

## **NATIONWIDE PERMIT 40**

### **Agricultural Activities**

Effective Date: March 15, 2021  
(NWP Final Notice, 86 FR 8)

40. Agricultural Activities. Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal jurisdictional waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

Note: Some discharges of dredged or fill material into waters of the United States for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

### **2021 Nationwide Permit General Conditions**

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be

constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study

river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been

completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C.

306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory

mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWP.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the

framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require

additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

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(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from

the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division

engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity’s purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with

the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination*: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

## **2021 District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer

determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

## **2021 Further Information**

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

## **2021 Nationwide Permit Definitions**

Best management practices (BMPs): Policies, practices, procedures, or structures

implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National

Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics

such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine,

and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of

structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a “water of the United States.” If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

### **The following regional conditions apply within the Fort Worth District**

1. Notification to the appropriate District Engineer in accordance with Nationwide Permit General Condition 32 - Pre-Construction Notification (PCN) is required for all activities proposed for authorization by any NWP into the below listed ecologically unique and sensitive areas located within waters of the United States. The Corps will coordinate with the resource agencies as specified in NWP General Condition 32(d)(3).
  - a. Pitcher plant bogs ((*Sarracenia* spp.) and/or sundews (*Drosera* spp.) and/or Bald Cypress/Tupelo swamps ((*Taxodium distichum*) and/or water tupelo (*Nyssa aquatica*)).
  - b. Karst Zones 1 and 2 located in Bexar, Travis and Williamson Counties (see [https://www.fws.gov/southwest/es/AustinTexas/Maps\\_Data.html](https://www.fws.gov/southwest/es/AustinTexas/Maps_Data.html) ).
  - c. Caddo Lake and associated areas that are designated as “Wetland of International Importance” under the Ramsar Convention (see <http://caddolakedata.us/media/145/1996caddolakeramsar.pdf> or <http://caddolakedata.us/media/144/1996caddolakeramsar.jpg> ).
  - d. Reaches of rivers (and their adjacent wetlands) that are included in the Nationwide Rivers Inventory (see <https://www.nps.gov/subjects/rivers/nationwide-rivers-inventory.htm> ).
2. For all activities proposed for authorization under any NWP at sites approved as

compensatory mitigation sites (either permittee-responsible, mitigation bank and/or in-lieu fee) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, the applicant shall notify the appropriate District Engineer in accordance with the Nationwide Permit General Condition 32 - PCN prior to commencing the activity.

#### **ADDITIONAL INFORMATION**

This nationwide permit is effective March 15, 2021, and expires on March 14, 2026.

Information about the U.S. Army Corps of Engineers regulatory program, including nationwide permits, may also be found at <http://www.swf.usace.army.mil/Missions/Regulatory.aspx> and <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 18, 2020

Colonel Timothy R. Vail  
Galveston District  
U.S. Army Corps of Engineers  
P.O. Box 1229  
Galveston, Texas 77553-1229

Re: 2020 USACE Nationwide Permits Reissuance

Dear Colonel Vail:

This letter is in response to your October 19, 2020, letter requesting Clean Water Act Section 401 certification of the United States Army Corps of Engineers (Corps) Nationwide Permits (NWP). The Proposal to Reissue and Modify Nationwide Permits was published in the Federal Register (Vol. 85, No. 179, pages 57298-57395) on September 15, 2020. Regional conditions for NWPs in Texas were proposed in public notices on September 30, 2020 (Corps Galveston District) and October 1, 2020 (Corps Fort Worth District).

The Texas Commission on Environmental Quality (TCEQ) has reviewed the Proposal to Reissue and Modify Nationwide Permits and the proposed regional conditions. On behalf of the Executive Director and based on our evaluation of the information contained in these documents, the TCEQ certifies that any discharge associated with the activities authorized by NWPs 1, 2, 4, 5, 8, 9, 10, 11, 20, 23, 24, 28, 34, 35, 48, A, and B will comply with water quality requirements as required by Section 401 of the Federal Clean Water Act and pursuant to Title 30, Texas Administrative Code (TAC), Chapter 279.

The TCEQ conditionally certifies that any discharge associated with the activities authorized by NWPs 3, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 25, 27, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, C, D, and E will comply with water quality requirements as required by Section 401 of the Federal Clean Water Act and pursuant to Title 30, Texas Administrative Code, Chapter 279. Conditions for each NWP are defined in Attachment 1 and more detail on specific conditions is given below, including information explaining why the condition is necessary for compliance with water quality requirements as well as the supporting regulatory authorizations.

The TCEQ understands that a prohibition against the use of NWP 3 in coastal dune swales, mangrove marshes, and Columbia Bottomlands in the Galveston District is included in the Draft 2020 Nationwide Permit (NWP) Regional Conditions for the State of Texas (Regional Conditions). A prohibition of using NWP 3 in coastal dune swales, mangrove marshes, and Columbia bottomlands in the Galveston District is a condition of this TCEQ 401 certification. This condition is necessary to ensure compliance with water quality requirements because impacts to rare and ecologically significant aquatic resources such as coastal dune swales, mangrove marshes, and Columbia bottomlands would not be considered minimal but significant, and therefore would not meet the purpose of a nationwide permit to authorize activities that will result in no more than minimal adverse environmental effects. Furthermore, activities that would result in impacts to these unique resources are more appropriately authorized under an individual permit to ensure that unavoidable impacts are adequately minimized (30 TAC §279.11(c)(2)) and mitigated (30 TAC §279.11(c)(3) and 30 TAC §307.4(i)).

The TCEQ wants to clarify the application of NWP 16 in Texas. NWP 16 should be limited to the return water from upland contained dredged material disposal areas. It is important to emphasize the intent for dredged material disposal. The TCEQ understands dredged material to be associated with navigational dredging activities, not commercial mining activities. To avoid confusion, the TCEQ requests that a regional condition be added or that the Corps commits to prohibiting the use of NWP 16 for activities that would be regulated under Standard Industrial Classification (SIC) codes 1442 and 1446 (industrial and construction sand and gravel mining).

Consistent with previous NWP certification decisions, the TCEQ is conditionally certifying NWP 16 for the return water from confined upland disposal not to exceed a 300 mg/L total suspended solids (TSS) concentration. This condition is necessary to ensure that return water discharges will comply with water quality requirements in accordance with Texas Water Code §26.003 and antidegradation policy in 30 TAC §307.5, and not result in violations of general water quality criteria in 30 TAC 307.4(b)(2)-(5). The TCEQ encourages the Corps to consider that TSS limits are promulgated as effluent limits under Title 40 of the Code of Federal Regulations, and that the TCEQ effectively imposes TSS effluent limits in thousands of wastewater discharge permits issued in Texas under Section 402 of the federal Clean Water Act.

The TCEQ recognizes the usefulness of having an instantaneous method to determine compliance with the 300 mg/L TSS limit. However, existing literature and analysis of paired samples of turbidity and TSS from the Texas Surface Water Quality Information System indicate this relationship must be a site-specific characterization of the actual sediments to be dredged. To address this approach, we have continued language in the NWP 16 conditional certification that allows flexibility to use an instantaneous method in implementing the TSS limit when a site-specific correlation curve for turbidity (nephelometric turbidity units (NTU)) versus TSS has been approved by TCEQ. The TCEQ remains interested in working with the Corps in the development of these curves and in working together to find the best methods to implement this limit.

Regional Condition 17 applies to NWP authorizations in the Area of Concern (AOC) of the San Jacinto River Waste Pits Superfund Site. The TCEQ conditionally certifies Regional Condition 17 provided that the Permit Evaluation Requirement Process (Process), effective November 1, 2009, is adhered to for all proposed and existing permits within the AOC. The Process requires that all permit applicants and existing permittees within the AOC perform sampling to ensure that any activities conducted, especially activities involving dredging or disposal of dredged materials, do not impact site investigation and remediation and that existing water quality is maintained and protected in accordance with the Texas Water Code §26.003 and TCEQ antidegradation policy in 30 TAC §307.5.

The TCEQ is conditionally certifying NWP General Condition 12 *Soil Erosion and Sediment Controls*, and General Condition 25 *Water Quality*. The conditions address three broad categories of water quality management with specific recommendations for Best Management Practices (BMPs) for each category. These BMP conditions are necessary to enhance the water quality protection of these General Conditions by requiring the use of specific BMPs to control erosion, sedimentation, and/or post-construction TSS in permitted activities and therefore prevent violation of state general water quality criteria (30 TAC §307.4) and antidegradation policy (30 TAC §307.5). Runoff from bridge decks has been exempted from the requirement for post-construction TSS controls under General Condition 25. A list of TCEQ-recommended BMPs is included as Attachment 2. Attachment 3 is provided as a quick reference table identifying the BMP categories that are required for each NWP. A detailed description of the BMPs is provided in Attachment 4.

The Corps is proposing to remove the 300 linear foot (LF) limit for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52, in part, to simplify the quantification of aquatic resource types (i.e., streams, wetlands, etc.) by using acreage as the preferred unit of measure. Removing the stream bed loss limit would mean that stream losses associated with activities covered by these 10 NWPs would only be limited by the existing ½-acre limit on overall impacts to waters of the U.S. This could significantly affect state stream resources by allowing upwards of several thousand linear feet of stream impacts under these permits, depending on the dimensions of the streams being impacted. The TCEQ has traditionally relied on and used linear feet as the preferred unit of measure of stream impacts and stream mitigation in our Section 401 water quality certification program. Therefore, the TCEQ does not support the proposed removal of the 300 LF stream bed loss limit in these NWPs and conditionally certifies NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 with a limit of 1,500 linear feet of stream bed loss. The condition is based on the amount of stream impacts considered minimal by the TCEQ, where certification is waived for projects impacting 1,500 LF of streams or less in accordance with the Memorandum of Agreement (August 2000) between the Corps and TCEQ. Any proposed impacts greater than 1,500 linear feet of impacts in stream length will need to undergo an individual TCEQ 401 certification review, preferably in the context of a Section 404 individual permit. This condition is necessary to ensure that the discharge associated with projects permitted using these 10 NWPs will comply with water quality requirements for aquatic life uses and habitat (30 TAC 307.4(i)), antidegradation implementation procedures (30 TAC

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307.5(c)(1)(B), and minimization and mitigation requirements in 30 TAC 279.11(c)(2) and (3), as well as be consistent with the NWP goal of authorizing only minimal adverse environmental impacts.

This certification decision is limited to those activities under the jurisdiction of the TCEQ. For activities related to the production and exploration of oil and gas, a Railroad Commission of Texas certification is required as provided in the Texas Water Code §26.131.

The TCEQ has reviewed the Notice of Reissuance of Nationwide Permits for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the CMP regulations {Title 31, Texas Administrative Code (TAC), Chapter (§)505.30} and has determined that the action is consistent with the applicable CMP goals and policies.

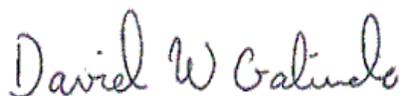
This certification was reviewed for consistency with the CMP's development in critical areas policy {31 TAC §501.23} and dredging and dredged material disposal and placement policy {31 TAC §501.25}. This certification complies with the CMP goals {31 TAC §501.12(1, 2, 3, 5)} applicable to these policies.

The TCEQ reserves the right to modify this certification if additional information identifies specific areas where significant impacts, including cumulative or secondary impacts, are occurring, and the use of these NWPs would be inappropriate.

No review of property rights, location of property lines, nor the distinction between public and private ownership has been made, and this certification may not be used in any way with regard to questions of ownership.

If you require further assistance, please contact Ms. Lili Murphy, Water Quality Assessment Section, Water Quality Division (MC-150), at (512) 239-4595 or by email at [lili.murphy@tceq.texas.gov](mailto:lili.murphy@tceq.texas.gov).

Sincerely,



David W. Galindo, Deputy Director  
Water Quality Division  
Texas Commission on Environmental Quality

DWG/LM/

Attachments

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Branch Chief, U.S. Army Corps of Engineers, Albuquerque District, 4101 Jefferson Plaza NE, Room 313, Albuquerque, New Mexico 87109-3435  
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## **Attachment 1** **Conditions of Section 401 Certification for Nationwide Permits, Regional Conditions, and General Conditions**

### **General Condition 12 (Soil Erosion and Sediment Controls)**

Erosion control and sediment control best management practices (BMPs) are required with the use of this general condition. Attachment 2 describes the BMPs and the Nationwide Permits (NWP) to which they apply. If the applicant does not choose one of the BMPs listed in Attachment 2, an individual 401 certification is required.

### **General Condition 25 (Water Quality)**

Post-construction total suspended solids (TSS) BMPs are required with the use of this general condition. Attachment 2 describes the BMPs and the NWP to which they apply. If the applicant does not choose one of the BMP's listed in Attachment 2, an individual 401 certification is required. Bridge deck runoff is exempt from this requirement.

### **Regional Condition 17 condition**

The Permit Evaluation Requirement Process, effective November 1, 2009, is required for all proposed and existing permits within San Jacinto River Waste Pits Superfund Site Area of Concern.

### **All NWPs except for NWP 3**

These NWPs are not authorized for use in coastal dune swales, mangrove marshes, and Columbia bottomlands in the Galveston District, Texas.

### **NWP 3 (Maintenance)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

### **NWP 6 (Survey Activities)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

### **NWP 7 (Outfall Structures and Associated Intake Structures)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

### **NWP 12 (Oil or Natural Gas Pipeline Activities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

### **NWP 13 (Bank Stabilization)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

### **NWP 14 (Linear Transportation Projects)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

### **NWP 15 (U.S. Coast Guard Approved Bridges)**

Soil Erosion and Sediment Controls under General Condition 12 are required.



## **Attachment 1**

### **Conditions of Section 401 Certification for Nationwide Permits, Regional Conditions, and General Conditions**

#### **NWP 16 (Return Water From Upland Contained Disposal Areas)**

Activities that would be regulated under Standard Industrial Classification (SIC) codes 1442 and 1446 (industrial and construction sand and gravel mining) are not eligible for this NWP. Effluent from an upland contained disposal area shall not exceed a TSS concentration of 300 mg/L unless a site-specific TSS limit, or a site-specific correlation curve for turbidity (nephelometric turbidity units (NTU)) versus TSS has been approved by TCEQ.

#### **NWP 17 (Hydropower Projects)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

#### **NWP 18 (Minor Discharges)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

#### **NWP 19 (Minor Dredging)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

#### **NWP 21 (Surface Coal Mining Activities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

#### **NWP 22 (Removal of Vessels)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

#### **NWP 25 (Structural Discharges)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

#### **NWP 27 (Aquatic Habitat Restoration, Establishment, and Enhancement Activities)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

#### **NWP 29 (Residential Developments)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

#### **NWP 30 (Moist Soil Management for Wildlife)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

#### **NWP 31 (Maintenance of Existing Flood Control Facilities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.



**Attachment 1**  
**Conditions of Section 401 Certification for Nationwide Permits, Regional Conditions, and General Conditions**

**NWP 32 (Completed Enforcement Actions)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

**NWP 33 (Temporary Construction, Access and Dewatering)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

**NWP 36 (Boat Ramps)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

**NWP 37 (Emergency Watershed Protection and Rehabilitation)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

**NWP 38 (Cleanup of Hazardous and Toxic Waste)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

**NWP 39 (Commercial and Institutional Developments)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

**NWP 40 (Agricultural Activities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

**NWP 41 (Reshaping Existing Drainage Ditches and Irrigation Ditches)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

**NWP 42 (Recreational Facilities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

**NWP 43 (Stormwater Management Facilities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Stream bed losses are limited to 1,500 linear feet.

**NWP 44 (Mining Activities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.



**Attachment 1**  
**Conditions of Section 401 Certification for Nationwide Permits, Regional Conditions, and General Conditions**

**NWP 45 (Repair of Uplands Damaged by Discrete Events)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

**NWP 46 (Discharges in Ditches)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

**NWP 49 (Coal Remining Activities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

**NWP 50 (Underground Coal Mining Activities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

**NWP 51 (Land-Based Renewal Energy Generation Facilities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

**NWP 52 (Water-Based Renewal Energy Generation Pilot Projects)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

**NWP 53 (Removal of Low-Head Dams)**

Soil Erosion and Sediment Controls under General Condition 12 are required.

**NWP 54 (Living Shorelines)**

Sediment Controls under General Condition 12 are required.

**NWP C (Electric Utility Line and Telecommunications Activities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

**NWP D (Utility Line Activities for Water and Other Substances)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

**NWP E (Water Reclamation and Reuse Facilities)**

Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.



Attachment 2  
401 Water Quality Certification Best Management Practices (BMPs) for  
Nationwide Permits

**I. Erosion Control**

Disturbed areas must be stabilized to prevent the introduction of sediment to adjacent wetlands or water bodies during wet weather conditions (erosion). *At least one* of the following best management practices (BMPs) must be maintained and remain in place until the area has been stabilized for NWP 3, 6, 7, 12, 13, 14, 15, 17, 18, 19, 21, 22, 25, 27, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, C, D, and E. If the applicant does not choose one of the BMPs listed, an individual 401 certification is required. BMPs for NWP 52 apply only to land-based impacts from attendant features.

- ◇ Temporary Vegetation
- ◇ Blankets/Matting
- ◇ Mulch
- ◇ Sod
- ◇ Interceptor Swale
- ◇ Diversion Dike
- ◇ Erosion Control Compost
- ◇ Mulch Filter Socks
- ◇ Compost Filter Socks

**II. Sedimentation Control**

Prior to project initiation, the project area must be isolated from adjacent wetlands and water bodies by the use of BMPs to confine sediment. Dredged material shall be placed in such a manner that prevents sediment runoff into water in the state, including wetlands. Water bodies can be isolated by the use of one or more of the required BMPs identified for sedimentation control. These BMP's must be maintained and remain in place until the dredged material is stabilized. *At least one* of the following BMPs must be maintained and remain in place until the area has been stabilized for NWP 3, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 25, 27, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, C, D, and E. If the applicant does not choose one of the BMPs listed, an individual 401 certification is required. BMPs for NWP 52 apply only to land-based impacts from attendant features.

- ◇ Sand Bag Berm
- ◇ Rock Berm
- ◇ Silt Fence
- ◇ Hay Bale Dike
- ◇ Triangular Filter Dike
- ◇ Brush Berms
- ◇ Stone Outlet Sediment Traps
- ◇ Sediment Basins
- ◇ Erosion Control Compost
- ◇ Mulch Filter Socks
- ◇ Compost Filter Socks



Attachment 2  
401 Water Quality Certification Best Management Practices (BMPs) for  
Nationwide Permits

**III. Post-Construction TSS Control**

After construction has been completed and the site is stabilized, total suspended solids (TSS) loadings shall be controlled by *at least one* of the following BMPs for NWPs 12, 14, 17, 18, 21, 29, 31, 36, 39, 40, 41, 42, 44, 45, 49, 50, 51, 52, C, D, and E. If the applicant does not choose one of the BMPs listed, an individual 401 certification is required. BMPs for NWP 52 apply only to land-based impacts from attendant features. Runoff from bridge decks has been exempted from the requirement for post construction TSS controls.

- ◇ Retention/Irrigation Systems
- ◇ Extended Detention Basin
- ◇ Vegetative Filter Strips
- ◇ Grassy Swales
- ◇ Erosion Control Compost
- ◇ Compost Filter Socks
- ◇ Constructed Wetlands
- ◇ Wet Basins
- ◇ Vegetation lined drainage ditches
- ◇ Sand Filter Systems
- ◇ Mulch Filter Socks
- ◇ Sedimentation Chambers\*

\* Only to be used when there is no space available for other approved BMPs.



**Attachment 3**  
**Reference to Nationwide Permits Best Management Practices Requirements**

NWP	Permit Description	Erosion Control	Sediment Control	Post-Construction TSS
1	Aid to Navigation			
2	Structures in Artificial Canals			
3	Maintenance	X	X	
4	Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities			
5	Scientific Measurement Devices			
6	Survey Activities *Trenching	X	X	
7	Outfall Structures and Associated Intake Structures	X	X	
8	Oil and Gas Structures on the Outer Continental Shelf			
9	Structures in Fleeting and Anchorage Areas			
10	Mooring Buoys			
11	Temporary Recreational Structures			
12	Oil or Natural Gas Pipeline Activities	X	X	X
13	Bank Stabilization	X	X	
14	Linear Transportation Projects	X	X	X
15	U.S. Coast Guard Approved Bridges	X	X	
16	Return Water From Upland Contained Disposal Areas			
17	Hydropower Projects	X	X	X
18	Minor Discharges	X	X	X
19	Minor Dredging	X	X	
20	Response Operations for Oil or Hazardous Substances			
21	Surface Coal Mining Activities	X	X	X
22	Removal of Vessels	X	X	



**Attachment 3**  
**Reference to Nationwide Permits Best Management Practices Requirements**

NWP	Permit Description	Erosion Control	Sediment Control	Post-Construction TSS
23	Approved Categorical Exclusions			
24	Indian Tribe or State Administered Section 404 Programs			
25	Structural Discharges	X	X	
26	[Reserved]			
27	Aquatic Habitat Restoration, Establishment, and Enhancement Activities	X	X	
28	Modifications of Existing Marinas			
29	Residential Developments	X	X	X
30	Moist Soil Management for Wildlife	X	X	
31	Maintenance of Existing Flood Control Facilities	X	X	X
32	Completed Enforcement Actions	X	X	
33	Temporary Construction, Access and Dewatering	X	X	
34	Cranberry Production Activities			
35	Maintenance Dredging of Existing Basins			
36	Boat Ramps	X	X	X
37	Emergency Watershed Protection and Rehabilitation	X	X	
38	Cleanup of Hazardous and Toxic Waste	X	X	
39	Commercial and Institutional Developments	X	X	X
40	Agricultural Activities	X	X	X
41	Reshaping Existing Drainage Ditches and Irrigation Ditches	X	X	X
42	Recreational Facilities	X	X	X
43	Stormwater Management Facilities	X	X	



**Attachment 3**  
**Reference to Nationwide Permits Best Management Practices Requirements**

NWP	Permit Description	Erosion Control	Sediment Control	Post-Construction TSS
44	Mining Activities	X	X	X
45	Repair of Uplands Damaged by Discrete Events	X	X	X
46	Discharges in Ditches	X	X	
47	[Reserved]			
48	Existing Commercial Shellfish Aquaculture Activities			
49	Coal Remining Activities	X	X	X
50	Underground Coal Mining Activities	X	X	X
51	Land-Based Renewable Energy Generation Facilities	X	X	X
52	Water-Based Renewable Energy Generation Pilot Projects	X	X	X
53	Removal of Low-Head Dams	X	X	
54	Living Shorelines		X	
C	Electric Utility Line and Telecommunications Activities	X	X	X
D	Utility Line Activities for Water and Other Substances	X	X	X
E	Water Reclamation and Reuse Facilities	X	X	X



## **Attachment 4** **Description of Best Management Practices (BMPs)**

### **EROSION CONTROL BMPs**

#### **Temporary Vegetation**

**Description:** Vegetation can be used as a temporary or permanent stabilization technique for areas disturbed by construction. Vegetation effectively reduces erosion in swales, stockpiles, berms, mild to medium slopes, and along roadways. Other techniques such as matting, mulches, and grading may be required to assist in the establishment of vegetation.

#### **Materials:**

- The type of temporary vegetation used on a site is a function of the season and the availability of water for irrigation.
- Temporary vegetation should be selected appropriately for the area.
- County agricultural extension agents are a good source for suggestions for temporary vegetation.
- All seed should be high quality, U.S. Dept. of Agriculture certified seed.

#### **Installation:**

- Grading must be completed prior to seeding.
- Slopes should be minimized.
- Erosion control structures should be installed.
- Seedbeds should be well pulverized, loose, and uniform.
- Fertilizers should be applied at appropriate rates.
- Seeding rates should be applied as recommended by the county agricultural extension agent.
- The seed should be applied uniformly.
- Steep slopes should be covered with appropriate soil stabilization matting.

#### **Blankets and Matting**

**Description:** Blankets and matting material can be used as an aid to control erosion



## **Attachment 4** **Description of Best Management Practices (BMPs)**

on critical sites during the establishment period of protective vegetation. The most common uses are in channels, interceptor swales, diversion dikes, short, steep slopes, and on tidal or stream banks.

### **Materials:**

New types of blankets and matting materials are continuously being developed. The Texas Department of Transportation (TxDOT) has defined the critical performance factors for these types of products and has established minimum performance standards which must be met for any product seeking to be approved for use within any of TxDOT's construction or maintenance activities. The products that have been approved by TxDOT are also appropriate for general construction site stabilization. TxDOT maintains a web site at <https://www.txdot.gov/inside-txdot/division/maintenance/erosion-control.html> which is updated as new products are evaluated.

### **Installation:**

- Install in accordance with the manufacturer's recommendations.
- Proper anchoring of the material.
- Prepare a friable seed bed relatively free from clods and rocks and any foreign material.
- Fertilize and seed in accordance with seeding or other type of planting plan.
- Erosion stops should extend beyond the channel liner to full design cross-section of the channel.
- A uniform trench perpendicular to line of flow may be dug with a spade or a mechanical trencher.
- Erosion stops should be deep enough to penetrate solid material or below level of ruling in sandy soils.
- Erosion stop mats should be wide enough to allow turnover at bottom of trench for stapling, while maintaining the top edge flush with channel surface.

### **Mulch**

**Description:** Mulching is the process of applying a material to the exposed soil surface to protect it from erosive forces and to conserve soil moisture until plants can become



## **Attachment 4** **Description of Best Management Practices (BMPs)**

established. When seeding critical sites, sites with adverse soil conditions or seeding on other than optimum seeding dates, mulch material should be applied immediately after seeding. Seeding during optimum seeding dates and with favorable soils and site conditions will not need to be mulched.

### **Materials:**

- Mulch may be small grain straw which should be applied uniformly.
- On slopes 15 percent or greater, a binding chemical must be applied to the surface.
- Wood-fiber or paper-fiber mulch may be applied by hydroseeding.
- Mulch nettings may be used.
- Wood chips may be used where appropriate.

### **Installation:**

Mulch anchoring should be accomplished immediately after mulch placement. This may be done by one of the following methods: peg and twine, mulch netting, mulch anchoring tool, or liquid mulch binders.

### **Sod**

**Description:** Sod is appropriate for disturbed areas which require immediate vegetative covers, or where sodding is preferred to other means of grass establishment. Locations particularly suited to stabilization with sod are waterways carrying intermittent flow, areas around drop inlets or in grassed swales, and residential or commercial lawns where quick use or aesthetics are factors. Sod is composed of living plants and those plants must receive adequate care in order to provide vegetative stabilization on a disturbed area.

### **Materials:**

- Sod should be machine cut at a uniform soil thickness.
- Pieces of sod should be cut to the supplier's standard width and length.
- Torn or uneven pads are not acceptable.
- Sections of sod should be strong enough to support their own weight and retain their size and shape when suspended from a firm grasp.



## **Attachment 4** **Description of Best Management Practices (BMPs)**

- Sod should be harvested, delivered, and installed within a period of 36 hours.

### **Installation:**

- Areas to be sodded should be brought to final grade.
- The surface should be cleared of all trash and debris.
- Fertilize according to soil tests.
- Fertilizer should be worked into the soil.
- Sod should not be cut or laid in excessively wet or dry weather.
- Sod should not be laid on soil surfaces that are frozen.
- During periods of high temperature, the soil should be lightly irrigated.
- The first row of sod should be laid in a straight line with subsequent rows placed parallel to and butting tightly against each other.
- Lateral joints should be staggered to promote more uniform growth and strength.
- Wherever erosion may be a problem, sod should be laid with staggered joints and secured.
- Sod should be installed with the length perpendicular to the slope (on the contour).
- Sod should be rolled or tamped.
- Sod should be irrigated to a sufficient depth.
- Watering should be performed as often as necessary to maintain soil moisture.
- The first mowing should not be attempted until the sod is firmly rooted.
- Not more than one third of the grass leaf should be removed at any one cutting.



## **Attachment 4** **Description of Best Management Practices (BMPs)**

### **Interceptor Swale**

Interceptor swales are used to shorten the length of exposed slope by intercepting runoff, prevent off-site runoff from entering the disturbed area, and prevent sediment-laden runoff from leaving a disturbed site. They may have a v-shape or be trapezoidal with a flat bottom and side slopes of 3:1 or flatter. The outflow from a swale should be directed to a stabilized outlet or sediment trapping device. The swales should remain in place until the disturbed area is permanently stabilized.

#### **Materials:**

- Stabilization should consist of a layer of crushed stone three inches thick, riprap or high velocity erosion control mats.
- Stone stabilization should be used when grades exceed 2% or velocities exceed 6 feet per second.
- Stabilization should extend across the bottom of the swale and up both sides of the channel to a minimum height of three inches above the design water surface elevation based on a 2-year, 24-hour storm.

#### **Installation:**

- An interceptor swale should be installed across exposed slopes during construction and should intercept no more than 5 acres of runoff.
- All earth removed and not needed in construction should be disposed of in an approved spoils site so that it will not interfere with the functioning of the swale or contribute to siltation in other areas of the site.
- All trees, brush, stumps, obstructions and other material should be removed and disposed of so as not to interfere with the proper functioning of the swale.
- Swales should have a maximum depth of 1.5 feet with side slopes of 3:1 or flatter.
- Swales should have positive drainage for the entire length to an outlet.
- When the slope exceeds 2 percent, or velocities exceed 6 feet per second (regardless of slope), stabilization is required. Stabilization should be crushed stone placed in a layer of at least 3 inches thick or may be high velocity erosion control matting. Check dams are also recommended to reduce velocities in the swales possibly reducing the amount of stabilization necessary.



## **Attachment 4** **Description of Best Management Practices (BMPs)**

- Minimum compaction for the swale should be 90% standard proctor density.

### **Diversion Dikes**

A temporary diversion dike is a barrier created by the placement of an earthen embankment to reroute the flow of runoff to an erosion control device or away from an open, easily erodible area. A diversion dike intercepts runoff from small upland areas and diverts it away from exposed slopes to a stabilized outlet, such as a rock berm, sandbag berm, or stone outlet structure. These controls can be used on the perimeter of the site to prevent runoff from entering the construction area. Dikes are generally used for the duration of construction to intercept and reroute runoff from disturbed areas to prevent excessive erosion until permanent drainage features are installed and/or slopes are stabilized.

### **Materials:**

- Stone stabilization (required for velocities in excess of 6 fps) should consist of riprap placed in a layer at least 3 inches thick and should extend a minimum height of 3 inches above the design water surface up the existing slope and the upstream face of the dike.
- Geotextile fabric should be a non-woven polypropylene fabric designed specifically for use as a soil filtration media with an approximate weight of 6 oz./yd<sup>2</sup>, a Mullen burst rating of 140 psi, and having an equivalent opening size (EOS) greater than a #50 sieve.

### **Installation:**

- Diversion dikes should be installed prior to and maintained for the duration of construction and should intercept no more than 10 acres of runoff.
- Dikes should have a minimum top width of 2 feet and a minimum height of compacted fill of 18 inches measured from the top of the existing ground at the upslope toe to top of the dike and have side slopes of 3:1 or flatter.
- The soil for the dike should be placed in lifts of 8 inches or less and be compacted to 95 % standard proctor density.
- The channel, which is formed by the dike, must have positive drainage for its entire length to an outlet.
- When the slope exceeds 2 percent, or velocities exceed 6 feet per second (regardless of slope), stabilization is required. In situations where velocities do not exceed 6 feet per second, vegetation may be used to control erosion.



## **Attachment 4** **Description of Best Management Practices (BMPs)**

### **Erosion Control Compost**

**Description:** Erosion control compost (ECC) can be used as an aid to control erosion on critical sites during the establishment period of protective vegetation. The most common uses are on steep slopes, swales, diversion dikes, and on tidal or stream banks.

#### **Materials:**

New types of erosion control compost are continuously being developed. The Texas Department of Transportation (TxDOT) has established minimum performance standards which must be met for any products seeking to be approved for use within any of TxDOT's construction or maintenance activities. Material used within any TxDOT construction or maintenance activities must meet material specifications in accordance with current TxDOT specifications. TxDOT maintains a website at <https://www.txdot.gov/inside-txdot/division/support/recycling/speclist.html> that provides information on compost specification data.

ECC used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification data. To ensure the quality of compost used as an ECC, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and Texas Natural Resource Conservation Commission (now named TCEQ) Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332.

Testing requirements required by the TCEQ are defined in TAC Chapter 332, including Sections §332.71 Sampling and Analysis Requirements for Final Products and §332.72 Final Product Grades. Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

Testing standards are dependent upon the intended use for the compost and ensures product safety, and product performance regarding the product's specific use. The appropriate compost sampling and testing protocols included in the United States Composting Council (USCC) Test Methods for the Examination of Composting and Compost (TMECC) should be conducted on compost products used for ECC to ensure that the products used will not impact public health, safety, and the environment and to promote production and marketing of quality composts that meet analytical standards. TMECC is a laboratory manual that provides protocols for the composting industry and test methods for compost analysis. TMECC provides protocols to sample, monitor, and analyze materials during all stages of the composting process. Numerous parameters that might be of concern in compost can be tested by following protocols



## **Attachment 4** **Description of Best Management Practices (BMPs)**

or test methods listed in TMECC. TMECC information can be found at <https://www.compostingcouncil.org/page/tmecc>.

The USCC Seal of Testing Assurance (STA) program contains information regarding compost STA certification. STA program information can be found at <https://www.compostingcouncil.org/page/SealofTestingAssuranceSTA>.

### **Installation:**

- Install in accordance with current TxDOT specification.
- Use on slopes 3:1 or flatter.
- Apply a 2-inch uniform layer unless otherwise shown on the plans or as directed.
- When rolling is specified, use a light corrugated drum roller.

### **Mulch and Compost Filter Socks**

**Description:** Mulch and compost filter socks (erosion control logs) are used to intercept and detain sediment laden run-off from unprotected areas. When properly used, mulch and compost filter socks can be highly effective at controlling sediment from disturbed areas. They cause runoff to pond which allows heavier solids to settle. Mulch and compost filter socks are used during the period of construction near the perimeter of a disturbed area to intercept sediment while allowing water to percolate through. The sock should remain in place until the area is permanently stabilized. Mulch and compost filter socks may be installed in construction areas and temporarily moved during the day to allow construction activity provided it is replaced and properly anchored at the end of the day. Mulch and compost filter socks may be seeded to allow for quick vegetative growth and reduction in run-off velocity.

### **Materials:**

New types of mulch and compost filter socks are continuously being developed. The Texas Department of Transportation (TxDOT) has established minimum performance standards which must be met for any products seeking to be approved for use within any of TxDOT's construction or maintenance activities. Mulch and compost filter socks used within any TxDOT construction or maintenance activities must meet material specifications in accordance with TxDOT specification 5049. TxDOT maintains a website at <https://www.txdot.gov/inside-txdot/division/support/recycling/speclist.html> that provides information on compost specification data.

Mulch and compost filter socks used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification



## **Attachment 4** **Description of Best Management Practices (BMPs)**

data. To ensure the quality of compost used for mulch and compost filter socks, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and Texas Natural Resource Conservation Commission Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. Testing requirements required by the TCEQ are defined in TAC Chapter 332, including Sections §332.71 Sampling and Analysis Requirements for Final Products and §332.72 Final Product Grades. Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

Testing standards are dependent upon the intended use for the compost and ensures product safety, and product performance regarding the product's specific use. The appropriate compost sampling and testing protocols included in the United States Composting Council (USCC) Test Methods for the Examination of Composting and Compost (TMECC) should be conducted on compost products used for mulch and compost filter socks to ensure that the products used will not impact public health, safety, and the environment and to promote production and marketing of quality composts that meet analytical standards. TMECC is a laboratory manual that provides protocols for the composting industry and test methods for compost analysis. TMECC provides protocols to sample, monitor, and analyze materials during all stages of the composting process. Numerous parameters that might be of concern in compost can be tested by following protocols or test methods listed in TMECC. TMECC information can be found at <https://www.compostingcouncil.org/page/tmecc>. The USCC Seal of Testing Assurance (STA) program contains information regarding compost STA certification. STA program information can be found at <https://www.compostingcouncil.org/page/SealofTestingAssuranceSTA>.

### **Installation:**

- Install in accordance with TxDOT Special Specification 5049.
- Install socks (erosion control logs) near the downstream perimeter of a disturbed area to intercept sediment from sheet flow.
- Secure socks in a method adequate to prevent displacement as a result of normal rain events such that flow is not allowed under the socks.
- Inspect and maintain the socks in good condition (including staking, anchoring, etc.). Maintain the integrity of the control, including keeping the socks free of accumulated silt, debris, etc., until the disturbed area has been adequately stabilized.



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### **SEDIMENT CONTROL BMPS**

#### **Sandbag Berm**

**Description:** The purpose of a sandbag berm is to detain sediment carried in runoff from disturbed areas. This objective is accomplished by intercepting runoff and causing it to pool behind the sandbag berm. Sediment carried in the runoff is deposited on the upstream side of the sandbag berm due to the reduced flow velocity. Excess runoff volumes are allowed to flow over the top of the sandbag berm. Sandbag berms are used only during construction activities in streambeds when the contributing drainage area is between 5 and 10 acres and the slope is less than 15%, i.e., utility construction in channels, temporary channel crossing for construction equipment, etc. Plastic facing should be installed on the upstream side and the berm should be anchored to the streambed by drilling into the rock and driving in T-posts or rebar (#5 or #6) spaced appropriately.

#### **Materials:**

- The sandbag material should be polypropylene, polyethylene, polyamide or cotton burlap woven fabric, minimum unit weight 4 oz/yd<sup>2</sup>, mullen burst strength exceeding 300 psi and ultraviolet stability exceeding 70 percent.
- The bag length should be 24 to 30 inches, width should be 16 to 18 inches and thickness should be 6 to 8 inches.
- Sandbags should be filled with coarse grade sand and free from deleterious material. All sand should pass through a No. 10 sieve. The filled bag should have an approximate weight of 40 pounds.
- Outlet pipe should be schedule 40 or stronger polyvinyl chloride (PVC) having a nominal internal diameter of 4 inches.

#### **Installation:**

- The berm should be a minimum height of 18 inches, measured from the top of the existing ground at the upslope toe to the top of the berm.
- The berm should be sized as shown in the plans but should have a minimum width of 48 inches measured at the bottom of the berm and 16 inches measured at the top of the berm.
- Runoff water should flow over the tops of the sandbags or through 4-inch diameter PVC pipes embedded below the top layer of bags.



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- When a sandbag is filled with material, the open end of the sandbag should be stapled or tied with nylon or poly cord.
- Sandbags should be stacked in at least three rows abutting each other, and in staggered arrangement.
- The base of the berm should have at least 3 sandbags. These can be reduced to 2 and 1 bag in the second and third rows respectively.
- For each additional 6 inches of height, an additional sandbag must be added to each row width.
- A bypass pump-around system, or similar alternative, should be used on conjunction with the berm for effective dewatering of the work area.

### **Silt Fence**

**Description:** A silt fence is a barrier consisting of geotextile fabric supported by metal posts to prevent soil and sediment loss from a site. When properly used, silt fences can be highly effective at controlling sediment from disturbed areas. They cause runoff to pond which allows heavier solids to settle. If not properly installed, silt fences are not likely to be effective. The purpose of a silt fence is to intercept and detain water-borne sediment from unprotected areas of a limited extent. Silt fence is used during the period of construction near the perimeter of a disturbed area to intercept sediment while allowing water to percolate through. This fence should remain in place until the disturbed area is permanently stabilized. Silt fence should not be used where there is a concentration of water in a channel or drainage way. If concentrated flow occurs after installation, corrective action must be taken such as placing a rock berm in the areas of concentrated flow. Silt fencing within the site may be temporarily moved during the day to allow construction activity provided it is replaced and properly anchored to the ground at the end of the day. Silt fences on the perimeter of the site or around drainage ways should not be moved at any time.

### **Materials:**

- Silt fence material should be polypropylene, polyethylene or polyamide woven or nonwoven fabric. The fabric width should be 36 inches, with a minimum unit weight of 4.5 oz/yd, mullen burst strength exceeding 190 lb/in<sup>2</sup>, ultraviolet stability exceeding 70%, and minimum apparent opening size of U.S. Sieve No. 30.
- Fence posts should be made of hot rolled steel, at least 4 feet long with Tee or Y-bar cross section, surface painted or galvanized, minimum nominal weight 1.25 lb/ft<sup>2</sup>, and Brindell hardness exceeding 140.



## **Attachment 4** **Description of Best Management Practices (BMPs)**

- Woven wire backing to support the fabric should be galvanized 2-inch x 4-inch welded wire, 12 gauge minimum.

### **Installation:**

- Steel posts, which support the silt fence, should be installed on a slight angle toward the anticipated runoff source. Post must be embedded a minimum of 1 foot deep and spaced not more than 8 feet on center. Where water concentrates, the maximum spacing should be 6 feet.
- Lay out fencing down-slope of disturbed area, following the contour as closely as possible. The fence should be sited so that the maximum drainage area is 3 acre/100 feet of fence.
- The toe of the silt fence should be trenched in with a spade or mechanical trencher, so that the down-slope face of the trench is flat and perpendicular to the line of flow. Where fence cannot be trenched in (e.g., pavement or rock outcrop), weight fabric flap with 3 inches of pea gravel on uphill side to prevent flow from seeping under fence.
- The trench must be a minimum of 6 inches deep and 6 inches wide to allow for the silt fence fabric to be laid in the ground and backfilled with compacted material.
- Silt fence should be securely fastened to each steel support post or to woven wire, which is in turn attached to the steel fence post. There should be a 3-foot overlap, securely fastened where ends of fabric meet.

### **Triangular Filter Dike**

**Description:** The purpose of a triangular sediment filter dike is to intercept and detain water-borne sediment from unprotected areas of limited extent. The triangular sediment filter dike is used where there is no concentration of water in a channel or other drainage way above the barrier and the contributing drainage area is less than one acre. If the uphill slope above the dike exceeds 10%, the length of the slope above the dike should be less than 50 feet. If concentrated flow occurs after installation, corrective action should be taken such as placing rock berm in the areas of concentrated flow. This measure is effective on paved areas where installation of silt fence is not possible or where vehicle access must be maintained. The advantage of these controls is the ease with which they can be moved to allow vehicle traffic and then reinstalled to maintain sediment.



## **Attachment 4** **Description of Best Management Practices (BMPs)**

### **Materials:**

- Silt fence material should be polypropylene, polyethylene or polyamide woven or nonwoven fabric. The fabric width should be 36 inches, with a minimum unit weight of 4.5 oz/yd, mullen burst strength exceeding 190 lb/in<sup>2</sup>, ultraviolet stability exceeding 70%, and minimum apparent opening size of U.S. Sieve No. 30.
- The dike structure should be 6 gauge 6-in x 6-inch wire mesh folded into triangular form being eighteen (18) inches on each side.

### **Installation:**

- The frame of the triangular sediment filter dike should be constructed of 6-inch x 6-inch, 6-gauge welded wire mesh, 18 inches per side, and wrapped with geotextile fabric the same composition as that used for silt fences.
- Filter material should lap over ends six (6) inches to cover dike to dike junction; each junction should be secured by shoat rings.
- Position dike parallel to the contours, with the end of each section closely abutting the adjacent sections.
- There are several options for fastening the filter dike to the ground. The fabric skirt may be toed-in with 6 inches of compacted material, or 12 inches of the fabric skirt should extend uphill and be secured with a minimum of 3 inches of open graded rock, or with staples or nails. If these two options are not feasible the dike structure may be trenched in 4 inches.
- Triangular sediment filter dikes should be installed across exposed slopes during construction with ends of the dike tied into existing grades to prevent failure and should intercept no more than one acre of runoff.
- When moved to allow vehicular access, the dikes should be reinstalled as soon as possible, but always at the end of the workday.

### **Rock Berm**

**Description:** The purpose of a rock berm is to serve as a check dam in areas of concentrated flow, to intercept sediment-laden runoff, detain the sediment and release the water in sheet flow. The rock berm should be used when the contributing drainage area is less than 5 acres. Rock berms are used in areas where the volume of runoff is too great for a silt fence to contain. They are less effective for sediment removal than silt fences, particularly for fine particles, but are able to withstand higher flows than a



## **Attachment 4** **Description of Best Management Practices (BMPs)**

silt fence. As such, rock berms are often used in areas of channel flows (ditches, gullies, etc.). Rock berms are most effective at reducing bed load in channels and should not be substituted for other erosion and sediment control measures further up the watershed.

### **Materials:**

- The berm structure should be secured with a woven wire sheathing having opening of one inch and a minimum wire diameter of 20 gauge galvanized and should be secured with shoat rings.
- Clean, open graded 3- to 5-inch diameter rock should be used, except in areas where high velocities or large volumes of flow are expected, where 5- to 8-inch diameter rocks may be used.

### **Installation:**

- Lay out the woven wire sheathing perpendicular to the flow line. The sheathing should be 20-gauge woven wire mesh with 1 inch openings.
- Berm should have a top width of 2 feet minimum with side slopes being 2:1 (H:V) or flatter.
- Place the rock along the sheathing to a height not less than 18 inches.
- Wrap the wire sheathing around the rock and secure with tie wire so that the ends of the sheathing overlap at least 2 inches, and the berm retains its shape when walked upon.
- Berm should be built along the contour at zero percent grade or as near as possible.
- The ends of the berm should be tied into existing upslope grade and the berm should be buried in a trench approximately 3 to 4 inches deep to prevent failure of the control.

### **Hay Bale Dike**

**Description:** The purpose of a hay or straw bale dike is to intercept and detain small amounts of sediment-laden runoff from relatively small unprotected areas. Straw bales are to be used when it is not feasible to install other, more effective measures or when the construction phase is expected to last less than 3 months. Straw bales should not be used on areas where rock or other hard surfaces prevent the full and uniform anchoring of the barrier.



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### **Materials:**

**Straw:** The best quality straw mulch comes from wheat, oats or barley and should be free of weed and grass seed which may not be desired vegetation for the area to be protected. Straw mulch is light and therefore must be properly anchored to the ground.

**Hay:** This is very similar to straw with the exception that it is made of grasses and weeds and not grain stems. This form of mulch is very inexpensive and is widely available but does introduce weed and grass seed to the area. Like straw, hay is light and must be anchored.

- Straw bales should weigh a minimum of 50 pounds and should be at least 30 inches long.
- Bales should be composed entirely of vegetable matter and be free of seeds.
- Binding should be either wire or nylon string, jute or cotton binding is unacceptable. Bales should be used for not more than two months before being replaced.

### **Installation:**

- Bales should be embedded a minimum of 4 inches and securely anchored using 2-inch x 2-inch wood stakes or 3/8-inch diameter rebar driven through the bales into the ground a minimum of 6 inches.
- Bales are to be placed directly adjacent to one another leaving no gap between them.
- All bales should be placed on the contour.
- The first stake in each bale should be angled toward the previously laid bale to force the bales together.

### **Brush Berms**

Organic litter and spoil material from site clearing operations is usually burned or hauled away to be dumped elsewhere. Much of this material can be used effectively on the construction site itself. The key to constructing an efficient brush berm is in the method used to obtain and place the brush. It will not be acceptable to simply take a bulldozer and push whole trees into a pile. This method does not assure continuous ground contact with the berm and will allow uncontrolled flows under the berm.



## **Attachment 4** **Description of Best Management Practices (BMPs)**

Brush berms may be used where there is little or no concentration of water in a channel or other drainage way above the berm. The size of the drainage area should be no greater than one-fourth of an acre per 100 feet of barrier length; the maximum slope length behind the barrier should not exceed 100 feet; and the maximum slope gradient behind the barrier should be less than 50 percent (2:1).

### **Materials:**

- The brush should consist of woody brush and branches, preferably less than 2 inches in diameter.
- The filter fabric should conform to the specifications for filter fence fabric.
- The rope should be 1/4-inch polypropylene or nylon rope.
- The anchors should be 3/8-inch diameter rebar stakes that are 18-inches long.

### **Installation:**

- Lay out the brush berm following the contour as closely as possible.
- The juniper limbs should be cut and hand placed with the vegetated part of the limb in close contact with the ground. Each subsequent branch should overlap the previous branch providing a shingle effect.
- The brush berm should be constructed in lifts with each layer extending the entire length of the berm before the next layer is started.
- A trench should be excavated 6-inches wide and 4-inches deep along the length of the barrier and immediately uphill from the barrier.
- The filter fabric should be cut into lengths sufficient to lay across the barrier from its up-slope base to just beyond its peak. The lengths of filter fabric should be draped across the width of the barrier with the uphill edge placed in the trench and the edges of adjacent pieces overlapping each other. Where joints are necessary, the fabric should be spliced together with a minimum 6-inch overlap and securely sealed.
- The trench should be backfilled, and the soil compacted over the filter fabric.
- Set stakes into the ground along the downhill edge of the brush barrier and anchor the fabric by tying rope from the fabric to the stakes. Drive the rope anchors into the ground at approximately a 45-degree angle to the ground on 6-



## **Attachment 4** **Description of Best Management Practices (BMPs)**

foot centers.

- Fasten the rope to the anchors and tighten berm securely to the ground with a minimum tension of 50 pounds.
- The height of the brush berm should be a minimum of 24 inches after the securing ropes have been tightened.

### **Stone Outlet Sediment Traps**

A stone outlet sediment trap is an impoundment created by the placement of an earthen and stone embankment to prevent soil and sediment loss from a site. The purpose of a sediment trap is to intercept sediment-laden runoff and trap the sediment in order to protect drainage ways, properties and rights of way below the sediment trap from sedimentation. A sediment trap is usually installed at points of discharge from disturbed areas. The drainage area for a sediment trap is recommended to be less than 5 acres.

Larger areas should be treated using a sediment basin. A sediment trap differs from a sediment basin mainly in the type of discharge structure. The trap should be located to obtain the maximum storage benefit from the terrain, for ease of clean out and disposal of the trapped sediment and to minimize interference with construction activities. The volume of the trap should be at least 3600 cubic feet per acre of drainage area.

### **Materials:**

- All aggregate should be at least 3 inches in diameter and should not exceed a volume of 0.5 cubic foot.
- The geotextile fabric specification should be woven polypropylene, polyethylene or polyamide geotextile, minimum unit weight of 4.5 oz/yd<sup>2</sup>, mullen burst strength at least 250 lb/in<sup>2</sup>, ultraviolet stability exceeding 70%, and equivalent opening size exceeding 40.

### **Installation:**

- **Earth Embankment:** Place fill material in layers not more than 8 inches in loose depth. Before compaction, moisten or aerate each layer as necessary to provide the optimum moisture content of the material. Compact each layer to 95 percent standard proctor density. Do not place material on surfaces that are muddy or frozen. Side slopes for the embankment are to be 3:1. The minimum width of the embankment should be 3 feet.



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- A gap is to be left in the embankment in the location where the natural confluence of runoff crosses the embankment line. The gap is to have a width in feet equal to 6 times the drainage area in acres.
- Geotextile Covered Rock Core: A core of filter stone having a minimum height of 1.5 feet and a minimum width at the base of 3 feet should be placed across the opening of the earth embankment and should be covered by geotextile fabric which should extend a minimum distance of 2 feet in either direction from the base of the filter stone core.
- Filter Stone Embankment: Filter stone should be placed over the geotextile and is to have a side slope which matches that of the earth embankment of 3:1 and should cover the geotextile/rock core a minimum of 6 inches when installation is complete. The crest of the outlet should be at least 1 foot below the top of the embankment.

### **Sediment Basins**

The purpose of a sediment basin is to intercept sediment-laden runoff and trap the sediment in order to protect drainage ways, properties and rights of way below the sediment basin from sedimentation. A sediment basin is usually installed at points of discharge from disturbed areas. The drainage area for a sediment basin is recommended to be less than 100 acres.

Sediment basins are effective for capturing and slowly releasing the runoff from larger disturbed areas thereby allowing sedimentation to take place. A sediment basin can be created where a permanent pond BMP is being constructed. Guidelines for construction of the permanent BMP should be followed, but revegetation, placement of underdrain piping, and installation of sand or other filter media should not be carried out until the site construction phase is complete.

### **Materials:**

- Riser should be corrugated metal or reinforced concrete pipe or box and should have watertight fittings or end to end connections of sections.
- An outlet pipe of corrugated metal or reinforced concrete should be attached to the riser and should have positive flow to a stabilized outlet on the downstream side of the embankment.
- An anti-vortex device and rubbish screen should be attached to the top of the riser and should be made of polyvinyl chloride or corrugated metal.



## Attachment 4 Description of Best Management Practices (BMPs)

### **Basin Design and Construction:**

- For common drainage locations that serve an area with ten or more acres disturbed at one time, a sediment basin should provide storage for a volume of runoff from a two-year, 24-hour storm from each disturbed acre drained.
- The basin length to width ratio should be at least 2:1 to improve trapping efficiency. The shape may be attained by excavation or the use of baffles. The lengths should be measured at the elevation of the riser de-watering hole.
- Place fill material in layers not more than 8 inches in loose depth. Before compaction, moisten or aerate each layer as necessary to provide the optimum moisture content of the material. Compact each layer to 95 percent standard proctor density. Do not place material on surfaces that are muddy or frozen. Side slopes for the embankment should be 3:1 (H:V).
- An emergency spillway should be installed adjacent to the embankment on undisturbed soil and should be sized to carry the full amount of flow generated by a 10-year, 3-hour storm with 1 foot of freeboard less the amount which can be carried by the principal outlet control device.
- The emergency spillway should be lined with riprap as should the swale leading from the spillway to the normal watercourse at the base of the embankment.
- The principal outlet control device should consist of a rigid vertically oriented pipe or box of corrugated metal or reinforced concrete. Attached to this structure should be a horizontal pipe, which should extend through the embankment to the toe of fill to provide a de-watering outlet for the basin.
- An anti-vortex device should be attached to the inlet portion of the principal outlet control device to serve as a rubbish screen.
- A concrete base should be used to anchor the principal outlet control device and should be sized to provide a safety factor of 1.5 (downward forces = 1.5 buoyant forces).
- The basin should include a permanent stake to indicate the sediment level in the pool and marked to indicate when the sediment occupies 50% of the basin volume (not the top of the stake).
- The top of the riser pipe should remain open and be guarded with a trash rack and anti-vortex device. The top of the riser should be 12 inches below the elevation of the emergency spillway. The riser should be sized to convey the runoff from the 2-year, 3-hour storm when the water surface is at the



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emergency spillway elevation. For basins with no spillway the riser must be sized to convey the runoff from the 10-yr, 3-hour storm.

- Anti-seep collars should be included when soil conditions or length of service make piping through the backfill a possibility.
- The 48-hour drawdown time will be achieved by using a riser pipe perforated at the point measured from the bottom of the riser pipe equal to 1/2 the volume of the basin. This is the maximum sediment storage elevation. The size of the perforation may be calculated as follows:

$$A_o = \frac{A_s \times \sqrt{2h}}{C_d \times 980,000}$$

Where:

$A_o$  = Area of the de-watering hole, ft<sup>2</sup>

$A_s$  = Surface area of the basin, ft<sup>2</sup>

$C_d$  = Coefficient of contraction, approximately 0.6

$h$  = head of water above the hole, ft

Perforating the riser with multiple holes with a combined surface area equal to  $A_o$  is acceptable.

### **Erosion Control Compost**

**Description:** Erosion control compost (ECC) can be used as an aid to control erosion on critical sites during the establishment period of protective vegetation. The most common uses are on steep slopes, swales, diversion dikes, and on tidal or stream banks.

#### **Materials:**

New types of erosion control compost are continuously being developed. The Texas Department of Transportation (TxDOT) has established minimum performance standards which must be met for any products seeking to be approved for use within any of TxDOT's construction or maintenance activities. Material used within any TxDOT construction or maintenance activities must meet material specifications in accordance with current TxDOT specifications. TxDOT maintains a website at <https://www.txdot.gov/inside-txdot/division/support/recycling/speclist.html> that provides information on compost specification data.

ECC used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification data. To ensure the quality of compost used as an ECC, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection



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Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and Texas Natural Resource Conservation Commission (now named TCEQ) Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. Testing requirements required by the TCEQ are defined in TAC Chapter 332, including Sections §332.71 Sampling and Analysis Requirements for Final Products and §332.72 Final Product Grades. Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

Testing standards are dependent upon the intended use for the compost and ensures product safety, and product performance regarding the product's specific use. The appropriate compost sampling and testing protocols included in the United States Composting Council (USCC) Test Methods for the Examination of Composting and Compost (TMECC) should be conducted on compost products used for ECC to ensure that the products used will not impact public health, safety, and the environment and to promote production and marketing of quality composts that meet analytical standards. TMECC is a laboratory manual that provides protocols for the composting industry and test methods for compost analysis. TMECC provides protocols to sample, monitor, and analyze materials during all stages of the composting process. Numerous parameters that might be of concern in compost can be tested by following protocols or test methods listed in TMECC. TMECC information can be found at <https://www.compostingcouncil.org/page/tmecc>. The USCC Seal of Testing Assurance (STA) program contains information regarding compost STA certification. STA program information can be found at <https://www.compostingcouncil.org/page/SealofTestingAssuranceSTA>.

### **Installation:**

- Install in accordance with current TxDOT specification.
- Use on slopes 3:1 or flatter.
- Apply a 2-inch uniform layer unless otherwise shown on the plans or as directed.
- When rolling is specified, use a light corrugated drum roller.

### **Mulch and Compost Filter Socks**

**Description:** Mulch and compost filter socks (erosion control logs) are used to intercept and detain sediment laden run-off from unprotected areas. When properly used, mulch and compost filter socks can be highly effective at controlling sediment from disturbed areas. They cause runoff to pond which allows heavier solids to settle. Mulch and compost filter socks are used during the period of construction near the



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perimeter of a disturbed area to intercept sediment while allowing water to percolate through. The sock should remain in place until the area is permanently stabilized. Mulch and compost filter socks may be installed in construction areas and temporarily moved during the day to allow construction activity provided it is replaced and properly anchored at the end of the day. Mulch and compost filter socks may be seeded to allow for quick vegetative growth and reduction in run-off velocity.

### **Materials:**

New types of mulch and compost filter socks are continuously being developed. The Texas Department of Transportation (TxDOT) has established minimum performance standards which must be met for any products seeking to be approved for use within any of TxDOT's construction or maintenance activities. Mulch and compost filter socks used within any TxDOT construction or maintenance activities must meet material specifications in accordance with TxDOT specification 5049. TxDOT maintains a website at <https://www.txdot.gov/inside-txdot/division/support/recycling/speclist.html> that provides information on compost specification data.

Mulch and compost filter socks used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification data. To ensure the quality of compost used for mulch and compost filter socks, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and Texas Natural Resource Conservation Commission Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. Testing requirements required by the TCEQ are defined in TAC Chapter 332, including Sections §332.71 Sampling and Analysis Requirements for Final Products and §332.72 Final Product Grades. Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

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### **Installation:**

Install in accordance with TxDOT Special Specification 5049.

- Install socks (erosion control logs) near the downstream perimeter of a disturbed area to intercept sediment from sheet flow.
- Secure socks in a method adequate to prevent displacement as a result of normal rain events such that flow is not allowed under the socks.
- Inspect and maintain the socks in good condition (including staking, anchoring, etc.).
- Maintain the integrity of the control, including keeping the socks free of accumulated silt, debris, etc., until the disturbed area has been adequately stabilized.



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### **POST-CONSTRUCTION TSS CONTROLS**

#### **Retention/Irrigation Systems**

**Description:** Retention/irrigation systems refer to the capture of runoff in a holding pond, then use of the captured water for irrigation of appropriate landscape areas. Retention/irrigation systems are characterized by the capture and disposal of runoff without direct release of captured flow to receiving streams. Retention systems exhibit excellent pollutant removal but can require regular, proper maintenance. Collection of roof runoff for subsequent use (rainwater harvesting) also qualifies as a retention/irrigation practice but should be operated and sized to provide adequate volume. This technology, which emphasizes beneficial use of stormwater runoff, is particularly appropriate for arid regions because of increasing demands on water supplies for agricultural irrigation and urban water supply.

**Design Considerations:** Retention/irrigation practices achieve 100% removal efficiency of total suspended solids contained within the volume of water captured. Design elements of retention/irrigation systems include runoff storage facility configuration and sizing, pump and wet well system components, basin lining, basin detention time, and physical and operational components of the irrigation system. Retention/irrigation systems are appropriate for large drainage areas with low to moderate slopes. The retention capacity should be sufficient considering the average rainfall event for the area.

**Maintenance Requirements:** Maintenance requirements for retention/irrigation systems include routine inspections, sediment removal, mowing, debris and litter removal, erosion control, and nuisance control.

#### **Extended Detention Basin**

**Description:** Extended detention facilities are basins that temporarily store a portion of stormwater runoff following a storm event. Extended detention basins are normally used to remove particulate pollutants and to reduce maximum runoff rates associated with development to their pre-development levels. The water quality benefits are the removal of sediment and buoyant materials. Furthermore, nutrients, heavy metals, toxic materials, and oxygen-demanding materials associated with the particles also are removed. The control of the maximum runoff rates serves to protect drainage channels below the device from erosion and to reduce downstream flooding. Although detention facilities designed for flood control have different design requirements than those used for water quality enhancement, it is possible to achieve these two objectives in a single facility.

**Design Considerations:** Extended detention basins can remove approximately 75% of the total suspended solids contained within the volume of runoff captured in the basin. Design elements of extended detention basins include basin sizing, basin



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configuration, basin side slopes, basin lining, inlet/outlet structures, and erosion controls. Extended detention basins are appropriate for large drainage areas with low to moderate slopes. The retention capacity should be sufficient considering the average rainfall event for the area.

**Maintenance Requirements:** Maintenance requirements for extended detention basins include routine inspections, mowing, debris and litter removal, erosion control, structural repairs, nuisance control, and sediment removal.

### **Vegetative Filter Strips**

**Description:** Filter strips, also known as vegetated buffer strips, are vegetated sections of land similar to grassy swales except they are essentially flat with low slopes and are designed only to accept runoff as overland sheet flow. They may appear in any vegetated form from grassland to forest, and are designed to intercept upstream flow, lower flow velocity, and spread water out as sheet flow. The dense vegetative cover facilitates conventional pollutant removal through detention, filtration by vegetation, and infiltration.

Filter strips cannot treat high velocity flows, and do not provide enough storage or infiltration to effectively reduce peak discharges to predevelopment levels for design storms. This lack of quantity control favors use in rural or low-density development; however, they can provide water quality benefits even where the impervious cover is as high as 50%. The primary highway application for vegetative filter strips is along rural roadways where runoff that would otherwise discharge directly to a receiving water passes through the filter strip before entering a conveyance system. Properly designed roadway medians and shoulders make effective buffer strips. These devices also can be used on other types of development where land is available and hydraulic conditions are appropriate.

Flat slopes and low to fair permeability of natural subsoil are required for effective performance of filter strips. Although an inexpensive control measure, they are most useful in contributing watershed areas where peak runoff velocities are low as they are unable to treat the high flow velocities typically associated with high impervious cover.

Successful performance of filter strips relies heavily on maintaining shallow unconcentrated flow. To avoid flow channelization and maintain performance, a filter strip should:

- Be equipped with a level spreading device for even distribution of runoff
- Contain dense vegetation with a mix of erosion resistant, soil binding species
- Be graded to a uniform, even and relatively low slope



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- Laterally traverse the contributing runoff area

Filter strips can be used upgradient from watercourses, wetlands, or other water bodies along toes and tops of slopes and at outlets of other stormwater management structures. They should be incorporated into street drainage and master drainage planning. The most important criteria for selection and use of this BMP are soils, space, and slope.

**Design Considerations:** Vegetative filter strips can remove approximately 85% of the total suspended solids contained within the volume of runoff captured. Design elements of vegetative filter strips include uniform, shallow overland flow across the entire filter strip area, hydraulic loading rate, inlet structures, slope, and vegetative cover. The area should be free of gullies or rills which can concentrate flow. Vegetative filter strips are appropriate for small drainage areas with moderate slopes. Other design elements include the following:

- Soils and moisture are adequate to grow relatively dense vegetative stands
- Sufficient space is available
- Slope is less than 12%
- Comparable performance to more expensive structural controls

**Maintenance Requirements:** Maintenance requirements for vegetative filter strips include pest management, seasonal mowing and lawn care, routine inspections, debris and litter removal, sediment removal, and grass reseeding and mulching.

### **Constructed Wetlands**

**Description:** Constructed wetlands provide physical, chemical, and biological water quality treatment of stormwater runoff. Physical treatment occurs as a result of decreasing flow velocities in the wetland, and is present in the form of evaporation, sedimentation, adsorption, and/or filtration. Chemical processes include chelation, precipitation, and chemical adsorption. Biological processes include decomposition, plant uptake and removal of nutrients, plus biological transformation and degradation. Hydrology is one of the most influential factors in pollutant removal due to its effects on sedimentation, aeration, biological transformation, and adsorption onto bottom sediments.

The wetland should be designed such that a minimum amount of maintenance is required. The natural surroundings, including such things as the potential energy of a stream or flooding river, should be utilized as much as possible. The wetland should approximate a natural situation and unnatural attributes, such as rectangular shape or



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rigid channel, should be avoided.

Site considerations should include the water table depth, soil/substrate, and space requirements. Because the wetland must have a source of flow, it is desirable that the water table is at or near the surface. If runoff is the only source of inflow for the wetland, the water level often fluctuates, and establishment of vegetation may be difficult. The soil or substrate of an artificial wetland should be loose loam to clay. A perennial baseflow must be present to sustain the artificial wetland. The presence of organic material is often helpful in increasing pollutant removal and retention. A greater amount of space is required for a wetland system than is required for a detention facility treating the same amount of area.

**Design Considerations:** Constructed wetlands can remove over 90% of the total suspended solids contained within the volume of runoff captured in the wetland. Design elements of constructed wetlands include wetland sizing, wetland configuration, sediment forebay, vegetation, outflow structure, depth of inundation during storm events, depth of micro pools, and aeration. Constructed wetlands are appropriate for large drainage areas with low to moderate slopes.

**Maintenance Requirements:** Maintenance requirements for constructed wetlands include mowing, routine inspections, debris and litter removal, erosion control, nuisance control, structural repairs, sediment removal, harvesting, and maintenance of water levels.

### **Wet Basins**

**Description:** Wet basins are runoff control facilities that maintain a permanent wet pool and a standing crop of emergent littoral vegetation. These facilities may vary in appearance from natural ponds to enlarged, bermed (manmade) sections of drainage systems and may function as online or offline facilities, although offline configuration is preferable. Offline designs can prevent scour and other damage to the wet pond and minimize costly outflow structure elements needed to accommodate extreme runoff events.

During storm events, runoff inflows displace part or all of the existing basin volume and are retained and treated in the facility until the next storm event. The pollutant removal mechanisms are settling of solids, wetland plant uptake, and microbial degradation. When the wet basin is adequately sized, pollutant removal performance can be excellent, especially for the dissolved fraction. Wet basins also help provide erosion protection for the receiving channel by limiting peak flows during larger storm events. Wet basins are often perceived as a positive aesthetic element in a community and offer significant opportunity for creative pond configuration and landscape design. Participation of an experienced wetland designer is suggested. A significant potential drawback for wet ponds in arid climates is that the contributing watershed for these facilities is often incapable of providing an adequate water supply to



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maintain the permanent pool, especially during the summer months. Makeup water (i.e., well water or municipal drinking water) is sometimes used to supplement the rainfall/runoff process, especially for wet basin facilities treating watersheds that generate insufficient runoff.

**Design Considerations:** Wet basins can remove over 90% of the total suspended solids contained within the volume of runoff captured in the basin. Design elements of wet basins include basin sizing, basin configuration, basin side slopes, sediment forebay, inflow and outflow structures, vegetation, depth of permanent pool, aeration, and erosion control. Wet basins are appropriate for large drainage areas with low to moderate slopes.

**Maintenance Requirements:** Maintenance requirements for wet basins include mowing, routine inspections, debris and litter removal, erosion control, nuisance control, structural repairs, sediment removal, and harvesting.

### **Grassy Swales**

**Descriptor:** Grassy swales are vegetated channels that convey stormwater and remove pollutants by filtration through grass and infiltration through soil. They require shallow slopes and soils that drain well. Pollutant removal capability is related to channel dimensions, longitudinal slope, and type of vegetation. Optimum design of these components will increase contact time of runoff through the swale and improve pollutant removal rates.

Grassy swales are primarily stormwater conveyance systems. They can provide sufficient control under light to moderate runoff conditions, but their ability to control large storms is limited. Therefore, they are most applicable in low to moderate sloped areas or along highway medians as an alternative to ditches and curb and gutter drainage. Their performance diminishes sharply in highly urbanized settings, and they are generally not effective enough to receive construction stage runoff where high sediment loads can overwhelm the system. Grassy swales can be used as a pretreatment measure for other downstream BMPs, such as extended detention basins. Enhanced grassy swales utilize check dams and wide depressions to increase runoff storage and promote greater settling of pollutants.

Grassy swales can be more aesthetically pleasing than concrete or rock-lined drainage systems and are generally less expensive to construct and maintain. Swales can slightly reduce impervious area and reduce the pollutant accumulation and delivery associated with curbs and gutters. The disadvantages of this technique include the possibility of erosion and channelization over time, and the need for more right-of-way as compared to a storm drain system. When properly constructed, inspected, and maintained, the life expectancy of a swale is estimated to be 20 years.



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### **Design Considerations:**

- Comparable performance to wet basins
- Limited to treating a few acres
- Availability of water during dry periods to maintain vegetation
- Sufficient available land area

The suitability of a swale at a site will depend on land use, size of the area serviced, soil type, slope, imperviousness of the contributing watershed, and dimensions and slope of the swale system. In general, swales can be used to serve areas of less than 10 acres, with slopes no greater than 5 %. The seasonal high water table should be at least 4 feet below the surface. Use of natural topographic lows is encouraged, and natural drainage courses should be regarded as significant local resources to be kept in use.

### **Maintenance Requirements:**

Research in the Austin area indicates that vegetated controls are effective at removing pollutants even when dormant. Therefore, irrigation is not required to maintain growth during dry periods but may be necessary only to prevent the vegetation from dying.

### **Vegetation Lined Drainage Ditches**

**Description:** Vegetation lined drainage ditches are similar to grassy swales. These drainage ditches are vegetated channels that convey storm water and remove pollutants by filtration through grass and infiltration through soil. They require soils that drain well. Pollutant removal capability is related to channel dimensions, longitudinal slope, and type of vegetation. Optimum design of these components will increase contact time of runoff through the ditch and improve pollutant removal rates. Vegetation lined drainage ditches are primarily storm water conveyance systems. They have vegetation lined in the low flow channel and may include vegetated shelves.

Vegetation in drainage ditches reduces erosion and removes pollutants by lowering water velocity over the soil surface, binding soil particles with roots, and by filtration through grass and infiltration through soil. Vegetation lined drainage ditches can be used where:

- A vegetative lining can provide sufficient stability for the channel grade by increasing maximum permissible velocity
- Slopes are generally less than 5%, with protection from sheer stress as needed through the use of BMPs, such as erosion control blankets



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- Site conditions required to establish vegetation, i.e. climate, soils, topography, are present

**Design Criteria:** The suitability of a vegetation lined drainage ditch at a site will depend on land use, size of the area serviced, soil type, slope, imperviousness of the contributing watershed, and dimensions and slope of the ditch system. The hydraulic capacity of the drainage ditch and other elements such as erosion, siltation, and pollutant removal capability, must be taken into consideration. Use of natural topographic lows is encouraged, and natural drainage courses should be regarded as significant local resources to be kept in use. Other items to consider include the following:

- Capacity, cross-section shape, side slopes, and grade
- Select appropriate native vegetation
- Construct in stable, low areas to conform with the natural drainage system. To reduce erosion potential, design the channel to avoid sharp bends and steep grades.
- Design and build drainage ditches with appropriate scour and erosion protection. Surface water should be able to enter over the vegetated banks without erosion occurring.
- BMPs, such as erosion control blankets, may need to be installed at the time of seeding to provide stability until the vegetation is fully established. It may also be necessary to divert water from the channel until vegetation is established or to line the channel with sod.
- Vegetated ditches must not be subject to sedimentation from disturbed areas.
- Sediment traps may be needed at channel inlets to prevent entry of muddy runoff and channel sedimentation.
- Availability of water during dry periods to maintain vegetation
- Sufficient available land area

### **Maintenance:**

During establishment, vegetation lined drainage ditches should be inspected, repaired, and vegetation reestablished if necessary. After the vegetation has become established, the ditch should be checked periodically to determine if the channel is



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withstanding flow velocities without damage. Check the ditch for debris, scour, or erosion and immediately make repairs if needed. Check the channel outlet and all road crossings for bank stability and evidence of piping or scour holes and make repairs immediately. Remove all significant sediment accumulations to maintain the designed carrying capacity. Keep the vegetation in a healthy condition at all times, since it is the primary erosion protection for the channel. Vegetation lined drainage ditches should be seasonally maintained by mowing or irrigating, depending on the vegetation selected. The long-term management of ditches as stable, vegetated, “natural” drainage systems with native vegetation buffers is highly recommended due to the inherent stability offered by grasses, shrubs, trees, and other vegetation.

Research in the Austin area indicates that vegetated controls are effective at removing pollutants even when dormant. Therefore, irrigation is not required to maintain growth during dry periods but may be necessary only to prevent the vegetation from dying.

### **Sand Filter Systems**

**Description:** The objective of sand filters is to remove sediment and the pollutants from the first flush of pavement and impervious area runoff. The filtration of nutrients, organics, and coliform bacteria is enhanced by a mat of bacterial slime that develops during normal operations. One of the main advantages of sand filters is their adaptability; they can be used on areas with thin soils, high evaporation rates, low-soil infiltration rates, in limited-space areas, and where groundwater is to be protected.

Since their original inception in Austin, Texas, hundreds of intermittent sand filters have been implemented to treat stormwater runoff. There have been numerous alterations or variations in the original design as engineers in other jurisdictions have improved and adapted the technology to meet their specific requirements. Major types include the Austin Sand Filter, the District of Columbia Underground Sand Filter, the Alexandria Dry Vault Sand Filter, the Delaware Sand Filter, and peat-sand filters which are adapted to provide a sorption layer and vegetative cover to various sand filter designs.

### **Design Considerations:**

- Appropriate for space-limited areas
- Applicable in arid climates where wet basins and constructed wetlands are not appropriate
- High TSS removal efficiency



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### **Cost Considerations:**

Filtration Systems may require less land than some other BMPs, reducing the land acquisition cost; however the structure itself is one of the more expensive BMPs. In addition, maintenance cost can be substantial.

### **Erosion Control Compost**

**Description:** Erosion control compost (ECC) can be used as an aid to control erosion on critical sites during the establishment period of protective vegetation. The most common uses are on steep slopes, swales, diversion dikes, and on tidal or stream banks.

### **Materials:**

New types of erosion control compost are continuously being developed. The Texas Department of Transportation (TxDOT) has established minimum performance standards which must be met for any products seeking to be approved for use within any of TxDOT's construction or maintenance activities. Material used within any TxDOT construction or maintenance activities must meet material specifications in accordance with current TxDOT specifications. TxDOT maintains a website at <https://www.txdot.gov/inside-txdot/division/support/recycling/speclist.html> that provides information on compost specification data.

ECC used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification data. To ensure the quality of compost used as an ECC, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and Texas Natural Resource Conservation Commission (now named TCEQ) Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. Testing requirements required by the TCEQ are defined in TAC Chapter 332, including Sections '332.71 Sampling and Analysis Requirements for Final Products and '332.72 Final Product Grades. Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

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to promote production and marketing of quality composts that meet analytical standards. TMECC is a laboratory manual that provides protocols for the composting industry and test methods for compost analysis. TMECC provides protocols to sample, monitor, and analyze materials during all stages of the composting process. Numerous parameters that might be of concern in compost can be tested by following protocols or test methods listed in TMECC. TMECC information can be found at <https://www.compostingcouncil.org/page/tmecc>. The USCC Seal of Testing Assurance (STA) program contains information regarding compost STA certification. STA program information can be found at <https://www.compostingcouncil.org/page/SealofTestingAssuranceSTA>.

### **Installation:**

Install in accordance with current TxDOT specification.

- Use on slopes 3:1 or flatter.
- Apply a 2-inch uniform layer unless otherwise shown on the plans or as directed.
- When rolling is specified, use a light corrugated drum roller.

### **Mulch and Compost Filter Socks**

**Description:** Mulch and compost filter socks (erosion control logs) are used to intercept and detain sediment laden run-off from unprotected areas. When properly used, mulch and compost filter socks can be highly effective at controlling sediment from disturbed areas. They cause runoff to pond which allows heavier solids to settle. Mulch and compost filter socks are used during the period of construction near the perimeter of a disturbed area to intercept sediment while allowing water to percolate through. The sock should remain in place until the area is permanently stabilized. Mulch and compost filter socks may be installed in construction areas and temporarily moved during the day to allow construction activity provided it is replaced and properly anchored at the end of the day. Mulch and compost filter socks may be seeded to allow for quick vegetative growth and reduction in run-off velocity.

### **Materials:**

New types of mulch and compost filter socks are continuously being developed. The Texas Department of Transportation (TxDOT) has established minimum performance standards which must be met for any products seeking to be approved for use within any of TxDOT's construction or maintenance activities. Mulch and compost filter socks used within any TxDOT construction or maintenance activities must meet material specifications in accordance with TxDOT specification 5049. TxDOT maintains a website at



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### **Installation:**

- Install in accordance with TxDOT Special Specification 5049.
- Install socks (erosion control logs) near the downstream perimeter of a disturbed area to intercept sediment from sheet flow.
- Secure socks in a method adequate to prevent displacement as a result of normal rain events such that flow is not allowed under the socks.



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- Inspect and maintain the socks in good condition (including staking, anchoring, etc.). Maintain the integrity of the control, including keeping the socks free of accumulated silt, debris, etc., until the disturbed area has been adequately stabilized.

#### **Sedimentation Chambers (only to be used when there is no space available for other approved BMP's)**

**Description:** Sedimentation chambers are stormwater treatment structures that can be used when space is limited such as urban settings. These structures are often tied into stormwater drainage systems for treatment of stormwater prior to entering state waters. The water quality benefits are the removal of sediment and buoyant materials. These structures are not designed as a catch basin or detention basin and not typically used for floodwater attenuation.

**Design Considerations:** Average rainfall and surface area should be considered when following manufacturer's recommendations for chamber sizing and/or number of units needed to achieve effective TSS removal. If properly sized, 50-80% removal of TSS can be expected.

**Maintenance Requirements:** Maintenance requirements include routine inspections, sediment, debris and litter removal, erosion control and nuisance control.



# RAILROAD COMMISSION OF TEXAS

## OIL AND GAS DIVISION

December 18, 2020

Colonel Timothy R. Vail  
Galveston District  
U.S. Army Corps of Engineers  
P.O. Box 1229  
Galveston, Texas 77553-1229

Re: 2020 USACE Nationwide Permits Reissuance  
NPWs 2, 3, 6, 7, 8, 12, 14, 16, 18, 19, 20, 25, 38, 43, 46, D and E

Dear Colonel Vail:

This letter is in response to your letter dated October 19, 2020, requesting Clean Water Act Section 401 certification of the United States Army Corps of Engineers (USACE) Nationwide Permits (NWP), notification of which was published in the September 15, 2020, issue of the Federal Register (85 FR 57298). Regional conditions for NWPs in Texas were proposed in public notices on September 30, 2020 and October 1, 2020.

Texas Natural Resources Code, §91.101, and Texas Water Code, §26.131, grant the RRC jurisdiction for water quality certifications for federal permits covering activities associated with the exploration, development, and production, including pipeline transportation, of oil, gas or geothermal resources that may result in discharges to waters of the United States. No person may conduct any activity subject to RRC jurisdiction pursuant to a USACE permit if that activity may result in a discharge into to waters of the United States within the boundaries of the State of Texas, unless the RRC has first issued a certification or waiver of certification under 16 Texas Administrative Code §3.93 (Rule 93). Although the RRC is responsible for water quality certification of activities under the jurisdiction of the RRC, the Texas Commission on Environmental Quality (TCEQ) establishes the Texas Water Quality Standards. This certification is limited to those activities under the jurisdiction of the RRC. For all other activities, the TCEQ will issue the certification as provided in Texas Water Code §26.131.

This office has reviewed the following proposed NWPs: 2 (Structures in Artificial Canals), 3 (Maintenance), 6 (Survey Activities), 7 (Outfall Structures and Associated Intake Structures), 8 (Oil and Gas Structures on the Outer Continental Shelf), 12 (Utility Line Activities), 14 (Linear Transportation Projects), 16 (Return Water From Upland Contained Disposal Areas), 18 (Minor Discharges), 19 (Minor Dredging), 20 (Oil Spill Cleanup), 25 (Structural Discharges), 38 (Cleanup of Hazardous and Toxic Waste), 43 (Stormwater Management Facilities), 46

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(Discharges in Ditches), D (Utility Line Activities for Water and Other Substances), and E (Water Reclamation and Reuse Facilities).

Based on our evaluation of the information contained in these documents, the RRC certifies that the activities authorized by NWPs 2, 8, 20, and E should not result in a violation of Texas Surface Water Quality Standards as required by Section 401 of the Federal Clean Water Act and pursuant to 16 Texas Administrative Code (TAC) §3.93.

The RRC conditionally certifies that the activities authorized by NWPs 3, 6, 7, 12, 14, 16, 18, 19, 25, 38, 43, 46, and D should not result in a violation of Texas Surface Water Quality Standards as required by Section 401 of the Federal Clean Water Act and pursuant to 16 TAC §3.93. Conditions for each NWP are defined in Attachment 1, in accordance with Texas Water Code, §26.003 and 30 TAC §307.5(a), which establish the antidegradation policy. The antidegradation policy and implementation procedures apply to actions regulated under state and federal authority that would increase pollution of the water in the state, including federal permits relating to the discharge of fill or dredged material under Federal Clean Water Act, §404.

Conditions for NWPs 6, 7, 12, 14, 16, 18, 19, 25, 38, 43, 46, and D: Certification of these NWPs is conditioned on inclusion of a prohibition on the use of these NWPs in coastal dune swales, mangrove marshes, and Columbia bottomlands in the Galveston District. Impacts to rare and ecologically significant coastal dune swales, mangrove marshes, and Columbia bottomlands, would not be considered minimal. Wetland water quality functions as defined in the Texas Surface Water Quality Standards (30 TAC §307) are attributes of wetlands that protect and maintain the quality of water in the state, which include stormwater storage and retention and the moderation of extreme water level fluctuations; shoreline protection against erosion through the dissipation of wave energy and water velocity, and anchoring of sediments; habitat for aquatic life; and removal, transformation, and retention of nutrients and toxic substances. No discharge can be certified if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other more significant adverse environmental consequences.

Condition for NWP 12 and NWP D: Certification on NWP 12 and NWP D is conditioned on a prohibition on mechanized land clearing in forested wetlands. Wetland water quality functions as defined in the Texas Surface Water Quality Standards (30 TAC §307) are attributes of wetlands that protect and maintain the quality of water in the state, which include stormwater storage and retention and the moderation of extreme water level fluctuations; shoreline protection against erosion through the dissipation of wave energy and water velocity, and anchoring of sediments; habitat for aquatic life; and removal, transformation, and retention of nutrients and toxic substances. No discharge can be certified if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other more significant adverse environmental consequences.

Condition for NWP 16: Certification of NWP 16 is conditioned on inclusion of a limit of 300 mg/L total suspended solids (TSS) concentration on the return water from upland contained dredged material disposal areas. This limit is promulgated as an effluent limit under Title 40 of

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the Code of Federal Regulations. The requirement has also been included in individual 404 permits.

The RRC is conditionally certifying NWP General Condition #12 *Soil Erosion and Sediment Controls*, and General Condition #25 *Water Quality*. The conditions address three categories of water quality management with specific recommendations for Best Management Practices (BMPs) for each category intended to enhance the water quality protection. A list of recommended BMPs is included as Attachment 2. The BMPs identified in Attachment 2 are in accordance with the Texas Water Code, §26.003 and the antidegradation policy and implementation procedures in 30 TAC §307.5(a), which apply to actions regulated under state and federal authority that would increase pollution of the water in the state, including federal permits relating to the discharge of fill or dredged material under Federal Clean Water Act, §404.

Attachment 3 is provided as a reference for all NWPs. A detailed description of the BMPs is provided in Attachment 4. These BMPs should be included for the protection of waters in the state specific to each NWP as part of the regional conditions for Texas. The conditions identified in Attachment 3 and 4 are in accordance with the Texas Water Code, §26.003 and the antidegradation policy and implementation procedures in 30 TAC §307.5(a), which apply to actions regulated under state and federal authority that would increase pollution of the water in the state, including federal permits relating to the discharge of fill or dredged material under Federal Clean Water Act, §404.

USACE is proposing to remove the 300 linear foot limit for NWP 43 and quantify impacts to streams using a ½-acre limit. Removal of the 300 linear foot limit would also remove the waiver requirement for proposed impacts to streams greater than 300 linear feet. The RRC is concerned about the potential adverse impact to state aquatic resources of the proposed removal of the 300 linear foot limit on stream bed losses. Removing the stream loss limit would mean that stream losses associated with activities covered by this NWP would only be limited by the existing 1/2 - acre limit on overall impacts to waters of the U.S., which could significantly affect state stream resources by allowing upwards of several thousand linear feet of stream impacts under these permits, depending on the dimensions of the streams being impacted. The RRC conditionally certifies this NWP with a cap of 1,500 linear feet on the stream length impacted based on the amount of stream impacts considered minimal by the state. The greater than minimal loss of stream length would result in significant loss of aquatic habitat and degradation of water quality per the state's Antidegradation Policy (30 TAC §307.4(i)) for aquatic life uses and habitat, where vegetative and physical components of the aquatic environment must be maintained or mitigated to protect aquatic life uses.

Certification of General Condition 23 *Mitigation* is conditioned to require USACE to copy RRC on any written notification of a mitigation waiver so that RRC may fulfill its responsibility to ensure water of the state is appropriately protected by understanding the impact of waivers being granted in Texas.

By letter dated November 14, 2020, the Texas Parks and Wildlife Department (TPWD) provided substantive recommendations. TPWD commented that the proposal to replace the 300 linear

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foot limit with a half-acre limit would greatly increase the amount of stream subject to impact without PCN and the length of stream allowed to be impacted under a NWP. TPWD recommended that Regional Condition 10 be revised to include resource agency coordination for any proposed discharges into mangrove forests or coastal dune swales.

TPWD recommended new Regional Conditions for NWP 3, 6, and 12 include PCN for activities that include general conditions for aquatic life movement, shellfish beds, adverse effects from impoundments, endangered species, designated critical resource waters and notice of fish, shellfish, and other aquatic resource mortality events as it related to the general conditions. The General Conditions cover many of these concerns.

In addition, a new regional condition should prohibit use of NWP 12 for discharges into Critical Resource Water (CRW) (GEMS, State Coastal Preserves, Sanctuaries, state Scientific areas, and Ecologically Significant Stream Segments, and Texas protected Mussel Sanctuaries; as well as state designated areas for known mussel habitat and known occurrences of state-and/or federally-listed freshwater mussels species) and their adjacent wetlands. Discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 12 for any activity within, or directly affecting, Designated Critical Resource Waters, including wetlands adjacent to such waters (General Condition 22). PCN is required for NWPs 3 for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal (General Condition 22). N addition, USACE advised by letter dated December 11, 2020, that USACE may designate, after notice and opportunity for public comment, additional waters having particular environmental or ecological significance. Although the process for designating the requested areas as CRWs was initiated, it has not been completed.

The RRC reserves the right to modify this certification should it be determined that significant cumulative or secondary impacts are occurring as a result of the activities authorized by the USACE under these NPWs.

The RRC has reviewed this proposed action for consistency with the Texas Coastal Management Plan (TCMP) goals and policies, in accordance with the regulations of the TCMP, and has found that the proposed action will have direct and significant adverse effect on any coastal natural resource area identified in the applicable policies, but has determined that the proposed action is consistent with the applicable goals and policies of the TCMP. This consistency determination is conditioned on inclusion in the NWPs of the conditions discussed above, as well as the following conditions:

Under General Condition 18 (Endangered Species), no activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. However, the General Condition does not include such a prohibition on activity that could jeopardize the continued existence of a threatened or

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endangered species or a species proposed for such designation, as identified by the State of Texas. USACE should coordinated with Texas Parks and Wildlife for all discharges, work, dredging activities, or dewatering activities proposed in non-tidal waters in which state and/or federal listed freshwater mussel species are known to occur and/or are within one of the 18 listed Texas protected mussel sanctuaries.

If you require further assistance, please contact me at 512-463-7308 or by email at [Leslie.savage@rrc.texas.gov](mailto:Leslie.savage@rrc.texas.gov).

Regards,

*Leslie Savage*

Leslie Savage, Chief Geologist  
Oil and Gas Division  
Railroad Commission of Texas

Ccs: (Via Electronic mail)

Mr. Stephen Brooks, Branch Chief, U.S. Army Corp of Engineers, Regulatory Branch,  
Fort Worth

Branch Chief, U.S. Army Corps of Engineers, Albuquerque District

Regulatory Branch Chief, U.S. Army Corps of Engineers, Regulatory Branch, Tulsa

Regulatory Branch Chief, U.S. Army Corps of Engineers, El Paso Regulatory Office

Ms. Leslie Koza, Texas Parks and Wildlife

Ms. Allison Buchtien, Texas General Land Office via e-mail

**Attachment 1**  
**Conditions of Section 401 Certification for Nationwide Permits and General Conditions**

General Condition 12 (Soil Erosion and Sediment Controls)

Erosion control and sediment control BMPs described in Attachment 2 are required with the use of this general condition. If the applicant does not choose one of the BMPs listed in Attachment 2, an individual 401 certification is required.

General Condition 25 (Water Quality)

Post-construction total suspended solids (TSS) BMPs described in Attachment 2 are required with the use of this general condition. If the applicant does not choose one of the BMP's listed in Attachment 2, an individual 401 certification is required.

General Condition 23 (Mitigation)

The USACE will copy the RRC on all mitigation waivers sent to applicants.

NWP 43

The USACE will copy the RRC on all written approvals of waivers for impacts to ephemeral, intermittent or perennial streams.

NWPs 2, 3, 6, 7, 8, 12, 14, 16, 18, 19, 20, 25, 38, 43, and 46

These NWPs are not authorized for use in coastal dune swales, mangrove marshes, and Columbia bottomlands in the Galveston District, Texas.

NWP 3 (Maintenance)

Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 6 (Survey Activities)

Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 7 (Outfall Structures and Associated Intake Structures)

Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 12 (Utility Line Activities)

Soil Erosion and Sediment Controls under General Condition 12 are required. Postconstruction TSS controls under General Condition 25 are required.

NWP 14 (Linear Transportation Projects)

Soil Erosion and Sediment Controls under General Condition 12 are required. Postconstruction TSS controls under General Condition 25 are required.

NWP 16 (Return Water From Upland Contained Disposal Areas)

Effluent from an upland contained disposal area shall not exceed a TSS concentration of 300 mg/L unless a site-specific TSS limit, or a site specific correlation curve for turbidity (nephelometric turbidity units (NTU)) versus TSS has been approved by TCEQ.

NWP 18 (Minor Discharges)

Soil Erosion and Sediment Controls under General Condition 12 are required. Postconstruction TSS controls under General Condition 2 5 are required.

NWP 19 (Minor Dredging)

Soil Erosion: and Sediment Controls under General Condition 12 are required.

NWP 25 (Structural Discharges)

Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 38 (Cleanup of Hazardous and Toxic Waste)

Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 43 (Stormwater Management Facilities)

Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 46 (Discharges in Ditches)

Soil Erosion and Sediment Controls under General Condition 12 are required.

**Attachment 2**  
**401 Water Quality Certification Best Management Practices (BMPs) for Nationwide Permits**

**I. Erosion Control**

Disturbed areas must be stabilized to prevent the introduction of sediment to adjacent wetlands or water bodies during wet weather conditions (erosion). *At least one* of the following BMPs must be maintained and remain in place until the area has been stabilized for NWP's 3, 6, 7, 12, 14, 18, 19, 25, 38, 43, and 46. If the applicant does not choose one of the BMPs listed, an individual 401 certification is required.

- o Temporary Vegetation
- o Mulch
- o Interceptor Swale
- o Erosion Control Compost
- o Compost Filter Socks

**II. Sedimentation Control**

- o Blankets/Matting
- o Sod
- o Diversion Dike
- o Mulch Filter Socks

Prior to project initiation, the project area must be isolated from adjacent wetlands and water bodies by the use of BMPs to confine sediment. Dredged material shall be placed in such a manner that prevents sediment runoff into water in the state, including wetlands. Water bodies can be isolated by the use of one or more of the required BMPs identified for sedimentation control. These BMP's must be maintained and remain in place until the dredged material is stabilized. *At least one* of the following BMPs must be maintained and remain in place until the area has been stabilized for NWP's 3, 6, 7, 12, 14, 18, 19, 25, 38, 43, and 46. If the applicant does not choose one of the BMPs listed, an individual 401 certification is required.

- o Sand Bag Berm
- o Rock Berm
- o Silt Fence
- o Triangular Filter Dike
- o Stone Outlet Sediment Traps
- o Erosion Control Compost
- o Compost Filter Socks

**III. Post-Construction TSS Control**

- o Hay Bale Dike
- o Brush Berms
- o Sediment Basins
- o Mulch Filter Socks

After construction has been completed and the site is stabilized, total suspended solids (TSS) loadings shall be controlled by *at least one* of the following BMPs for NWPs 12, 14, and 18. If the applicant does not choose one of the BMPs listed, an individual 401 certification is required.

- o Retention/Irrigation Systems
- o Constructed Wetlands
- o Extended Detention Basin
- o Wet Basins
- o Vegetative Filter Strips
- o Vegetation lined drainage ditches
- o Grassy Swales
- o Sand Filter Systems
- o Erosion Control Compost
- o Mulch Filter Socks
- o Compost Filter Socks
- o Sedimentation Chambers\*

\* Only to be used when there is no space available for other approved BMPs.

#### **IV. NWP 16: Return Water from Upland Contained Disposal Areas**

Effluent from an upland contained disposal area shall not exceed a TSS concentration of 300 mg/L unless a site-specific TSS limit, or a site specific correlation curve for turbidity (nephelometric turbidity units (NTU)) versus TSS has been approved by TCEQ.

#### **V. All NWPs except NWP 3**

These NWPs are not authorized for use in coastal dune swales, mangrove marshes, and Columbia bottomlands in the Galveston District, Texas.

**Attachment 3**  
**Reference to Nationwide Permits Best Management Practices Requirements**

NWP	Permit Description	Erosion Control	Sediment Control	Post Construction TSS
2	Structures in Artificial Canals			
3	Maintenance	X	X	
6	Survey Activities Trenching	X	X	
7	Outfall Structures and Associated Intake Structures	X	X	
8	Oil and Gas Structures on the Outer Continental Shelf	X	X	
12	Utility Line Activities	X	X	X
14	Liner Transportation Projects	X	X	X
16	Return Water From Upland Contained Disposal Areas			
18	Minor Discharges	X	X	X
19	Minor Dredging	X	X	
20	Response Operations for Oil and Hazardous Substances			
25	Structural Discharges	X	X	
38	Cleanup o Hazardous and Toxic Waste	X	X	
43	Stormwater Management Facilities	X	X	
46	Discharges in Ditches	X	X	

## Attachment 4 EROSION CONTROL BMPs

### **Temporary Vegetation**

**Description:** Vegetation can be used as a temporary or permanent stabilization technique for areas disturbed by construction. Vegetation effectively reduces erosion in swales, stockpiles, berms, mild to medium slopes, and along roadways. Other techniques such as matting, mulches, and grading may be required to assist in the establishment of vegetation.

#### **Materials:**

- The type of temporary vegetation used on a site is a function of the season and the availability of water for irrigation.
- Temporary vegetation should be selected appropriately for the area.
- County agricultural extension agents are a good source for suggestions for temporary vegetation.
- All seed should be high quality, U.S. Dept. of Agriculture certified seed.

#### **Installation:**

- Grading must be completed prior to seeding.
- Slopes should be minimized.
- Erosion control structures should be installed.
- Seedbeds should be well pulverized, loose, and uniform.
- Fertilizers should be applied at appropriate rates.
- Seeding rates should be applied as recommended by the county agricultural extension agent.
- The seed should be applied uniformly.
- Steep slopes should be covered with appropriate soil stabilization matting.

### **Blankets and Matting**

**Description:** Blankets and matting material can be used as an aid to control erosion on critical sites during the establishment period of protective vegetation. The most common uses are in channels, interceptor swales, diversion dikes, short, steep slopes, and on tidal or stream banks.

#### **Materials:**

The Texas Department of Transportation (TxDOT) has defined the critical performance factors for these types of products and has established minimum performance standards which must be met for any product seeking to be approved for use within any of TxDOT's construction or maintenance activities. The products that have been approved by TxDOT are also appropriate for general construction site stabilization. TxDOT maintains a web site at [http://www.txdot.gov/business/doing\\_business/product\\_evaluation/erosion\\_control.htm](http://www.txdot.gov/business/doing_business/product_evaluation/erosion_control.htm), which is updated as new products are evaluated.

#### **Installation:**

- Install in accordance with the manufacturer's recommendations.
- Proper anchoring of the material.
- Prepare a friable seed bed relatively free from clods, rocks and any foreign material.
- Fertilize and seed in accordance with seeding or other type of planting plan.

- Erosion stops should extend beyond the channel liner to full design cross-section of the channel.
- A uniform trench perpendicular to line of flow may be dug with a spade or a mechanical trencher.
- Erosion stops should be deep enough to penetrate solid material or below level of ruling in sandy soils.
- Erosion stop mats should be wide enough to allow turnover at bottom of trench for stapling, while maintaining the top edge flush with channel surface.

### **Mulch**

**Description:** Mulching is the process of applying a material to the exposed soil surface to protect it from erosive forces and to conserve soil moisture until plants can become established. When seeding critical sites, sites with adverse soil conditions or seeding on other than optimum seeding dates, mulch material should be applied immediately after seeding. Seeding during optimum seeding dates and with favorable soils and site conditions will not need to be mulched.

### **Materials:**

- Mulch may be small grain straw which should be applied uniformly.
- On slopes 15 percent or greater, a binding chemical must be applied to the surface.
- Wood-fiber or paper-fiber mulch may be applied by hydroseeding.
- Mulch nettings may be used.
- Wood chips may be used where appropriate.

### **Installation:**

Mulch anchoring should be accomplished immediately after mulch placement. This may be done by one of the following methods: peg and twine, mulch netting, mulch anchoring tool, or liquid mulch binders.

**Description:** Sod is appropriate for disturbed areas which require immediate vegetative covers, or where sodding is preferred to other means of grass establishment. Locations particularly suited to stabilization with sod are waterways carrying intermittent flow, areas around drop inlets or in grassed swales, and residential or commercial lawns where quick use or aesthetics are factors. Sod is composed of living plants and those plants must receive adequate care to provide vegetative stabilization on a disturbed area.

### **Materials:**

- Sod should be machine cut at a uniform soil thickness.
- Pieces of sod should be cut to the supplier's standard width and length.
- Torn or uneven pads are not acceptable.
- Sections of sod should be strong enough to support their own weight and retain their size and shape when suspended from a firm grasp.
- Sod should be harvested, delivered, and installed within a period of 36 hours.

### **Installation:**

- Areas to be sodded should be brought to final grade.
- The surface should be cleared of all trash and debris.

- Fertilize according to soil tests.
- Fertilizer should be worked into the soil.
- Sod should not be cut or laid in excessively wet or dry weather.
- Sod should not be laid on soil surfaces that are frozen.
- During periods of high temperature, the soil should be lightly irrigated.
- The first row of sod should be laid in a straight line with subsequent rows placed parallel to and butting tightly against each other.
- Lateral joints should be staggered to promote more uniform growth and strength.
- Wherever erosion may be a problem, sod should be laid with staggered joints and secured.
- Sod should be installed with the length perpendicular to the slope (on the contour).
- Sod should be rolled or tamped.
- Sod should be irrigated to a sufficient depth.
- Watering should be performed as often as necessary to maintain soil moisture.
- The first mowing should not be attempted until the sod is firmly rooted.
- Not more than one third of the grass leaf should be removed at any one cutting.

### **Interceptor Swale**

Interceptor swales are used to shorten the length of exposed slope by intercepting runoff, prevent off-site runoff from entering the disturbed area, and prevent sediment-laden runoff from leaving a disturbed site. They may have a v-shape or be trapezoidal with a flat bottom and side slopes of 3:1 or flatter. The outflow from a swale should be directed to a stabilized outlet or sediment trapping device. The swales should remain in place until the disturbed area is permanently stabilized.

### **Materials:**

- Stabilization should consist of a layer of crushed stone three inches thick, riprap or high velocity erosion control mats.
- Stone stabilization should be used when grades exceed 2% or velocities exceed 6 feet per second.
- Stabilization should extend across the bottom of the swale and up both sides of the channel to a minimum height of three inches above the design water surface elevation based on a 2-year, 24-hour storm.

### **Installation:**

- An interceptor swale should be installed across exposed slopes during construction and should intercept no more than 5 acres of runoff.
- All earth removed and not needed in construction should be disposed of in an approved spoils site so that it will not interfere with the functioning of the swale or contribute to siltation in other areas of the site.
- All trees, brush, stumps, obstructions and other material should be removed and disposed of so as not to interfere with the proper functioning of the swale.
- Swales should have a maximum depth of 1.5 feet with side slopes of 3:1 or flatter. Swales should have positive drainage for the entire length to an outlet.
- When the slope exceeds 2 percent, or velocities exceed 6 feet per second (regardless of slope), stabilization is required. Stabilization should be crushed stone placed in a layer of at least 3 inches thick or may be high velocity erosion control matting. Check dams are also

recommended to reduce velocities in the swales possibly reducing the amount of stabilization necessary.

- Minimum compaction for the swale should be 90% standard proctor density.

### **Diversion Dikes**

A temporary diversion dike is a barrier created by the placement of an earthen embankment to reroute the flow of runoff to an erosion control device or away from an open, easily erodible area. A diversion dike intercepts runoff from small upland areas and diverts it away from exposed slopes to a stabilized outlet, such as a rock berm, sandbag berm, or stone outlet structure. These controls can be used on the perimeter of the site to prevent runoff from entering the construction area. Dikes are generally used for the duration of construction to intercept and reroute runoff from disturbed areas to prevent excessive erosion until permanent drainage features are installed and/or slopes are stabilized.

### **Materials:**

- Stone stabilization (required for velocities in excess of 6 fps) should consist of riprap placed in a layer at least 3 inches thick and should extend a minimum height of 3 inches above the design water surface up the existing slope and the upstream face of the dike.
- Geotextile fabric should be a non-woven polypropylene fabric designed specifically for use as a soil filtration media with an approximate weight of 6 oz./yd<sup>2</sup>, a Mullen burst rating of 140 psi, and having an equivalent opening size (EOS) greater than a #50 sieve.

### **Installation:**

- Diversion dikes should be installed prior to, and maintained for the duration of, construction and should intercept no more than 10 acres of runoff.
- Dikes should have a minimum top width of 2 feet and a minimum height of compacted fill of 18 inches measured from the top of the existing ground at the upslope toe to top of the dike and have side slopes of 3:1 or flatter.
- The soil for the dike should be placed in lifts of 8 inches or less and be compacted to 95 % standard proctor density .
- The channel, which is formed by the dike, must have positive drainage for its entire length to an outlet.
- When the slope exceeds 2 percent, or velocities exceed 6 feet per second (regardless of slope), stabilization is required. In situations where velocities do not exceed 6 feet per second, vegetation may be used to control erosion.

### **Erosion Control Compost**

**Description:** Erosion control compost (ECC) can be used as an aid to control erosion on critical sites during the establishment period of protective vegetation. The most common uses are on steep slopes, swales, diversion dikes, and on tidal or stream banks.

### **Materials:**

ECC used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification data. To ensure the quality of compost used as an ECC, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal

Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and TCEQ Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. TCEQ testing requirements are defined in TAC Chapter 332, including Sections §332.71 (Sampling and Analysis Requirements for Final Products) and §332.72 (Final Product Grades). Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

Testing standards are dependent upon the intended use for the compost and ensures product safety, and product performance regarding the product's specific use. The appropriate compost sampling and testing protocols included in the United States Composting Council (USCC) Test Methods for the Examination of Composting and Compost (TMECC) should be conducted on compost products used for ECC to ensure that the products used will not impact public health, safety, and the environment and to promote production and marketing of quality composts that meet analytical standards. TMECC information can be found at <http://www.tmecc.org/tmecc/index.html>. The USCC Seal of Testing Assurance (STA) program contains information regarding compost STA certification. STA program information can be found at [http://tmecc.org/sta/STA\\_program\\_description.html](http://tmecc.org/sta/STA_program_description.html).

**Installation:**

- Install in accordance with current TxDOT specification.
- Use on slopes 3:1 or flatter.
- Apply a 2-inch uniform layer unless otherwise shown on the plans or as directed.
- When rolling is specified, use a light corrugated drum roller.

**Mulch and Compost Filter Socks**

**Description:** Mulch and compost filter socks (erosion control logs) are used to intercept and detain sediment laden run-off from unprotected areas. When properly used, mulch and compost filter socks can be highly effective at controlling sediment from disturbed areas. They cause runoff to pond which allows heavier solids to settle. Mulch and compost filter socks are used during the period of construction near the perimeter of a disturbed area to intercept sediment while allowing water to percolate through. The sock should remain in place until the area is permanently stabilized. Mulch and compost filter socks may be installed in construction areas and temporarily moved during the day to allow construction activity provided it is replaced and properly anchored at the end of the day. Mulch and compost filter socks may be seeded to allow for quick vegetative growth and reduction in run-off velocity.

**Materials:**

Mulch and compost filter socks used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification data. To ensure the quality of compost used for mulch and compost filter socks, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and TCEQ Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. TCEQ testing requirements are defined in TAC Chapter

332, including Sections §332.71 (Sampling and Analysis Requirements for Final Products) and §332.72 (Final Product Grades). Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

Testing standards are dependent upon the intended use for the compost and ensures product safety, and product performance regarding the product's specific use. The appropriate compost sampling and testing protocols included in the United States Composting Council (USCC) Test Methods for the Examination of Composting and Compost (TMECC) should be conducted on compost products used for mulch and compost filter socks to ensure that the products used will not impact public health, safety, and the environment and to promote production and marketing of quality composts that meet analytical standards. TMECC information can be found at <http://www.tmecc.org/tmecc/index.html>. The USCC Seal of Testing Assurance (ST A) program contains information regarding compost ST A certification. STA program information can be found at [http://tmecc.org/sta/STA\\_program\\_description.html](http://tmecc.org/sta/STA_program_description.html).

**Installation:**

- Install in accordance with TxDOT Special Specification 5049.
- Install socks (erosion control logs) near the downstream perimeter of a disturbed area to intercept sediment from sheet flow.
- Secure socks in a method adequate to prevent displacement as a result of normal rain events such that flow is not allowed under the socks.
- Inspect and maintain the socks in good condition (including staking, anchoring, etc.). Maintain the integrity of the control, including keeping the socks free of accumulated silt, debris, etc., until the disturbed area has been adequately stabilized.

**SEDIMENT CONTROL BMPS****Sand Bag Berm**

**Description:** The purpose of a sandbag berm is to detain sediment carried in runoff from disturbed areas by intercepting runoff and causing it to pool behind the sand bag berm. Sediment carried in the runoff is deposited on the upstream side of the sand bag berm due to the reduced flow velocity. Excess runoff volumes are allowed to flow over the top of the sand bag berm. Sand bag berms are used only during construction activities in streambeds when the contributing drainage area is between 5 and 10 acres and the slope is less than 15%, i.e., pipeline construction in channels, temporary channel crossing for construction equipment, etc. Plastic facing should be installed on the upstream side and the berm should be anchored to the streambed by drilling into the rock and driving in T-posts or rebar (#5 or #6) spaced appropriately.

**Materials:**

- The sand bag material should be polypropylene, polyethylene, polyamide or cotton burlap woven fabric, minimum unit weight 4 oz/yd<sup>2</sup>, mullen burst strength exceeding 300 psi and ultraviolet stability exceeding 70%.
- The bag length should be 24 to 30 inches, width should be 16 to 18 inches and thickness should be 6 to 8 inches.

- Sandbags should be filled with coarse grade sand and free from deleterious material. All sand should pass through a No. 10 sieve. The filled bag should have an approximate weight of 40 pounds.
- Outlet pipe should be schedule 40 or stronger polyvinyl chloride (PVC) having a nominal internal diameter of 4 inches.

**Installation:**

- The berm should be a minimum height of 18 inches, measured from the top of the existing ground at the upslope toe to the top of the berm.
- The berm should be sized as shown in the plans but should have a minimum width of 48 inches measured at the bottom of the berm and 16 inches measured at the top of the berm.
- Runoff water should flow over the tops of the sandbags or through 4-inch diameter PVC pipes embedded below the top layer of bags.
- When a sandbag is filled with material, the open end of the sandbag should be stapled or tied with nylon or poly cord.
- Sandbags should be stacked in at least three rows abutting each other, and in staggered arrangement.
- The base of the berm should have at least 3 sandbags. These can be reduced to 2 and 1 bag in the second and third\_ rows respectively.
- For each additional 6 inches of height, an additional sandbag must be added to each row width.
- A bypass pump-around system, or similar alternative, should be used on conjunction with the berm for effective dewatering of the work area.

**Silt Fence**

**Description:** A silt fence is a barrier consisting of geotextile fabric supported by metal posts to prevent soil and sediment loss from a site. Silt fences can be highly effective at controlling sediment from disturbed areas by causing runoff to pond, allowing heavier solids to settle. The purpose of a silt fence is to intercept and detain water-borne sediment from unprotected areas of a limited extent. Silt fence is used during the period of construction near the perimeter of a disturbed area to intercept sediment while allowing water to percolate through. This fence should remain in place until the disturbed area is permanently stabilized. Silt fence should not be used where there is a concentration of water in a channel or drainage way. If concentrated flow occurs after installation, corrective action must be taken such as placing a rock berm in the areas of concentrated flow. Silt fencing within the site may be temporarily moved during the day to allow construction activity provided it is replaced and properly anchored to the ground at the end of the day. Silt fences on the perimeter of the site or around drainage ways should not be moved at any time.

**Materials:**

- Silt fence material should be polypropylene, polyethylene or polyamide woven or nonwoven fabric. The fabric width should be 36 inches, with a minimum unit weight of 4.5 oz/yd, mullen burst strength exceeding 190 lb/in<sup>2</sup>, ultraviolet stability exceeding 70%, and minimum apparent opening size of U.S. Sieve No. 30.
- Fence posts should be made of hot rolled steel, at least 4 feet long with Tee or Y-bar cross section, surface painted or galvanized, minimum nominal weight 1.25 lb/ft<sup>2</sup>, and Brindell hardness exceeding 140.

- Woven wire backing to support the fabric should be galvanized 2-inch x 4-inch welded wire, 12 gauge minimum.

**Installation:**

- Steel posts, which support the silt fence, should be installed on a slight angle toward the anticipated runoff source. Post must be embedded a minimum of 1 foot deep and spaced not more than 8 feet on center. Where water concentrates, the maximum spacing should be 6 feet.
- Lay out fencing down-slope of disturbed area, following the contour as closely as possible. The fence should be sited so that the maximum drainage area is \* acre/100 feet of fence.
- The toe of the silt fence should be trenched in with a spade or mechanical trencher so that the down-slope face of the trench is flat and perpendicular to the line of flow. Where fence cannot be trenched in, weight fabric flap with 3 inches of pea gravel on uphill side to prevent flow from seeping under fence.
- The trench must be a minimum of 6 inches deep and 6 inches wide to allow for the silt fence fabric to be laid in the ground and backfilled with compacted material.
- Silt fence should be securely fastened to each steel support post or to woven wire attached to the steel fence post. There should be a 3-foot overlap, securely fastened where ends of fabric meet.

**Triangular Sediment Filter Dike**

**Description:** The purpose of a triangular sediment filter dike is to intercept and detain water-borne sediment from unprotected areas of limited extent. The triangular sediment filter dike is used where there is no concentration of water in a channel or other drainage way above the barrier and the contributing drainage area is less than one acre. If the uphill slope above the dike exceeds 10%, the length of the slope above the dike should be less than 50 feet. If concentrated flow occurs after installation, corrective action should be taken such as placing rock berm in the areas of concentrated flow. This measure is effective on paved areas where installation of silt fence is not possible or where vehicle access must be maintained. The advantage of these controls is the ease with which they can be moved to allow vehicle traffic and then reinstalled to maintain sediment.

**Materials:**

- Silt fence material should be polypropylene, polyethylene or polyamide woven or nonwoven fabric. The fabric width should be 36 inches, with a minimum unit weight of 4.5 oz/yd, mullen burst strength exceeding 190 lb/in<sup>2</sup>, ultraviolet stability exceeding 70%, and minimum apparent opening size of U.S. Sieve No. 30.
- The dike structure should be 6 gauge 6-inch x 6-inch wire mesh folded into triangular form being eighteen (18) inches on each side.

**Installation:**

- The frame of the triangular sediment filter dike should be constructed of 6-inch x 6-inch, 6 gauge welded wire mesh, 18 inches per side, and wrapped with geotextile fabric the same composition as that used for silt fences.
- Filter material should lap over ends 6 inches to cover dike to dike junction; each junction should be secured by shoat rings.

- Position dike parallel to the contours, with the end of each section closely abutting the adjacent sections.
- There are several options for fastening the filter dike to the ground. The fabric skirt may be toed-in with 6 inches of compacted material, or 12 inches of the fabric skirt should extend uphill and be secured with a minimum of 3 inches of open graded rock, or with staples or nails. If these two options are not feasible the dike structure may be trenched in 4 inches.
- Triangular sediment filter dikes should be installed across exposed slopes during construction with ends of the dike tied into existing grades to prevent failure and should intercept no more than one acre of runoff.
- When moved to allow vehicular access, the dikes should be reinstalled as soon as possible, but always at the end of the workday.

### **Rock Berm**

**Description:** The purpose of a rock berm is to serve as a check dam in areas of concentrated flow, to intercept sediment-laden runoff, detain the sediment and release the water in sheet flow. The rock berm should be used when the contributing drainage area is less than 5 acres. Rock berms are used in areas where the volume of runoff is too great for a silt fence to contain. They are less effective for sediment removal than silt fences, particularly for fine particles, but can withstand higher flows than a silt fence. As such, rock berms are often used in areas of channel flows. Rock berms are most effective at reducing bed load in channels and should not be substituted for other erosion and sediment control measures further up the watershed.

### **Materials:**

- The berm structure should be secured with a woven wire sheathing having maximum opening of one inch and a minimum wire diameter of 20 gauge galvanized and should be secured with shoat rings.
- Clean, open graded 3- to 5-inch diameter rock should be used, except in areas where high velocities or large volumes of flow are expected, where 5- to 8-inch diameter rocks may be used.

### **Installation:**

- Lay out the woven wire sheathing perpendicular to the flow line. The sheathing should be 20 gauge woven wire mesh with 1 inch openings.
- Berm should have a top width of 2 feet minimum with side slopes being 2:1 (H:V) or flatter.
- Place the rock along the sheathing to a height not less than 18 inches.
- Wrap the wire sheathing around the rock and secure with tie wire so that the ends of the sheathing overlap at least 2 inches, and the berm retains its shape when walked upon.
- Berm should be built along the contour at zero percent grade or as near as possible.
- The ends of the berm should be tied into existing upslope grade and the berm should be buried in a trench approximately 3 to 4 inches deep to prevent failure of the control.

### **Hay Bale Dike**

**Description:** The purpose of a hay or straw bale dike is to intercept and detain small amounts of sediment-laden runoff from relatively small unprotected areas. Straw bales are to be used when it is not feasible to install other, more effective measures or when the construction phase is expected to last less than 3 months. Straw bales should not be used on areas where rock or other hard surfaces prevent the full and uniform anchoring of the barrier.

**Materials:**

**Straw:** The best quality straw mulch comes from wheat, oats or barley and should be free of weed and grass seed which may not be desired vegetation for the area to be protected. Straw mulch is light and therefore must be properly anchored to the ground.

**Hay:** This is very similar to straw with the exception that it is made of grasses and weeds and not grain stems. This form of mulch is very inexpensive and is widely available but does introduce weed and grass seed to the area. Like straw, hay is light and must be anchored.

- Straw bales should weigh a minimum of 50 pounds and should be at least 30 inches long.
  - Bales should be composed entirely of vegetable matter and be free of seeds.
  - Binding should be either wire or nylon string, jute or cotton binding is unacceptable.
- Bales should be used for not more than two months before being replaced.

**Installation:**

- Bales should be embedded a minimum of 4 inches and securely anchored using 2-inch x 2-inch wood stakes or 3/8-inch diameter rebar driven through the bales into the ground a minimum of 6 inches.
- Bales are to be placed directly adjacent to one another leaving no gap between them.
- All bales should be placed on the contour.
- The first stake in each bale should be angled toward the previously laid bale to force the bales together.

**Brush Berms**

Organic litter and spoil material from site clearing operations is usually burned or hauled away to be dumped elsewhere. Much of this material can be used effectively on the construction site. The key to constructing an efficient brush berm is in the method used to obtain and place the brush. It will not be acceptable to simply take a bulldozer and push whole trees into a pile as this does not assure continuous ground contact with the berm and will allow uncontrolled flows under the berm. Brush berms may be used where there is little or no concentration of water in a channel or other drainage way above the berm. The size of the drainage area should be no greater than one-fourth of an acre per 100 feet of barrier length; the maximum slope length behind the barrier should not exceed 100 feet; and the maximum slope gradient behind the barrier should be less than 50% (2:1).

**Materials:**

- The brush should consist of woody brush and branches, preferably less than 2 inches in diameter.
- The filter fabric should conform to the specifications for filter fence fabric.
- The rope should be 1/4 - inch polypropylene or nylon rope.
- The anchors should be 3/8-inch diameter rebar stakes that are 18-inches long.

**Installation:**

- Lay out the brush berm following the contour as closely as possible.

- The juniper limbs should be cut and hand placed with the vegetated part of the limb in close contact with the ground. Each subsequent branch should overlap the previous branch providing a shingle effect.
- The brush berm should be constructed in lifts with each layer extending the entire length of the berm before the next layer is started.
- A trench should be excavated 6-inches wide and 4-inches deep along the length of the barrier and immediately uphill from the barrier.
- The filter fabric should be cut into lengths sufficient to lay across the barrier from its up-slope base to just beyond its peak. The lengths of filter fabric should be draped across the width of the barrier with the uphill edge placed in the trench and the edges of adjacent pieces overlapping each other. Where joints are necessary, the fabric should be spliced together with a minimum 6-inch overlap and securely sealed.
- The trench should be backfilled and the soil compacted over the filter fabric.
- Set stakes into the ground along the downhill edge of the brush barrier, and anchor the fabric by tying rope from the fabric to the stakes. Drive the rope anchors into the ground at approximately a 45-degree angle to the ground on 6-foot centers.
- Fasten the rope to the anchors and tighten berm securely to the ground with a minimum tension of 50 pounds.
- The height of the brush berm should be a minimum of 24 inches after the securing ropes have been tightened.

### **Stone Outlet Sediment Traps**

A stone outlet sediment trap is an impoundment created by the placement of an earthen and stone embankment to prevent soil and sediment loss from a site. The purpose of a sediment trap is to intercept sediment-laden runoff and trap the sediment in order to protect drainage ways, properties and rights of way below the sediment trap from sedimentation. A sediment trap is usually installed at points of discharge from disturbed areas. The drainage area for a sediment trap is recommended to be less than 5 acres.

Larger areas should be treated using a sediment basin. A sediment trap differs from a sediment basin mainly in the type of discharge structure. The trap should be located to obtain the maximum storage benefit from the terrain, for ease of clean out and disposal of the trapped sediment and to minimize interference with construction activities. The volume of the trap should be at least 3600 cubic feet per acre of drainage area.

### **Materials:**

- All aggregate should be at least 3 inches in diameter and should not exceed a volume of 0.5 cubic foot.
- The geotextile fabric specification should be woven polypropylene, polyethylene or polyamide geotextile, minimum unit weight of 4.5 oz/yd<sup>2</sup>, mullen burst strength at least 250 lb/in<sup>2</sup>, ultraviolet stability exceeding 70%, and equivalent opening size exceeding 40.

### **Installation:**

- Earth Embankment: Place fill material in layers not more than 8 inches in loose depth. Before compaction, moisten or aerate each layer as necessary to provide the optimum moisture content of the material. Compact each layer to 95% standard proctor density. Do not place material on

surfaces that are muddy or frozen. Side slopes for the embankment are to be 3: 1. The minimum width of the embankment should be 3 feet.

- A gap is to be left in the embankment in the location where the natural confluence of runoff crosses the embankment line. The gap is to have a width in feet equal to 6 times the drainage area in acres.
- Geotextile Covered Rock Core: A core of filter stone having a minimum height of 1.5 feet and a minimum width at the base of 3 feet should be placed across the opening of the earth embankment and should be covered by geotextile fabric which should extend a minimum distance of 2 feet in either direction from the base of the filter stone core.
- Filter Stone Embankment: Filter stone should be placed over the geotextile and is to have a side slope which matches that of the earth embankment of 3:1 and should cover the geotextile/rock core a minimum of 6 inches when installation is complete. The crest of the outlet should be at least 1 foot below the top of the embankment.

### **Sediment Basins:**

The purpose of a sediment basin is to intercept sediment-laden runoff and trap the sediment to protect drainage ways, properties and rights of way below the sediment basin from sedimentation. A sediment basin is usually installed at points of discharge from disturbed areas. The drainage area for a sediment basin is recommended to be less than 100 acres.

Sediment basins are effective for capturing and slowly releasing the runoff from larger disturbed areas thereby allowing sedimentation to take place. A sediment basin can be created where a permanent pond BMP is being constructed. Guidelines for construction of the permanent BMP should be followed, but revegetation, placement of underdrain piping, and installation of sand or other filter media should not be carried out until the site construction phase is complete.

### **Materials:**

- Riser should be corrugated metal or reinforced concrete pipe or box and should have watertight fittings or end to end connections of sections.
- An outlet pipe of corrugated metal or reinforced concrete should be attached to the riser and should have positive flow to a stabilized outlet on the downstream side of the embankment.
- An anti-vortex device and rubbish screen should be attached to the top of the riser and should be made of polyvinyl chloride or corrugated metal.

### **Basin Design and Construction:**

- For common drainage locations that serve an area with ten or more acres disturbed at one time, a sediment basin should provide storage for a volume of runoff from a two-year, 24-hour storm from each disturbed acre drained.
- The basin length to width ratio should be at least 2:1 to improve trapping efficiency. The shape may be attained by excavation or the use of baffles. The lengths should be measured at the elevation of the riser de-watering hole.
- Place fill material in layers not more than 8 inches in loose depth. Before compaction, moisten or aerate each layer as necessary to provide the optimum moisture content of the material. Compact each layer to 95% standard proctor density. Do not place material on surfaces that are muddy or frozen. Side slopes for the embankment should be 3:1 (H:V).

- An emergency spillway should be installed adjacent to the embankment on undisturbed soil and should be sized to carry the full amount of flow generated by a 10-year, 3-hour storm with 1 foot of freeboard less the amount which can be carried by the principal outlet control device.
- The emergency spillway should be lined with riprap as should the swale leading from the spillway to the normal watercourse at the base of the embankment.
- The principal outlet control device should consist of a rigid vertically oriented pipe or box of corrugated metal or reinforced concrete. Attached to this structure should be a horizontal pipe, which should extend through the embankment to the toe of fill to provide a de-watering outlet for the basin.
- An anti-vortex device should be attached to the inlet portion of the principal outlet control device to serve as a rubbish screen.
- A concrete base should be used to anchor the principal outlet control device and should be sized to provide a safety factor of 1.5 (downward forces= 1.5 buoyant forces).
- The basin should include a permanent stake to indicate the sediment level in the pool and marked to indicate when the sediment occupies 50% of the basin volume (not the top of the stake).
- The top of the riser pipe should remain open and be guarded with a trash rack and anti-vortex device. The top of the riser should be 12 inches below the elevation of the emergency spillway. The riser should be sized to convey the runoff from the 2-year, 3-hour storm when the water surface is at the emergency spillway elevation. For basins with no spillway the riser must be sized to convey the runoff from the 10-yr, 3-hour storm.
- Anti-seep collars should be included when soil conditions or length of service make piping through the backfill a possibility.
- The 48-hour drawdown time will be achieved by using a riser pipe perforated at the point measured from the bottom of the riser pipe equal to 1/2 the volume of the basin. This is the maximum sediment storage elevation. The size of the perforation may be calculated as follows:

$$A_o = \frac{A_s \times \sqrt{2h}}{C_d \times 980,000}$$

Where:

$A_s$  = Area of the de-watering hole, ft<sup>2</sup>

$A_o$  = Surface area of the basin, ft<sup>2</sup>

$C_d$  = Coefficient of contraction, approximately 0.6

$h$  = head of water above the hole, ft

Perforating the riser with multiple holes in a combined surface area equal to  $A_o$  is acceptable.

### **Erosion Control Compost**

**Description:** Erosion control compost (ECC) can be used as an aid to control erosion on critical sites during the establishment period of protective vegetation. The most common uses are on steep slopes, swales, diversion dikes, and on tidal or stream banks.

#### **Materials:**

ECC used for projects not related to TxDOT should be of quality materials by meeting performance standards and compost specification data. Products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and TCEQ Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. TCEQ testing requirements are defined in TAC Chapter 332, including Sections §332.71 (Sampling and Analysis Requirements for Final Products) and §332.72 (Final Product Grades). Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

Testing standards are dependent upon the intended use for the compost and ensures product safety, and product performance regarding the product's specific use. The appropriate compost sampling and testing protocols included in the United States Composting Council (USCC) Test Methods for the Examination of Composting and Compost (TMECC) should be conducted on compost products used for ECC to ensure that the products used will not impact public health, safety, and the environment and to promote production and marketing of quality composts that meet analytical standards. TMECC provides protocols to sample, monitor, and analyze materials during all stages of the composting process. TMECC information can be found at <http://www.tmecc.org/tmecc/index.html>. The USCC Seal of Testing Assurance (STA) program contains information regarding compost STA certification. STA program information can be found at [http://tmecc.org/sta/STA\\_program\\_description.html](http://tmecc.org/sta/STA_program_description.html).

#### **Installation:**

- Install in accordance with current TxDOT specification.
- Use on slopes 3:1 or flatter.
- Apply a 2-inch uniform layer unless otherwise shown on the plans or as directed.
- When rolling is specified, use a light corrugated drum roller.

### **Mulch and Compost Filter Socks**

**Description:** Mulch and compost filter socks (erosion control logs) are used to intercept and detain sediment laden run-off from unprotected areas. When properly used, mulch and compost filter socks can be highly effective at controlling sediment from disturbed areas. They cause runoff to pond which allows heavier solids to settle. Mulch and compost filter socks are used during the period of construction near the perimeter of a disturbed area to intercept sediment while allowing water to percolate through. The sock should remain in place until the area is permanently stabilized. Mulch and compost filter socks may be installed in construction areas and temporarily moved during the day to allow construction activity provided it is replaced and properly anchored at the end of the day. Mulch and compost filter socks may be seeded to allow for quick vegetative growth and reduction in run-off velocity.

**Materials:**

Mulch and compost filter socks used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification data. To ensure the quality of compost used for mulch and compost filter socks, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and TCEQ Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. TCEQ testing requirements are defined in TAC Chapter 332, including Sections §332.71 (Sampling and Analysis Requirements for Final Products) and §332.72 (Final Product Grades). Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

Testing standards are dependent upon the intended use for the compost and ensures product safety, and product performance regarding the product's specific use. The appropriate compost sampling and testing protocols included in the United States Composting Council (USCC) Test Methods for the Examination of Composting and Compost (TMECC) should be conducted on compost products used for mulch and compost filter socks to ensure that the products used will not impact public health, safety, and the environment and to promote production and marketing of quality composts that meet analytical standards. TMECC information can be found at <http://www.tmecc.org/tmecc/index.html>. The USCC Seal of Testing Assurance (ST A) program contains information regarding compost STA certification. STA program information can be found at [http://tmecc.org/sta/STA\\_program\\_description.html](http://tmecc.org/sta/STA_program_description.html).

**Installation:**

- Install socks (erosion control logs) near the downstream perimeter of a disturbed area to intercept sediment from sheet flow.
- Secure socks in a method adequate to prevent displacement as a result of normal rain events such that flow is not allowed under the socks.
- Inspect and maintain the socks in good condition (including staking, anchoring, etc.). Maintain the integrity of the control, including keeping the socks free of accumulated silt, debris, etc., until the disturbed area has been adequately stabilized.

**POST-CONSTRUCTION TSS CONTROLS****Retention/Irrigation Systems**

**Description:** Retention/irrigation systems refer to the capture of runoff in a holding pond, then use of the captured water for irrigation of appropriate landscape areas. Retention/irrigation systems are characterized by the capture and disposal of runoff without direct release of captured flow to receiving streams. Retention systems exhibit excellent pollutant removal but require regular, proper maintenance.

**Design Considerations:** Retention/irrigation practices achieve 100% removal efficiency of total suspended solids contained within the volume of water captured. Design elements of

retention/irrigation systems include runoff storage facility configuration and sizing, pump and wet well system components, basin lining, basin detention time, and physical and operational components of the irrigation system. Retention/irrigation systems are appropriate for large drainage areas with low to moderate slopes. The retention capacity should be sufficient considering the average rainfall event for the area.

**Maintenance Requirements:** Maintenance requirements for retention/irrigation systems include routine inspections, sediment removal, mowing, debris and litter removal, erosion control, and nuisance control.

### **Extended Detention Basin**

**Description:** Extended detention facilities are basins that temporarily store a portion of stormwater runoff following a storm event. Extended detention basins are normally used to remove particulate pollutants and to reduce maximum runoff rates associated with development to their pre-development levels. The water quality benefits are the removal of sediment and buoyant materials. Furthermore, nutrients, heavy metals, toxic materials, and oxygen-demanding materials associated with the particles also are removed. The control of the maximum runoff rates serves to protect drainage channels below the device from erosion and to reduce downstream flooding.

**Design Considerations:** Extended detention basins can remove approximately 75% of the total suspended solids contained within the volume of runoff captured in the basin. Design elements of extended detention basins include basin sizing, basin configuration, basin side slopes, basin lining, inlet/outlet structures, and erosion controls. Extended detention basins are appropriate for large drainage areas with low to moderate slopes. The retention capacity should be sufficient considering the average rainfall event for the area.

**Maintenance Requirements:** Maintenance requirements for extended detention basins include routine inspections, mowing, debris and litter removal, erosion control, structural repairs, nuisance control, and sediment removal.

### **Vegetative Filter Strips**

**Description:** Filter strips, also known as vegetated buffer strips, are vegetated sections of land similar to grassy swales except they are essentially flat with low slopes, and are designed only to accept runoff as overland sheet flow. They may appear in any vegetated form from grassland to forest, and are designed to intercept upstream flow, lower flow velocity, and spread water out as sheet flow. The dense vegetative cover facilitates conventional pollutant removal through detention, filtration by vegetation, and infiltration. Filter strips cannot treat high velocity flows, and do not provide enough storage or infiltration to effectively reduce peak discharges to predevelopment levels for design storms. This lack of quantity control favors use in rural or low-density development; however, they can provide water quality benefits even where the impervious cover is as high as 50%.

Flat slopes and low to fair permeability of natural subsoil are required for effective performance of filter strips. Although an inexpensive control measure, they are most useful in contributing watershed areas where peak runoff velocities are low as they are unable to treat the high flow

velocities typically associated with high impervious cover. Successful performance of filter strips relies heavily on maintaining shallow unconcentrated flow. To avoid flow channelization and maintain performance, a filter strip should:

- Be equipped with a level spreading device for even distribution of runoff
- Contain dense vegetation with a mix of erosion resistant, soil binding species
- Be graded to a uniform, even and relatively low slope
- Laterally traverse the contributing runoff area

Filter strips can be used upgradient from watercourses, wetlands, or other water bodies along toes and tops of slopes and at outlets of other stormwater management structures. They should be incorporated into street drainage and master drainage planning. The most important criteria for selection and use of this BMP are soils, space, and slope.

**Design Considerations:** Vegetative filter strips can remove approximately 85% of the total suspended solids contained within the volume of runoff captured. Design elements of vegetative filter strips include uniform, shallow overland flow across the entire filter strip area, hydraulic loading rate, inlet structures, slope, and vegetative cover. The area should be free of gullies or rills which can concentrate flow. Vegetative filter strips are appropriate for small drainage areas with moderate slopes. Other design elements include the following:

- Soils and moisture are adequate to grow relatively dense vegetative stands
- Sufficient space is available
- Slope is less than 12%
- Comparable performance to more expensive structural controls

**Maintenance Requirements:** Maintenance requirements for vegetative filter strips include pest management, seasonal mowing and lawn care, routine inspections, debris and litter removal, sediment removal, and grass reseeding and mulching.

### **Constructed Wetlands**

**Description:** Constructed wetlands provide physical, chemical, and biological water quality treatment of stormwater runoff. Physical treatment occurs as a result of decreasing flow velocities in the wetland, and is present in the form of evaporation, sedimentation, adsorption, and/or filtration. Chemical processes include chelation, precipitation, and chemical adsorption. Biological processes include decomposition, plant uptake and removal of nutrients, plus biological transformation and degradation. Hydrology is one of the most influential factors in pollutant removal due to its effects on sedimentation, aeration, biological transformation, and adsorption onto bottom sediments. The wetland should be designed such that a minimum amount of maintenance is required. The natural surroundings, including such things as the potential energy of a stream or flooding river, should be utilized as much as possible. The wetland should approximate a natural situation and unnatural attributes, such as rectangular shape or rigid channel, should be avoided.

Site considerations should include the water table depth, soil/substrate, and space requirements. Because the wetland must have a source of flow, it is desirable that the water table is at or near the surface. If runoff is the only source of inflow for the wetland, the water level often fluctuates and establishment of vegetation may be difficult. The soil or substrate of an artificial wetland

should be loose loam to clay. A perennial baseflow must be present to sustain the artificial wetland. The presence of organic material is often helpful in increasing pollutant removal and retention. A greater amount of space is required for a wetland system than is required for a detention facility treating the same amount of area.

**Design Considerations:** Constructed wetlands can remove over 90% of the total suspended solids contained within the volume of runoff captured in the wetland. Design elements of constructed wetlands include wetland sizing, wetland configuration, sediment forebay, vegetation, outflow structure, depth of inundation during storm events, depth of micropools, and aeration. Constructed wetlands are appropriate for large drainage areas with low to moderate slopes.

**Maintenance Requirements:** Maintenance requirements for constructed wetlands include mowing, routine inspections, debris and litter removal, erosion control, nuisance control, structural repairs, sediment removal, harvesting, and maintenance of water levels.

### **Wet Basins**

**Description:** Wet basins are runoff control facilities that maintain a permanent wet pool and a standing crop of emergent littoral vegetation. These facilities may vary in appearance from natural ponds to enlarged, bermed (manmade) sections of drainage systems and may function as online or offline facilities, although offline configuration is preferable. Offline designs can prevent scour and other damage to the wet pond and minimize costly outflow structure elements needed to accommodate extreme runoff events. During storm events, runoff inflows displace part or all of the existing basin volume and are retained and treated in the facility until the next storm event. The pollutant removal mechanisms are settling of solids, wetland plant uptake, and microbial degradation. When the wet basin is adequately sized, pollutant removal performance can be excellent, especially for the dissolved fraction. Wet basins also help provide erosion protection for the receiving channel by limiting peak flows during larger storm events. Wet basins are often perceived as a positive aesthetic element in a community and offer significant opportunity for creative pond configuration and landscape design. Participation of an experienced wetland designer is suggested. A significant potential drawback for wet ponds in arid climates is that the contributing watershed for these facilities is often incapable of providing an adequate water supply to maintain the permanent pool, especially during the summer months. Makeup water (i.e., well water or municipal drinking water) is sometimes used to supplement the rainfall/runoff process, especially for wet basin facilities treating watersheds that generate insufficient runoff.

**Design Considerations:** Wet basins can remove over 90% of the total suspended solids contained within the volume of runoff captured in the basin. Design elements of wet basins include basin sizing, basin configuration, basin side slopes, sediment forebay, inflow and outflow structures, vegetation, depth of permanent pool, aeration, and erosion control. Wet basins are appropriate for large drainage areas with low to moderate slopes.

**Maintenance Requirements:** Maintenance requirements for wet basins include mowing, routine inspections, debris and litter removal, erosion control, nuisance control, structural repairs, sediment removal, and harvesting.

### **Grassy Swales**

Grassy swales are vegetated channels that convey stormwater and remove pollutants by filtration through grass and infiltration through soil. They require shallow slopes and soils that drain well. Pollutant removal capability is related to channel dimensions, longitudinal slope, and type of vegetation. Optimum design of these components will increase contact time of runoff through the swale and improve pollutant removal rates. Grassy swales are primarily stormwater conveyance systems. They can provide sufficient control under light to moderate runoff conditions, but their ability to control large storms is limited. Therefore, they are most applicable in low to moderate sloped areas or along highway medians as an alternative to ditches and curb and gutter drainage. Their performance diminishes sharply in highly urbanized settings, and they are generally not effective enough to receive construction stage runoff where high sediment loads can overwhelm the system. Grassy swales can be used as a pretreatment measure for other downstream BMPs, such as extended detention basins. Enhanced grassy swales use check dams and wide depressions to increase runoff storage and promote greater settling of pollutants. Grassy swales can be more aesthetically pleasing than concrete or rock-lined drainage systems and are generally less expensive to construct and maintain. Swales can slightly reduce impervious area and reduce the pollutant accumulation and delivery associated with curbs and gutters. The disadvantages of this technique include the possibility of erosion and channelization over time, and the need for more right-of-way as compared to a storm drain system. When properly constructed, inspected, and maintained, the life expectancy of a swale is estimated to be 20 years.

### **Design Considerations:**

- Comparable performance to wet basins
- Limited to treating a few acres
- Availability of water during dry periods to maintain vegetation
- Sufficient available land area

The suitability of a swale at a site will depend on land use, size of the area serviced, soil type, slope, imperviousness of the contributing watershed, and dimensions and slope of the swale system. In general, swales can be used to serve areas of less than 10 acres, with slopes no greater than 5 %. The seasonal high water table should be at least 4 feet below the surface. Use of natural topographic lows is encouraged, and natural drainage courses should be regarded as significant local resources to be kept in use.

### **Maintenance Requirements:**

Research in the Austin area indicates that vegetated controls are effective at removing pollutants even when dormant. Therefore, irrigation is not required to maintain growth during dry periods, but may be necessary only to prevent the vegetation from dying.

### **Vegetation Lined Drainage Ditches**

Vegetation lined drainage ditches are similar to grassy swales. These drainage ditches are vegetated channels that convey storm water and remove pollutants by filtration through grass and infiltration through soil. They require soils that drain well. Pollutant removal capability is related to channel dimensions, longitudinal slope, and type of vegetation. Optimum design of these components will increase contact time of runoff through the ditch and improve pollutant

removal rates. Vegetation lined drainage ditches are primarily storm water conveyance systems. They have vegetation lined in the low flow channel and may include vegetated shelves. Vegetation in drainage ditches reduces erosion and removes pollutants by lowering water velocity over the soil surface, binding soil particles with roots, and by filtration through grass and infiltration through soil. Vegetation lined drainage ditches can be used where:

- A vegetative lining can provide sufficient stability for the channel grade by increasing maximum permissible velocity
- Slopes are generally less than 5%, with protection from sheer stress as needed through the use of BMPs, such as erosion control blankets
- Site conditions required to establish vegetation, i.e. climate, soils, topography, are present

**Design Criteria:** The suitability of a vegetation lined drainage ditch at a site will depend on land use, size of the area serviced, soil type, slope, imperviousness of the contributing watershed, and dimensions and slope of the ditch system. The hydraulic capacity of the drainage ditch and other elements such as erosion, siltation, and pollutant removal capability, must be taken into consideration. Use of natural topographic lows is encouraged, and natural drainage courses should be regarded as significant local resources to be kept in use. Other items to consider include the following:

- Capacity, cross-section shape, side slopes, and grade
- Select appropriate native vegetation
- Construct in stable, low areas to conform with the natural drainage system. To reduce erosion potential, design the channel to avoid sharp bends and steep grades.
- Design and build drainage ditches with appropriate scour and erosion protection. Surface water should be able to enter over the vegetated banks without erosion occurring.
- BMPs, such as erosion control blankets, may need to be installed at the time of seeding to provide stability until the vegetation is fully established. It may also be necessary to divert water from the channel until vegetation is established or to line the channel with sod.
- Vegetated ditches must not be subject to sedimentation from disturbed areas.
- Sediment traps may be needed at channel inlets to prevent entry of muddy runoff and channel sedimentation.
- Availability of water during dry periods to maintain vegetation
- Sufficient available land area

**Maintenance:**

During establishment, vegetation lined drainage ditches should be inspected, repaired, and vegetation reestablished if necessary. After the vegetation has become established, the ditch should be checked periodically to determine if the channel is withstanding flow velocities without damage. Check the ditch for debris, scour, or erosion and immediately make repairs if needed. Check the channel outlet and all road crossings for bank stability and evidence of piping or scour holes and make repairs immediately. Remove all significant sediment accumulations to maintain the designed carrying capacity. Keep the vegetation in a healthy condition at all times, since it is the primary erosion protection for the channel. Vegetation lined drainage ditches should be seasonally maintained by mowing or irrigating, depending on the vegetation selected. The long-term management of ditches as stable, vegetated, "natural" drainage systems with native vegetation buffers is highly recommended due to the inherent stability offered by grasses, shrubs, trees, and other vegetation.

### **Sand Filter Systems**

The objective of sand filters is to remove sediment and the pollutants from the first flush of pavement and impervious area runoff. The filtration of nutrients, organics, and coliform bacteria is enhanced by a mat of bacterial slime that develops during normal operations. One of the main advantages of sand filters is their adaptability; they can be used on areas with thin soils, high evaporation rates, low-soil infiltration rates, in limited-space areas, and where groundwater is to be protected. There have been numerous alterations or variations in the original design as engineers in other jurisdictions have improved and adapted the technology to meet their specific requirements. Major types include the Austin Sand Filter, the District of Columbia Underground Sand Filter, the Alexandria Dry Vault Sand Filter, the Delaware Sand Filter, and peat-sand filters which are adapted to provide a sorption layer and vegetative cover to various sand filter designs.

#### **Design Considerations:**

- Appropriate for space-limited areas
- Applicable in arid climates where wet basins and constructed wetlands are not appropriate
- High TSS removal efficiency

#### **Cost Considerations:**

Filtration Systems may require less land than some other BMPs, reducing the land acquisition cost; however the structure itself is one of the more expensive BMPs. In addition, maintenance cost can be substantial.

### **Erosion Control Compost**

**Description:** Erosion control compost (ECC) can be used as an aid to control erosion on critical sites during the establishment period of protective vegetation. The most common uses are on steep slopes, swales, diversion dikes, and on tidal or stream banks.

#### **Materials:**

ECC used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification data. To ensure the quality of compost used as an ECC, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and TCEQ Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. TCEQ testing requirements are defined in TAC Chapter 332, including Sections §332.71 (Sampling and Analysis Requirements for Final Products) and §332.72 (Final Product Grades). Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

Testing standards are dependent upon the intended use for the compost and ensures product safety, and product performance regarding the product's specific use. The appropriate compost sampling and testing protocols included in the United States Composting Council (USCC) Test Methods for the Examination of Composting and Compost (TMECC) should be conducted on compost products used for ECC to ensure that the products used will not impact public health,

safety, and the environment and to promote production and marketing of quality composts that meet analytical standards. TMECC information can be found at <http://www.tmecc.org/tmecc/index.html>. The USCC Seal of Testing Assurance (STA) program contains information regarding compost ST A certification. STA program information can be found at [http://tmecc.org/sta/STA\\_program\\_description.html](http://tmecc.org/sta/STA_program_description.html).

**Installation:**

- Install in accordance with current TxDOT specification.
- Use on slopes 3:1 or flatter.
- Apply a 2-inch uniform layer unless otherwise shown on the plans or as directed.
- When rolling is specified, use a light corrugated drum roller.

**Mulch and Compost Filter Socks**

**Description:** Mulch and compost filter socks (erosion control logs) are used to intercept and detain sediment laden run-off from unprotected areas. When properly used, mulch and compost filter socks can be highly effective at controlling sediment from disturbed areas. They cause runoff to pond which allows heavier solids to settle. Mulch and compost filter socks are used during the period of construction near the perimeter of a disturbed area to intercept sediment while allowing water to percolate through. The sock should remain in place until the area is permanently stabilized. Mulch and compost filter socks may be installed in construction areas and temporarily moved during the day to allow construction activity provided it is replaced and properly anchored at the end of the day. Mulch and compost filter socks may be seeded to allow for quick vegetative growth and reduction in run-off velocity.

**Materials:**

Mulch and compost filter socks used for projects not related to TxDOT should also be of quality materials by meeting performance standards and compost specification data. To ensure the quality of compost used for mulch and compost filter socks, products should meet all applicable state and federal regulations, including but not limited to the United States Environmental Protection Agency (USEPA) Code of Federal Regulations (CFR), Title 40, Part 503 Standards for Class A biosolids and TCEQ Health and Safety Regulations as defined in the Texas Administration Code (TAC), Chapter 332, and all other relevant requirements for compost products outlined in TAC, Chapter 332. TCEQ testing requirements are defined in TAC Chapter 332, including §332.71 (Sampling and Analysis Requirements for Final Products) and §332.72 (Final Product Grades). Compost specification data approved by TxDOT are appropriate to use for ensuring the use of quality compost materials or for guidance.

Testing standards are dependent upon the intended use for the compost and ensures product safety, and product performance regarding the product's specific use. The appropriate compost sampling and testing protocols included in the United States Composting Council (USCC) Test Methods for the Examination of Composting and Compost (TMECC) should be conducted on compost products used for mulch and compost filter socks to ensure that the products used will not impact public health, safety, and the environment and to promote production and marketing of quality composts that meet analytical standards. TMECC information can be found at <http://www.tmecc.org/tmecc/index.html>. The USCC Seal of Testing Assurance (STA) program

contains information regarding compost STA certification. STA program information can be found at [http://tmecc.org/sta/STA\\_program\\_description.html](http://tmecc.org/sta/STA_program_description.html).

**Installation:**

- Install in accordance with TxDOT Special Specification 5049.
- Install socks (erosion control logs) near the downstream perimeter of a disturbed area to intercept sediment from sheet flow.
- Secure socks in a method adequate to prevent displacement as a result of normal rain events such that flow is not allowed under the socks.
- Inspect and maintain the socks in good condition (including staking, anchoring, etc.). Maintain the integrity of the control, including keeping the socks free of accumulated silt, debris, etc., until the disturbed area has been adequately stabilized.

**Sedimentation Chambers (only to be used when there is no space available for other approved BMP's)**

**Description:** Sedimentation chambers are stormwater treatment structures that can be used when space is limited such as urban settings. These structures are often tied into stormwater drainage systems for treatment of stormwater prior to entering state waters. The water quality benefits are the removal of sediment and buoyant materials. These structures are not designed as a catch basin or detention basin and not typically used for floodwater attenuation.

**Design Considerations:** Average rainfall and surface area should be considered when following manufacturer's recommendations for chamber sizing and/or number of units needed to achieve effective TSS removal. If properly sized, 50-80% removal of TSS can be expected.

**Maintenance Requirements:** Maintenance requirements include routine inspections, sediment, debris and litter removal, erosion control and nuisance control.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

December 14, 2020

Joe McMahan  
Chief, Regulatory Division  
Galveston District, U.S. Army Corps of Engineers  
2000 Fort Point Road  
Galveston, TX 77550

RE: Clean Water Act Section 401 Water Quality Certification for the 2020 U.S. Army Corps of Engineers  
Section 404 Nationwide Permits Reissuance, on behalf of Indian tribes that have not received  
Treatment in a Similar Manner as a State for Section 401 in EPA Region 6.

Dear Mr. McMahan:

This water quality certification (WQC) applies to any potential point source discharges from potential projects authorized under the proposed reissuance of the following U.S. Corps of Engineers (Corps) Nationwide Permits (NWP) into waters of the United States that occur within tribal boundaries within the State of Texas: NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, D and E. The Corps is not requesting certification for 11 NWPs: 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B.

Section 401(a)(1) of the Clean Water Act (CWA) requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S.

Environmental Protection Agency (EPA) is the certifying authority. In this case, Ysleta del Sur Pueblo, Alabama-Coushatta Tribe of Texas, and Kickapoo Traditional Tribe of Texas do not have the authority to provide CWA Section 401 certification for discharges occurring within the boundaries of the aforementioned tribal lands, therefore, EPA Region 6 is making the certification decisions for discharges that may result from the potential projects authorized under the proposed Corps CWA 404 NWPs. This letter is being directed to Galveston District, which is the lead regulatory program for NWP reissuance in Texas; the Albuquerque, Fort Worth, Galveston, and Tulsa Districts are also represented. Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, EPA Region 6 circulated a letter dated September 18, 2020 offering to consult with tribes on the certification process and invite their participation.

**Reissuance of NWPs Description**

The Corps is proposing to re-issue its existing NWPs and associated general conditions and definitions, with some modifications. The Corps states that it is “proposing these modifications to simplify and clarify the NWPs, reduce burdens on the regulated public, and continue to comply with the statutory requirement that these NWPs authorize only activities with no more than minimal individual and cumulative adverse environmental effects.” 85 FR 57298. For more details:

<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.

## **General Information**

The general information provided in this section does not constitute a certification condition(s).

Project proponents for potential projects authorized under the NWP's are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

Project proponents for potential projects authorized under the NWP's should conduct all work in such a manner as to comply with all Corps Section 404 permit conditions.

Copies of the Corps permit including this certification should be kept on the job site and readily available to the public for reference.

Project proponents for potential projects authorized under the NWP's should retain this certification in their files with the applicable NWP's as documentation of EPA's certification decisions for the above-referenced proposed NWP's. This certification is specifically associated with the proposed NWP's described above and expires when those NWP's expire, five years from Corps issuance date.

During project planning, EPA highly recommends the project proponent notify the appropriate tribal environmental office of the project details and location.

## **Certification Determination**

### **Grant (121.7(c)):**

On behalf of Ysleta del Sur Pueblo, Alabama-Coushatta Tribe of Texas, and Kickapoo Traditional Tribe of Texas, CWA Section 401 certification, for the following proposed NWP's, is granted with no conditions. EPA Region 6 has determined that any discharge that could be authorized under the following proposed NWP's will comply with water quality requirements, as defined at 40 CFR 121.1(n).

**NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, D, and E**

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Should your office have any questions, please feel free to contact our staff: 1) Paul Kaspar at 214-665-7459, [Kaspar.Paul@epa.gov](mailto:Kaspar.Paul@epa.gov); 2) Daniel Landeros at 214-665-8077, [Landeros.Daniel@epa.gov](mailto:Landeros.Daniel@epa.gov).

Sincerely,

*Charles Maguire*

Charles W. Maguire  
Director  
Water Division