



**US Army Corps
of Engineers®**

Galveston District

**Special Public Notice
Department of the Army Permit Setbacks along
the Sabine Neches Waterway
January 29, 2016**

**Galveston District Permit Setbacks along the Sabine Neches Waterway
Draft Policy Memorandum**

PURPOSE OF PUBLIC NOTICE: To inform you of a proposed U.S Army Corps of Engineers, Galveston District (Corps) policy updating setback distances for Department of the Army Permits on the Sabine-Neches Waterway Navigation Channel and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

INTRODUCTION: The proposed policy provides guidance for Department of the Army (DA) permits along the Sabine Neches Waterway Navigation Channel (SNWW). It is the intent of this proposed policy to regulate the construction of structures and/or fill along the SNWW in order to preserve the Government's ability to maintain the waterway and provide a margin of safety to those who use such waterway by maintaining established setbacks from the SNWW.

The Ports of Beaumont, Port Arthur and Orange are ranked #4, #18 and #150 in the nation with respect to commercial tonnage. The SNWW total commercial tonnage for 2013 was 129.8 million tons; Beaumont 94.4 million tons and Port Arthur 34.7 million tons and Orange 0.7 million tons. The Port of Beaumont and Port Arthur are also designated as a Strategic Harbors, as military personnel, equipment and supplies are deployed and redeployed through its port facilities. SNWW is first in the U.S. with crude oil imports, and supplies 55% of the Nation's strategic petroleum reserves. In addition to this important economic engine, the SNWW is access for many Texans to navigable waters for both commercial and recreation purposes. The infrastructure for these commercial and recreational uses can adversely impact vital commercial navigation if they are not assured to be compatible with the congressionally authorized purpose of the SNWW. With increased development along the SNWW, the Corps concluded that it was imperative that we develop a predictable and repeatable policy for authorizing structures along the SNWW that maintains the compatibility of these important functions. To do this, the Corps established setbacks from the SNWW channel where structures could be placed without interfering with navigation on the SNWW. In addition, we identified hazard areas of concern where a heightened permit evaluation was necessary.

A setback is defined as the distance from a federally authorized and constructed channel, landward, to a proposed structure (i.e., the distance that a structure must be "set back" from the edge of the channel). For the Corps, these setbacks ensure that we have sufficient clearance for dredging the channel. For industry, these setbacks facilitate safe transportation by ensuring there are no encroachments into the navigable

channel. For the public, these setbacks serve as a guideline for which the district will regulate permit applications along the SNWW.

DEVELOPMENT OF THE POLICY: The District established an interagency-team comprised of state and federal agency partners as well as commercial users of the SNWW to develop the proposed setback policy. Members of the team included the; Corps' Area Offices and Regulatory Branch, U.S. Coast Guard, Texas Department of Transportation, Sabine-Neches Navigation District, and Sabine Pilots.

ESTABLISHMENT OF SETBACKS: The following setbacks are designed to ensure that no structures or fill encroach beyond the top edge of the navigation channel, including appropriate side slopes, and there is sufficient clearance for dredging the navigation channel to its full width and depth, including side slopes. Additionally, considerations are made for safe passage of commercial vessels through the SNWW. Absent unusual circumstances identified on a case-by-case basis, the following guidelines will apply.

- a. Standard Setback. The Standard Setback is designed to establish a distance from the near bottom edge of the SNWW where structures or fill should not extend past.
- b. Setback Hazard Zone. The Setback Hazard Zones are designed and established to identify areas of the SNWW that are narrow and of which the placement of structures and/or fill would have a higher probability of interfering with navigation. The Hazard Zone areas have been designed and established based on maximum zone width of the open water areas between the existing structure/ bank (shoreline) and the near bottom edge (toe). Zones are aligned with channel station and dredge survey reaches.

Evaluation of DA Permits on the SNWW: The Corps' Regulatory program regulations, specifically 33 CFR 320.4, require permit decisions in navigable waters balance the inherent right to reasonable private land use with the rights and interests of the public. When the activity is in the area of a federal project, such as the SNWW, the activity must be evaluated to ensure that they are compatible. In the case where a permit proposal will create undue interference with access to, or use of, a navigable water, the authorization will be generally denied. The proposed policy established the following guidelines for the evaluation of DA permit application on the SNWW.

1. DA permits for structures and/or fill proposed within areas of the SNWW with Standard Setbacks will be evaluated based on their proximity to the setback. Projects located shoreward of the setback will be evaluated using a permit type commensurate with the proposed impact. These permit types include general and standard permits. DA permits proposed impacts on or within the standard setback will be evaluated using an individual permit, including letter of permission if applicable. DA permits for proposed work within the Standard Setback areas of the SNWW will be evaluated using the permit type commensurate with the proposed impact.

2. DA Permits for structure and/or fill proposed within areas identified as Standard Setback Exemptions will also be evaluated based on their proximity to the modified setbacks. DA permit applications proposed shoreward of the setback lines will be evaluated using an individual permit, including letter of permission if applicable. General permits shall not be used to evaluate DA permits within Standard Setback Exemption areas. DA permits for structures and/or fill proposed within the standard setback will be considered to create undue interference with access to, or use of, navigable waters and authorization will be denied by the district engineer pursuant to 33 CFR 325.8(b). DA permits for proposed work within the Standard Setback Exemption areas of the SNWW will be evaluated using an individual permit, including letter of permission if applicable.
3. All general permits, including Nationwide General Permits, Programmatic General Permits and Regional General Permits, will have a regional general condition added to require pre-construction notification if proposed along the SNWW and will restrict their use in Standard Setback Exemption areas.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Special Public Notice must reach this office on or before February 29, 2016. **If no comments are received by that date, it will be considered that there are no objections.** Comments and requests for additional information should be submitted to:

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