



DEPARTMENT OF THE ARMY  
MOBILE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 2288  
MOBILE, AL 36628-0001

CESAM-RD-C  
Special Public Notice No. SAM-2006-2139-JBE

Date: 19 June 2007

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**2007 NATIONWIDE PERMIT PROGRAM  
MOBILE DISTRICT - STATE OF ALABAMA  
REGIONAL CONDITIONS, WATER QUALITY CERTIFICATION AND  
COASTAL ZONE MANAGEMENT PROGRAM CONSISTENCY**

On March 12, 2007, in Part II of the *Federal Register* (72 FR 11092), the U.S. Army Corps of Engineers (Corps) announced the reissuance of all existing Nationwide Permits (NWP), general conditions, and definitions with some modifications. The Corps also issued six new NWPs, two new general conditions, and 13 new definitions. The NWPs were effective on March 19, 2007.

By letter dated May 30, 2007, the Alabama Department of Environmental Management (ADEM) issued Water Quality Certification with conditions for all of the NWPs, pursuant to Section 401 of the Clean Water Act (copy attached).

By letter dated May 30, 2007, the ADEM issued Coastal Zone Management Program (CZMP) and amended their CZMP determination by letter dated 7 June 2007. Regarding CZMP, of the 49 NWPs, the ADEM certified 9 NWPs without additional conditions, 26 NWPs with special conditions, 9 NWPs were found to be inconsistent, and 5 NWPs were found to be not applicable within the coastal area of Alabama. A copy of the CZMP letter and amendment is attached.

The Mobile District placed a Regional Condition (RC) on NWP 47, Pipeline Safety Program Designated Time Sensitive Inspections and Repairs. The RC is attached.

The March 12, 2007, *Federal Register* notice is available for viewing at the Mobile District, located at 109 St. Joseph Street, Mobile, Alabama, or on the Internet at [http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp\\_2007\\_final.pdf](http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_2007_final.pdf). As an alternate, World Wide Web users can access the *Federal Register* through the U.S. Government Printing Office at <http://www.gpoaccess.gov/fr/index.html>.

The Corps has also issued final decision documents for the new and reissued NWPs. these documents are also available on the Internet at [http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp\\_final.htm](http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_final.htm) and Corps district offices. The Mobile District's NWP Supplemental Decision Documents NWP decision documents are available on the Districts website.

The Vicksburg District is publishing the NWPs for the State of Mississippi.

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**Mobile District Regional Condition Specific to Nationwide Permit 47 - Pipeline Safety Program Designated Time Sensitive Inspections and Repairs:**

- When the repair work is located within a Federal Channel, the work is subject to the following conditions:

(a) The Mobile District and the U.S. Coast Guard shall be notified before work mobilization so that a "Notice to Mariners" can be issued. The work schedule shall be submitted by telephone to both the Corps of Engineers (Corps) and the U.S. Coast Guard (USCG).

**U.S. Army Corps of Engineers . . . . .Telephone: (251) 690-2570**  
**U.S. Coast Guard, Sector Mobile . . . . .Telephone: (251) 441-6503**

Corps Address: U.S. Army Corps of Engineers, Mobile District, OP-TN, P.O. Box 2288, Mobile, Alabama 36628

USCG Address: U.S. Coast Guard, Sector Mobile, Attention: Marine Safety Office, Brookley Complex, Building 102, Mobile, Alabama 36615-1390

(b) An as-built hydrographic survey of channel conditions shall be conducted and furnished to the Corps after completion of the repair work to assure that the depth of the repaired pipeline is at an approved project depth in the Federal Channel. This survey shall be submitted to Mobile District, U.S. Army Corps of Engineers to assure a return of the Federal Project conditions. The survey area will extend 350 feet on each side of the work area (including all dredging and temporary dredged material disposal limits). Cross-sections should be taken on a minimum of 50-foot intervals within the survey area, with vertical elevations made continuously along each cross-section. Cross-sections shall encompass the entire Federal channel, top of slope to top of slope. All surveys should be electronically controlled horizontally from known monuments (fixed coordinate points) and referenced to mean lower low water (MLLW) with tidal compensation. Surveys should be plotted in cross-section format with a plan view layout drawing all horizontal control, monument stations, tide gage locations, etc. All field and survey notes shall be furnished. The permittee shall be responsible for returning the project area to Federal Project conditions. The survey shall be submitted to the above listed Corps address.

(c) Construction activities shall not infringe upon navigation on the waterway. These activities shall be in compliance with 33 CFR 163, which states in part: "A clear channel shall at all times be left open to permit free and unobstructed navigation by all types of vessels and tows normally using the various waterways."

(d) No discharge of cuttings, drilling mud or any other waste materials shall occur unless authorized by a National Pollution Discharge Elimination System permit pursuant to Section 402 of the Clean Water Act.



## ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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ONIS "TREY" GLENN, III, P.E.

DIRECTOR

BOB RILEY

GOVERNOR

May 30, 2007

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MOBILE DISTRICT  
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Field Operations: 272-8131  
Laboratory: 277-6718  
Mining: 394-4326

RE: Clean Water Act (CWA) Section 401 Water Quality Certification (WQC)  
March 7, 2007, Federal Register, Vol. 72, No. 47, Pages 11092 – 11198  
US Army Corps of Engineers (COE) Nationwide Permits (NWP) And General Conditions For  
Alabama

Dear Sirs:

This office has completed a review of the above-referenced joint public notice listed, and all associated materials submitted related to the proposed COE NWP for Alabama. Comments made during the public notice period have also been forwarded to us for review. Please be advised that ADEM is providing to the COE additional conditions regarding Coastal Consistency Review by separate correspondence.

Because action pertinent to WQC is required by Section 401(a)(1) of the CWA, 33 U.S.C. Section 1251, et seq., we hereby issue certification, for a period **not to exceed five (5) years** from the date of issuance, that there is reasonable assurance that the discharge resulting from the proposed activities as submitted will not violate applicable water quality standards established under Section 303 of the CWA and Title 22, Section 22-22-9(g), Code of Alabama, 1975, provided the applicant acts in accordance with the following conditions as specified. We further certify that there are no applicable effluent limitations under Section 301 and 302 nor applicable standards under Section 306 and 307 of the CWA in regard to the activities specified.

To minimize adverse impacts to State waters, by copy of this letter we are requesting the COE to incorporate the following as special conditions appropriate to each activity in Alabama authorized by the COE NWP:

1. The applicant shall obtain ADEM concurrence relative to consistency with the State's Coastal Zone Management Program (CZMP) for projects located wholly or partially within the defined coastal area of Alabama, as defined by ADEM Admin. Code R. 335-8-1-.02 (k), prior to commencing activities authorized by the COE NWP. In addition, during project implementation, the applicant shall ensure compliance with applicable requirements of ADEM Admin. Code Div. 335-8 and any CZMP conditions to the COE NWP.

JUN 4 2007



2. During project implementation, the applicant/owner/operator shall ensure compliance with applicable requirements of ADEM. Admin. Code Chapter 335-6-6 (National Pollutant Discharge Elimination System), Chapter 335-6-10 (Water Quality Criteria), and Chapter 335-6-11 (Water Use Classifications for Interstate and Intrastate Waters).
3. Pursuant to EPA rules and ADEM Admin. Code Ch. 335-6-12, the operator/owner or applicant is required to register for and maintain valid National Pollutant Discharge Elimination System (NPDES) coverage for stormwater discharges prior to beginning construction or land disturbance (1) above the Ordinary High Water Mark, (2) for any non-dredge/fill operations below the Ordinary High Water Mark, (3) construction of associated upland dredge disposal sites that will equal or exceed one (1) acre in size, and/or (4) recovery, removal, re-mining, processing, etc. of material from disposal areas or other sites/areas regardless of size. The regulations also require NPDES registration for disturbance activities less than one (1) acre that are part of, adjacent to, or associated with a larger common plan of development or sale, that may eventually equal or exceed one (1) acre, or if less than one (1) acre in size if stormwater discharges have reasonable potential to be a significant contributor of pollutants to a water of the State or have reasonable potential to cause or contribute to a violation of applicable Alabama water quality standards as determined by ADEM. The regulated construction disturbance also includes, but is not limited to, associated areas utilized for support activities such as vehicle parking, equipment or supply storage areas, staging areas, disposal areas, material stockpiles, temporary office areas, and access roads, and pre-construction activities performed in advance or in support of construction such as logging, clearing, and dewatering. Please be advised that a registrant, operator/owner, contractor, or other responsible entity, separately or collectively, must retain NPDES registration coverage for phased developments until all disturbance activity, including phased construction, is complete. Information regarding registration under ADEM Admin. Code Ch. 335-6-12 for discharge of treated stormwater from regulated construction, construction materials management, small non-metallic, noncoal mining, processing and related activity can be viewed/downloaded from the ADEM webpage at [www.adem.state.al.us/FieldOps/Permitting/Construction/Construction.htm](http://www.adem.state.al.us/FieldOps/Permitting/Construction/Construction.htm)
4. All terms, conditions, and requirements of any NPDES permit in effect at the facility must be followed and maintained. Failure to comply with applicable NPDES rules and/or permit coverage may constitute a violation of this certification.
5. Valid NPDES individual or general permit coverage for stormwater discharges resulting from the operation of a service dock, commercial/private marina, transportation/transloading facility, port/docks facility, landfills, or industrial/manufacturing facilities may be required. If you have any questions regarding the requirement for NPDES permit coverage, please contact ADEM's Water Division, Industrial Section at (334) 271-7700.
6. Valid NPDES permit coverage for stormwater discharges is required prior to commencement of operation of a coal, aggregate, crushed stone, chert, dirt, or other ore, mineral, or material mining/borrow, transloading, storage, screening, or barge loading facility. If you have any questions regarding the need for stormwater permit coverage or would like to request application forms/information, please contact ADEM's Mining & Nonpoint Source Section by email at [mnps@adem.state.al.us](mailto:mnps@adem.state.al.us) or by phone at (334) 394-4311.
7. The applicant/owner/operator shall ensure that fill material sources and/or associated borrow/mining sites have obtained appropriate NPDES permit coverage. If you have any

questions regarding the need for the applicant to obtain stormwater permit coverage, to determine if the contractor has obtained stormwater permit coverage, or would like to request application forms/information, please contact ADEM's Mining & Nonpoint Source Section by email at [mnps@adem.state.al.us](mailto:mnps@adem.state.al.us) or by phone at (334) 394-4311.

8. ADEM air permit coverage may be required for certain barge loading/unloading operations. If you have any questions regarding the requirement for air permit coverage, please contact ADEM's Air Division at (334) 271-7700.
9. The applicant/owner/operator shall ensure that activities are in compliance with ADEM Land Division regulations for the permitting/management/removal/remediation or use of any hazardous, toxic, and/or solid waste on the site. Please contact ADEM's Land Division at (334) 271-7730 if you have any questions, or to request additional information.
10. The applicant shall implement the project in accordance with all plans, designs, specifications, descriptions, drawings, schedules, maps, and other information submitted relative to the proposed project.
11. Upon the loss or failure of any treatment facility, best management practice (BMP), or other control, the applicant shall, where necessary to maintain compliance with this certification, suspend, cease, reduce or otherwise control work/activity and all discharges until effective treatment is restored. It shall not be a defense for the applicant in a compliance action that it would have been necessary to halt or reduce work or other activities in order to maintain compliance with the conditions of this certification.
12. The applicant shall retain records adequate to document activities authorized by this certification including but not limited to, inspection reports, monitoring information, copies of any reports and all data used to complete the above reports or the application for this certification, for a period of at least three years after completion of work/activity authorized by the certification. Upon written request, the applicant shall provide ADEM with a copy of any record/information required to be retained by this paragraph.
13. The applicant shall implement and maintain a comprehensive BMP plan for prevention and control of nonpoint sources of pollutants during and after project implementation, including measures that will be taken to ensure permanent revegetation or cover of all disturbed areas during and after project implementation that was submitted as part of the application or required by this certification.
14. The applicant shall implement and maintain appropriate, effective BMPs for prevention and control of nonpoint sources of pollutants during and after project implementation. The applicant, at a minimum, must implement and maintain applicable effective BMPs as provided in the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas, as amended, Alabama Soil and Water Conservation Committee (ASWCC). A copy of the Handbook can be downloaded or ordered at [http://swcc.state.al.us/erosion\\_handbook.htm](http://swcc.state.al.us/erosion_handbook.htm) Immediately after completion of the project, the applicant is required to implement and maintain effective measures to ensure permanent revegetation or cover of all disturbed areas.
15. The applicant shall implement a Spill Prevention Control and Countermeasures (SPCC) Plan for all temporary and permanent onsite fuel or chemical storage tanks or facilities consistent

with the requirements of ADEM Admin. Code R. 335-6-6-.12(r), Section 311 of the Federal Water Pollution Control Act, and 40 CFR Part 112. The applicant shall maintain onsite or have readily available sufficient oil & grease absorbing material and flotation booms to contain and clean-up fuel or chemical spills and leaks. The applicant shall immediately notify ADEM after becoming aware of a significant visible oil sheen in the vicinity of the proposed activity. In the event of a spill with the potential to impact groundwater or other waters of the State, the applicant should immediately call the National Response Center at 1-800-424-8802 and the Alabama Emergency Management Agency at 1-800-843-0699. The caller should be prepared to report the name, address and telephone number of person reporting spill, the exact location of the spill, the company name and location, the material spilled, the estimated quantity, the source of spill, the cause of the spill, the nearest downstream water with the potential to receive the spill, and the actions taken for containment and cleanup.

16. Until the project is complete, the applicant shall conduct, at a minimum, weekly comprehensive site inspections to ensure that effective BMPs are properly designed, implemented, and regularly maintained (i.e. repair, replace, add to, improve, implement more effective practice, etc.) utilizing good engineering practices to prevent/minimize to the maximum extent practicable discharges of pollutants in order to provide for the protection of water quality. The inspections shall be conducted by a qualified credentialed professional (QCP), qualified personnel under the direct supervision of a QCP, or an ADEM recognized qualified credentialed inspector (QCI), until completion of the proposed activity.
17. Additional, effective BMPs shall be fully implemented and maintained on a daily basis as needed to prevent to the maximum extent possible potential discharges of pollutants from activities authorized by this certification, directly to or to a tributary or other stream segment, that have the potential to be impact a State water currently considered impaired [waterbody is identified on the Alabama 303(d) list, a total maximum daily load (TMDL) has been finalized for the waterbody, and/or the waterbody is otherwise considered a Tier 1 water pursuant to ADEM Admin. Code Ch. 335-6-10]. The applicant shall inspect all BMPs as often as is necessary (daily if needed) for effectiveness, need for maintenance, and the need to implement additional, effective BMPs. Additional effective BMPs shall immediately be implemented as needed and may include but are not limited to sediment retention basins, greater capacity in sediment retention structures, hydroseeding with application of non-toxic tackifiers, grass sodding, non-toxic chemical treatment, erosion control blankets, other effective innovative/alternative technologies, etc. to ensure full compliance with ADEM requirements and the protection of water quality in the impaired waterbody.
18. All construction and worker debris (e.g. trash, garbage, etc.) must be immediately removed and disposed in an approved manner. If acceptable offsite options are unavailable, effective onsite provisions for collection and control of onsite worker toilet wastes or gray waste waters (i.e. port-o-let, shower washdown, etc.) must be implemented and maintained. Soil contaminated by paint or chemical spills, oil spills, etc. must be immediately cleaned up or be removed and disposed in an approved manner. Also, the applicant shall manage and dispose of any trash, debris, and solid waste according to applicable state and federal requirements.
19. Appropriate measures must be taken to prevent the deposition of airborne pollutants such as spray paint, herbicides, excessive road dust, etc. from entering the waterbody.
20. Appropriate measures must be taken to prevent the disposal, minimize to the maximum extent practicable the deposition, and remove as necessary, any material, debris, or liquids resulting

from bridge/culvert, building, or other construction and/or maintenance such as waste concrete/cement, wash water, surfactants, sand blasting particles, paint, etc. from falling into or entering the waterbody.

21. Surface drainage patterns should be designed, constructed, and maintained to the extent practicable with swales or other methods to minimize direct runoff into the waterbody and to prevent/minimize the introduction of pollutants. Diversion structures (berms, ditches, etc.) created in order to re-route upgradient stormwater runoff from the proposed project location shall be constructed, stabilized, and vegetated as necessary, prior to commencement of disturbance activities.
22. All materials used as fill, or materials used for construction of structures in a waterbody, must be non-toxic, non-leaching, non-acid forming, and free of solid waste or other debris.
23. The applicant shall implement appropriate measures to minimize the potential for a decrease of instream dissolved oxygen concentrations as a result of project implementation. In addition, the applicant shall ensure that the activities authorized by this certification do not significantly contribute to or cause a violation of applicable water quality standards for instream dissolved oxygen.
24. Dredged or fill material shall not be sidecast or otherwise placed in adjacent waters or wetlands outside the permitted project area.
25. The applicant shall conduct the proposed operation in a timely manner with all due diligence utilizing good engineering practices in order to reduce potential environmental impacts created by the project to the maximum extent practicable and to reduce the amount of time to the maximum extent practicable in which turbid water is produced.
26. The applicant shall implement appropriate, effective BMPs, including installation of floating turbidity screens as necessary, to minimize downstream turbidity to the maximum extent practicable. The applicant shall visually monitor or measure background turbidity. The applicant shall temporarily suspend operations should turbidity resulting from project implementation exceed background turbidity by more than 50 NTUs. Operations may resume when the turbidity decreases to within acceptable levels.
27. To ensure the protection of water quality, the applicant shall evaluate, characterize, and as necessary, conduct analysis of any material dredged/removed/disturbed in order to ensure that potential pollutants are not present in concentrations that could cause or contribute to a violation of applicable water quality standards. Information regarding the evaluation, characterization, or detailed results of any analyses shall be made available to ADEM upon request.
28. If upland disposal areas are utilized, the applicant shall be responsible for the condition of the spoil disposal area, including the structural integrity of any embankments, for the life of the dredging and disposal activity and until the disposal area is reclaimed or adequately stabilized, and for pumping and discharge rates, to ensure settling of suspended solids within the confines of the spoil disposal area sufficient to ensure that turbidity in the return water will not cause substantial visible contrast with the receiving waters, or result in an increase of 50 NTUs above background turbidity levels in the receiving waters.

29. Unless specifically authorized in writing by ADEM, subsequent recovery, removal, re-mining, processing, trans-loading, etc. of material from upland disposal areas is not authorized by this certification, and appropriate NPDES permit coverage [ADEM Admin. Code Ch. 335-6-12 and/or ADEM Admin. Code Ch. 335-6-9] is required to be obtained from ADEM prior to commencing and/or continuing recovery, removal, re-mining, processing, trans-loading, etc. of material from upland disposal areas or other sites/areas. If you have any questions regarding NPDES permit requirements for material mining, re-mining, recovery, removal, borrow sites, or would like to request application forms/information, please contact ADEM's Mining & Nonpoint Source Section by email at [mnps@adem.state.al.us](mailto:mnps@adem.state.al.us) or by phone at (334) 394-4311.
30. New or updated marinas, multiple boat slips, floating docks, large or multiple piers, etc. that increase the number of berthing areas shall be equipped with all facilities and appurtenances (i.e. trash receptacles, receptacles for fish offal and carcasses, and accepted SPCC plan for fueling facilities, and a sewage pump out system where appropriate) for activities that are allowed or conducted at the new or updated facility as appropriate.
31. Bilge or ballast water pumped from ships or boats (e.g. dredge or construction barges, tugboats, fishing boats, pleasure craft, etc.) shall not be discharged to waters of the State of Alabama without removal of solids, oils, fuel, petroleum by-products and toxic compounds.
32. No rubbish, trash, garbage, or other such materials shall be discharged overboard into waters of the State of Alabama. Litter and refuse from vessels or a marina shall be disposed in a manner consistent with State and local regulations (e.g. trash receptacles, receptacles for fish offal and carcasses).
33. Toilet wastes, domestic wastewater, and other domestic wastes must be pumped out to an approved onsite sewage system or municipal sewer, or must be treated by an approved marine sanitation device prior to discharge to waters of the State of Alabama.
34. Any proposed temporary channel, pipe, conduit, or other management measures implemented to temporarily divert stream flow to accommodate culvert construction, stream crossings, pipelines, or other within-bank stream work shall be constructed and maintained at all times to ensure that water quality is not adversely impacted. The measures to protect water quality during the construction of the temporary diversion channel may include but is not limited to, temporarily blocking/impounding and pumping water around the construction area, construction of a temporary channel lined with plastic or rip-rap, temporary installation of a properly sized pipe, etc.
35. Any proposed new or modified permanent waterbody channel should duplicate the old waterbody channel or a natural waterbody channel in regard to pools, riffle areas, riparian vegetation, depth, gradient, and length to the maximum extent practicable so that the new/modified waterbody channel maintains its dimension, pattern, and profile while neither degrading nor aggrading to ensure that water temperature, pH, turbidity, and dissolved oxygen concentrations are not adversely impacted, and are improved to the extent possible, after the project is completed.
36. Permanent or temporary raised waterbody crossings must be constructed with pipe(s)/culvert(s) to safely pass expected mean water flow of the waterbody for the time of year and length of time that they are installed, unless a properly designed and constructed low-water crossing is installed that provides for unobstructed stream flow over the low-water

structure. The crossing must be inspected on a regular basis and any significant debris or blockage removed and properly disposed to ensure unobstructed flow of water. Placement of raised rock-fill or other fill without pipe(s)/culvert(s) for passage of water is not acceptable. Each raised waterbody crossing must be designed and maintained to ensure structure integrity and stability for safe passage of water flow generated by expected precipitation events while the structure is in place.

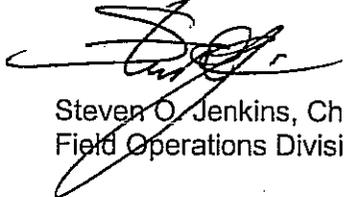
37. The bottom of any proposed new or modified, temporary or permanent waterbody channel, culvert, ditch, or pipe should be V-notched, sloped, concave in shape, or otherwise constructed with a base flow channel or configuration, to ensure adequate concentrated and unobstructed flow of water during periods of low flow. Alternatively, the bottom of the culvert/structure can be buried at a sufficient depth considering the hydraulic gradient of the existing channel to provide for a stable sediment streambed through the culvert/structure, or a bottomless culvert can be installed where the stream bottom is bedrock or as otherwise determined suitable by the design engineer.
38. Design features, such as protection of existing waterbody trees or planting of new shade trees or other appropriate measures, should be implemented to the maximum extent practicable in order to minimize temperature extremes in any new or modified permanent waterbody channel.
39. Please be advised that **(A)** ADEM Admin. Code R. 335-6-6-.03 (aaa) [NPDES Rules] defines "Waters of the state" as all waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce, **(B)** ADEM Admin. Code R. 335-6-9-.02(i) [Surface Mining Rules] defines "stream" as any body of water having a drainage area in excess of one square mile [640 acres], **(C)** Pursuant to ADEM Admin. Code R. 335-6-12-.21(10) [Construction Stormwater Rules], the installation or use of instream or within-bank sediment storage traps or deposition areas, or other sediment storage/detention BMPs, in waters of the State to control/treat stormwater runoff from construction/ activity, is not authorized, and **(D)** ADEM Admin. Code R. 335-6-12-.21(2)(b)3. [Construction Stormwater Rules], requires proper cleanup/removal or effective stabilization of sediment deposited offsite, in the event of such an occurrence, and effective remediation of sediment or other pollutant instream impacts to the maximum extent practicable.
40. 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, as necessary on a case by case basis, in order to ensure the protection of water quality.
41. Liability and responsibility for compliance with this certification 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 violations resulting from the actions of such person shall be considered violations of this certification and may subject the applicant to enforcement action.
42. ADEM certification 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 certification by ADEM neither precludes nor negates an operator/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.

43. This certification 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 to lands now owned by the State of Alabama nor shall it be construed 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 related matters, please do not hesitate to contact Richard Hulcher, Mining & Nonpoint Source Section, by email at [mnps@adem.state.al.us](mailto:mnps@adem.state.al.us) or by phone at (334) 394-4311.

Sincerely,



Steven O. Jenkins, Chief  
Field Operations Division

SOJ/rh

File: WQ401

c: Wetlands Section, EPA Region IV



## ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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June 7, 2007

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Colonel Peter F. Taylor, Jr.  
District Engineer  
Mobile District  
U. S. Army Corps of Engineers [Corps]  
P.O. Box 2288  
Mobile, AL 36628-0001

RE: Alabama's Coastal Zone Management Program Coastal Consistency Decision  
2007 Nationwide Permit Reauthorization Program (NWP)  
SAM-2006-2139-JBE

Dear: Col. Taylor:

Reference is made to May 30, 2007 correspondence from the Alabama Department of Environmental Management [ADEM] to you regarding the Alabama coastal zone management program's coastal consistency decision for the 2007 nationwide permit program reauthorization. Based on a June 6, 2007 meeting between ADEM and Corps staffers it has been determined that clarification is needed to address: 1) NWP 3 as pertains to the "ADEM determining a project or activity not being subject to the ACAMP" and 2) Pre-construction Notification (PCN), which was attached as a condition to NWPs 13, 14, 18, 28, and 32.

As regards NWP 3, the text appears to require "pre-approval" by ADEM prior to permit issuance. That language should be clarified. As regards PCN, the intended purpose of the condition was to provide ADEM information prior to permit issuance by the Corps. However, the wording may be confusing to applicants and result in mis-direction of correspondence and information resulting in unnecessarily delayed decisions. Therefore to avoid misunderstandings, ADEM offers this addendum as clarification to its May 30, 2007, consistency decision document. The Corps and ADEM collaborated over a 3-day period to develop the technical language of this addendum and both agencies are in agreement.

### NWP 3 – Maintenance

The text, "*Nationwide Permit #3 shall not be used where adverse impacts to wetlands, submerged aquatic vegetation, or oyster reefs would occur unless the Department determines that the project or activity is not subject to the requirements of the Alabama Coastal Area Management Program*" should be replaced with the text, "*Nationwide Permit #3 shall not be used where adverse impacts to wetlands, submerged aquatic vegetation, or oyster reefs would occur*".

### NWP 13 – Bank Stabilization

The text, "*Pre-Construction Notification (PCN) to the ADEM Coastal/Facility Section shall be required for activities proposed on properties fronting on Weeks Bay and the Point aux Pines wetland system owned by the Board of Trustees of the University of Alabama*" should be replaced with the text, "*NWP*



Addendum

Coastal Consistency Certification conditions to 2007 Nationwide Permit program

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*13 shall not be used to authorize activities on properties fronting on Weeks Bay and the Point aux Pines wetland system owned by the Board of Trustees of the University of Alabama".*

#### NWP 14 – Linear Transportation Crossings

The text, *"PCN to the ADEM Coastal/Facility Section shall be required for activities impacting 0.10 acre or more of wetlands and/or more than 100 linear feet of stream"* should be replaced with the text, *"A copy of the PCN required by the Corps shall be concurrently submitted to the ADEM Coastal/Facility Section"*.

The following text should be added as a separate condition, *"Notification, prior to commencement of work, shall be provided by the applicant to the ADEM Coastal/Facility Section where more than 100 linear feet of stream impacts would occur"*.

#### NWP 18 – Minor Discharges

The text, *"PCN to the ADEM Coastal/Facility Section shall be required for all activities proposed under Nationwide Permit #18"* should be replaced with the text, *"A copy of the PCN required by the Corps shall be concurrently submitted to the ADEM Coastal/Facility Section for all activities proposed under Nationwide Permit #18"*.

#### NWP 28 – Modifications of Existing Marinas

The condition, *"PCN to the ADEM Coastal/Facility Section shall be required for marina facilities having 10 or more wet slips"* should be replaced with the text, *"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"*.

#### NWP 32 – Completed Enforcement Actions

The text, *"PCN to the ADEM Coastal/Facility Section shall be required for activities proposed to be authorized under Nationwide Permit #32"* should be deleted because no PCN is required by the Corps for this NWP.

Call or write anytime with questions. The Department contact for this matter and other coastal zone management issues is J. Scott Brown, Mobile Branch Chief. He may be reached by telephone at [251] 432-6533 or via e-mail [jsb@adem.state.al.us].

Sincerely,



Steven O. Jenkins, Chief  
Field Operations Division

c: Joy Earp, Mobile District Corps of Engineers, Regulatory Division, Coastal Branch  
Phillip Hinesley, ADCNR-State Lands Division, Coastal Section



## ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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May 30, 2007

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Colonel Peter F. Taylor, Jr.  
District Engineer  
Mobile District  
U. S. Army Corps of Engineers [Corps]  
P.O. Box 2288  
Mobile, AL 36628-0001

RE: Alabama's Coastal Zone Management Program Coastal Consistency Decision  
2007 Nationwide Permit Reauthorization Program  
SAM-2006-2139-JBE

Dear: Col. Taylor:

The Alabama Department of Environmental Management [ADEM] has completed its review of the above referenced modified and reissued Nationwide Permits as advertised in the 12 March 2007 publication of the *Federal Register* and all materials submitted and associated with the proposal including comments submitted by the public in response to ADEM's public notice. 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

Action pertinent to coastal zone management certification is required by the Alabama Coastal Area Management Program. The Nationwide Permits as outlined 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 Alabama Coastal Area Management Program 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.

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

The following regional conditions, as noted with each Nationwide Permit, are necessary to ensure that activities located within the coastal area of Alabama, which includes all waters and lands in Mobile and Baldwin Counties lying seaward of the continuous 10-foot contour of the land, are in compliance with the Alabama Coastal Area Management Program.

1. **Aids to Navigation**

No additional coastal consistency conditions.

JUN 4 2007



**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 aquatic vegetation, or oyster reefs would occur unless the Department determines that the project or activity is not subject to the requirements of the Alabama Coastal Area Management Program.

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 and Pelican Bay, Weeks Bay, or the Point aux 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 Alabama Department of Conservation and Natural Resources-State Lands Division (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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

**5. Scientific Measurement Devices**

a) Nationwide Permit #5 shall not be used where adverse impacts to wetland, submerged aquatic vegetation, 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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

**6. Survey Activities**

No additional coastal consistency conditions.

**7. Outfall Structures and Maintenance**

a) Nationwide Permit #7 shall not be used where adverse impacts to wetland, submerged aquatic vegetation, or oyster reefs would occur.

b) Nationwide Permit #7 shall not be used to authorize outfall structures that would discharge to the Gulf of Mexico, Pelican Bay, Weeks Bay, Dauphin Island Audubon Sanctuary, or the Point aux 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 Alabama Department of Conservation and Natural Resources-State Lands Division (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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

**10. Mooring Buoys**

a) This permit shall not be used in areas where adverse impacts to submerged aquatic vegetation 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 Alabama Department of Conservation and Natural Resources-State Lands Division (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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

**12. Utility Line Activities**

- a) Nationwide Permit #12 shall not be used where adverse impacts to submerged aquatic vegetation 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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

**13. Bank Stabilization**

- a) Nationwide Permit #13 shall not be used to authorize activities on properties fronting the Gulf of Mexico or Pelican Bay.
- b) Nationwide Permit #13 shall not be used to authorize the discharge of dredged or fill material into wetlands.
- c) Pre-Construction Notification (PCN) to the ADEM Coastal/Facility Section shall be required for activities proposed on properties fronting on Weeks Bay and the Point aux Pines wetland system owned by the Board of Trustees of the University of Alabama.
- 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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

**14. Linear Transportation Crossings**

- a) PCN to the ADEM Coastal/Facility Section shall be required for activities impacting 0.10 acre or more of wetlands and/or more than 100 linear feet of stream.
- b) Crossings authorized under Nationwide Permit #14 shall access buildable upland areas sufficient to support the planned development.
- c) The permittee shall provide compensatory mitigation for all wetland and/or stream impacts authorized under Nationwide Permit #14.
- 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 Alabama Department of Conservation and Natural Resources-State Lands Division (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 Alabama Department of Conservation and Natural Resources-State Lands Division (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 sites 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 Water Quality Certification conditions.

**17. Hydropower Projects**

No additional coastal consistency conditions.

**18. Minor Discharges**

- a) PCN to the ADEM Coastal/Facility Section shall be required for all activities proposed under Nationwide Permit #18.
- b) Use of Nationwide Permit #18 is limited to no more than 0.10 acre of wetlands per legally platted lot or parcel of property in existence on or before 14 August 1979.
- c) The permittee shall provide compensatory mitigation for all wetland impacts authorized under Nationwide Permit #18.
- e) Prior to commencement of activities that would impact 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).
- f) Activities authorized by Nationwide Permit #18 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.

**19. Minor Dredging**

- a) Nationwide Permit #19 shall not be used where adverse impacts to oyster reefs would occur.
- b) Nationwide Permit #19 shall not be used to authorize activities 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) Dredged 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 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).

**20. Oil Spill Cleanup**

- a) Notification shall be provided to the ADEM Coastal/Facility Section of any activities authorized under Nationwide Permit #20.
- b) 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 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 areas where adverse impacts to oyster reefs or submersed aquatic vegetation 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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

26. **Reserved**

27. **Stream and Wetland Restoration Activities**

- a) Notification shall be provided to ADEM Coastal/Facility Section 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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

28. **Modifications of Existing Marinas**

- a) PCN to the ADEM Coastal/Facility Section shall be required 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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

31. **Maintenance of Existing Flood Control Facilities**

No additional coastal consistency conditions.

32. **Completed Enforcement Actions**

PCN to the ADEM Coastal/Facility Section shall be required for activities proposed to be authorized under Nationwide Permit #32.

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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

35. **Maintenance Dredging of Existing Basins**

Prior to commencement of activities that would impact 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).

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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

37. **Emergency Watershed Protection and Rehabilitation**

Notification shall be provided to the ADEM Coastal/Facility Section of any activities authorized under Nationwide Permit #37.

38. **Cleanup of Hazardous and Toxic Waste**

Notification shall be provided to the ADEM Coastal/Facility Section and the ADCNR-State Lands Division of any activities authorized under Nationwide Permit #38.

**45. Emergency Repair Activities**

- a) Nationwide Permit #45 shall not be used where adverse impacts to wetlands, submerged aquatic vegetation, or oyster reefs would occur unless the Department determines that the project or activity is not subject to the requirements of the Alabama Coastal Area Management Program.
- 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 Alabama Department of Conservation and Natural Resources-State Lands Division (ADCNR-SLD).

**46. Discharges in Ditches and Canals**

No additional coastal consistency conditions.

**47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs**

No additional coastal consistency conditions.

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

**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**

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.

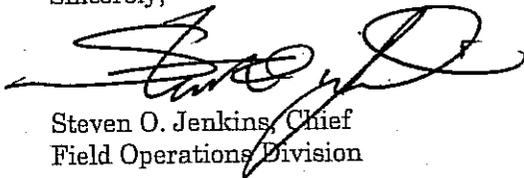
Liability and responsibility for compliance are not delegable by contract or otherwise. The applicant shall ensure that any agent, contractor, subcontractor, or other person employed by, under contract, or paid a salary by the applicant complies with this certification. Any violations resulting from 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 operator/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 to lands now owned by the State of Alabama nor shall it be construed as acquiescence by the State of Alabama of lands owned by the State of Alabama that may be in the applicant's possession.

Call or write anytime with questions. The Department contact for this matter and other coastal zone management issues is J. Scott Brown. He may be reached by telephone at [251] 432-6533 or via e-mail [jsb@adem.state.al.us].

Sincerely,



Steven O. Jenkins, Chief  
Field Operations Division

c: Joy Earp, Mobile District Corps of Engineers, Regulatory Division, Coastal Branch  
Phillip Hinesley, ADCNR-State Lands Division, Coastal Section