



Alabama Department of Environmental Management
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March 12, 2012

Colonel Steven J. Roemhildt, P.E.
District Commander
Mobile District
U.S. Army Corps of Engineers
P.O. Box 2288
Mobile, Alabama 36628-0001

Re: Alabama's Coastal Zone Management Program Coastal Consistency Decision
2012 Nationwide Permit Reauthorization Program (NWP)
U.S. Army Corps of Engineers Permit: SAM-2011-00006-JMT
ADEM Tracking ID: 2011-124-COE

Dear Colonel Roemhildt:

The Alabama Department of Environmental Management (hereinafter ADEM or Department) has completed its review of the referenced new, modified, and reissued Nationwide Permits as advertised in the 21 February 2012 publication of the Federal Registrar and all materials submitted and associated with the proposal including comments submitted by the public. Please be advised that ADEM is providing to the Corps additional conditions regarding Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) by separate correspondence.

Applicants shall ensure that discharges resulting from proposed activities do not violate applicable water quality standards established under Section 303 CWA, the Alabama Water Pollution Control Act, and applicable ADEM regulations. In addition, during project implementation, the applicant shall ensure compliance with the ADEM's CWA Section 401 WQC conditions.

Action pertinent to coastal zone management certification is required by the Alabama Coastal Area Management Program (ACAMP). The coastal area of Alabama includes all waters and lands in Mobile and Baldwin Counties lying seaward of the continuous ten-foot contour. The Nationwide Permits listed below have been determined by the Department, based on their scope or nature, not to have a significant impact on coastal resources where implemented as conditioned herein and therefore have been categorically certified to be consistent with the ACAMP as implemented through ADEM Admin. Code Div. 335-8 Coastal Program Rules. This coastal zone management certification is conditional upon continued compliance with the management program and the conditions prescribed herein. Regional conditions - noted with each Nationwide Permit - are necessary to ensure that activities performed within the coastal area of Alabama are in compliance with the ACAMP.

1. **Aids to Navigation**
No additional coastal consistency conditions.
2. **Structures in Artificial Canals**
Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the Alabama Department of Conservation and Natural Resources - State Lands Division (ADCNR-SLD).
3. **Maintenance**
 - a) Nationwide Permit #3 shall not be used where adverse impacts to wetlands, submerged grassbeds, or oyster reefs would occur.
 - b) Nationwide Permit #3 shall not be used to authorize the placement of new riprap in an area that was previously unarmored or to authorize placement of additional riprap to expand the boundaries of the protected area on properties fronting the Gulf of Mexico, Pelican Bay, Weeks Bay, or the Point of Pines wetland system owned by the Board of Trustees of the University of Alabama.
 - c) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.



4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities

Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

5. Scientific Measurement Devices

- a) Nationwide Permit #5 shall not be used where adverse impacts to wetlands, submerged grassbeds, or oyster reefs would occur.
- b) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

6. Survey Activities

No additional coastal consistency conditions.

7. Outfall Structures

- a) Nationwide Permit #7 shall not be used where adverse impacts to wetlands, submerged grassbeds, or oyster reefs would occur.
- b) Nationwide Permit #7 shall not be used to authorize the placement of new riprap in an area that was previously unarmored or to authorize placement of additional riprap to expand the boundaries of the protected area on properties fronting the Gulf of Mexico, Pelican Bay, Weeks Bay, or the Point of Pines wetland system owned by the Board of Trustees of the University of Alabama.
- c) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

8. Oil and Gas Structures

No additional coastal consistency conditions.

9. Structures in Fleeting and Anchorage Areas

Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

11. Temporary Recreational Structures

Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

12. Utility Line Activities

- a) Nationwide Permit #12 shall not be used where adverse impacts to wetlands, submerged grassbeds, or oyster reefs would occur.
- b) Nationwide Permit #12 shall not be used to authorize the permanent placement of fill in waters of the United States, including wetlands, for the new construction or expansion of utility substations.
- c) The permittee shall provide compensatory mitigation for all permanent wetland and/or stream impacts authorized under Nationwide Permit #12.
- d) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

14. Linear Transportation Crossings

- a) A copy of the PCN required by the Corps shall be submitted to the ADEM's Coastal Program office.
- b) Notification, prior to commencement of work, shall be provided by the applicant to the ADEM/Coastal Facility for activities impacting 0.10 acre or more of wetlands and/or more than 100 linear feet of stream.
- c) Nationwide Permit #14 shall not be utilized for activities involving the construction or expansion of a multiple unit residential, commercial, or institutional development.
- d) Activities authorized by Nationwide Permit #14 shall demonstrate avoidance and minimization of impacts to wetlands and waters to the maximum extent practicable to include demonstration of maximum utilization of all available upland areas.
- e) The permittee shall provide compensatory mitigation for all wetland and/or stream impacts authorized under Nationwide Permit #14.
- f) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

15. U.S. Coast Guard Approved Bridges

Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

16. Return Water From Upland Contained Disposal Areas

- a) For projects authorized under Nationwide Permit #16, the permittee shall ensure that salinity of return waters from dredge disposal site is similar to the salinity of the receiving waters.
- b) The discharge from the upland contained disposal area(s) shall not cause a violation of State water quality standards or applicable 401 WQC conditions.

17. Hydropower Projects

No additional coastal consistency conditions.

18. Minor Discharges

- a) Impacts authorized under Nationwide Permit #18 may be considered only after maximum use of all available uplands is exhausted and impacts to wetlands are avoided to the maximum extent practicable. In no case shall impacts to wetlands exceed 1/10th of one acre (4,356 ft²).
- b) A copy of the PCN required by the Corps shall be submitted to the ADEM's Coastal Program office.
- c) The permittee must demonstrate in the submitted PCN maximum utilization of all available upland areas AND avoidance of impacts to wetlands to the maximum extent practicable.
- d) For activities proposed on legally platted lots or parcels, Nationwide Permit # 18 is restricted to only those in existence on or before 14 August 1979.
- e) When wetland impacts are proposed on legally platted lots or parcels, the PCN must include a copy of the legal plat.
- f) The permittee shall provide compensatory mitigation for all wetland impacts authorized under Nationwide Permit # 18.
- g) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

19. Minor Dredging

- a) Nationwide Permit #19 shall not be used where adverse impacts to submerged grassbeds, shell fish beds, or oyster reefs would occur.
- b) Nationwide Permit #19 shall not be used to authorize activity in the Gulf of Mexico or Pelican Bay in an area from ADEM's Construction Control line to a point 1,500 feet seaward of mean high tide.
- c) Dredge material shall be placed in an approved upland area and properly contained to prevent re-entering the waterway or wetlands unless specifically authorized by other approved permits or exemptions.
- d) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

20. Oil Spill Cleanup

Any disturbed areas resulting from oil spill cleanup authorized under Nationwide Permit #20 shall be returned to pre-disturbance elevations and contours.

22. Removal of Vessels

- a) A plan shall be provided to address the restoration of any wetland areas disturbed as a result of the vessel removal authorized under Nationwide Permit #22.
- b) Nationwide Permit #22 shall not be used to authorize vessel removal related to a catastrophic natural disaster (e.g. hurricane, discrete flooding event, etc.) during the time an applicable Temporary State/Regional General Permit for Emergency Vessel Removal related to the natural disaster recovery is in effect.

23. Approved Categorical Exclusions

No additional coastal consistency conditions.

25. Structural Discharges

- a) Nationwide Permit #25 shall not be used in area where adverse impacts to oyster reefs or submerged grassbeds would occur.
- b) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

26. Reserved

27. Stream and Wetland Restoration Activities

- a) Notification shall be provided to the ADEM's Coastal Program office of all activities authorized under Nationwide Permit #27.
- b) Nationwide Permit #27 shall not be used to authorize construction of open water areas in existing coastal area wetlands unless the impacted wetland acreage is replaced elsewhere within the restoration, establishment, and/or enhancement project area.
- c) Nationwide Permit #27 shall not be used to separately authorize permittee responsible compensatory mitigation for projects being reviewed through the Individual Permit process.
- d) Prior to commencement of activities, that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

28. Modifications of Existing Marinas

- a) Notification, prior to commencement of work, shall be provided by the applicant to the ADEM/Coastal Facility Section for marina facilities having 10 or more wet slips.
- b) Prior to commencement of activities, that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

31. Maintenance of Existing Flood Control Facilities

No additional coastal consistency conditions.

32. Completed Enforcement Actions

No additional coastal consistency conditions.

33. Temporary Construction, Access, and Dewatering

Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

35. Maintenance Dredging of Existing Basins

Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

36. Boat Ramps

- a) Nationwide Permit #36 shall not be used on properties fronting the Gulf of Mexico or Pelican Bay.
- b) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

37. Emergency Watershed Protection and Rehabilitation

No additional coastal consistency conditions.

38. Cleanup of Hazardous and Toxic Waste

No additional coastal consistency conditions.

45. Emergency Repair Activities

- a) Nationwide Permit #45 shall not be used where adverse impacts to wetlands, submerged grassbeds, or oyster reefs would occur.
- b) Prior to commencement of activities that would impact or be located over State-Owned Submerged Lands, the permittee shall obtain all appropriate authorizations required by the ADCNR-SLD.

46. Discharge in Ditches and Canals

No additional coastal consistency conditions.

47. Reserved

The following Nationwide Permits have been found to be inconsistent with the ACAMP and are not authorized for use within the coastal area of Alabama.

- 10. **Mooring Bouys**
- 13. **Bank Stabilization**
- 29. **Residential Developments**
- 30. **Moist Soil Management for Wildlife**
- 39. **Commercial and Institutional Developments**
- 40. **Agricultural Activities**
- 41. **Reshaping Existing Drainage Ditches**
- 42. **Recreational Facilities**
- 43. **Stormwater Management Facilities**
- 44. **Mining Activities**
- 48. **Commercial Shellfish Aquaculture Activities**

The following Nationwide Permits are not applicable within the coastal area of Alabama.

- 21. **Surface Coal Mining Activities**
- 24. **State Administered Section 404 Programs**
- 34. **Cranberry Production Activities**
- 49. **Coal Remining Activities**
- 50. **Underground Coal Mining Activities**

The following newly proposed Nationwide Permits have been determined by the Department to require an individual review to determine consistency with the ACAMP.

- 51. **Land-Based Renewable Energy Generation Facilities**
- 52. **Water-Based Renewable Energy Generation Facilities**

In recognition that projects are site specific in nature and conditions can change during project implementation, ADEM reserves the right to require the submission of additional information or require additional management measures to be implemented by the applicant, as necessary on a case by case basis, in order to ensure the protection of water quality.

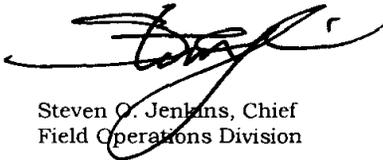
Liability and responsibility for compliance are not delegable by contract or otherwise. The applicant shall ensure that any agent, contractor, subcontractor, or other person employed by, under contract, or paid a salary by the applicant complies with this certification. Any violation resulting from the actions of such person shall be considered violations of this certification and may subject the applicant to enforcement action.

ADEM consistency decisions are predicated on current regulatory requirements, established engineering standards and technical considerations, best management practices information, and formal administrative procedures in conformance with ADEM regulations and applicable Alabama law. Issuance of a consistency determination by ADEM neither precludes nor negates an operation/owner's responsibility or liability to apply for, obtain, or comply with other ADEM, federal, state, or local government permits, certifications, licenses, or other approvals.

This certification decision does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, trespass, or any infringement of Federal, State, or Local laws or regulations, and in no way purports to vest in the applicant title of lands now owned by the State of Alabama nor shall it be constructed as acquiescence by the State of Alabama of lands owned by the State of Alabama that may be in the applicant's possession.

Should you have any questions on this or other coastal zone management issues please do not hesitate to contact J. Scott Brown, Chief of the Mobile Branch, by email at jsb@adem.state.al.us or by phone at 251-432-6533.

Sincerely,



Steven O. Jenkins, Chief
Field Operations Division

SOJ/jsb

- c: Joy Earp – Mobile District Corps of Engineers, Coastal Alabama Team Leader
Joe Tanko – Mobile District Corps of Engineers
Phillip Hinesley – ADCNR Coastal Section, State Lands Division
Rosemary Hall – U.S. Environmental Protection Agency, Region 4
Bill Pearson – U.S. Fish and Wildlife Service
Mark Thompson – National Marine Fisheries Service