



Public Announcement

6 July 2010

U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT

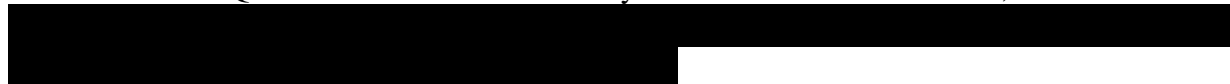
NOTICE OF THE REINSTATEMENT AND MODIFICATION TO NATIONWIDE PERMITS WITHIN THE SAN JACINTO WASTE PITS IDENTIFIED AREA OF CONCERN

INTRODUCTION: The U.S. Army Corps of Engineers, Galveston District announces the reinstatement and modification to Nationwide Permits (NWP) within the identified area of concern (AOC) described below. As required by 33 CFR 330.5, effective the date of this Announcement, the NWP within the AOC, have been reinstated and modified by the addition of 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, No.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. The applicant must receive written approval, including a waiver from the DE prior to starting work in jurisdictional areas of waters of the United States.

EFFECTIVE DATES: Regional Condition 14 is effective immediately.

ADDRESSES: Questions about this action may be addressed to the USACE, Galveston District,



SUPPLEMENTARY INFORMATION:

Authority: This Federal Action is pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C.403) and Section 404 of the Clean Water Act (33 U.S.C.1344).

Location: Waters, wetlands, and aquatic resources within the identified 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 (Enclosure 1).

Nationwide Permits: As defined in 33 CFR 330, NWP's 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's may be modified, suspended, or revoked after an opportunity for public notice and comment. Regional modifications to existing NWP's 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. 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.

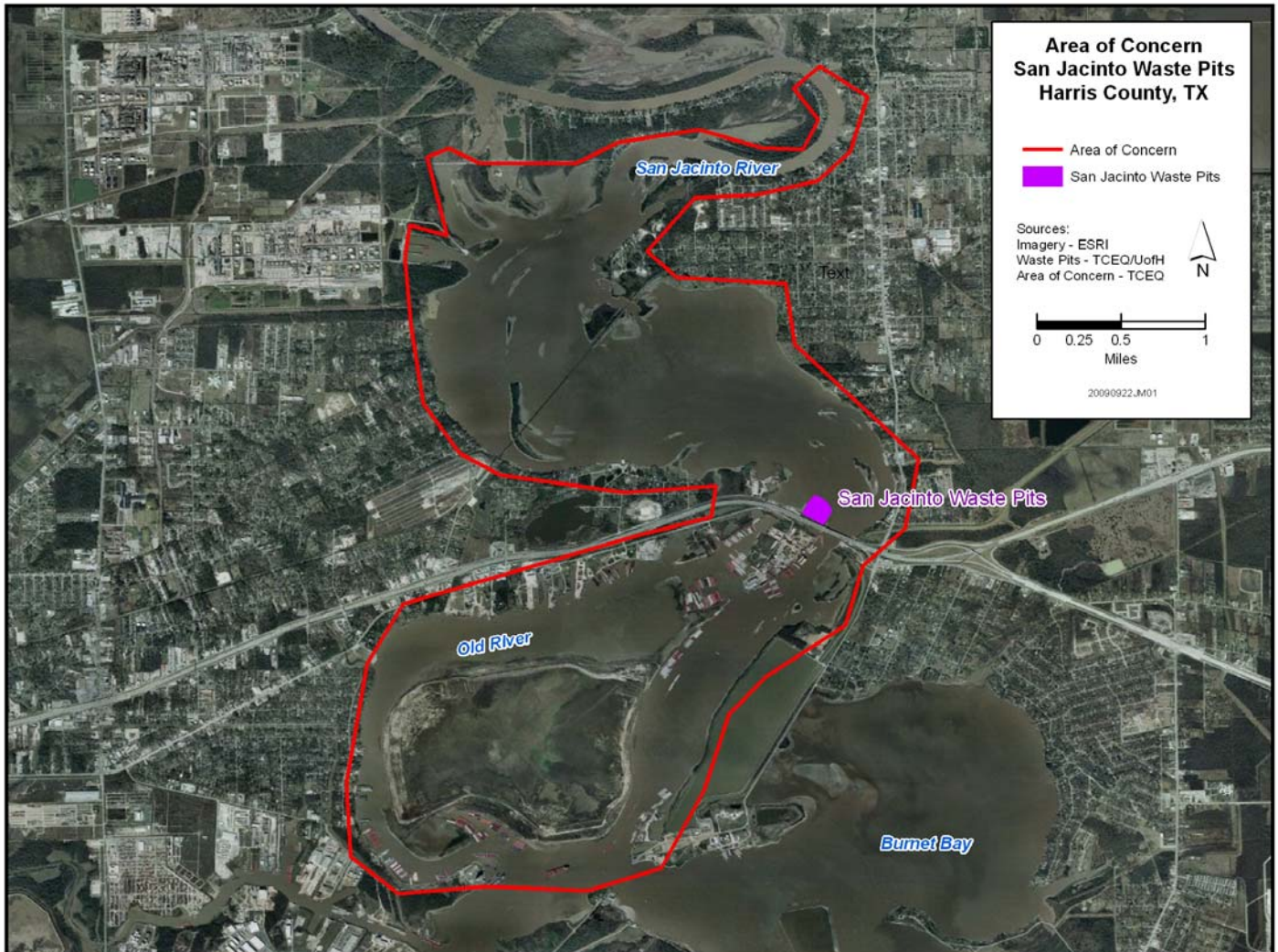
District and division engineers have been delegated a discretionary authority to suspend, modify, or revoke authorizations under a NWP. This discretionary authority may be used by district and division engineers only to further condition or restrict the applicability of an NWP for cases where they have 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 NWP's, 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 NWP's require the district engineers (DE) 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.

Background: On March 19, 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 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 October 21, 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 and Process are attached (Enclosures 2 & 3).

As required by 33 CFR 330.5, a public notice was issued on 8 March 2010, to announce the suspension of all NWP's for the specific geographic area and to solicit comments on the proposal to modify the NWP's by adding Regional Condition 14. Comments received during the comment period are addressed in the "Second Supplement to the National Decision Document for Nationwide Permits in the State of Texas" (Supplement). The Supplement discloses the decision and addresses regional modifications and conditions for the NWP's specifically in the San Jacinto Waste Pits area.

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS

I. AREA OF CONCERN DESCRIPTION

Horizontal Datum Name: NAD 83

Ellipsoid Name: GRS 80

SOUTH of:

longitude -95.063977 latitude 29.833028

(line perpendicular to river channel from approximately 20400 Rio Villa Drive)

NORTH of:

longitude -95.086488 latitude 29.761463

(line of sight bearing from DeZavalla Point to south terminal of Lynchburg Ferry, then along ferry route to north terminal).

Public Announcement



October 21, 2009

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

INTRODUCTION: Notice is hereby given of a Permit Evaluation Requirement Process (Process) effective as of **November 1, 2009** for all proposed and existing permits within the identified Area of Concern until further notice. The Area of Concern and Process is summarized in Attachment A.

BACKGROUND: On March 19, 2008, the EPA placed the San Jacinto River Waste Pits Superfund Site (Site) on the National Priorities List. This event marks 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 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 in an area where the Interstate Highway 10 Bridge crosses over the San Jacinto River.

Due to the Site being partially located in the San Jacinto River, area permitted activities, issued under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers & Harbors Act of 1899 (RHA) may impact the 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 U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), and Texas Commission on Environmental Quality (TCEQ) developed a Process, which all permit applicants and existing permittees within the area of concern must undertake.

In summary, as part of the Process, all permit applicants and existing permittees within the area of concern must conduct certain sampling events to ensure that any activities conducted, especially activities involving dredging or disposal of dredged materials, do not impact 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.

Questions concerning the Process should be addressed to: [REDACTED] Project Manager, Superfund/SSDAP Section, Remediation Division, Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, TX 78753, phone: [REDACTED], email: [REDACTED]

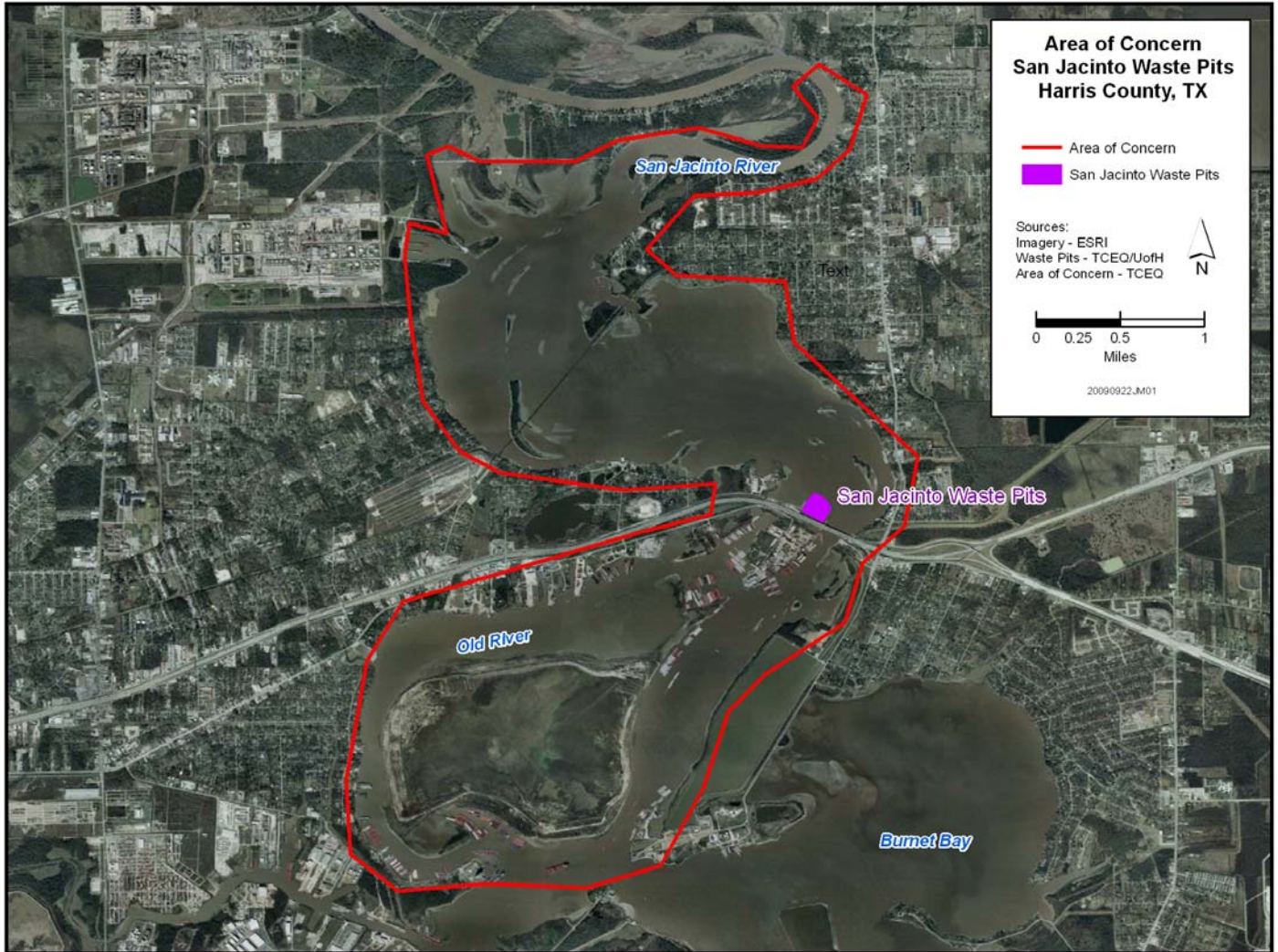
Questions concerning the permits issuance should be addressed to: [REDACTED], Project Manager, U.S. Army Corps of Engineers, Galveston District, 2000 Fort Point Road, Galveston, TX 77550, phone: [REDACTED], email: [REDACTED]

Questions concerning the National Priorities List, the Site, or steps involved in a Superfund site cleanup should be addressed to: [REDACTED], Regional Community Relations Liaison, U.S. Environmental Protection Agency, 1445 Ross Ave, Dallas, TX 75202, phone: [REDACTED], email: [REDACTED]

Questions concerning CERCLA liability should be addressed to: [REDACTED], Assistant Regional Counsel, U.S. Environmental Protection Agency, 1445 Ross Ave, Dallas, TX 75202, phone: [REDACTED], email: [REDACTED]

PERMIT PRE-CONDITIONS AND CONDITIONS PROCESS

I. AREA OF CONCERN DESCRIPTION



Horizontal Datum Name: NAD 83

Ellipsoid Name: GRS 80

SOUTH of:

longitude -95.063977 latitude 29.833028

(line perpendicular to river channel from approximately 20400 Rio Villa Drive)

NORTH of:

longitude -95.086488 latitude 29.761463

(line of sight bearing from DeZavalla Point to south terminal of Lynchburg Ferry, then along ferry route to north terminal).

II. PRE-CONDITIONS AND CONDITIONS PROCESS

II.A. PERMIT PRE-CONDITIONS PROCESS

TCEQ shall verify the fulfillment of the pre-conditions process (sections II.A.1. to II.A.4.) and certify to USACE the resulting conditions to be integrated into the permit (section II.A.5.).

II.A.1. Required Sampling Procedures

- SOP 1.4- Management of IDW
- SOP 1.5- Decontamination
- SOP 6.1- Documentation
- SOP 6.2- Homogenization of Soil Samples
- SOP 6.4- Sample Handling and Control
- SOP 8.1- Surface Water Sampling Using the Direct Method
- SOP 9.1- Sediment Sampling
- SOP 17.1-GPS Data Collection and Submission

II.A.2. Required State of Texas Lab Certification

- NELAC standard and accreditation process:
<http://www.nelac-institute.org/docs/2003nelacstandard.pdf>
- Current list of accredited labs:
http://www.tceq.state.tx.us/assets/public/compliance/compliance_support/qa/txnelap_lab_list.pdf

II.A.3. Required Sample Number & Distribution

II.A.3.1. Sample Number: A minimum of two samples (one vertical composite sample and one post-dredged surface sample) shall be submitted per 5,000 cubic yards of total planned dredged volume (including any planned overdredges or advanced maintenance).

- Post-dredged surface sample (ie- representing the sediment to be exposed by the dredging) equates to one discrete sample that represents the 6” section immediately below the planned dredged depth in the same location(s) as determined in section II.A.3.2.

II.A.3.2. Sample Distribution: Samples identified in section II.A.3.1. shall be distributed evenly across the total planned dredged area.

II.A.4. Required Sample Analysis

- Laboratory sample analysis shall be via EPA 1613, EPA 8280b, or EPA 8290a.
- Laboratory results shall be reported as TEQ and TCDD organic carbon normalized or TCDD non-organic carbon normalized.
- Laboratory shall use WHO 2005 TEF to calculate TEQ.

II.A.5. Conditions Determination

- If sample >1000 ppt TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill.
- If sample >33 ppt TCDD organic carbon normalized and <1000 TEQ; or, >0.45 ppt TCDD non-organic carbon normalized and <1000 TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill or upland confined disposal area.
- If sample <33 ppt TCDD organic carbon normalized; or, <0.45 ppt TCDD non-organic carbon normalized, then no restrictions on disposal location of sample's representative volume (or dredged materials).

II.B. PERMIT CONDITIONS PROCESS:

After the TCEQ's evaluation of Section II.A. is submitted to the USACE Galveston District, the USACE will review the information and will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements under the Clean Water Act and Rivers and Harbors Act of 1899 to otherwise satisfy the public interest requirement. The USACE will only be responsible for enforcing those conditions that are specifically tied to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

In addition, the permit shall contain the following language:

"By accepting this permit, the permittee agrees to accept potential liability for both response costs and natural resource damages, to the same extent as would be inherent under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 U.S.C. 9601 et. Seq.). Further, the permittee agrees that this permit does not exclude the permittee from liability under the CERCLA, nor does the permit waive any liability for response costs, damages, and any other costs that may be assessed under the CERCLA."