August 23, 2007

NATIONWIDE PERMIT REGIONAL CONDITIONS FOR THE STATE OF TEXAS

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

1. Compensatory mitigation is required at a minimum one-for-one ratio for all special aquatic site losses that exceed 1/10 acre and require pre-construction notification, and for all losses to streams that exceed 300 linear feet and require pre-construction notification, unless the appropriate District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement.

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

a. Wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (Sarracenia sp.), sundews (Drosera sp.), and sphagnum moss (Sphagnum sp.).

b. Bald Cypress-Tupelo Swamps: Wetlands comprised predominantly of bald cypress trees (Taxodium distichum), and water tupelo trees (Nyssa aquatica), that are occasionally or regularly flooded by fresh water. Common associates include red maple (Acer rubrum), swamp privet (Forestiera acuminata), green ash (Fraxinus pennsylvanica) and water elm (Planera aquatica). Associated herbaceous species include lizard's tail (Saururus cernuus), water mermaid weed (Proserpinaca spp.), buttonbush (Cephalanthus occidentalis) and smartweed (Polygonum spp.). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Bethesda, Maryland 20814-2198. Library of Congress Catalog Card No. 80-54185)

3. For all activities proposed for authorization under nationwide permit (NWP) 12 that involve mechanized land clearing in a forested wetland, the applicant must submit a pre-construction notification to the appropriate District Engineer in accordance with the NWP General Condition 27 prior to commencing the activity.

4. For all activities proposed for authorization under nationwide permit (NWP) 16, the applicant must submit a pre-construction notification to the appropriate District Engineer in accordance with the NWP General Condition 27, and work cannot begin under NWP 16 until the permittee has received written approval from the Corps.

The following regional conditions apply only within the Fort Worth District in the State of Texas:

5. For all discharges proposed for authorization under nationwide permits (NWPs) 3, 6, 7, 12, 14, 18, 19, 25, 27, 29, 39, 40, 41, 42, 43, and 44, 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 27. The Corps will coordinate with the resource agencies as specified in NWP General Condition 27(d).

6. For all discharges proposed for authorization under nationwide permit (NWP) 43 that occur in forested wetlands, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 27.

7. For all discharges proposed for authorization under any nationwide permit in Dallas, Denton, and Tarrant Counties that are within the study area of the "Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries" (May 1986), the applicant shall meet the criteria and follow the guidelines specified in Section III of the Record of Decision for the Regional EIS, including the hydraulic impact requirements. A copy of these guidelines is available upon request from the Fort Worth District and at the District website www.swf.usace.army.mil (select "Permits").

The following regional conditions apply only within the Galveston District in the State of Texas:

8. Nationwide permit 12 shall not be used to authorize discharges within 500 feet of a seagrass bed or oyster reef.

9. Nationwide permit (NWP) 6 shall not be used to authorize 3-D seismic test discharges conducted within tidal waters of the United States within the coastal zone of Texas. For all 3-D seismic test discharges conducted within non-tidal waters of the United States within the coastal zone of Texas pursuant to NWP 6, the applicant shall notify the District Engineer in accordance with the NWP General Condition 27.

10. For all discharges exceeding 10 cubic yards below the plane of the ordinary high water mark or the high tide line proposed into special aquatic sites, including wetlands, under nationwide permit (NWP) 6, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 27. 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.

11. Nationwide permits 6, 7, 12, 13, 14, 18, 19, 25, 29, 39, 40, 41, 42, 43, 44, 46, and 48 shall not be used to authorize discharges into the following waters of the United States within the coastal zone of Texas: Mangrove marshes, wetlands within the Texas Gulf Coastal Plain that are occasionally or regularly flooded by brackish or saline water and

have more than 40 percent cover by woody plants. The dominant woody species in this environment is the black mangrove (Avicennia germinans) with a dominant herbaceous species component of smooth cordgrass (Spartina alterniflora). (Preliminary Guide to Wetlands of the Gulf Coastal Plain. 1978. Technical Report - U.S. Army Engineer Waterways Experiment Station: Y-78-5. P.O. Box 631, Vicksburg, Miss. 39180.)

12. Nationwide permits 6, 7, 12, 13, 14, 15, 17, 18, 19, 22, 25, 29, 30, 31, 32, 33, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, and 48 shall not be used to authorize discharges into the following waters of the United States within the coastal zone of Texas: Coastal Dune Swales, "wetlands and other waters of the United States that are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting the tidal waters of the Gulf of Mexico and adjacent to the tidal waters of bays and estuaries. Coastal dune swales are generally comprised either of impermeable muds that act as reservoirs which collect precipitation or of groundwater nourished wetlands in sandy soils. As such, they generally have a high fresh to brackish water table. Vegetation species characteristically found in coastal dune swales include but are not limited to marshhay cordgrass (Spartina patens), gulfdune paspalum (Paspalum monostachyum), bulrush (Scirpus spp.), seashore paspalum (Paspalum vaginatum), common reed (Phragmites australis), groundsel bush (Baccharis halimifolia), rattlebush (Sesbania drummondii), camphor weed (Pluchea camphorata), smartweed (Polygonum spp.), water hyssop (Bacopa monnieri), cattail (Typha spp.), umbrella sedge (Cyperus spp.), softrush (Juncus spp.), sedge (Carex spp.), beakrush (Rhynchospora spp.), frog-fruit (Phyla spp.), duckweed (Lemna spp.), buttonweed (Diodia virginiana), mist flower (Eupatorium coelestinum), creeping spotflower (Acmella oppositifolia var. repens), pennywort (Hydrocotyle spp.), and bushy bluestem (Andropogon glomeratus)." (U.S. Fish and Wildlife Service, Houston, Texas, and the Texas General Land Office, Austin, Texas).

13. For all discharges and work proposed in tidal waters under nationwide permits (NWPs) 14 and 18, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 27. The Corps will coordinate with the National Marine Fisheries Service in accordance with NWP General Condition 27(d).