



**DEPARTMENT OF THE ARMY  
REGIONAL GENERAL PERMIT:  
SWG-1997-02818**



**PERMIT:** Oil and gas structures within a portion of the High Island Oil Field

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Southwest Division, Galveston District Regulatory Division (Corps)

**EFFECTIVE DATE:** January 1, 2019

**EXPIRATION DATE:** December 31, 2023

## **A. AUTHORIZATION**

**Permittee:** General Public

**Project Location:** Within a portion of the High Island Oil Field, bounded on the south and west by the existing perimeter levee, on the north by a marsh adjacent to the perimeter levee, and on the east by State Highway 124 and the 5-foot elevation contour, at the base of High Island, Galveston County, Texas.

**General Permit Expiration:** Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this Regional General Permit (RGP or permit), the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

## **B. REGIONAL GENERAL PERMIT APPLICABILITY**

- 1. Regional General Permit Regulatory Authorities:** Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and/or fill material into waters of the United States, including wetlands and other special aquatic sites defined in 40 CFR 230.4(q-1), located within the geographic boundaries stated in Part A.
- 2. Eligible Activities:** This permit authorizes applicants to install, operate, and maintain fill, structures, and equipment necessary for oil and gas drilling, production, and transportation activities. Impacts to waters of the United States, including wetlands and other special aquatic sites defined in 40 CFR 230.4(q-1), will not exceed 1 acre of permanent and/or 2 acres of temporary impacts for a single and complete project. This RGP may be used to authorize permanent losses and temporary impacts in waters of the United States necessary to

accomplish the activities listed below:

- a. Well Pads: Discharges of fill necessary, including temporary fills, for the installation, operation, and maintenance for oil and gas drilling, production, and transportation activities.
- b. Access Roads: Regulated activities for single and complete linear projects to construct permanent and temporary access roads necessary for the construction, repair, and maintenance of authorized oil and gas structures. Temporary board matting will be used whenever possible.
- c. Temporary Workspaces: Temporary board matting will be used whenever possible.
- d. Borrow Ditches: Fill roads will be staggered on opposite sides of the roadbed.
- e. Culverts:
  - i. Culverts shall be placed at all road crossings of natural drainages and:
  - ii. Culverts will be aligned with the stream;
  - iii. Allow flow during low flow conditions
  - iv. Be sized to have at a minimum the same width as the bank full width of the stream;
  - v. The culvert will be placed at the same slope as the stream slope; and floodplain culverts shall be used.

**3. RGP Restrictions:**

- a. Regulated activities for each single and complete project cannot cause the permanent loss of greater than 1.0 acre of waters of the United States and the temporary loss of greater than 2.0 acres of waters of the United States. Where a single and complete project would result in losses to more than one aquatic resource type (e.g., wetland and tributary), this restriction is calculated as the sum for all losses to aquatic resources.
- b. Mud Pits: Mud pits are not authorized by this RGP. All by-products of the exploration and production process, including drilling muds, fluids, drill cuttings and oil field waste products must be containerized. Disposal of drilling muds, drilling fluids and drilling cuttings shall be disposed at an authorized disposal facility.

**4. Site Restoration:**

- a. The impact site shall be restored to pre-construction elevation and contours within 60 days of completion of drilling if the well is a non-producer or within 60 days of the cessation of production. A restoration report shall be submitted to the Galveston District's Chief of Compliance Branch within 30 days of restoration.
- b. If the well will be used for production, the impacts will be restored to the minimum necessary for production within 90 days of cessation of drilling. A restoration report shall be submitted to the Galveston District's Chief of Compliance Branch within 30 days of restoration.

**5. Regulatory Discretion:** If the determination is made that the adverse effects of the proposed work are more than minimal, then the applicant will be notified either:

- a. That the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit; or,

- b. That the project is authorized under the RGP subject to the applicant's submission of an approved mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or,
- c. That the project is authorized under the RGP with specific modifications or conditions.

### **C. PRE-CONSTRUCTION NOTIFICATION (PCN) REQUIREMENTS**

1. All applicants shall submit a PCN to the Galveston District Regulatory Division Office, as early as possible, prior to initiation of work in navigable waters of the United States, including wetlands and other special aquatic sites defined in 40 CFR 230.4(q-1).
2. If the application is determined to be incomplete, the applicant will be notified requesting specific information surrounding the activity. The applicant will have a 30 day period to gather and submit the requested information to the Corps. If the requested information is not submitted in full after that 30 day period, the Corps will withdraw the permit application without prejudice for the applicant's right to reapply at a later date. Once the application has been withdrawn, the Corps will only accept a resubmitted application if the applicant can provide all of the information previously requested.
3. The PCN shall include:
  - a. A completed and signed DA application (Form ENG 4345), or other suitable means of submittal (i.e., letter, report, etc.) that has the following information detailed:
    - i. Name (Point of Contact), Address, Telephone, email (if applicable) of the applicant and consultant (if applicable);
    - ii. Signed statement acknowledging the use of a consultant if applicable;
    - iii. Location of the proposed activity(s) in decimal degrees;
    - iv. Description of the proposed activity, detailed description of construction methods in the order of commencement, purpose and need, direct and indirect adverse environmental effects the activity may cause in linear feet, acres, cubic yards, and/or other suitable means;
    - v. Detailed description of avoidance and minimization measures, including approved Texas Commission on Environmental Quality (TCEQ) Best Management Practices, and/or other mitigation measures, including proposed compensatory mitigation for the loss of water of the United States (if applicable), the applicant has undertaken;
    - vi. A copy of all DA authorizations previously issued for the work area.
  - b. A vicinity map, plan view, typical cross section detailing the proposed method of construction showing all impacts to waters of the United States. Engineered and/or colored drawings will be accepted on a case by case basis; however, general and typical drawings will be suitable if found legible. Drawings shall include:
    - i. A vicinity map with the precise location of the project so that its geographic coordinates (decimal degrees) can be determined;
    - ii. A plan view of the drawing showing the property, its owner(s), specific transmission or distribution line location, any navigational channels in the immediate project vicinity, and a separate plan showing the entire

- transmission or distribution line route;
  - iii. A cross-section drawing with the orientation, span, and clearance of the crossing, including structures on both banks and any navigational channels in the immediate project vicinity;
  - iv. Drawings will also include voltage of the lines and any other relevant information and data required in this General Permit's Conditions;
  - v. A delineation of waters of the United States, including wetlands and other special aquatic sites defined in 40 CFR 230.3(q-1), in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement, that clearly demonstrates the locations and boundaries of any aquatic resource located within the project site location. The size of each special aquatic resource (in acres or square feet) and location (decimal degrees) can be included on a table if multiple resources are present. All aquatic resources names and boundaries must be clearly demarcated on a delineation map.
- c. A statement that the work will be conducted in compliance with the terms and conditions of this RGP.
  - d. A statement of estimated start and completion dates.
  - e. A restoration plan for temporary impacts and/or compensatory mitigation plan, including monitoring plans, for temporary and permanent impacts based on an approved functional assessment in accordance with:
    - i. 33 CFR 332 Compensatory Mitigation for Losses of Aquatic Resources;
    - ii. SWG Standard Operating Procedure;
    - iii. Using HGM to Determine Potential Wetland Functions and the Appropriate Compensatory Mitigation for Unavoidable Wetland Impacts;
    - iv. SWG Stream Condition Assessment Standard Operating Procedure; and
    - v. Regulatory Guidance letter 08-03.

## **D. MITIGATION**

1. In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest.
2. Examples of avoidance activities may include excluding wetlands from additional temporary workspace. Minimization activities may include the use of construction matting in waters of the United States, or seasonally restricting the timing for regulated activities. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by this RGP, and will be evaluated by the Corps using individual permit procedures.
3. After all practicable steps to avoid and minimize adverse effects to waters of the United States have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal

adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

4. Regulated activities eligible for this RGP which require submittal of a PCN must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the United States. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, and 33 CFR 332 (the Mitigation Rule).

## E. GENERAL CONDITIONS

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises, and/or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the permit and any special (permit-specific) conditions included in any written verification letter from the Corps. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the permit. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to the permit authorization.
2. **Post-Construction Notification:** The permittee must provide notification of project completion of the authorized activity and implementation of any required compensatory mitigation to the Corps within 30 days of completion of the authorized activity, or the implementation of any required compensatory mitigation, whichever comes later.
3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Suitable Material:** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be

free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

5. **Restoration of Temporary Impacts:** All temporary impacts in waters of the United States, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and, as appropriate, revegetated with native, non-invasive vegetation. In temporarily excavated wetlands, topsoil should be segregated and replaced to original depths, for example, in most wetlands the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
6. **Temporary Impacts:** Temporary impacts in waters of the United States, including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
7. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
8. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the United States and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the United States must be properly bridged or culverted to maintain surface flows.
9. **Cultural and Historic Resources:** The Corps will review all activities proposed under this RGP for cultural resources requirements, and, when appropriate, coordinate these activities with the Texas Historical Commission (THC).
  - a. In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
  - b. If potential historic properties are located in the project area, permit specific conditions may be implemented for additional protection to avoid these resources by a sufficient margin as designated by the Corps and the THC. If avoidance of the potential historic is not feasible, further archeological investigations shall be required.
  - c. The activity shall not begin until the Corps has notified the prospective permittee that the activity has no potential to cause effects to historic properties and/or that NHPA section 106 consultation has been completed.
10. **Unknown Historic and Archeological Remains:** If any previously unknown historic or archeological remains are discovered while accomplishing the activity

authorized by this permit, you must immediately cease and desist any activity on the project and notify the Galveston District Regulatory Division of what you have found. The Corps will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. No work shall continue until all required coordination has been completed and written notification by the Corps has been provided.

11. **Tribal Rights:** Any activity proposed under this RGP may not cause no more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
  
12. **Threatened and Endangered Species:** No activity proposed under this RGP is authorized that is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species.
  - a. The Corps will review all proposed activities authorized under this RGP for Endangered Species Act requirements, and, when appropriate, coordinate these activities with the U.S. Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS).
  - b. No activity is authorized under this RGP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed.
    - i. Direct effects are the immediate effects on listed species and critical habitat caused by the General Permit activity.
    - ii. Indirect effects are those effects on listed species and critical habitat that are caused by the General Permit activity and are later in time, but still are reasonably certain to occur.
  - c. Authorization of an activity by this RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species:
    - i. “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.
    - ii. “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
  - d. Work shall not begin on the activity until the Corps has notified the permittee that the requirements of the ESA have been satisfied and that the activity is authorized.
  - e. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species specific permit conditions to the General Permit authorization.
  
13. **Migratory Bird Act and Bald and Golden Eagle Protection Act:** For any activity proposed under this RGP, the applicant is responsible for ensuring their

action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The applicant is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

14. **Migratory Bird Breeding Areas:** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
  - a. Work is prohibited within 1,000 feet of an identified bird rookery between February 14th and September 1st.
  - b. Any work within 1,000 feet of a known wading bird or seabird rookery shall be restricted to the non-nesting period of the species comprising that rookery.
15. **Activities Affecting Structures or Works Built by the United States:** If the activity authorized by this General Permit requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) Federally authorized Civil Works project (a “USACE project”), the activity is not authorized by this General Permit until the appropriate Corps office issues the Section 408 permission to alter, occupy, or use the USACE project, and the District Engineer sends a written notice to the applicant of approval.
16. **Coastal Zone Management Act:** The activity authorized by this General Permit will be conducted in a manner that is consistent and complies with the Texas Approved Coastal Management Program.
17. **Section 401 of the Clean Water Act Water Quality Certification:** The activities authorized under this RGP must meet the State of Texas Water Quality Standards as determined by the Texas Rail Road Commission.

## F. FURTHER INFORMATION

1. **Congressional Authorities:** The permittee has been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C 1344).
2. **Discretionary Authority:** The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. **Limits of this authorization:**
  - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
  - b. This RGP does not grant any property rights or exclusive privileges;
  - c. This RGP does not authorize any injury to the property or rights of others; and
  - d. This RGP does not authorize interference with any existing or proposed federal project.



4. **Limits of Federal Liability:** In authorizing a project under this General Permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
  
5. **Reliance on Applicant's Data:** The determination of this office to authorize the activity under this RGP as not contrary to the public interest will be made in reliance on the information provided by the applicant.
  
6. **Re-evaluation of Permit Decision:** This office may re-evaluate its decision to authorize an activity under this General Permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. The applicant fails to comply with the terms and conditions of this permit.
  - b. The information provided by the applicant to support their permit application proves to have been false, incomplete, or inaccurate.
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.
  - d. Significant new information surfaces which this office did not consider in reaching the original decision. Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.
  
7. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with the permit verification, the permittee may transfer the permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit, including any special conditions, will continue to be binding on the new owner(s) of the

property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

This General Permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE GALVESTON DISTRICT ENGINEER:

\_\_\_\_\_  
**ROBERT W. HEINLY**  
**GALVESTON DISTRICT REGULATORY DIVISION**  
**DEPUTY CHIEF, SUPERVISOR POLICY ANALYSIS BRANCH**  
**FOR COLONEL LARS N. ZETTERSTORM**

\_\_\_\_\_  
**DATE**