



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

Public Notice

Action: Nationwide Permits Reissuance
Date Issued: 19 March 2012

SPECIAL PUBLIC NOTICE

IMPLEMENTATION OF REGIONAL CONDITIONS FOR NATIONWIDE PERMITS IN TEXAS

AND

STATUS OF SECTION 401 WATER QUALITY CERTIFICATION AND COASTAL ZONE MANAGEMENT ACT CONSISTENCY FOR THE NATIONWIDE PERMITS IN TEXAS INCLUDING INDIAN COUNTRY

In the February 21, 2012 *Federal Register* (77 FR 10184-10290), the Corps of Engineers (Corps) announced the reissuance of 48 existing Nationwide Permits (NWP) and the issuance of two new NWP <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx> . Concurrent with the public interest review conducted for the NWP, the Galveston District, as lead district for the Corps Regulatory Program in Texas and on behalf of the Albuquerque District, the Fort Worth District, and the Tulsa District, solicited public comment on proposed regional conditions for the new and reissued NWP in Texas. The regional conditions are intended to provide additional protection of the aquatic environment by ensuring that the NWP authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions help ensure protection of high value waters within the districts. The NWP regional conditions for Texas have been finalized, and the Corps decision documents for implementation of the regional conditions for Texas are available for public viewing at the Galveston District Corps of Engineers, Regulatory Branch, 2000 Fort Point Road, Galveston, Texas 77550, please contact Ms. Pamela Thibodeaux at 409-766-3932 or at pamela.thibodeaux@usace.army.mil to schedule viewing of these documents. The final NWP regional conditions for Texas and a map of the Corps district boundaries in Texas are attached to this public notice.

As of the date of this public notice, the Corps has not received certifications regarding water quality (WQC) under Section 401 of the Clean Water Act or the consistency determination (determination) under the Coastal Zone Management Act (CZMA) for the NWP in Texas. Once the Corps receives the WQC certification and CZMA determination from the respective agencies, we will review the

certification/determination and any associated conditions to assure that they are reasonably implementable or enforceable, according to 33 CFR 325.4(c). If we determine that the certification/determination or the associated conditions are not reasonably implementable or enforceable, according to 33 CFR 325.4(c), the Corps will consider the certification/determination denied and work may not proceed under the NWP until the permittee obtains an individual water quality certification and/or CZMA determination. If the Corps accepts the certification/determination and conditions, we will attach the certification/determination to the supplemental decision documents and to issued permits.

If you have any questions on this public notice, please contact:

Ms. Kristi N. McMillan
Regulatory Branch, CESWG-PE-RB
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
409-766-3083 Phone
409-766-3931 Fax

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS

NATIONWIDE PERMIT (NWP) 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 (PCN), and for all losses to streams that exceed 300 linear feet and require PCN, 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, 44, 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 31, Pre-Construction Notification (PCN). The Corps of Engineers (Corps), except for the Tulsa District, will coordinate with the resource agencies as specified in NWP General Condition 31(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 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 NWP 12 that involve a discharge of fill material associated with mechanized land clearing in a forested wetland, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification) prior to commencing the activity.

4. For all activities proposed for authorization under NWP 16, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification), and work cannot begin under NWP 16 until the applicant 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 all NWP's, 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 31. The Corps will coordinate with the resource agencies as specified in NWP General Condition 31(d) (Pre-Construction Notification).
6. For all discharges proposed for authorization under NWP 43 that occur in forested wetlands, the applicant shall notify the Fort Worth District Engineer in accordance with the General Condition 31 (Pre-Construction Notification).
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").
8. Federal Projects. The applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 31, Pre-Construction Notification (PCN) for any regulated activity where the applicant is proposing work that would result in the modification or alteration of any completed Corps of Engineer projects that are either locally or federally maintained and for work that would occur within the conservation pool or flowage easement of any Corps of Engineers lake project. PCN's cannot be deemed complete until such time as the Corps has made a determination relative to 33 USC Section 408, 33 CFR Part 208, Section 208.10, 33 CFR Part 320, Section 320.4.
9. Invasive and Exotic Species. Best management practices are required where practicable to reduce the risk of transferring invasive plant and animal species to or from project sites. Information concerning state specific lists and threats can be found at: <http://www.invasivespeciesinfo.gov/unitedstates/tx.shtml>. Best management practices can be found at: <http://www.invasivespeciesinfo.gov/toolkit/prevention.shtml>. Known zebra mussel waters within can be found at: <http://nas.er.usgs.gov/queries/zmbyst.asp>.
10. For all discharges proposed for authorization under NWP's 51 and 52, the Corps will provide the PCN to the US Fish and Wildlife Service as specified in NWP General Condition 31(d)(2) for its review and comments.

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

11. Nationwide permit (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 not limited to: seagrass beds, oyster reefs, and coral reefs.

12. For all 3-D seismic testing activities proposed for authorization under NWP 6, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 31 (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. 3-D seismic testing will not be authorized 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.

13. All NWPs, except NWP 3, shall not be used to authorize discharges into mangrove marshes. Mangrove marshes are dominated by mangroves (Avicennia sp. and Rhizophora sp.). (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.)

14. All NWPs, except NWP 3, 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).

15. For all discharges and work proposed in tidal waters under NWP 14 and 18 the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification). The Corps will coordinate with the National Marine Fisheries Service in accordance with NWP General Condition 31(d) (Pre-Construction Notification).

16. For all work in the San Jacinto River Waste Pits (SJWP) Area of Concern (AOC), authorized under a NWP, requires a waiver from the Galveston District Engineer. The applicant shall notify the Galveston District Engineer (DE) in accordance with the NWP General Condition 31, Pre-Construction Notification (PCN). This PCN shall be used to review the project to determine if it will result in more than minimal effects to the region, and does not lessen the restriction provided by any General Condition of the NWPs. The applicant must receive written approval, including a waiver from the Galveston DE prior to starting work in jurisdictional areas of waters of the United States.

17. The use of NWP 51 and 52 are administratively denied, within the Galveston District boundaries.

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

18. Nationwide Permit No. 23 – Approved Categorical Exclusions. Notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification) is required for all proposed activities under nationwide permit 23.

19. Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. For all proposed activities under Nationwide Permit 27 that require Pre-Construction Notification, 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 “Guidelines for Nationwide Permit 27 Submittals” at <http://www.spa.usace.army.mil/reg/>).

20. Nationwide Permits No. 29 - Residential Developments, and No. 39 – Commercial and Institutional Developments. These permits do not authorize channelization or relocation of any intermittent or perennial water course regardless of size or rate of flow, except when, as determined by the Albuquerque District, the proposed channelization would impact a previously channelized stream reach, or the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

21. Activities in Special Aquatic Sites, Including Wetlands. Notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification) is required for all proposed impacts that exceed 1/10 acre in special aquatic sites, including wetlands.

22. Activities in Intermittent and Perennial Streams. Notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification) is required for all proposed activities that involve fills greater than 1/10 acre in perennial or intermittent streams and is not covered by other notification requirements.

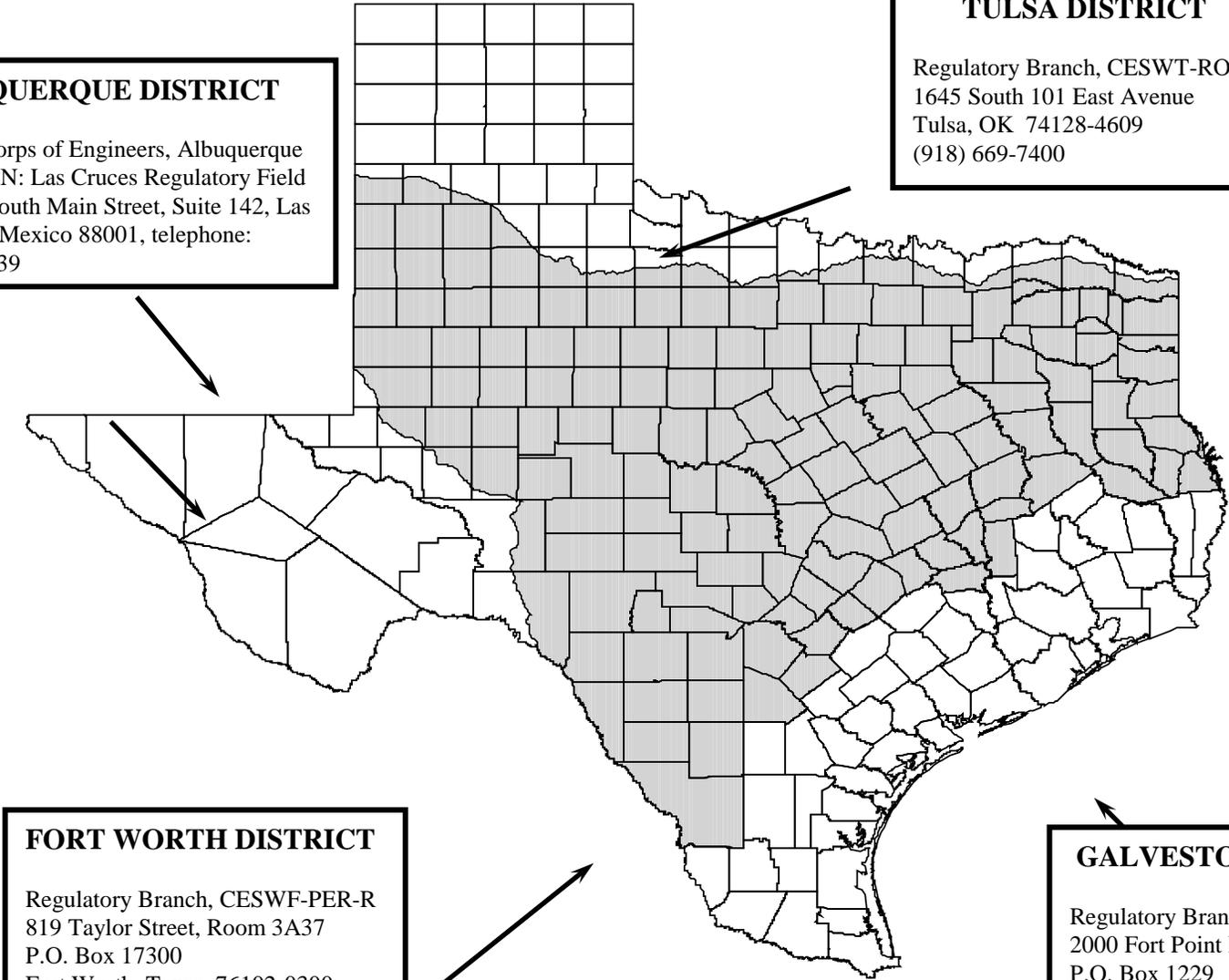
23. Springs. All nationwide permits require preconstruction notification pursuant to General Condition 31 for discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs. A spring source is defined as any location where ground water emanates from a point in the ground and a jurisdictional nexus to another water of the United States. For purposes of this regional condition, springs do not include seeps or other discharges which lack a jurisdictional nexus to another water of the United States.

24. Suitable Fill. Use of broken concrete or used tires formed into bales as fill or bank stabilization material requires notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification). Applicants must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to environment, cost, existing technology, and logistics), before broken concrete or used tires as bales are allowed as suitable fill.

APPENDIX B

ALBUQUERQUE DISTRICT
U.S. Army Corps of Engineers, Albuquerque District, ATTN: Las Cruces Regulatory Field Office, 505 South Main Street, Suite 142, Las Cruces, New Mexico 88001, telephone: (575) 556-9939

TULSA DISTRICT
Regulatory Branch, CESWT-RO
1645 South 101 East Avenue
Tulsa, OK 74128-4609
(918) 669-7400



FORT WORTH DISTRICT
Regulatory Branch, CESWF-PER-R
819 Taylor Street, Room 3A37
P.O. Box 17300
Fort Worth, Texas 76102-0300
(817) 886-1731

GALVESTON DISTRICT
Regulatory Branch, CESWG-PE-R
2000 Fort Point Road
P.O. Box 1229
Galveston, Texas 77553-1229
(409) 766-3930

February 5, 2002