result in a violation of established Texas Water Quality Standards provided the standard provisions in Appendix B are followed. The Railroad Commission of Texas (RCT) has waived certification pursuant to Section 401 of the Clean Water Act, for the activities for which they are responsible.

COASTAL ZONE PROGRAM CONSISTENCY

The USACE certifies that the proposed LOP procedure complies with the approved Texas Coastal Management Program and will be implemented in a manner consistent with such program. The USACE certifies that the issuance of this LOP Procedure is consistent to the maximum extent practicable with the Louisiana Coastal Resources Program.

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 stream bed 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 (TPWD), 4200 Smith School Road, Austin, Texas 78744. All activities occurring on lands owned or managed by the TPWD require a signed agreement from that agency prior to commencing operations.
2. All activities in Texas located on lands under the jurisdiction of the Texas General Land Office (GLO), 1700 North Congress Avenue, Austin, Texas 78701-1495, must have prior approval from that office. The placement of structures onto state-owned stream beds, state-owned uplands, or coastal public lands in Texas may require the issuance of a lease or easement from the GLO.
3. Any work on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that agency.
4. Projects involving government property on USACE reservoirs will require submission of detailed design information to the reservoir manager and USACE approval of the proposed activity, including a real estate consent to easement.
5. Activities within a 100-year floodplain may require a permit from the local floodplain

administrator or the TCEQ. In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.

6. Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in the disturbance of one or more acres, must be controlled and authorized under Texas Pollutant Discharge Elimination System (TPDES) general permit TXR150000. A copy of the general permit, application (notice of intent), and additional information is available at:

http://www.tceq.texas.gov/permitting/stormwater/wq_construction.html or by contacting the TCEQ Storm Water & Pretreatment Team at (512) 239-4671.

7. The use of scrap tires for bank stabilization and erosion control requires notification of the TCEQ Waste Tire Recycling Program, P. O. Box 13087, Austin, Texas 78711-3087.

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, the Federal Energy Regulatory Commission, 3125 Presidential Parkway, Suite 300, Atlanta, Georgia 30340, and/or the Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495.

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 subject to authorization under this permit and affecting an international water in Texas, including the Rio Grande, Amistad Reservoir, Falcon Lake, and all tributaries of the Rio Grande, may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 North Mesa Street, El Paso, Texas 79902.

10. Projects involving construction of a bridge or equivalent thereof across a navigable water of the United States may require authorization from the Commander, Eighth Coast Guard District (ob), Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 501 Magazine Street, New Orleans, Louisiana 70130-3396.

11. 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 (FWS) to prevent a violation of the Endangered Species Act under Section 9.

12. Activities that may affect the land or water use or natural resources of the Texas Coastal Zone may require a Coastal Use Permit or other authorization or waiver from the Texas Coastal Management Program, Texas Coastal Coordination Council, 1700 North Congress, Room 617, Austin, Texas 78701-1495.

13. Activities that may affect the land or water use or natural resources of the Louisiana Coastal Zone may require a Coastal Use Permit or other authorization or waiver from the Louisiana Department of Natural Resources, Coastal Management Division, P. O. Box 44487, Baton Rouge, Louisiana 70804.

APPLICATION PROCEDURES

An application for authorization of work under this LOP procedure must include a written description of the 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. The purpose of, and need for, the project.
2. A vicinity map (e.g., county map, USGS quad sheet, etc.) showing the location of the project, including any borrow or disposal site(s).
3. Plan, profile, and cross-section views of all work, both permanent and temporary, in or adjacent to waters of the United States, including wetlands.
4. The volume of material proposed to be discharged into and/or excavated from waters of the United States and the proposed type and source of the material. In cases where the activity may result in a change to pre-construction contours or drainage patterns, provide the reasons why the changes are necessary and a description of the anticipated outcome of the changes.
5. A delineation and description of wetlands and other waters of the United States in the area that would be affected by the proposed work, and a description of the project's likely impact on the aquatic environment. Delineations of wetlands must be conducted using the "Corps of Engineers Wetland Delineation Manual", USACE Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987, including all regional supplemental guidance. The supplemental guidance is included in the on-line version and may also be obtained from your USACE district office. In addition, the width and depth of the water body and the waterward distance of any structures from the existing shoreline.
6. A statement disclosing whether or not 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. Direct coordination with the FWS concerning the potential impact of the entire project on threatened and endangered species is strongly encouraged.
7. The applicant should include any other relevant information, including available information on cultural resources and hydrology.

Address applications and inquiries regarding proposed activities to the appropriate district office:

Fort Worth District: Regulatory Division, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX 76102-0300, or telephone the Regulatory Division at (817)886-1731

Albuquerque District: Regulatory Branch, U.S. Army Corps of Engineers, Albuquerque District, 505 S. Main St. Suite 142, Las Cruces, NM 88001, or telephone the Regulatory Office at (575)556-9939

Galveston District: Regulatory Branch, U.S. Army Corps of Engineers, Galveston District, P.O. Box 1229, Galveston, TX 77553-1229, or telephone the Regulatory Branch at (409) 766-3930

Tulsa District: Regulatory Branch, U.S. Army Corps of Engineers, Tulsa District, 2488 East 81st Street, Tulsa, OK 74137, or telephone the Regulatory Branch at (918) 669-7400

This application 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. When Section 10 applies, the Section 10 work will be evaluated using the Section 10 LOP procedures at 33 CFR 325.2(e)(1).

EVALUATION PROCEDURES

Prior to authorizing any project, the USACE shall conduct a public interest evaluation and coordinate with the EPA, FWS, TPWD; either the TCEQ or RCT (depending on the nature of the proposed activities); the National Marine Fisheries Service and the GLO for projects that would be located within the boundaries of the Galveston District; the Louisiana Department of Environmental Quality and the Louisiana Department of Wildlife and Fisheries for projects along the Sabine River and its impoundments where the Sabine River is the border between the states of Texas and Louisiana; and the Louisiana Department of Natural Resources (Coastal Management Division) for projects in the Sabine River watershed which might affect the land or water use or natural resources of the Louisiana Coastal Zone to obtain their concurrence with authorizing the proposed work under this LOP procedure. Coordination may be by telephone, facsimile transmission, letter, or a combination of the above. Should one of the appropriate agencies not concur, the proposed work would require authorization by individual permit or other means. A verbal or written response from each contacted agency is required to complete the interagency coordination process. Concurrence may not be presumed in the absence of a response unless written procedures for such presumption are developed between the USACE and the agency in question. Projects within the boundaries of the Texas Coastal Management Plan must have certification from the Coastal Coordination Council of consistency with the Texas Coastal

Management Program. Projects in the Sabine River watershed that might affect the land or water use or natural resources of the Louisiana Coastal Zone must have certification from the Louisiana Department of Natural Resources of consistency with the Louisiana Coastal Resources Program. The USACE strongly encourages pre-application coordination with these agencies through the USACE.

Work may not proceed prior to written notification that the USACE has issued an LOP. It is the applicant's responsibility to insure that the authorized project meets the terms and conditions set forth herein; failure to abide by them will constitute a violation of the Clean Water Act. Projects outside the scope of this LOP 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:

ORIGINAL SIGNED

James S. Weller
Colonel, Corps of Engineers
District Engineer
Fort Worth District

Thomas N. Fallin
Lieutenant Colonel, EN
District Engineer
Albuquerque District

Nicholas J. Buechler
LTC(P), Corps of Engineers
District Engineer
Galveston District

Leonardo V. Flor
Colonel, U.S. Army
District Engineer
Tulsa District

APPENDIX A

GENERAL CONDITIONS OF LETTERS OF PERMISSION ISSUED UNDER "Letter of Permission Procedure, Activities at Certain Reservoirs and Federal and State-Sponsored Projects"

1. In issuing a letter of permission (LOP), the Department of the Army has relied in part on the information provided by the permittee. If, subsequent to issuing an LOP, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.
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 permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. LOP's do not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. Nor do they 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 such action 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 structures or activities authorized herein which 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 a project authorized by LOP.

8. Permittees shall not cause any unreasonable interference with navigation by the existence or use of the permanent and temporary structures authorized by LOP using this procedure.
9. Permittees shall make every reasonable effort to conduct the activities authorized by LOP 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. Permittees shall allow the District Engineer and his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the activity being performed by LOP is in accordance with the terms and conditions prescribed herein.
11. The impact of activities authorized by LOP using this procedure on historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), shall be taken into account by the USACE prior to the initiation of work. Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest which occur in the permit area. If a known historic property would be encountered, the permittee shall not conduct any work in the permit area that would affect the property until the requirements of 33 CFR Part 325, Appendix C, have been satisfied. If a previously unknown historic property is encountered during work authorized by an LOP issued under this procedure, the permittee shall immediately notify the USACE and avoid further impact to the site until the USACE has verified that the requirements of 33 CFR Part 325, Appendix C, have been satisfied.
12. Permittees shall use and maintain appropriate erosion and siltation controls in effective operating condition during construction, and permanently stabilize all exposed soil at the earliest practicable date.
13. Permittees shall remove all temporary fills in their entirety.
14. Permittees shall coordinate all construction activities in federally maintained channels and/or waterways for required setback distances with the USACE prior to application for a permit.
15. Permittees shall place all heavy equipment working in wetlands on mats, or take other measures to minimize soil disturbance.
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 unless the primary purpose of the activity is to impound water.
18. Permittees shall properly maintain any structure or fill, including maintenance to ensure public safety.
19. Permittees shall address any potential adverse impacts of the discharge of dredged or fill material to public water supply intakes.
20. Stream realignment is not authorized.
21. Permittees shall avoid and minimize discharges of dredged or fill material into waters of the United States through the use of practicable alternatives.
22. To the maximum extent practicable, permittees shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the fill is to impound water.
23. Permittees shall design facilities to be stable against the forces of flowing water, wave action, and the wake of passing vessels.
24. This permit does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

Appendix B
USACE Public Notice No. CESWF-97-LOP-1
Attachment 1 – Dredge and Fill Certification
September 15, 1997
Page 1 of 3

WORK DESCRIPTION: As described in the public notice dated August 8, 1997.

SPECIAL CONDITIONS: 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. 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 Texas Commission on Environmental Quality (TCEQ) 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 TCEQ or a successor agency.

STANDARD PROVISIONS: These following provisions attach to any permit issued by the COE 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 COE 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 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 TCEQ by calling the State of Texas Environmental Hotline at 1-800-832-8224.
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.

Appendix B
USACE Public Notice No. CESWF-97-LOP-1
Attachment 1 – Dredge and Fill Certification
September 15, 1997
Page 2 of 3

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 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. Dredged 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 TCEQ shall be contacted by calling the State of Texas Environmental Hotline at 1-800-832-8224. 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 storm water from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
11. Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in the disturbance of one or more acres, must be controlled and authorized under Texas Pollutant Discharge Elimination System (TPDES) general permit TXR150000. A copy of the general permit, application (notice of intent), and additional information is available at: http://www.tceq.texas.gov/permitting/stormwater/wq_construction.html or by contacting the TCEQ Storm Water & Pretreatment Team at (512) 239-4671.
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 affect 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.

Appendix B
USACE Public Notice No. CESWF-97-LOP-1
Attachment 1 – Dredge and Fill Certification
September 15, 1997
Page 3 of 3

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.
16. Surface water shall be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms, 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 and foaming or frothing of a persistent nature is avoided. 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.