

PIPELINERS ASSOCIATION OF HOUSTON MEETING

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Galveston District
Regulatory Division
December 2, 2019

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TOPICS

- Overview of Program
- Nationwide Permit Program
- 2017 Nationwide Permit Program
 - Expected renewal 2020
- Regional Conditions for the Nationwide permits
- Expired Galveston District Regional General Permit
- Outer Continental shelf (OCS)
- State of the Regulatory Program



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REGULATORY MISSION

To protect the Nation's aquatic resources, while allowing reasonable development through fair and balanced decisions.



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AUTHORITIES

Section 10 Rivers and Harbors Act of 1899

Regulate the obstruction or alteration of navigable waters

- Constructing structures in, over, under navigable waters
- Excavation/dredging
- Depositing material
- Any other work that affects the course, location, condition, or capacity of navigable waters
- Also applies to the construction of artificial islands, installations, and other devices located on the seabed on the outer continental shelf.

Clean Water Act Section 404

Corps regulates the discharge of dredged or fill material into waters of the U.S.

Not all waters are waters of the U.S.



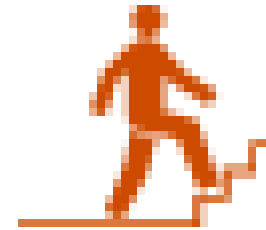
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PERMIT TYPES

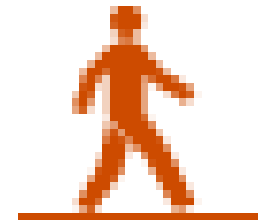
- **Individual Permits**

- Standard Permits
- Letters of Permission



- **General Permits**

- Nationwide Permits
- Regional General Permits
- Programmatic General Permits



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NATIONWIDE PERMITS

- Congressional intent (Clean Water Act Section 404(e))
 - Streamlined authorization process for small activities with no more than minimal adverse environmental effects
 - Issued for no more than 5 years (Last Issued March 19, 2017)
- Authorize Nationally ~35,000 activities per year (reported) plus ~30,000 non-reporting activities
- First issued in 1977
 - 15 nationwide permits
 - 14 general conditions
- Current nationwide permits expire on March 18, 2022
 - 52 nationwide permits
 - 32 general conditions
 - Note: Individual verifications will also expire on March 18, 2022.



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NATIONWIDE PERMITS PRE-CONSTRUCTION NOTIFICATION (PCN)

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No PCN
(Non-Reporting)

Vs

PCN
(Reporting)

It's all about the thresholds.



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NO PRE-CONSTRUCTION NOTIFICATION

- A request does not need to be submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit.
- The project proponent is responsible for assuring all terms and conditions of the nationwide permit have been met.

Note: Endangered Species Act and National Historic Preservation Act



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PRE-CONSTRUCTION NOTIFICATION

- Opportunity for district to review proposed NWP activity to determine eligibility for authorization
 - Will the proposed activity result in only minimal adverse environmental effects?
 - Does proposed activity comply with all applicable general and regional conditions?
 - Is compensatory mitigation or other mitigation required to ensure no more than minimal adverse environmental effects?
 - Are any consultations required?
 - Endangered Species Act Section 7
 - National Historic Preservation Act Section 106
 - Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act



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ENDANGERED SPECIES ACT COMPLIANCE

- Based on requirements of:
 - General condition 18, endangered species
 - For non-federal permittees, PCNs are required for proposed activities that might affect listed species or designated critical habitat
 - 33 CFR 330.4(f)
- Compliance with requirements of ESA section 7(a)(2)
 - No PCN – Applicant must assure ESA compliance
 - PCN – Corps assures ESA compliance
 - Activity-specific ESA section 7 consultations
- Applicant shall not begin the activity until notified by the Corps.



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NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE

- Based on requirements of:
 - General condition 20, historic properties
 - For non-federal permittees, PCNs are required for proposed activities that might have the potential to cause effects to historic properties
 - 33 CFR 330.4(g)
- Compliance with requirements of NHPA section 106
 - No PCN – Applicant must assure NHPA compliance
 - PCN – Corps assures NHPA compliance
 - Activity-specific NHPA section 106 consultations
- Applicant shall not begin the activity until notified by the Corps.

2017 NATIONWIDE PERMITS AND GENERAL CONDITIONS HIGHLIGHTS



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NWP 3 – MAINTENANCE

- (a) Authorizes the repair, rehabilitation, or replacement of previously authorized structures or fills
- (b) Authorizes the removal of accumulated sediments in vicinity of existing structures and associated canals
- Limits:
 - Minor changes to conform to current construction practices, materials, current construction codes, and regulatory requirements (paragraph (a))
 - Removal of accumulated sediment within 200 feet of existing structures (paragraph (b))



NWP 12 – UTILITY LINE ACTIVITIES

- Authorizes crossings of jurisdictional waters and wetlands for utility lines
- Also authorizes utility line substations, foundations for overhead utility lines, and access roads
- Limits Regarding Loss of Waters of US:
 - 1/2-acre limit for each separate and distant waterbody crossing
 - 1/2-acre of non-tidal waters for utility line substations
 - 1/2-acre of non-tidal waters for access road crossings



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GC 18 – ENDANGERED SPECIES

- Define “direct effects” and “indirect effects” to assist in Endangered Species Act compliance
 - Direct effects are immediate effects on listed species and critical habitat caused by NWP activity
 - Indirect effects are effects on listed species and critical habitat caused by NWP activity that occur later in time, and are reasonably certain to occur
- Clarified that other federal agencies are responsible for their own compliance with the Endangered Species Act
- District engineer may add permit conditions for Endangered Species Act compliance
- May use ESA section 10(a)(1)(B) incidental take permit to fulfill requirements of this general condition and the ESA



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GC 20 – HISTORIC PROPERTIES

- Revised text of general condition to be more consistent with threshold for National Historic Preservation Act section 106 consultation:
 - “May have the potential to cause effects to historic properties”
- Added designated tribal representative to list of sources for assistance for obtaining information on the potential presence of historic properties
- Clarified when section 106 consultation is conducted:
 - NWP activities where there are “no historic properties affected,” or that have “no adverse effects” or “adverse effects” on historic properties



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GC 23 – MITIGATION

- NWP's mitigation must meet the Corps' 2008 mitigation rule
- Preference for use of mitigation bank or in-lieu fee program credits to fulfill compensatory mitigation requirements imposed by district engineers
 - Does not preclude the use of permittee-responsible mitigation, where appropriate (or where credits are not available)



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GC 23 – MITIGATION

- If compensatory mitigation is required, then the amount must be sufficient to ensure the NWP activity causes no more than minimal individual and cumulative adverse environmental effects
- Compensatory mitigation may be required to ensure no more than minimal adverse environmental effects if a regulated activity results in the loss of certain aquatic resource functions and services (e.g., the conversion of forested wetlands to emergent wetlands)



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GC 31 – ACTIVITIES AFFECTING STRUCTURES OR WORKS BUILT BY THE UNITED STATES

- Any NWP activity that also requires a Section 408 permission from the Corps requires notification to the Corps district
- Activity is not authorized by NWP until after the Corps issues the 408 permission, and the district issues the NWP verification



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GC 32 – PRE-CONSTRUCTION NOTIFICATION

- Corps' review process
 - Retained 30-day completeness review period
 - Retained 45-day verification decision period
- Content of pre-construction notification:
 - Specify the NWP(s) the project proponent wants to use
 - Describe mitigation measures intended to reduce adverse environmental effects
 - For linear projects, clarify that notification must identify other crossings of waters of the United States that require Corps authorization, including those authorized by general permit that do not require pre-construction notification
 - For linear projects, the notification must also include the quantity of losses of aquatic resources for each single and complete crossing of those waters and wetlands

EXPECTED RENEWAL 2020

Regulatory Community of Practice Headquarters is currently working on renewing the NWP program.

- Renewal of NWP program is Rule Making
- Corps will publish the draft/final in the Federal Register
- Comments will be accepted/addressed

No news as of today on the status of this renewal efforts. Please keep your eye's on our Website for the most up to date information.



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REGIONAL CONDITIONS FOR THE NATIONWIDE PERMITS



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REGIONAL AND ACTIVITY-SPECIFIC CONDITIONS FOR NWPS

- Texas Regional Conditions
 - 30 Conditions Total
 - Entire Texas – 3
 - Galveston District – 15
- Louisiana Regional Conditions
 - 61 Conditions Total
 - All NWPs – 7
 - Per NWP

<http://www.swg.usace.army.mil/Business-With-Us/Regulatory/Permits/Nationwide-General-Permits/>



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CLARIFICATION TO REGIONAL CONDITION #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, 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.) and/or sundews (*Drosera* spp.).
- b. Bald Cypress-Tupelo Swamps: Wetlands dominated by bald cypress (*Taxodium distichum*) and/or water tupelo (*Nyssa aquatic*).



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CLARIFICATION TO REGIONAL CONDITION #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 native woody shrubs, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 – PCN 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 inches in diameter at breast height but greater than 3.2 feet in height, which covers 20% or more of the area. Woody vines are not included.



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CLARIFICATION TO REGIONAL CONDITION #12

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 respectively. Examples include, but are not limited to: seagrass beds, oyster reefs, and coral reefs.



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CLARIFICATION TO REGIONAL CONDITION #15

- No NWP, except NWP 3, shall be used to authorize discharges into the habitat types or specific areas listed in paragraphs a through c, below. The applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification prior to commencing the activity under NWP 3.
 - a. Mangrove Marshes.
 - b. Coastal Dune Swales.
 - 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 identified in the 1997 Memorandum of Agreement between the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Natural Resource Conservation Service, and Texas Parks and Wildlife Department for bottomland hardwoods in Brazoria County. (For further information, see <http://www.swg.usace.army.mil/Business-With-Us/Regulatory/Permits/Nationwide-General-Permits/>)



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CLARIFICATION TO REGIONAL CONDITION #15 CONT.

Columbia Bottomlands. For the purpose of this regional condition, Columbia bottomlands are defined as.....

- 1) Waters of the United States
- 2) That are dominated by bottomland hardwoods
- 3) In the Lower Brazos and San Bernard River basins identified in the 1997 Memorandum of Agreement between the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Natural Resource Conservation Service, and Texas Parks and Wildlife Department for bottomland hardwoods in Brazoria County.



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CLARIFICATION TO REGIONAL CONDITION #20

For all activities proposed for authorization under NWP 12 that involve underground placement below a non-navigable river bed and/or perennial stream bed there shall a minimum cover of 48 inches (1,219 millimeters) of soil below the river and/or perennial stream thalweg.



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Expired Galveston District Regional General Permit



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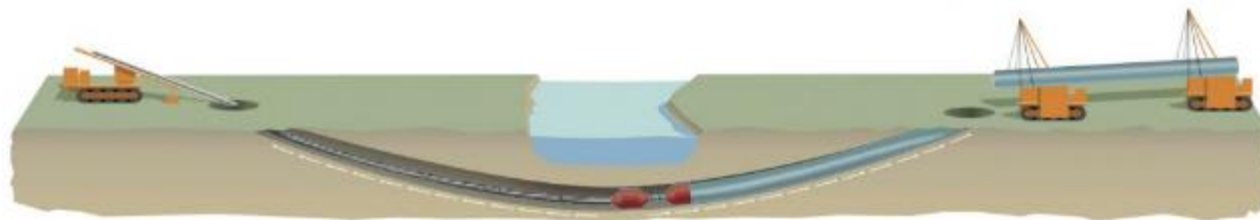


EXPIRATION OF REGIONAL GENERAL PERMIT

Expired - SWG-1998-02413 – Installation of Pipelines by Directional Drilling

NWP 12 authorization covers the installation of pipelines by directional drilling. Due to ongoing Sec 408 requirements, it was determined that this Regional General Permit was no longer needed.

Note: Perpendicular crossings of water bodies still preferred.



River Crossing – HDD Method



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OUTER CONTINENTAL SHELF (OCS)



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OUTER CONTINENTAL SHELF (OCS)

Section 10 of the Rivers and Harbor Act

The authority of the Secretary of the Army to prevent obstructions to navigation in navigable waters of the United States was extended to artificial islands, installations, and other devices located on the seabed, to the seaward limit of the outer continental shelf, by section 4(f) of the Outer Continental Shelf Lands Act of 1953 as amended (43 U.S.C. 1333(e)).



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OUTER CONTINENTAL SHELF (OCS) CONT.

NWP 8. *Oil and Gas Structures on the Outer Continental Shelf.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management.

NWP 12. *Utility Line Activities.* Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.



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OUTER CONTINENTAL SHELF (OCS) CONT.

- Galveston District Rescinded Pipeline Abandonment Policy
 - Now accepting applications to amend permits for decommissioning pipelines.
- Pipeline Decommissioning on the OCS
 - Tying BSEE & Corps Reviews.
- Pipeline Decommissioning on State Waters
 - Tying State Agencies & Corps Reviews.



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State of the Regulatory Program



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BUDGET AND PERSONNEL - REGULATORY DIVISION

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Annual budget approximately \$7,000,000; Level for about 5 years
Personnel of 50; **Currently 4 Vacancies**



Division Chief/Admin - 2 positions

Policy Analysis Branch - 11 positions (Chief, 2 funded by 214, **1 vacant**,
1 Archeologist, 1 Budget Analyst, 5 PMs for Policy related work)

Evaluation Branch - 17 positions (Chief, 2 Admin, 2 Team Leaders,
1 Legal Instruments Examiner, 8 PMs, (4 of 8 < 1 yr), **3 unaffordable vacancies**)

Compliance Branch - 11 positions (Chief, Admin, 1 Team Leader, 8 PMs (4 of 8 < 1 year)

Corpus Christi Field Office - 7 positions (Supervisor, Admin, 1 Team Leader, 4 PMs)



Administrative Records - 4 positions



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RECENT TRENDS – Higher workload, Less Resources

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Impacts of Hurricane Harvey and Imelda

- Increased funding for jurisdictional activities throughout the region
- Increased sensitivity and interest in actions that may have an impact on flooding potential

Nation's Energy Coast

- Increase in number of large scale energy projects along the entire coast – 14+ active pipeline applications (SWG-Lead District in Tx); LNG, port, channel and refinery development
- Increased overlap of Civil Works and Regulatory responsibilities
- Limitations on capacity for placement of dredged material
- Increased interest in use of Section 103 of MPRSA for use of ODMDS

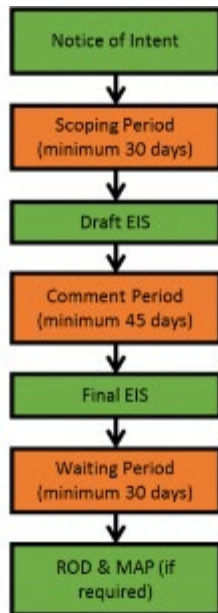


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ADDITIONAL TRENDS

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More Environmental Impact Statements - 15

- Cooperating Agency status: 3 new and 5 existing LNG's (FERC), and one High Speed Rail (FRA) project
- 5 proposed deepwater ports (MARAD/USCG)
- Leading two EIS's - Industrial water use and Navigation (FAST 41: 1 of 2 Ports and Waterways Projects for USACE, only one in Regulatory nationwide)

EO 13807 – One Federal Decision

- Two Year Goal
- Establishing a permitting timetable
- Development of single EIS/ROD
- Process for issue resolution

EO 13777 Regulatory Reform

- Nationwide Permit Reissuance - Proposed for later this year
(Opportunity to comment on NWP's and Regional Conditions)
- Increased need for fast decisions and efficiencies



Increased lack of permit compliance, risk taking



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WHY DOES THE PERMIT PROCESS TAKE SO LONG?

Primary cause of **delay** for applications is:
incomplete,
inaccurate, or
contradictory information.
Need QA-QC!

Written descriptions and/or tables provided must
match what is reflected on the project plans
(drawings)

Requests for additional information cause the
project manager to take away from review time
and write an additional information letter; complete
applications get worked on and produce a
decision!



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LEVEL OF EFFORT.....!

Incomplete SP - Withdrawn



45-Day PCN



Increases with complexity of the Project,
amount of information to be reviewed and/or level
of errors and inconsistencies in the application



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CURRENT EFFICIENCIES

- 52 Nationwide Permits
- 4 Regional General Permits
- 5 Programmatic General Permits
- 4 Agency Specific Regional General Permits
- 3 Letter Of Permission Procedures
- 9 Approved Wetland and/or Stream Mitigation Banks,
including Interdistrict Mitigation Banks (SWG & SWF)
- 21 Proposed Wetland and/or Stream Mitigation Banks
- 5 Section 214 Agreements
- * Use of Pre-application Meetings; KM initiatives
- * Use of templates for most documents
- * Continual improvement of business practices
and processes !



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- Continued pursuit for additional resources, personnel or cooperative assistance such as interagency personnel partnerships
 - Enhanced consistency and increased timeliness of decisions/ determinations w/o sacrificing quality of reviews
 - Increase transparency
 - Continued search for efficiencies in coordination and business practices
 - New streamlined processes
 - Opportunities for enhanced outreach
- Next Workshop:

Where: Galveston District HQ

What: Joint Corps/Interagency format – ESA, 106 Consultation, 408 Coordination, CMP, PSC, GLO Leasing

Watch our Internet Site for Registration Information!

New Regulatory Division
Chief:

Mr. Joe McMahan
10 November 2019



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WANT TO KNOW MORE?

Regulatory HQ HomePage

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>

- Links to Regulations, Policies, MOAs and MOUs
- Video Library that provides more detailed overviews of aspects of the review process
- Avatar for finding Regulatory offices
- And so Much More!

Galveston District HomePage

<http://www.swg.usace.army.mil/Business-With-Us/Regulatory/>

Ask a Regulator!

Galveston District Regulatory Hotline

409-766-3869



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QUESTIONS?

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