



# Public Notice

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

**Galveston District**

Permit Application No: \_\_\_\_\_

Date Issued: \_\_\_\_\_

Comments \_\_\_\_\_

Due: \_\_\_\_\_

NATIONWIDE PERMIT  
REISSUANCE

June 7, 2016

July 22, 2016

## INITIAL PUBLIC NOTICE

### NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On June 1, 2016, the U.S. Army Corps of Engineers published in the *Federal Register* its proposal to reissue the 50 existing nationwide permits (NWP) and issue two new NWPs.

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWPs require notification to the district engineer before commencing those activities, to ensure that the activities authorized by those NWPs cause no more than minimal individual and cumulative adverse environmental effects.

**National Issues Concerning the Proposed NWPs:** The *Federal Register* notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2015-0017 at [www.regulations.gov](http://www.regulations.gov), or by email to [NWP2017@usace.army.mil](mailto:NWP2017@usace.army.mil) or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the June 1, 2016 *Federal Register* notice. Comments on the proposed NWPs are due by August 1, 2016.

**Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning:** Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that the adverse environmental effects of activities authorized by the NWPs are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWPs may be more than minimal. An enclosure for this public notice (Enclosure 1) lists the proposed 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 regional conditions and seeking comments on the need for

additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWP are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in Texas. Comments on regional issues relating to the proposed NWP and proposed regional conditions should be sent to:

Mr. Jayson M Hudson  
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 regional conditions are due by July 22, 2016. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

After the final NWP are issued, the final regional conditions will be issued after they are approved by the Division Commander. After the final NWP are issued, States and Tribes will make their Clean Water Act Section 401 (401) water quality certification and States will make their Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 90 days of the *Federal Register* notice announcing the issuance of the NWP. The final NWP will go into effect on March 19, 2017.

Draft decision documents for each of the proposed NWP, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP with the requirements for issuance under the Corps general permit authority. These documents, as well as the proposed NWP, are available for viewing at [www.regulations.gov](http://www.regulations.gov), docket number COE-2015-0017. Final decision documents will be prepared for the NWP that are issued. In addition, the final national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP.

Below is an index of the proposed NWP and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP through the Corps Home Page at: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>, at [www.regulations.gov](http://www.regulations.gov) in docket number COE-2015-0017, or at the *Federal Register* at <https://www.gpo.gov/fdsys/pkg/FR-2016-06-01/pdf/2016-12083.pdf>.

## Index of Proposed Nationwide Permits, Conditions, and Definitions

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## **District Engineer's Decision**

### **Further Information**

#### **Definitions**

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Direct effects  
Discharge  
Enhancement  
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Stormwater management  
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Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody

DRAFT 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, 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.), and sphagnum moss (*Sphagnum* 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 16, the permittee will obtain an individual Section 401-water quality certification from the Texas Commission Environmental Quality for the effluent or return water from the upland dredge material placement areas to be used. The applicant shall notify the District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification). The pre-construction notification will not be considered complete until the applicant has submitted a copy of the individual Section 401-certification to the District Engineer.
3. For all activities proposed for authorization under NWP 12 that involve a discharge of fill material associated with mechanized land clearing in native scrub/shrub wetland(s), the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.
4. For all activities proposed for authorization under NWP at sites identified 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.

5. 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 invasive plant and animal species 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 (in excess of 140F) or professional cleaning may be substituted for drying time.

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

6. 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 are not limited to: seagrass beds; oyster reefs; and coral reefs.

7. 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 National Marine Fisheries Service in accordance with NWP General Condition 31(d) (Pre-Construction Notification).

8. No NWPs, except NWP 3, shall be used to authorize discharges into mangrove marshes. Mangrove marshes are dominated by mangroves (*Avicennia* spp. and *Rhizophora* spp.).
9. No NWPs, except NWP 3, shall be used to authorize discharges into Coastal dune swales. Coastal dune swales are wetlands and 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.
10. 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 National Marine Fisheries Service in accordance with NWP General Condition 31(d) (Pre-Construction Notification).
11. 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 32, 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.
12. The use of NWP 51 and 52 are revoked within the Galveston District boundaries.
13. In-kind compensatory mitigation at a minimum one-for-one ratio will be required for all stream losses that exceed 300 linear feet and require notification in accordance with General Condition 32 (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 effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement.
14. No NWPs, except NWP 3, 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.
15. 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.

16. 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.

17. For activities proposed for authorization under NWP which require pre-construction notification to the District Engineer in accordance with the NWP General Condition 32; the pre-construction notification will not be considered complete until a preliminary jurisdictional determination or approved jurisdictional determination has been finalized by the Galveston District.

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

18. 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.

19. 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>).

20. 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.

21. 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.

22. 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.

23. 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 only within the Fort Worth District in the State of Texas:**

24. Nationwide Permit No. 14 – Pre-Construction Notification in accordance with General Condition 32 and compensatory mitigation are required for activities that would result in the loss of more than 300 linear feet of streams and 0.1 acre of waters of the U.S.

25. 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).

26. In-kind compensatory mitigation will be required for all stream losses that exceed 300 linear feet and require notification in accordance with General Condition 32 (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 effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement.

**The following regional conditions apply only within the Tulsa District in the State of Texas**

27. 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.

28. 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.

Figure 1: District Boundary Map

