



# Public Notice

<b>U.S. Army Corps Of Engineers</b>	<b>Suspension and Proposed Modification of Nationwide Permits</b>
	Date Issued: <u>8 March 2010</u>
	Comments
<b>Galveston District</b>	Due: <u>7 April 2010</u>

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**U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT  
AND  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**PURPOSE OF PUBLIC NOTICE:** Notice is hereby given of the suspension and proposed modification to Nationwide Permits (NWP) within the identified area of concern described below. In addition, we are soliciting your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

**AUTHORITY:** This action will be reviewed pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act (RHA).

**WATERWAY AND LOCATION:** Waters, wetlands, and aquatic resources within the identified Area of Concern (AOC) which surrounds the San Jacinto River Waste Pits (SJWP) site. The SJWP site is located in the San Jacinto River, along the south bank, north of the Interstate Highway 10 Bridge, in Channelview, Harris County, Texas. The USGS Quad reference map is: Highlands, Texas. Approximate coordinates for the northern and southern-most limits of the AOC include an area south of 29.833 Latitude and -95.0639 Longitude; and north of 29.7615 Latitude and -95.08648 Longitude.

**NATIONWIDE PERMITS:** As defined in 33 CFR 330, NWP are a type of general permit issued by the Chief of Engineers on a five-year time frame and are designed to regulate with little, if any, delay or paperwork of certain activities having minimal impacts. The NWP may be modified, suspended, or revoked after an opportunity for public notice and comment. Regional modifications to existing NWP will be adopted only after the Corps gives notice and allows the public an opportunity to comment on and request a public hearing regarding the proposals. The Corps will give full consideration to all comments received prior to reaching a final decision.

An activity is authorized under an NWP only if that activity and the permittee satisfy all of the NWP's terms and conditions. Activities that do not qualify for authorization under an NWP still may be authorized by an individual or regional general permit. The Corps will consider unauthorized any activity requiring Corps authorization if that activity is under construction or completed and does not comply with all of the terms and conditions of an NWP, regional general permit, or an individual permit.

District and division engineers have been delegated a discretionary authority to suspend, modify, or revoke authorizations under a NWP. This discretionary authority may be used by district and division engineers only to further condition or restrict the applicability of an NWP for cases where they have concerns for the aquatic environment under the CWA Section 404(b)(1) Guidelines or for any factor of the public interest. Because of the nature of most activities authorized by NWPs, district and division engineers do not have to review every such activity to decide whether to exercise discretionary authority. The terms and conditions of certain NWPs require the district engineers (DEs) to review the proposed activity before the NWP authorizes its construction. However, the DE has the discretionary authority to review any activity authorized by NWP to determine whether the activity complies with the NWP. If the DE finds that the proposed activity would have more than minimal individual or cumulative net adverse effects on the environment or otherwise may be contrary to the public interest, he shall modify the NWP authorization to reduce or eliminate those adverse effects, or he shall instruct the prospective permittee to apply for a regional general permit or an individual permit.

**STATE 401 WATER QUALITY CERTIFICATION:** State 401 water quality certification pursuant to Section 401 of the CWA, or waiver thereof, is required prior to the issuance or reissuance of NWPs authorizing activities which may result in a discharge into waters of the United States. If, prior to the issuance or reissuance of such NWPs, a state issues a 401 water quality certification (WQC) which includes special conditions, the division engineer will make these special conditions regional conditions of the NWP for activities which may result in a discharge into waters of United States in that state, unless he determines that such conditions do not comply with the provisions of 33 CFR 325.4. In the latter case, the conditioned 401 WQC will be considered a denial of the certification. If a state denies a required 401 WQC for an activity otherwise meeting the terms and conditions of a particular NWP, that NWP's authorization for all such activities within that state is denied without prejudice until the state issues an individual 401 WQC or waives its right to do so. State denial of 401 WQC for any specific NWP affects only those activities which may result in a discharge. That NWP continues to authorize activities which could not reasonably be expected to result in discharges into waters of the United States.

DEs will take appropriate measures to inform the public of which activities, waterbodies, or regions require an individual 401 WQC before authorization by NWP. The DE will not require or process an individual permit application for an activity which may result in a discharge and otherwise qualifies for an NWP solely on the basis that the 401 WQC has been denied for that NWP. However, the district or division engineer may consider water quality, among other appropriate factors, in determining whether to exercise his discretionary authority and require a regional general permit or an individual permit. For NWPs requiring a 30-day pre-discharge notification, the DE will immediately begin, and complete, his review prior to the state action on the individual section 401 WQC. If a state issues a conditioned individual 401 WQC for an individual activity, the DE will include those conditions as activity-specific conditions of the NWP. Where a state, after issuing a 401 WQC for an NWP, subsequently attempts to withdraw it for substantive reasons after the

effective date of the NWP, the division engineer will review those reasons and consider whether there is substantial basis for suspension, modification, or revocation of the NWP authorization as outlined in 33 CFR 330.5. Otherwise, such attempted state withdrawal is not effective and the Corps will consider the State WQC to be valid for the NWP authorizations until such time as the NWP is modified or reissued.

**BACKGROUND:** On 19 March 2008, the U.S. Environmental Protection Agency (EPA) placed the SJWP site on the National Priorities List. This event marked the beginning of several steps that the EPA will be taking to clean up the Site thru the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. The SJWP site is comprised of an area of land and an area of the San Jacinto River bottom, i.e., river sediment that is contaminated with certain hazardous materials from released waste paper mill sludge. Due to the Site being partially located in the San Jacinto River, activities in the area permitted under Section 404 of the CWA and Section 10 of the Rivers and Harbors Act of 1899 (RHA) may impact the SJWP site. Those permitted activities that impact the site may expose permittees to CERCLA liability. To minimize permittee exposure to CERCLA liability and to continue to effectively evaluate proposed and permitted activities, an interagency workgroup between EPA, U.S. Army Corps of Engineers (USACE), and Texas Commission on Environmental Quality (TCEQ) developed a Permit Evaluation Requirement Process (Process), which all permit applicants and existing permittees within the AOC must undertake. A Joint Public Notice was issued on 21 October 2009 by EPA, USACE, and TCEQ to inform the public of the AOC and Process. In summary, as part of the Process, all permit applicants and existing permittees within the AOC must conduct certain sampling events to ensure that any activities conducted, especially activities involving dredging or disposal of dredged materials, do not impact SJWP Site investigation and cleanup. The verification of such sampling events and adherence to the Process will be completed by TCEQ. The issuance of permits for work and/or activities regulated under Section 10 of the RHA and/or Section 404 of the CWA, with any associated special conditions (if necessary), will be completed by USACE. The Joint Public Notice, AOC, and Process is included as Attachment A.

Pursuant to 33 CFR 330.5, a division engineer may use his discretionary authority to modify, suspend, or revoke NWP authorizations for any specific geographic area, class of activities, or class of waters within his division, including on a statewide basis, by issuing a public notice or notifying the individuals involved. The notice will state his concerns regarding the environment or the other relevant factors of the public interest. Before using his discretionary authority to modify or revoke such NWP authorizations, division engineers will: 1) Give an opportunity for interested parties to express their views on the proposed action; 2) Consider fully the views of affected parties; 3) Prepare supplemental documentation for any modifications or revocations that may result through assertion of discretionary authority; 4) Provide, if appropriate, a grandfathering period; and 5) Notify affected parties of the modification, suspension, or revocation, including the effective date. The suspension, modification, or revocation of authorizations under a NWP by the division engineer will become effective by issuance of a public notice or a notification to the individuals involved.

Based on input from EPA and its reported levels of dioxin and other contaminants in the AOC, the Southwestern Division Engineer has determined that sufficient concerns exist for the environment and factors of the public interest and that NWP's could result in more than minimal adverse environmental effects either individually or cumulatively. Therefore, as required by 33 CFR 330.5, effective the date of this Notice, the NWP's within the AOC, are suspended and we are proposing to modify the NWP's by adding the following regional condition:

**Regional Condition No. 14: All work in the San Jacinto River Waste Pits (SJWP) Area of Concern (AOC), authorized under a Nationwide Permit, requires a waiver from the District Engineer (DE). The applicant must submit a Preconstruction Notification (PCN) according to General Condition No. 27 (Federal Register, Vol. 72, '0.47, FR 11194 - 11196). 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 restrictions provided by any General Conditions of the NWP's. The applicant must receive written approval, including a waiver from the DE prior to starting work in jurisdictional areas.**

**PUBLIC INTEREST REVIEW FACTORS:** This proposal will be reviewed in accordance with 33 CFR 320-332, the Regulatory Programs of the Corps of Engineers (Corps), and other pertinent laws, regulations and executive orders. The decision whether to authorize this proposal will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed action on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal, will be considered: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people.

**SOLICITATION OF COMMENTS:** The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate this proposed action. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Impact Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed action.

This public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the Corps may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed activity should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

**PUBLIC HEARING:** Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues are substantial and should be considered in the decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before **7 April 2010**. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. **If no comments are received by that date, it will be considered that there are no objections.** Comments and requests for additional information should be submitted to:

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Attachment

DISTRICT ENGINEER  
GALVESTON DISTRICT  
CORPS OF ENGINEERS