



Public Notice

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

Galveston District

Permit Application No: SWG-2000-02956

Date Issued: 3 November 2020

Comments

Due: 7 December 2020

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

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.

APPLICANT: Enterprise Products Operating LLC
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AGENT: Enterprise Products Operating LLC
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LOCATION: The project site is located in and adjacent to the Neches River, at the Beaumont Marine West (BMW) Terminal, approximately 6.5 miles southeast of Beaumont, within Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Vidor, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 30.036085° North; **Longitude:** -94.034659° West

PROJECT DESCRIPTION: Following a compliance investigation initiated by the Corps, the applicant has requested the following:

- a. To retain minor variations in dock and berthing area design versus construction including:
 - T-heads added at end of shoreline revetment (Page 16 of 21).
 - Change in revetment configuration; flattening of revetment curvature was resolved with property acquisition (Page 18 of 21).
 - Six protection piles were permitted abutting the dock platform; only four were constructed (Page 18 of 21).
- b. To consolidate the following permits: DA #10446, #10446(01), DA #21826, #21826(01, 02, 03, 04), LOP SWG-2000-02956, and SWG-2000-02956 that was transferred from Oiltanking Beaumont Partners to Enterprise (February 4, 2016).
- c. To construct 555 cubic yards of concrete revetment mat bank stabilization in 0.0267 acres of palustrine emergent wetlands adjacent to Barge Dock A.
- d. To perform maintenance dredging on all barge and ship docks located at the BMW Terminal for 10 years.
- e. To dispose of dredged material from all docks to DMPAs: 8, 11, 12, 13, 14, 15, 15A, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, or 27A. (Page 8 of 21).
- f. To revise the wetland mitigation plan associated with permit SWG-2000-02956 to address construction discrepancies, which include an increase of mitigation planting acres from 24.6 to 42 acres, a decrease in the number of transplants from ~119,000 to ~67,000, changes to species selection, changes in herbicide application frequency, changes to monitoring frequency, changes to success criteria due to rapid colonization of desirable species.

AVOIDANCE AND MINIMIZATION: The applicant has stated that they have avoided and minimized the environmental impacts by designing the shoreline stabilization to impact less than 0.10 acre of wetlands. Upon analysis of project alternatives, the applicant has stated that installation of a bulkhead is cost prohibitive, installation of a living shoreline is impracticable because the shoreline is already somewhat vegetated and fails to prevent shoreline erosion, and the revetment mat must extend above and below the waterline to effectively stabilize the bank.

MITIGATION: The applicant has revised their PRM plan in order to address deviations from the originally permitted plan. These deviations occurred from uncontrollable changes in environmental variables at the time of planting and during the monitoring period, such as Hurricane Harvey and Tropical Storm Imelda.

The original PRM plan proposed to create 24.6 acres of high-quality, intertidal, herbaceous wetlands connected to the Neches River. The applicant proposes to modify the original mitigation plan by planting marsh vegetation along the Rose City Marsh Beneficial Use Area's eroded edges to stabilize the area. The applicant requests authorization to plant 42 acres and to protect/monitor 24.6 acres under the previously obtained conservation easement. The applicant requests that the other 17.4 acres of

plantings be considered as compensation for the temporal functional losses resulting from non-compliance with the previously issued PRM plan. Note: The originally approved mitigation success criteria were met in 2018, when the site achieved over 85% overall cover and 5% invasive species.

CURRENT SITE CONDITIONS: The project site is located within a heavily developed portion of the Neches River. A portion of the project area included scattered, sparse wetland vegetation including giant bulrush (*Scheonoplectus californicus*), phragmites (*Phragmites australis*), sesbania (*Sesbania drummondii*), cattail (*Typha latifolia*), and rush (*Juncus sp.*) along and below the Mean High Tide (MHT) line along the shoreline area.

PERMIT HISTORY:

1. Department of the Army (DA) Permit 10446 was issued on January 29, 1975 and authorized modifications to the existing terminal facility. Based on a review of the included plans, the applicant sought authorization to add several mooring and berthing dolphins. This authorization expired on December 31, 1978. There were no special conditions associated with this permit.
2. DA permit 10446(01) was issued on December 31, 1992 and authorized the installation of four protective dolphins and four mooring dolphins in the vicinity of South Dock. The authorization expired on December 31, 1996. There were no special conditions associated with this amendment.
3. DA Permit 21826 was issued on March 8, 2000 and authorized the installation of two breasting dolphins, two mooring dolphins, and to hydraulically dredge approximately 35,000-cubic yards of sediment, to maintain this authorized depth of -40 feet for 10-years, and to place the dredged material in United States Army Corps of Engineers (USACE) Dredged Material Placement Areas (DMPA) 23, 24, 25, or 26, depending on availability. Return water from the dredged material placement areas will be discharged back into the Neches River during dredging operations. The time limit for completing the installation of the dolphins and to perform the initial dredging ends on December 31, 2005. The maintenance dredging work was authorized until December 31, 2010. The special conditions associated with this permit include:
 - a. "The permittee must obtain a Consent to Easement or other Real Estate document from the USACE, Galveston District, Real Estate Division, prior to performing any and all work within DMPA 23, 24, 25, or 26."
 - b. "The permittee must coordinate the use of DMPA 23, 24, 25, or 26 with the Area Engineer, Northern Area Office and Navigation Branch, Operations Division, at least 60 days prior to conducting any and all work in these areas to assure that the work will not conflict with US Government dredging or disposal area management activities."

4. DA Permit 21826(01) was issued on July 31, 2000 and authorized the addition of two additional mooring dolphins, incorporate a fender into the design of the already authorized breasting dolphins, and change the locations of the dolphins. This authorization expired on December 31, 2005. The special conditions associated with this permit include:
 - a. "The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration."
5. DA Permit 21826(02) was issued on January 12, 2001 and authorized the construction of a new dock loading platform, including a new pipeway and walkway, the installation of two new ship breasting dolphins, two new ship mooring dolphins, and performance of mechanical/hydraulic maintenance dredging at North Dock for a period of 10 years. Additionally, this permit authorized the installation of six barge breasting dolphin, the construction of a new loading platform and walkway, and the performance of mechanical and/or hydraulic maintenance dredging at South Dock for a period of 10 years. Authorized USACE DMPA were 23, 24, 25, and/or 26. The time to perform the mechanical and/or hydraulic maintenance dredging was extended until December 31, 2011. The following special conditions were associated with this amendment:
 - a. "The permittee, in utilizing Corps of Engineers Dredged Material Placement Area Nos. 25 and 26, is required to adhere to the avoidance plans/measures that were previously established for these placement areas. Archaeological Site 41OR50 is located in Placement Area No. 25. The State Historic Preservation Officer (SHPO) concurred with the avoidance measures."
 - b. "The permittee must contact the Corps' staff archaeologist for details regarding these archaeological avoidance measures, prior to conducting any permitted work within the Corps of Engineers Dredged Material Placement Area Nos. 25 and 26."
 - c. "Prior to the performance of hydraulic dredging, the permittee will obtain a Section 401 water quality certification from the Texas Natural Resource Conservation Commission for the effluent or return water. The permittee

will submit a copy of the Section 401 certification to the Corps Galveston District, prior to performing hydraulic dredging.”

6. DA Permit 21826(03) was issued on November 29, 2004 and authorized the construction of a new barge slip, associated structures, and associated dredging to -15-feet. This authorization expired on December 31, 2009 and was subject to the following special conditions:
 - a. “The permittee will purchase 35 credits from the Neches River Cypress Swamp Mitigation Bank prior to the state of construction (i.e. fill or structures) in the jurisdictional area.”
 - b. “The permittee will submit documentation to the Corps, Galveston District, Chief of Compliance, Regulatory Branch, verifying that 35-acre-credits were purchased from Neches River Cypress Swamp Mitigation Bank, prior to the start of construction (i.e. fill or structures) in the jurisdictional area.”

This barge slip was never constructed.

7. DA Permit 21826(04) was issued on June 17, 2005 and authorized the construction of a new 40 x 30-foot barge docking facility, associated breasting dolphin, proposed new fender line, and dredging of approximately 100,000-cubic yards of material adjacent to Barge Dock A. This authorization expired on December 31, 2010 and was subject to the following special conditions:
 - a. “The permittee will purchase 10.5-acre-credits from the Neches River Cypress Swamp Mitigation Bank within 10 days from the start of construction in the jurisdictional area.”
 - b. “The permittee will submit documentation to the Corps (CE), Galveston District, Chief of Compliance, Regulatory Branch verifying that 10.5-acre-credits were purchased from Neches River Cypress Swamp Mitigation Bank within 10 days from the state of construction (i.e. fill or structures) in the jurisdictional area.”
 - c. “The permittee is required to obtain a CE, Galveston District Real Estate Outgrant prior to utilizing the CE dredged material placement areas.”
 - d. “The permittee must coordinate the use of Dredged Material Placement Area 23 or 24 with the CE Galveston District’s Northern Area Office, the Navigation Branch, and the Operations Division, at least 60 days prior to conducting any and all work in or affecting the disposal areas to assure that the work will not conflict with US Government dredging or disposal area management activities.”
8. Permit No. SWG-2000-02956, [21826(04)]; Amendment to 21826(03) was issued on October 29, 2009 and authorized an extension of time to perform work authorized under DA Permit 21826(03), which included the construction of a barge slip and maintenance dredge to a depth of -15 Mean Low Tide (MLT). The expiration date for this extension of time is December 31, 2019. No new special

conditions are associated with this permit. This barge dock was never constructed.

9. Letter of Permission no. SWG-2000-02956 was authorized on June 9, 2010 and authorized the addition of a 14 x 25-foot pile supported platform adjacent to an existing barge dock (Barge Dock A) in the reserve fleet area. The expiration date for this permit was December 31, 2015 and the following special conditions were associated with this permit.
 - a. "The permittee understands and agrees that if future operations by the United States require the removal, relocation or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration."
10. SWG-2000-02956 was authorized on June 4, 2014 and authorized the following:
 - Construction of a ship berthing area adjacent to their existing docking facility.
 - Dredging of 1.81-acres of estuarine emergent marsh (EEM), 10.12-acres of palustrine emergent marsh (PEM), 6.86-acres of open water, 5.67-acres of uplands
 - Dredging of a ship slip to a depth of -40 feet below mean low water, with a 2-foot overdredge. Approximately 1,442,000-cubic yards of material is proposed to be dredged during construction.
 - Perform maintenance dredging for 10 years. Approximately 50,000-cubic yards of material is proposed to be dredged annually for maintenance dredging.
 - Filling 0.43-acre of PEM and 0.05-acre of EEM wetlands and the clearing of 0.72-acre of PEM and 0.08-acre of EEM wetlands to construct a revetment for erosion control.
 - Construction of a new finger pier dock within the dredged basin with a 8,000-square foot loading platform, new roadway and piperack, new concrete approachway and piperack, a firewater pump platform, and associated mooring and breasting structures.
 - Use of dredge material beneficially by placing it in open water on approximately 300-acres within the Rose City Marsh Complex or to place the material into Dredge Material Placement Areas 23, 24, or 25 depending on capacity and availability.

- To create 24.6-acres of EEM within the beneficial use site. Small portals were to be cut into dredge material containment levees to promote the natural development of channels for tidal exchange and rain water drainage, per the applicant's Compensatory Mitigation Plan (CMP). Other enhancement activities included planting native species and noxious species management as described in the CMP.

This authorization for completing the above work expires on December 31, 2019. The authorization for the maintenance dredging expires on December 31, 2024. The following special conditions were issued as a component of this authorization:

- a. "The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration of the structure of work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration."
- b. "When structures or work authorized by this permit are determined by the District Engineer to have become abandoned, obstructive to navigation, or cease to be used for the purpose for which they were permitted, such structures or other work must be removed, the area cleared of all obstructions, and written notice given to the Chief of Compliance, Galveston/Corpus Christi Office District Regulatory Division, within 30 days of completion."
- c. "The permittee must install and maintain, at their own expense, any safety lights and signals prescribed by the US Coast Guard (USCG) through regulations or otherwise on the authorized facilities. In addition, no bright lights that may be erected on the permitted structure shall be directed toward a navigable waterway in a manner that could hinder nighttime users of this waterway. The USCG may be reached at the following address: Commander (dpb), Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or by telephone at 504-589-6198."
- d. "The permittee must coordinate the use of Dredged Material Placement Areas 23, 24, and/or 25 with the Corps of Engineers Galveston District's Operations Division, Navigation Branch and the Port Arthur Area Office, at least 60 days prior to conducting any and all work in or affecting the disposal area(s) to assure that the work will not conflict with US Government dredging or disposal area management activities. The permittee must receive written approval from the Corps of Engineers Galveston District's Operations Division, Navigation

Branch and the Port Arthur area Office, prior to placement of dredged material into Dredged Material Placement Areas 23, 24, and/or 25.”

- e. “All construction of mitigation, including planting, must be complete within 23 months after start of construction within jurisdictional areas. The permittee will notify the Corps of Engineers, Chief of Compliance Galveston Regulatory Division in writing when the work begins in jurisdictional areas. Monitoring and maintenance will proceed according to the mitigation plan included in Attachment B.”
- f. “The mitigation success criteria, as indicated in the mitigation plan included in Attachment B must be achieved for the mitigation requirement to be considered complete.”
- g. “Should mitigation be determined unsuccessful by the Corps of Engineers personnel at the end of the monitoring period, the permittee will be required to take necessary corrective measures, as approved by the Corps of Engineers. Once the corrective measures are completed, the permittee will notify the Corps of Engineers and a determination will be made regarding success of the mitigation.”
- ~~h. “The permittee must submit sediment, elutriant, and salinity test results to the EPA, Region 6, Grassland Soil & Water Research Lab, 808 East Blackland Road, Temple, Texas 76502-6712, or EPA’s designee. The permittee must receive written approval of test results from EPA Region 6, or EPA’s designee, prior to placement of dredge material into the Beneficial Use sites.” (this condition was later retracted)~~
- h. “The permittee will coordinate sediment test results with the Environmental Protection Agency and Texas Commission for Environmental Quality” (Revised per July 7, 2014 Minor Mod)

11. SWG-2000-2956 was transferred from Oiltanking Beaumont Partners to Enterprise Products Operating, LLC on February 4, 2016.

NOTES: This public notice is being issued based on information furnished by the applicant. This project information has not been verified by the Corps. As of the date of this Public Notice, the Corps has received but not yet verified the wetland delineation. The applicant’s plans are enclosed in 21 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 Clean Water Act (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.

This project was submitted prior to September 11, 2020. This project incorporates the requirements necessary to comply with the Texas Commission on Environmental Quality's (TCEQ) Tier I project criteria. Tier I projects are those which result in a direct impact of three acres or less of waters of the state or 1500 linear feet of streams (or a combination of the two is below the threshold) for which the applicant has incorporated best management practices and other provisions designed to safeguard water quality. The Corps has received a completed checklist and signed statement-fulfilling Tier I criteria for the project. Accordingly, a request for 401 certification is not necessary and there will be no additional TCEQ review.

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 has been so extensively impacted by industrial development that there is no potential for historic properties to exist within the permit area. Therefore, the proposed project has no potential to effect historic properties.

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 of Engineers, 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 of Engineers 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 of Engineers 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 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 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 of Engineers 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 **7 December 2020**. 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-2000-02956**, and should be submitted to:

North Unit
Regulatory Division, CESWG-RDE
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
409-766-3869 Phone
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DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS