



Public Notice

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

Galveston District

Permit Application No: SWG-2007-01401

Date Issued: 30 March 2023

Comments

Due: 1 May 2023

U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT

PURPOSE OF PUBLIC NOTICE: To inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. The U.S. Army Corps of Engineers (Corps) is not the entity proposing or performing the proposed work, nor has the Corps taken a position, in favor or against the proposed work.

AUTHORITY: This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

APPLICANT: Energy Transfer Nederland Terminal, LLC
15645 West Port Arthur Road
Beaumont, Texas 77005
POC: Justin Minter
Telephone: 409-377-0054
Email: Justin.Minter@energytransfer.com

AGENT: Perennial Environmental Services, LLC
13100 Northwest Freeway, Suite #150
Houston, Texas 77040
POC: Ryan Conley
Telephone: 713-462-7121
Email: rconley@perennialenv.com

LOCATION: The project site is located in and adjacent to the Neches River, approximately 7.5 miles southeast of Beaumont, within Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Beaumont East, Terry, Port Acres, and Port Arthur North, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 30.002552° North; **Longitude:** 093.999444° West

PROJECT DESCRIPTION: The applicant proposes to modify Department of the Army (DA) Permit SWG-2007-01401 to permanently discharge fill into an additional 331.181 acres of palustrine emergent (PEM), scrub-shrub (PSS) and forested (PFO) wetlands and 10.74 acres / 5,804 linear feet of water bodies, including 1,611 feet of shoreline along the Neches River, for facility expansion and reconfiguration at and adjacent to the Energy Transfer Nederland Terminal. The modified project boundary is inclusive of areas previously authorized for discharge of fill and dredging, resulting in impacts to a total of 465.947 acres of wetlands and 16.71 acres (7,281 linear feet) of water bodies within the expanded project footprint. The modified impacts also include temporary impacts to 0.31 acre (97 linear feet) of streams. All wetlands and waterbodies that were previously authorized for temporary impact are now proposed to be permanently impacted within the expanded project footprint.

Modified project components include additional dredging to construct the new Dock 7 and Materials Offloading (MOF) Dock at the terminal facility. Approximately 304,000 cubic yards of material within an approximate 9.2-acre area of the Neches River will be dredged to a depth of -42 feet Mean Lower Low Water (MLLW) and 356,000 cubic yards of material will be excavated within an approximately 8.01-acre area of land adjacent to the river to accommodate the construction and operation of Dock 7 and the MOF Dock. Approximately 272.07 cubic yards of material will be discharged below the Mean High Water (MHW) line of 1,300 linear feet of the Neches River, and 627.93 cubic yards of material will be discharged in 0.95 acre of adjacent wetlands, for the installation of shoreline revetment at Dock 7 and the MOF Dock. Fill used onsite will consist of material dredged from the Neches River for Dock 7/MOF Dock construction, material dredged from the Neches River for the previously approved Dock C modifications, material excavated from federal Placement Area 23, and clean fill brought in from offsite. General fill material will consist of 6,466,961 cubic yards, with additional fill material of 622,261 cubic yards of crushed limestone and 12,280 cubic yards for concrete culverts and revetment. This modification incorporates all previously authorized project components in the permit modification issued on 27 May 2022 (see Background), including the modifications to Dock C structures and dredging, as well as 10 years of maintenance dredging at all other previously authorized docks (A-B Barge Dock, Dock 1, Dock 2, Dock 3, Dock 4, Dock 5, Dock 6, Layberth A, and Layberth D) and placement of dredged material, to include associated effluent discharge, onsite within the new development areas. The applicant is requesting authorization for 10 years for all project components.

The applicant stated that the purpose of the project is to build new and modernize existing facilities and infrastructure at Energy Transfer's Nederland Terminal that will allow for the manufacture, storage, and transfer of petroleum products onto deep draft vessels bound for domestic and export markets.

BACKGROUND: DA Permit Number W-N-243-41-Permit-09855 was issued on 30 January 1974 and authorized the Sun Oil Company to dredge a basin (to -42.0 Mean Low Tide) and construct a wharf with breasting structures. This permit was modified on 17 June 1974 to revise sheet 3 of the proposed plans (moving the proposed wharf approximately 200 feet upstream). This permit was then modified on 24 October 1974, to authorize additional dredging of a 400- by 290-foot ship slip to a depth of -42 feet Mean Low Tide (MLT). This permit was modified on 9 December 1976 to allow the dredging of 1,080,000 cubic yards of material along the South Bank of the Neches River to allow vessels to moor outside of the channel, construction of two-tanker terminals each with a pile supported loading dock, four breasting dolphins, necessary mooring dolphins, and additional mooring dolphins at an existing adjacent dock. This permit was modified on 13 January 1977, which authorized the additional dredging of a basin and construction of a wharf with associated breasting structures and to include revised plans. This permit was modified on 15 August 1980, which allowed the permittee to maintenance dredge areas along existing docks 2, 3, 4, and 5 to a depth of -43 MLT. This permit was modified on 15 October 1985 to include an extension of time to perform maintenance hydraulic dredging for 10 years over previous docks and Dock 1. This authorization expired on 31 December 1995. On 29 January 1999 an extension of time to perform hydraulic maintenance dredging was authorized. On 4 August 1999 the permit was modified to include Dredge Material Placement Area No. 18. This permit expired on 31 December 2009.

DA Permit SWG-1998-01773 (formerly DA Permit 09855) was issued on 27 May 2010 and added upland disposal area 23 to the permit and extended the time to conduct 10 years maintenance dredging for Docks 1, 2, 3, 4, and 5 to a depth of -43 MLT and Layberths A & D to a depth of -42 MLT. This authorization will expire on 31 December 2020.

DA Permit SWG-2007-01401 (formerly DA Permit 09855) was issued on 28 May 2013 and authorized the construction of a 20- by 20-foot pile supported hose, four barge monopoles, and four mooring dolphins within the project boundary. This authorization expired on 31 December 2018.

DA Permit 12620 was issued on 28 April 1978 and authorized the removal of deteriorated portions of Ship Dock 1, perform maintenance dredging, and construct a dock with loading structure, walkways, and breasting dolphins. This permit was modified on 23 March 1981 to allow maintenance dredging and the placement of 72,200 cubic yards of uncontaminated earthen fill and 8,000 cubic yards of shell fill behind an existing 1,200-foot-long sheet pile bulkhead. This authorization expired on 31 December 1983.

DA Permit 11870 was issued on 2 June 1977 and authorized the dredging of a basin and placement of 710,000 cubic yards of material on the permittee's property behind levees. This authorization expired on 31 December 1980.

DA Permit SWG-2014-00141 was authorized on 1 April 2015 and authorized the dredging of 590,000 cubic yards of material, construct a 60- by 100-foot pile supported dock with 4 breasting dolphins, walkways, 6 onshore mooring dolphins, approximately 1,300 linear feet of articulated concrete block for shoreline stabilization, and discharging 13,000 cubic yards of fill material into 7.7 acres of wetlands to construct a 160-foot driveway, access road, onshore foundations, and containment areas. The dredged material was placed in placement areas 18, 21, 22, 23, 24, 25, or beneficial use areas. This permit was set to expire on 31 December 2020.

DA Permit SWG-2014-00315 was issued on 20 March 2015 and authorized the removal of an existing bulkhead and marine structures, performance of mechanical and hydraulic dredging of 55,000 cubic yards of material (to a depth of -15 MLT), construction of 900 linear feet of sheet pile bulkhead, install 11 new monopole breasting dolphins, construct a new access road, parking area, foundations for onshore equipment, and relocate 2 existing drainage outfalls. Dredged material could be placed into placement areas 18, 21, 22, 23, 24, 25, or the Nelda Stark Unit of the Lower Neches Wildlife Management Area.

DA Permit 12269 was issued on 30 November 1977 and authorized the dredging of two ship berthing areas and one entrance channel. This authorization expired on 31 December 1980.

DA Permit 12269 was amended on 27 December 1990 to extend maintenance dredging for 10 years. This authorization expired on 31 December 2000.

DA Permit SWG-2007-00259 (formerly DA 12269) was authorized on 18 June 2007 and authorized maintenance dredging for 10 years. This authorization expired on 31 December 2012.

On 21 November 2019, the Corps completed a consolidation request for all previously authorized permits, work, and structures within the Nederland Terminal property under DA Permit SWG-2007-01401. As a component of this consolidation, the applicant requested authorization to maintenance dredge for 10 years, modify existing structures, and to fill 0.636 acres of PFO and 199 linear feet of perennial stream in order to construct a Butane Chiller Facility.

DA Permit SWG-2007-01401 was amended on 27 May 2021 and authorized the temporary discharge of fill into 8.75 acres of palustrine emergent wetlands (PEM), 0.66 acre of palustrine scrub-shrub wetlands (PSS), 3.95 acres of palustrine forested wetlands (PFO) and permanent discharge of fill into 10.57 acres of PEM, 0.31 acres of PSS, 119.27 acres of PFO, and 295 linear feet (0.10 acre) of stream. This amendment also authorized the conversion of 0.66 acres of PSS to PEM and 3.95 acres of PFO to PEM and dredging of 5.87 acres (1,082 linear feet) of the Neches River. The permittee was authorized to permanently impact 0.09 acres of stream by placing two 48-inch culverts in order to construct a petrochemical facility expansion and 0.01 acre of stream to stabilize the banks for access road improvements. This amendment further authorized the permittee to raise the grade, by filling, an adjacent 132.6-acre area to an elevation of +9 feet MLLW using excavated material and/or clean imported fill. This 132.6-acre area consists of the North Development Area (69.3 acres) and Mid Development Area (63.3 acres) and would house new liquefied petroleum gas processing units, approximately 4 refrigerated liquified petroleum gas storage tanks, 9 aboveground storage tanks, and a new pump manifold.

The permittee was also authorized to modify the existing Dock C to accommodate Aframax sized vessels and meet Sabine Pilot's association safety standards. As a component of this dock modification, the permittee would remove nine breasting dolphins, the Dock C platform, two firewater pump foundations and associated firewater equipment, firewater intake support piles, the approachway, the dock house, a section of bulkhead, and product piping. Following removal, the permittee would dredge 330,000 cubic yards of material within a 5.87-acre area of the Neches River to a depth of -43.9 feet Mean High Water [MHW; -43.0 feet Mean Lower Low Water (MLLW)] +/- 2 feet. An additional 0.43 acre would be excavated in uplands for a total area of 6.3 acres for future maintenance dredging. The dredged material would be placed onsite or within Placement Areas 18, 21, 22, 23, 24, or 25. The permittee would then construct a 135- by 80-foot pile supported platform, a gangway tower, a hose tower with hydraulic crane, 4 product loading arms, 4 ship breasting dolphins with walkways, 5 onshore mooring dolphins, an onshore valve containment foundation, firewater intake structure and equipment, dock house, pipe rack, product piping, and install approximately 1,160 linear feet of sheet pile bulkhead. The permittee would also conduct 10 years of maintenance dredging. The permittee was authorized to place all maintenance dredged material, to include associated effluent discharge, from Dock C dredge area as well as all previously authorized maintenance dredge areas (A-B Barge Dock, Dock 1, Dock 2, Dock 3, Dock 4, Dock 5, Dock 6, Layberth A, and Layberth D) onsite within the new development areas or within Placement Areas (PA) 18, 21, 22, 23, 24, and 25.

AVOIDANCE AND MINIMIZATION: The applicant has stated that they have avoided and minimized the environmental impacts by configuring the facility to the smallest footprint necessary to meet the project's purpose and need, while maintaining safety. New infrastructure for material offloading (MOF Dock) will allow for efficient design of the facility and help to minimize the overall construction footprint by utilizing offsite construction where processing units will be constructed in modules and transported to the project site via marine vessels. This construction method reduces impacts by removing the need for the larger construction footprint that would be necessary to construct and assemble the modules onsite. A detailed analysis of onsite and offsite alternatives were considered for the siting of the project and was provided to the Corps for evaluation. Fill material utilized for the project will be sourced from the excavation of Corps PA 23, excavation/dredge material generated by the new Dock 7 and MOF Dock construction, dredge material generated by the Dock C modifications, and other local providers of crushed limestone, imported earthen fill, and stone/rock fill. In order to minimize impacts associated with the placement of dredge material onsite, the applicant stated they will sample the dredge material excavated for the Dock 7, MOF Dock and Dock C activities to identify potential contaminants in accordance with federal standards prior to placement. The applicant is not proposing to sample the dredge material excavated from Corps PA 23 because all material disposed of in federal placement areas was done so in accordance with the Texas dredging and dredged material disposal and placement policy (31 TAC §501.25). During construction, best management practices (BMPs) will be utilized to assist in the control of erosion and minimize the transport of sediments. BMPs may include the use of silt fences, straw bales, and other measures as appropriate to minimize erosion and sedimentation during construction. The applicant stated they designed the project to minimize the amount of additional workspace needed for construction staging and equipment storage by utilizing the proposed permanent footprint for these activities to the extent practicable. In addition, the applicant has designed the project to minimize the footprint by utilizing the permanent workspace for the positioning, laydown yards, access, etc.

MITIGATION: As part of the previous authorization issued on 27 May 2021, the applicant was required to purchase 71.043 forested Temporary Storage and Detention of Storage Water (TSSW) Functional Credit Units (FCUs), 63.753 forested Maintain Plant and Animal Communities (MPAC) FCUs, 73.480 forested Removal and Sequestration of Elements and Compounds (RSEC) FCUs, 8.993 palustrine scrub-shrub/emergent TSSW FCUs, 6.539 palustrine scrub-shrub/emergent MPAC FCUs, 6.739 palustrine scrub-shrub/emergent RSEC FCUs, from the Graham Creek Mitigation Bank and/or Pineywoods Mitigation Bank.

The applicant proposes to mitigate for the expanded project footprint impacts by purchasing an additional 8.827 physical FCUs, 37.160 biological FCUs, and 52.369 chemical FCUs for PFO wetland impacts, 17.329 physical FCUs, 16.317 biological FCUs, and 16.629 chemical FCUs for PSS wetland impacts, and 168.491 physical FCUs, 112.348 biological FCUs, and 134.669 chemical FCUs for PEM impacts from the Pineywoods Mitigation Bank.

CURRENT SITE CONDITIONS: The project site is currently within the Neches River and an undeveloped tract of land adjacent to the applicant's Nederland Terminal facility. The surrounding area is heavily developed with other commercial and industrial facilities. The tract consists of wetland forest, open marsh, the Neches River, maintained transportation right of ways, utility right of ways, and industrial development. Within the utility rights of way, typical vegetative species include smut grass (*Sporobolus indicus*), Bermuda grass (*Cynodon dactylon*), and yellow bluestem (*Bothriochloa ischaemum*). Typical plants within the forested wetlands include Chinese tallow (*Triadica sebifera*), red maple (*Acer rubrum*), and red mulberry (*Morus rubra*). Typical plants within scrub-shrub wetlands include Chinese tallow, black willow (*Salix nigra*), and alligatorweed (*Alternanthera philoxeroides*). Lastly, representative vegetation within emergent wetlands includes common reed (*Phragmites australis*), torpedo grass (*Panicum repens*), and alligatorweed.

This public notice is being issued based on information furnished by the applicant. This project information has not been verified by the Corps. The applicant's plans are enclosed in 67 sheets.

A preliminary review of this application indicates that an Environmental Impact Statement (EIS) is not required. Since permit assessment is a continuing process, this preliminary determination of EIS requirement will be changed if data or information brought forth in the coordination process is of a significant nature.

Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404 (b)(1) of the CWA.

OTHER AGENCY AUTHORIZATIONS:

Consistency with the State of Texas Coastal Management Plan is required. The applicant has stated that the proposed activity complies with Texas' approved Coastal Management Program goals and policies and will be conducted in a manner consistent with said program.

The proposed project will trigger review under Section 401 of the Clean Water Act (CWA). The Texas Commission on Environmental Quality (TCEQ) will review this application under Section 401 of the CWA and in accordance with Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. The applicant contacted the TCEQ and initiated the Section 401 CWA process, on 8 November 2022. If you have comments or questions on this proposed project's State water quality certification, please contact 401certs@tceq.texas.gov. You may also find information on the Section 401 process here: <https://www.epa.gov/cwa-401/basic-information-cwa-section-401-certification>.

Pursuant to 33 USC 408, the proposed project will require Section 408 coordination and review. This is a requirement for activities that seek permission, to temporarily or permanently, alter, occupy, or use a federally authorized United States Army Corps of Engineers civil works project. Changes to the proposed project, from the Section 408 process, may warrant additional coordination.

NATIONAL REGISTER OF HISTORIC PLACES: The staff archaeologist has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information. The following is current knowledge of the presence or absence of historic properties and the effects of the undertaking upon these properties:

The permit area is composed of low-lying wetlands with no existing or subsided natural levee landforms and has a low potential for containing cultural deposits that may be eligible for inclusion in the National Register of Historic Places. No cultural resource survey is warranted.

THREATENED AND ENDANGERED SPECIES: Preliminary indications are that no known threatened and/or endangered species or their critical habitat will be affected by the proposed work.

ESSENTIAL FISH HABITAT: This notice initiates the Essential Fish Habitat consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed action would not have a substantial adverse impact on Essential Fish Habitat or federally managed fisheries in the Gulf of Mexico. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Programs of the Corps, and other pertinent laws, regulations and executive orders. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity 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 the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for 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 EIS 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 activity.

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 work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: The purpose of a public hearing is to solicit additional information to assist in the evaluation of the proposed project. 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 if the reasons identified for holding a public hearing are sufficient to warrant that a public hearing be held. 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 **1 May 2023**. 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 reference our file number, **SWG-2007-01401**, and should be submitted to:

North Unit
Regulatory Division, CESWG-RDE
U.S. Army Corps of Engineers
Galveston District
2000 Fort Point Road
Galveston, Texas 77550
409-766-3869 Phone
409-766-3931 Fax
swg_public_notice@usace.army.mil

DISTRICT ENGINEER
GALVESTON DISTRICT
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