



STATE OF MISSISSIPPI

PHIL BRYANT
GOVERNOR

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

GARY C. RIKARD, EXECUTIVE DIRECTOR

March 6, 2017

Certified Mail No. 7016 2070 0000 7232 9804

Ms. Jennifer Mallard
Regulatory Branch Chief
U.S. Army Corps of Engineers, Vicksburg District
4155 Clay Street
Vicksburg, Mississippi 39183-3435

Dear Ms. Mallard:

Re: US Army Corps of Engineers
Nationwide Permit No. 51
Warren County
COE No. MVK-2017-114
WQC No. WQC2017051

Pursuant to Section 401 of the Federal Water Pollution Control Act (33 U. S. C. 1251, 1341), the Office of Pollution Control (OPC) issues this Certification, after public notice and opportunity for public hearing, to the U.S. Army Corps of Engineers, an applicant for a Federal License or permit to conduct the following activity:

US Army COE, Nationwide Permit No. 51:

Nationwide Permits are general permits issued on a nationwide basis to streamline the authorization of activities that have no more than minimal and cumulative adverse effects on the aquatic environment. The U.S. Army Corps of Engineers issues NWPs to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.

51. *Land-Based Renewable Energy Generation Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or

aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. A "new commercial shellfish aquaculture operation" is an operation in a project area where commercial shellfish aquaculture activities have not been conducted during the past 100 years.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

- (a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;
- (b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990;
- (c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste; or
- (d) Activities that directly affect more than 1/2-acre of submerged aquatic vegetation beds in project areas that have not been used for commercial shellfish aquaculture activities during the past 100 years.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The activity will include a species that has never been cultivated in the waterbody; or (2) the activity occurs in a project area that has not been used for commercial shellfish aquaculture activities during the past 100 years. If the operator will be conducting commercial shellfish aquaculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the pre-construction notification must also include the

following information: (1) A map showing the boundaries of the project area(s), with latitude and longitude coordinates for each corner of each project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per project area or group of contiguous project areas should be submitted for the commercial shellfish operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake in the project area or group of contiguous project areas during the effective period of this NWP. If an operator intends to undertake unanticipated changes to the commercial shellfish aquaculture operation during the effective period of this NWP, and those changes require Department of the Army authorization, the operator must contact the district engineer to request a modification of the NWP verification; a new preconstruction notification does not need to be submitted.

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines “aquatic nuisance species” as “a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.” [MVK-2017-114, WQC2017048].

The Office of Pollution Control certifies that the above-described activity will be in compliance with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Section 49-17-29 of the Mississippi Code of 1972, if the applicant complies with the following conditions:

1. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the

State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.

2. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.
3. The turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50-Nephelometric Turbidity Units.

The Office of Pollution Control also certifies that there are no limitations under Section 302 nor standards under Sections 306 and 307 of the Federal Water Pollution Control Act which are applicable to the applicant's above-described activity.

This certification is valid for the project as proposed. Any deviations without proper modifications and/or approvals may result in a violation of the 401 Water Quality Certification. If we can be of further assistance, please contact us.

Sincerely,



Harry M. Wilson, P.E., DEE
Chief, Environmental Permits Division

HMW: ld

cc: U.S. Army Corps of Engineers, Mobile District
Attn: Mr. Craig Litteken
U.S. Army Corps of Engineers, Memphis District
Attn: Mr. Tim Fudge
U.S. Army Corps of Engineers, Nashville District
Attn: Mr. Timothy Wilder
U.S. Army Corps of Engineers, New Orleans District
Attn: Mr. Michael Farabee
Ms. Willa Brantley, Department of Marine Resources
Mr. David Felder, U.S. Fish and Wildlife Service
Mr. William Ainsley, Environmental Protection Agency