



# Public Notice

<b>U.S. Army Corps Of Engineers</b>  <b>Galveston District</b>	<b>2021 NATIONWIDE PERMIT PROGRAM ANNOUNCING THE ISSUANCE: 2021-A TEXAS REGIONAL CONDITIONS TEXAS SECTION 401 WATER QUALITY CERTIFICATION TEXAS COASTAL ZONE MANAGEMENT ACT CONSISTENCY</b>
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## Purpose of Public Notice:

This public notice is to announce and convey the 2021-A Texas Regional Conditions, Texas Clean Water Act (CWA) Section 401 Water Quality Certifications, and the Texas Coastal Zone Management Act consistencies. These documents and certifications will go into effect for the subject 16 nationwide permits (NWP) on 15 March 2021 and are attached to this public notice. The Corps is not seeking comments at this time.

On 13 January 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing NWP and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP will go into effect on 15 March 2021, and will expire on 14 March 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

### Texas Regional Conditions:

The Southwestern Division has finalized the Texas regional conditions for these 16 NWP's. The regional conditions are intended to provide additional protection of the aquatic environment by ensuring that the NWP's authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions help ensure protection of high value waters within the districts. The final NWP regional conditions for Texas and a map of the Corps district boundaries in Texas are attached to this public notice. (Encl 1 and 2)

### Texas CWA Section 401 Water Quality Certifications:

With the exception of NWP 55 (fka A) and NWP 56 (fka B) for which no water quality certification was requested, the Environmental Protection Agency (EPA) Region 6, by letter dated 14 December 2020, on behalf of Ysleta del Sur Pueblo, Alabama-Coushatta Tribe of Texas, and Kickapoo Traditional Tribe of Texas, granted CWA Section 401 certification, with no conditions, for these 16 NWP's (Encl 3). EPA Region 6 has determined that any discharge that could be authorized under these 14 NWP's would comply with water quality requirements, as defined at 40 CFR 121.1(n).

The Texas Commission on Environmental Quality (TCEQ), by letter dated 18 December 2020, conditionally certified these 16 NWP's, with the exception of NWP 48, NWP 55, and NWP 56 which were certified with no conditions (Encl 4). TCEQ has determined that any discharge that could be authorized under these 16 NWP's would comply with water quality requirements, as required by CWA Section 401 certification and pursuant to Title 30 Texas Administrative Code (TAC) Chapter 279. Conditions for each NWP were defined in the TCEQ's water quality certification letter.

The Texas Railroad Commission (TxRRC), by letter dated 18 December 2020, conditionally certified NWP 12, NWP 43, and NWP 58 (fka D) and determined that they should not result in a violation of Texas Surface Water Quality Standards as required by CWA Section 401 and pursuant to 16 TAC §3.93 (Encl 5). Conditions for each NWP were defined in TxRRC's water quality certification letter. Under Texas Natural Resource Code, Title 3, and the Texas Water Code, Chapter 26, the TxRRC has the responsibility for the prevention of pollution that might result from activities associated with the exploration, development, and production of oil, gas, or geothermal resources of the State.

### Coastal Zone Management Act:

The Texas General Land Office (TxGLO), by letter dated 17 December 2020, stated that their staff has reviewed the submitted information for consistency pursuant to Title 31 Natural Resources and Conservation, Part 16 Coastal Coordination Council rules, Section 506.20 and has determined that the NWP's, general conditions, definitions, and regional conditions have been found to be consistent with the goals and policies of the Texas Coastal Management Program (CMP). The TxGLO's consistency determination was issued without conditions. (Encl 6)

The TCEQ, by the same letter dated 18 December 2020, stated that they reviewed the Notice of Reissuance of Nationwide Permits for consistency with the Texas CMP goals and policies in accordance with the CMP regulations {Title 31, Texas Administrative Code (TAC), Chapter (§)505.30} and determined that the action is consistent with the applicable CMP goals and policies. The TCEQ's consistency determination was issued without conditions.

The TxRRC, by the same letter dated 18 December 2020, stated that they reviewed the proposed action for consistency with the CMP goals and policies, in accordance with the regulations of the CMP, and found that the proposed action will have direct and significant adverse effect on any coastal natural resource area identified in the applicable policies, but has determined that the proposed action is consistent with the applicable goals and policies of the CMP. The TxRRC's consistency determination was issued with conditions.

### Existing NWP's Not Subject to this Effort:

There are 40 existing NWP's that were not reissued or modified by the 13 January 2021 final rule. Those 40 NWP's were published in the 6 January 2017, issue of the Federal Register (82 FR 1860) and those NWP's remain in effect until the Corps issues a final rule reissuing those NWP's or 18 March 2022, whichever comes first. The 40 2017 NWP's that remain in effect are:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys

- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 34 – Cranberry Production Activities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines

The regional conditions for these 40 NWPs that were approved by division engineers in 2017 remain in effect while these 2017 NWPs remain in effect.