



Public Notice

**U.S. Army Corps
Of Engineers**

Fort Worth District

Permit Application No: _____

Date Issued: _____

Comments _____

Due: _____

NATIONWIDE PERMIT
REISSUANCE

January 12, 2017

February 11, 2017

**PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE
ANNOUNCING THE REISSUANCE OF THE NATIONWIDE PERMITS**

**U.S. ARMY CORPS OF ENGINEERS
AND
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AND
RAILROAD COMMISSION OF TEXAS
ANNOUNCING PUBLIC COMMENT ON SECTION 401 WATER QUALITY
CERTIFICATION**

On January 6, 2017, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* announcing the reissuance of all 50 existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, one new general condition, and five new definitions. The 2017 NWPs will go into effect on March 19, 2017, and will expire on March 18, 2022.

With the publication of this *Federal Register* notice, Corps districts will begin finalizing their regional conditions for the new and reissued NWPs. Regional conditions will provide additional protection for the aquatic environment, and will help ensure that the NWPs authorize only those activities with no more than minimal adverse environmental effects. Regional conditions will help ensure protection of high value waters within the Southwestern Division and South Pacific Division for Albuquerque District, Fort Worth District, Galveston District and Tulsa District.

An enclosure for this public notice (Enclosure 1) lists the proposed final regional conditions currently under consideration by the Southwestern Division and South Pacific Division for Albuquerque District, Fort Worth District, Galveston District and Tulsa District. As the lead District for the Corps' Regulatory program in Texas, the Galveston District is seeking comments on the proposed final regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWPs are no more than minimal, individually and cumulatively.

Comments on regional issues relating to the proposed NWPs and proposed final regional conditions should be sent to:

Regulatory Division, CESWG-RD-P
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
swg_public_notice@usace.army.mil

Comments relating to the final regional conditions are due by February 11, 2017.

The publication of this *Federal Register* notice also begins the 60-day period for states, Tribes, and the Environmental Protection Agency (EPA) to complete their water quality certification (WQC) processes for the NWP. The 60-day period for WQC will end on March 6, 2017. This *Federal Register* notice also begins the 90-day period for coastal states to complete their Coastal Zone Management Act (CZMA) consistency determination processes. The 90-day period for CZMA consistency determinations will end on April 5, 2017.

If coastal states do not complete their CZMA consistency determination processes before the 2017 NWP go into effect on March 19, 2017, the use of an NWP to authorize an activity within, or outside, a state's coastal zone that will affect land or water uses or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence.

The January 6, 2017, *Federal Register* notice is available for viewing at the Fort Worth District Office located at 819 Taylor Street, Fort Worth, Texas; or on the Internet at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>. As an alternative, interested parties can access the January 6, 2017, final rule that was published in the *Federal Register* through the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>.

The Corps has also issued final decision documents for the new and reissued NWP. These documents are available at www.regulations.gov at docket number COE-2015-0017. Furthermore, the national NWP decision documents will be supplemented by Division Engineers to address decisions concerning the addition of regional conditions to the NWP.

Concurrent with Corps processing of this notice, the Texas Commission on Environmental Quality (TCEQ) is reviewing this notice under Section 401 of the CWA and in accordance with Title 30, Texas Administrative Code Section 279.1-279.13 to determine if the work would comply with State water quality standards. This public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. Any comments concerning this notice may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MC-150, P.O. Box 13087, Austin, Texas 78711-3087. The public comment period extends **30 days** from the date of publication of this notice. A copy of the public notice with a description of the work is made available for review in the TCEQ's Austin office. The complete notice may be reviewed

in the Corps office listed in this public notice. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, notice title, or other recognizable reference to the application; a brief description of the interest of the requester, or of persons represented by the requester; and a brief description of how the notice, if granted, would adversely affect such interest.

Railroad Commission of Texas (RRC) certification is required for activities associated with the exploration, development, or production of oil, gas, or geothermal resources, as described in Tex. Nat. Res. Ann. §91.101. Concurrent with the processing of notice, the RRC is reviewing Section 401 of the Clean Water Act and Title 16, Texas Administrative Code, Section 3.93, to determine if the proposed work would comply with applicable water quality laws and regulations. By virtue of an agreement between the Corps and the RRC, this public notice is issued for the purpose of advising all known interested persons that there is pending before the RRC a decision on water quality certification under the above authorities. Written comments concerning the request for certification may be submitted to the Assistant Director, Environmental Services, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. The public comment period extends **30 days** from the date of publication of this notice. The RRC may also hold a public meeting on the request for certification if the RRC determines that a public meeting is in the public interest. If the RRC holds a meeting to receive public comment on a request for certification, the RRC will give notice of the meeting to the applicant, the USACE, and persons identified under 16 TAC §3.93(d)(2) at least ten days prior to the meeting.

**2017 NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS
FOR THE STATE OF TEXAS**

The following regional conditions apply within the entire State of Texas:

1. For all discharges proposed for authorization under nationwide permits (NWP) 3, 6, 7, 12, 14, 18, 19, 21, 23, 25, 27, 29, 39, 40, 41, 42, 43, 44, 49, 51, and 52, into the following habitat types or specific areas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32, Pre-Construction Notification (PCN). The Corps of Engineers (Corps) will coordinate with the resource agencies as specified in NWP General Condition 32(d) (PCN). The habitat types or areas are:

- a. Pitcher Plant Bogs: Wetlands typically characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia* spp.), sundews (*Drosera* spp.).
- b. Bald Cypress-Tupelo Swamps: Wetlands dominated by bald cypress (*Taxodium distichum*) and/or water tupelo (*Nyssa aquatic*).

2. For all activities proposed for authorization under NWP in Palustrine and Lacustrine aquatic resource types, best management practices (BMPs) are required to reduce the risk of transferring zebra mussels to or from project sites. The following BMPs, as a minimum, will be required:

- a. Clean: Clean both the inside and outside of equipment and gear, by removing all plants, animals, and mud and thoroughly washing the equipment using a high pressure spray nozzle. Equipment operated or stored in a water body on the Texas list of zebra mussel (*Dreissena polymorpha*) infected water bodies shall be decontaminated in accordance with State of Texas law prior to relocation.
- b. Drain: Drain all water from receptacles before leaving the area, including livewells, bilges, ballast, and engine cooling water on boats.
- c. Dry: Allow time for your equipment to dry completely before relocating in other waters. Minimum drying time is one week. Equipment operated or stored in a water body on the Texas list of zebra mussel (*Dreissena polymorpha*) infected water bodies shall be dried a minimum of 20 days prior to relocation. High temperature pressure washing (greater than or equal to 140F) or professional cleaning may be substituted for drying time.

3. For all activities proposed for authorization under 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 NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.

The following regional conditions apply within the Albuquerque, Fort Worth, and Galveston Districts:

4. For all activities proposed for authorization under NWP 12 that involve a discharge of fill material associated with mechanized land clearing of wetlands dominated by woody shrubs, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity. For the purpose of this regional condition, a shrub dominated wetland is characterized by woody vegetation less than 3.0 in. in diameter at breast height but greater than 3.2 ft in height, exclusive of woody vines, covering 20 % or more of the area.

The following regional conditions apply within the Albuquerque, District.

5. Nationwide Permit No. 23 – Approved Categorical Exclusions. A PCN to the District Engineer in accordance with General Condition 32 is required for all proposed activities under Nationwide Permit 23.

6. Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. For all proposed activities under Nationwide Permit 27 that require PCN, a monitoring plan commensurate with the scale of the proposed restoration project and the potential for risk to the aquatic environment must be submitted to the Corps. (See “NWP 27 Guidelines” at <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/NWP.aspx>).

7. Channelization. General Condition 9 for Management of Water Flows is amended to add the following: Projects that would result in permanent channelization to previously un-channelized streams require PCN to the District Engineer in accordance with General Condition 32.

8. Dredge and Fill Activities in Intermittent and Perennial Streams, and Special Aquatic Sites: (a) For all activities subject to regulation under the Clean Water Act Section 404 in intermittent and perennial streams, and special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges), PCN to the District Engineer is required in accordance with General Condition 32.

9. Springs. For all discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs, PCN is required to the Corps in accordance with General Condition 32. A natural spring is defined as any location where ground water emanates from a point in the ground and has a defined surface water connection to another waters of the United States. For purposes of this regional condition, springs do not include seeps or other groundwater discharges which lack a defined surface water connection.

10. Suitable Fill. Use of broken concrete as fill or bank stabilization material is prohibited unless the applicant demonstrates that its use is the only practicable material (with respect to cost, existing technology, and logistics). Any applicant who wishes to use broken concrete as bank stabilization must provide notification to the District Engineer in accordance with General Condition 32 (Pre-Construction Notification) along with justification for such use. Use of broken concrete with rebar or used tires (loose or formed into bales) is prohibited in all waters of the United States.

The following regional conditions apply within the Fort Worth District.

11. For all discharges associated with the construction of water intake structures, the applicant shall notify the Fort Worth District Engineer in accordance with General Condition 32 (Pre-Construction Notification).

12. For all discharges proposed for authorization under all NWPs, into the area of Caddo Lake within Texas that is designated as a “Wetland of International Importance” under the Ramsar Convention, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 32. The Corps will coordinate with the resource agencies as specified in NWP General Condition 32(d) (Pre-Construction Notification).

13. Compensatory mitigation is required for all losses of waters of the United States that exceed 1/10 acre and for all losses to streams that exceed 300 linear feet. Mitigation thresholds are cumulative irrespective of aquatic resource type. Compensatory mitigation requirements will be determined in accordance with the appropriate district standard operating procedures and processes. The applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.

14. For all activities proposed for authorization under NWPs 12, 14 and/or NWP 33 that involve a temporary discharge of fill material into 1/2 acre or more of emergent wetland OR 1/10 acre of scrub-shrub/forested wetland, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.

15. For all discharges proposed for authorization under NWPs 51 and 52, the Corps will provide the PCN to the US Fish and Wildlife Service as specified in NWP General Condition 32(d)(2) for its review and comments.

The following regional conditions apply within the Galveston District.

16. No NWP's, except NWP 3, shall be used to authorize discharges into the habitat types or specific areas. The applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32, Pre-Construction Notification (PCN) prior to commencing the activity under NWP 3

a. Mangrove Marshes. For the purpose of this regional condition, Mangrove marches are those waters of the United States that are dominated by mangroves (*Avicennia spp.*, *Laguncularia spp.*, *Conocarpus spp.*, and *Rhizophora spp.*).

b. Coastal Dune Swales. For the purpose of this regional condition, coastal dune swales are wetlands and/or other waters of the United States located within the backshore and dune areas in the coastal zone of Texas. They are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting tidal waters of the United States.

c. Columbia Bottomlands. For the purpose of this regional condition, Columbia bottomlands are defined as waters of the United States that are dominated by bottomland hardwoods in the Lower Brazos and San Bernard River basins

17. Compensatory mitigation is required for all special aquatic site losses that exceed 1/10 acre and for all losses to streams that exceed 200 linear feet. Compensatory mitigation requirements will be determined in accordance with the appropriate district standard operating procedures and processes. The applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.

18. For all seismic testing activities proposed for authorization under NWP 6, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification). The pre-construction notification must state the time period for which the temporary fill is proposed, and must include a restoration plan for the special aquatic sites. For seismic testing under NWP 6 within the Cowardin Marine System, Subtidal Subsystem; as defined by the U.S. Fish and Wildlife, Classification of Wetlands and Deepwater Habitats of the United States, December 1979/Reprinted 1992, the Corps will coordinate with the resource agencies in accordance with NWP General Condition 32(d) (Pre-Construction Notification).

19. For all NWP's 10 and 11 located in vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectfully, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification). Examples include, but are not limited to: seagrass beds; oyster reefs; and coral reefs.

20. NWP 12 shall not be used to authorize discharges within 500 feet of vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectfully. Examples include, but are not limited to: seagrass beds; oyster reefs; and coral reefs.

21. For all activities proposed for authorization under NWP 12 that involve underground placement below a non-navigable river bed and/or perennial stream bed shall be installed with a minimum cover of a minimum of 48 inches (1,219 millimeters) in soil below the river and/or perennial stream thalweg.
22. For all discharges and work proposed below the high tide line under NWPs 14 and 18, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification). The Corps will coordinate with the resource agencies in accordance with NWP General Condition 32(d) (Pre-Construction Notification).
23. For all activities proposed for authorization under NWP 33 the applicant shall notify the District Engineer in accordance with the NWP General Condition 32, PCN. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. Activities causing the temporary loss of more than 0.5 acres of tidal waters and/or 200 linear feet of stream will be coordinated with the agencies in accordance with NWP General Condition 32(d)
24. No NWPs, except NWPs 3 and 16, shall be used to authorize discharges, structures, and/or fill within the standard setback and high hazard zones of the Sabine-Neches Waterway as defined in the *Standard Operating Procedure - Permit Setbacks along the Sabine-Neches Waterway*. The applicant shall notify the Galveston District Engineer in accordance with NWP General Condition 32 (Pre-Construction Notification) for all discharge, structures and/or work in medium hazard zones and all NWP 3 applications within the standard setback and high hazard zones of the Sabine-Neches Waterway.
25. No NWPs shall be used to authorize discharges, structures, and/or fill within the standard setback exemptions of the Gulf Intracoastal Waterway as defined in the *Standard Operating Procedure- Department of the Army Permit Evaluation Setbacks along the Gulf Intracoastal Waterway*. The applicant shall notify the Galveston District Engineer in accordance with NWP General Condition 32 (Pre-Construction Notification) for all discharge, structures and/or work within the standard setback, shoreward of the standard setback, and/or standard setback exemption zones.
26. The use of NWPs in the San Jacinto River Waste Pits Area of Concern are revoked.
27. The use of NWP 51 and 52 are revoked within the Galveston District boundaries.
28. NWP 53 will be coordinated with resource agencies as specified in NWP General Condition 32(d).
29. Stream losses exceeding 300 linear feet have more than minimal effect and will require and Individual Permit.

The following regional conditions apply within the Tulsa District.

30. Upland Disposal: Material disposed of in uplands shall be placed in a location and manner that prevents discharge of the material and/or return water into waters or wetlands unless otherwise authorized by the Tulsa District Engineer.

31. Major Rivers: The applicant shall notify the Tulsa District Engineer, in accordance with NWP General Condition 32, for all NWP 14 verifications that encompass activities, within the permit area, crossing major rivers within Tulsa District. For the purposes of this condition, major rivers include the following: Canadian River, Prairie Dog Fork of the Red River, and Red River.