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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 3, 2007

Mr. Fred Anthamatten
U.S. Army Corps of Engineers
Galveston District CESWG-PE-RE
P.O. Box 1229
Galveston, Texas 77553-1229

Re: Regional Conditions for the State of Texas

Dear Mr. Anthamatten:

The Texas Commission on Environmental Quality (TCEQ) is in receipt of the U.S. Army Corps of Engineers (Corps) Nationwide Permits (NWP). The Notice of Issuance of Nationwide Permits was published in the Federal Register (Part II, Vol. 72, No. 47, pages 11092-11198) on March 12, 2007. The TCEQ is in the process of completing the water quality certification process for the NWPs. The TCEQ submitted a comment letter, dated November 28, 2006, to the Corps regarding the proposed regional conditions for Texas. The TCEQ has been coordinating with your staff in order to address our comments.

The TCEQ would like to include Best Management Practices (BMPs) for the protection of waters in the state specific to each NWP as part of the regional conditions (Enclosure 1). A Reference to NWPs BMPs is provided in Enclosure 2. They are intended to enhance the water quality protection goals of the Corps NWP General Condition #12 *Soil Erosion and Sediment Controls* and General Condition #21 *Water Quality*. The TCEQ BMPs address three broad categories of water quality management with specific BMPs recommended for each category. A detailed description of the BMPs is also provided in Enclosure 3.

The TCEQ would like the Corps to copy us on all authorizations for impacts greater than 300 linear feet of intermittent and ephemeral streams sent to applicants for NWPs 29, 39, 40, 42, and 43. We would also like to be copied on all authorizations for impacts greater than 500 linear feet in length of ephemeral, intermittent, and perennial streams or drainage ditches for NWPs 13 and 41 and for discharges greater than the 50 cubic yard limit or boat ramps greater than 20 feet in width for NWP 36. The TCEQ requests confirmation from the Corps that we will be copied on these NWPs.

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The TCEQ is requesting that the Corps include a 300 mg/L Total Suspended Solids (TSS) limit for discharges authorized under NWP 16 for the return water from confined upland disposal in the regional conditions. The TCEQ recognizes the usefulness of having an instantaneous method to determine compliance with this 300 mg/L TSS limit. However, existing literature and analysis of Texas Surface Water Quality Data with paired samples of turbidity and TSS indicate this relationship must be a site specific characterization of the actual sediments to be dredged. To address this approach we have included language in attachment 1 (Enclosure 1) that allows flexibility to the TSS limit when a site specific correlation curve for turbidity (nephelometric turbidity units (NTU)) versus total suspended solids (TSS) has been approved by TCEQ. The TCEQ remains interested in continuing to work with the Corps in the development of these curves.

The best management practices and TSS requirements are limited to those activities under the jurisdiction of the TCEQ. The Texas Railroad Commission is responsible for activities related to the production and exploration of oil and gas as provided in the Texas Water Code §26.131.

The TCEQ looks forward to working with the Corps to quickly finalize the Regional Conditions for NWPs for the State of Texas. If we may be of further assistance, please contact Ms. Lori Hamilton of my staff at (512) 239-0683.

Sincerely,



L'Oreal W. Stepney, P.E., Director
Water Quality Division
Texas Commission on Environmental Quality

LWS/LH/jp

Enclosures

ccs: Mr. Casey Cutler, U.S. Army Corps of Engineers, Galveston District CESWG-PE-RE,
P.O. Box 1229, Galveston, Texas 77553-1229