

JEFF LANDRY
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SECRETARY

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL SERVICES

DEC 16 2025

Brad Guarisco
U.S. Army Corps of Engineers, New Orleans District
7400 Leake Avenue
New Orleans, Louisiana 70118-3651

AI No.: 149056
Activity No.: CER20250001

RE: U.S. Army Corps of Engineers – Nationwide Permits Renewal and Issuance
Water Quality Certification WQC 250618-01
State of Louisiana

Dear Mr. Guarisco:

The Louisiana Department of Environmental Quality (LDEQ), Water Permits Division, provides with this correspondence the water quality certification for the reissuance of forty-four (44) Nationwide Permits (NWP), the issuance of one (1) new NWP (NWP A), and their associated conditions and definitions. In addition, this document serves as the conditional water quality certification for the reissuance of NWP 29. A water quality certification for the reissuance of NWP 39 has been denied. The Corps published its proposal to reissue the NWPs and issue one new NWP in the Federal Register on June 18, 2025. In addition, on June 18, 2025, the New Orleans, Vicksburg, and Fort Worth Districts of the Corps published public notices regarding the NWPs and Regional Conditions for the State of Louisiana. The Corps requested a water quality certification under Section 401 of the Clean Water Act for the NWPs that may result in a discharge to waters of the United States in the State of Louisiana on June 18, 2025.

The LDEQ has reviewed the Corps' proposal to reissue the NWPs and issue one new NWP with the attached Regional Conditions for the State of Louisiana. The LDEQ has complied with its public notice procedures established pursuant to Clean Water Act Section 401 (a)(1). The LDEQ concludes that the activities authorized by the NWPs will not violate water quality standards as provided for in LAC 33:IX.Chapter 11. The LDEQ hereby issues WQC 250618-01 for the following NWPs.

NWP 3	NWP 17	NWP 31	NWP 43	NWP 54
NWP 4	NWP 18	NWP 32	NWP 44	NWP 57
NWP 5	NWP 19	NWP 33	NWP 45	NWP 58
NWP 6	NWP 20	NWP 34	NWP 46	NWP 59
NWP 7	NWP 21	NWP 36	NWP 48	NWP A
NWP 12	NWP 22	NWP 37	NWP 49	
NWP 13	NWP 23	NWP 38	NWP 50	
NWP 14	NWP 25	NWP 40	NWP 51	
NWP 15	NWP 27	NWP 41	NWP 52	
NWP 16	NWP 30	NWP 42	NWP 53	

Per Louisiana Administrative Code (LAC) 33:IX.1109.A.1, "The existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." Furthermore, LAC 33:IX.1109.A.3 states, "The administrative authority shall not approve any wastewater discharge or certify any activity for a federal permit that would impair water quality or use of state waters, including waters in the Natural and Scenic Rivers System that are waters of the state."

Louisiana's water quality standards include both numeric and general criteria. General criteria shall apply at all times to the surface waters of the state, including wetlands, whether they are identified in the standards or not.

The NWP 29 authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction of a single residence, a multiple unit residential development, or a residential subdivision. The NWP 39 authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features necessary for the use and maintenance of structures. Wastewater and stormwater discharges from these activities may cause or contribute to violations of water quality standards, including but not limited to, LAC 33:IX.1113.B.5.Toxic Substances, LAC 33:IX.1113.B.8.Nutrients, LAC 33:IX.1113.C.2.Chlorides, Sulfates, and Total Dissolved Solids, LAC 33:IX.1113.C.3.Dissolved Oxygen, LAC 33:IX.1113.C.5.Bacteria, and LAC 33:IX.1113.C.7.Ammonia. The Environmental Protection Agency has approved Total Maximum Daily Loads (TMDLs) for many of these parameters to ensure waterbodies in the state will meet water quality standards. Individual review is necessary to ensure projects authorized by these NWPs will comply with water quality standards and approved TMDLs.

Based on the information provided, the LDEQ has determined activities authorized by NWP 29 may have adverse effects on water quality or fail to comply with water quality standards in LAC 33:IX.Chapter 11, either through construction or wastewater discharges.

The LDEQ hereby issues a conditional water quality certification for the reissuance of NWP 29 only for activities associated with construction or expansion of a single residence pursuant to the attached State of Louisiana Nationwide Permit Regional Conditions. Activities permitted under this NWP that do not meet this criteria may fail to comply with water quality standards and should be considered for certification on an individual, case-by-case basis. Each project proponent that does not qualify must follow the procedures for obtaining a water quality certification found in LAC 33:IX.Chapter 15.

Based on the information provided, the LDEQ has determined activities authorized by NWP 39 may have adverse effects on water quality or fail to comply with water quality standards in LAC 33:IX.Chapter 11, either through construction or wastewater discharges.

The LDEQ hereby denies a water quality certification for the reissuance of the NWP 39.

The issuance of a conditional water quality certification for NWP 29 and the denial of a water quality certification for NWP 39 align with the proposed Regional Conditions for NWPs in the State of Louisiana.

Should you have any questions concerning any part of this certification, please contact Jace Hood at (225) 219-2743 or by email at jace.hood@la.gov. Please reference Agency Interest (AI) number 149056 and Water Quality Certification 250618-01 on all future correspondence to this Department to ensure all correspondence regarding this project is properly filed into the LDEQ's Electronic Document Management System.

Sincerely,



Amanda Vincent, PhD, PMP
Assistant Secretary

U.S. Army Corps of Engineers – New Orleans District – Nationwide Permit Renewal
AI 149056
WQC 250618-01
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LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY (LDEQ)

RATIONALE FOR DECISION

**UNITED STATES ARMY CORPS OF ENGINEERS (Corps)
NATIONWIDE PERMITS (NWP)s RENEWAL AND ISSUANCE
AGENCY INTEREST (AI) NO. 149056
WATER QUALITY CERTIFICATION (WQC) 250618-01**

STATE OF LOUISIANA

The LDEQ, Office of Environmental Services has issued a WQC to the Corps for the reissuance of forty-four (44) NWP's, the issuance of one (1) new NWP (NWP A), and their associated conditions and definitions. In addition, a conditional water quality certification has been issued for the reissuance of NWP 29. A water quality certification for the reissuance of NWP 39 has been denied. NWP's are general permits issued on a nationwide basis to streamline authorizations of activities that result in no more than minimal individual and cumulative adverse environmental effects. Activities authorized by the Corps under these NWP's will occur throughout the state of Louisiana.

The following permits are proposed for reissuance and are covered by WQC 250618-01:

NWP 3	NWP 17	NWP 31	NWP 43	NWP 54
NWP 4	NWP 18	NWP 32	NWP 44	NWP 57
NWP 5	NWP 19	NWP 33	NWP 45	NWP 58
NWP 6	NWP 20	NWP 34	NWP 46	NWP 59
NWP 7	NWP 21	NWP 36	NWP 48	
NWP 12	NWP 22	NWP 37	NWP 49	
NWP 13	NWP 23	NWP 38	NWP 50	
NWP 14	NWP 25	NWP 40	NWP 51	
NWP 15	NWP 27	NWP 41	NWP 52	
NWP 16	NWP 30	NWP 42	NWP 53	

The following permit is proposed for issuance and is covered by WQC 250618-01:

NWP A

In accordance with the Clean Water Act (CWA), 33 U.S. Code §1341 *et. seq.*, any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate. 33 U.S. Code §1362 (7) defines navigable waters as "...waters of the United States, including the territorial seas." Per 33 U.S. Code §1344 *et. seq.*, to conduct an activity that may lead to a discharge into navigable waters, an applicant must receive authorization via a permit issued by the Corps. Activities authorized by the Corps under these NWP's may result in a discharge to navigable waters. Therefore, the Corps is required to obtain a WQC from the LDEQ for the NWP's.

The issuance of a water quality certification is a determination that a project, as proposed, will not violate Louisiana's Surface Water Quality Standards and is in accordance with Louisiana's Water Quality Management Plan and all applicable state water laws, rules, and regulations. A WQC does not authorize the

applicant to perform the proposed activity. It is not a permit. Official records referenced in this document are located in the LDEQ's Electronic Document Management System (EDMS).¹

A water quality certification for NWP 29 has been conditionally issued for activities associated with the construction or expansion of a single residence. Activities permitted under this NWP that do not meet this criteria should be considered for certification on an individual, case-by-case basis. A water quality certification for NWP 39 has been denied. Activities permitted under this NWP must be considered for a water quality certification on an individual, case-by-case basis.

NWPs 1, 2, 9, 10, 11, 24, 28, 35, and 55 have also been proposed for reissuance by the Corps. The Corps has determined these NWPs are not reasonably expected to result in a discharge into waters of the United States.² NWP 8 is also proposed for reissuance, but it only authorizes activities seaward of the territorial seas. Therefore, it has been determined that a water quality certification is not necessary for these NWPs.³

I. PROJECT INFORMATION

A. Description of the Project

The Corps has proposed reissuing fifty-six (56) NWPs and issuing one new NWP. One NWP is not proposed for reissuance.⁴

The LDEQ has issued a WQC for the reissuance of forty-four (44) NWPs and the issuance of one (1) new NWP.

A water quality certification for NWP 29 has been conditionally issued for activities associated with the construction or expansion of a single residence. Activities permitted under this NWP that do not meet this criteria should be considered for certification on an individual, case-by-case basis. A water quality certification for NWP 39 has been denied. Activities permitted under this NWP must be considered for a water quality certification on an individual, case-by-base basis.

Descriptions of the activities covered by each NWP may be found in the LDEQ's EDMS.⁵

II. PUBLIC NOTICE AND COMMENT PERIOD

Louisiana Administrative Code (LAC) 33:IX.1507.D.1 requires applications for WQCs public a publish notice one time in the official journal of the state and one time in at least one or more local newspapers or journals of general circulation in each parish in which the activity is to be conducted. However, per LAC 33:IX.1507.D.6.Other Notices, "Notices required by this Section for state certification shall be in

¹ EDMS stands for Electronic Document Management System, the LDEQ's electronic repository of official records that have been created or received by LDEQ. Employees and members of the public can search and retrieve documents stored in the EDMS via this web application. (See <http://edms.deq.louisiana.gov/app/doc/querydef.aspx>).

² EDMS Document ID 15003744.

³ EDMS Document ID 15003744.

⁴ EDMS Document ID 15003744.

⁵ EDMS Document ID 15003744.

addition to any other notice concerning the same activity by the applicant or any federal agency unless the various state and/or federal agencies have adopted a procedure for the issuance of joint public notices.”

Public notices regarding the NWP and Louisiana Regional Conditions were published by the New Orleans, Vicksburg, and Fort Worth Districts of the Corps on June 18, 2025.⁶ Public comments were due July 18, 2025. Comments concerning water quality impacts from the project were received during the public notice period.

III. PUBLIC COMMENT RESPONSE SUMMARY

A Public Comments Response Summary has been prepared and made part of this Rationale for Decision.

IV. ANTIDegradation

40 Code of Federal Regulations (CFR) 131.12 requires states develop and adopt a statewide Antidegradation Policy. The LDEQ’s Antidegradation Policy and Implementation Plan can be found at LAC 33:IX.1109 and LAC 33:IX.1119, respectively. The goal of the Antidegradation Policy and Implementation Plan is to protect existing instream water uses and the level of water quality necessary to support these uses. Waterbodies are evaluated based upon the water quality at the time the designated use is adopted.

A. Water Quality Use and Criteria

Surface water quality standards are described in LAC 33:IX.Chapter 11. There are seven water uses designated for surface waters in Louisiana: agriculture, drinking water supply, fish and wildlife propagation (including a sub-category of limited aquatic life), outstanding natural resource waters, oyster propagation, primary contact recreation, and secondary contact recreation. Designated uses assigned to a subsegment apply to all waterbodies (listed waterbody and tributaries/distributaries of the listed waterbody) contained in that subsegment unless unique chemical, physical, and/or biological conditions preclude such uses. However, the designated uses of drinking water supply, outstanding natural resource waters, and oyster propagation apply only to the waterbodies specifically so designated in LAC 33:IX.1123, Table 3, and not to any tributaries or distributaries to such waterbodies, unless specified. Subsegments are hydrologic units used to define the borders of a watershed or drainage basin. Each subsegment has water quality standards unique to its location and designated uses.

Water quality criteria are elements of the water quality standards that set general and numerical limitations on the permissible amount of a substance or other characteristics of state water. General and numerical criteria are established to promote restoration, maintenance, and protection of state water. A criterion for a substance represents the permissible levels for that substance at which water quality will remain sufficient to support a designated use. Water quality criteria describe stream uses.

⁶<https://www.mvn.usace.army.mil/Missions/Regulatory/Public-Notices/Article/4220671/2025-06-18mvm2026-nwpsspnl/>

General criteria specifically apply to human activities; they do not apply to naturally occurring conditions. Except where specifically exempted elsewhere in the standards, general criteria shall apply at all times to the surface waters of the state, including wetlands, whether they are identified in the standards or not. General water quality criteria include aesthetics, color, floating, suspended or settleable solids, taste and odor, toxic substances, oil and grease, foaming or frothing materials, nutrients, turbidity, flow, radioactive materials, and biological and aquatic community integrity. Numeric criteria identified in LAC 33:IX.1123, Table 3, apply to the specified waterbodies, and to their tributaries, distributaries, and interconnected streams and waterbodies contained in the water management subsegment if they are not specifically named therein, unless unique chemical, physical, and/or biological conditions preclude the attainment of the criteria.

Activities authorized under the NWP in Louisiana will occur throughout the state of Louisiana. The numeric criteria and designated uses for each subsegment are listed in LAC 33:IX.1123, Table 3. In addition, numeric criteria for toxic substances and ammonia can be found in LAC 33:IX.1113.C.

B. Water Quality Assessment

Each subsegment has designated uses unique to its location. Biennially, the LDEQ assesses whether or not water quality standards are being met for each subsegment's designated uses. The degree of support for each designated use is analyzed with respect to ambient water quality data, total maximum daily load surveys, and other information related to the subsegment. This data can be found in the Louisiana Water Quality Inventory: Integrated Report.⁷ LDEQ reviewed the water quality certification application with regard to potential impacts from activities authorized by NWPs and compliance with water quality standards.

NWPs are general permits issued on a nationwide basis to streamline authorizations of activities that result in no more than minimal individual and cumulative adverse environmental effects. Activities authorized by the NWPs covered by WQC 250618-01 may result in discharges to waters of the United States. Section 404 of the CWA requires impacts to waters of the United States be avoided and minimized to the extent practicable. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) is required to ensure the individual and cumulative adverse environmental effects are no more than minimal.⁸ The Corps is responsible for determining applicable mitigation for activities authorized by the NWPs.

To receive an NWP authorization, project proponents must comply with all applicable General and Regional conditions of the Permit.⁹ Regional Conditions help ensure the adverse effects of the activities authorized by NWPs are no more than minimal, both individually and cumulatively. Several of the General and Regional Conditions are protective of water quality.¹⁰ For example, if an activity creates an impoundment of water, General Condition 8 requires adverse effects to the aquatic system due to the accelerating passage of water and/or restricting its flow be minimized to

⁷ The 2024 Louisiana Water Quality Integrated Report can be found at <https://deq.louisiana.gov/page/2024-Water-Quality-Integrated-Report>.

⁸ EDMS Document ID 15003744.

⁹ EDMS Document ID 15003744.

¹⁰ EDMS Document ID 15003744.

the maximum extent practicable.¹¹ General Condition 9 is another condition that is protective of water quality – it requires the pre-construction course, condition, capacity, and location of open waters be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings.¹² The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).¹³ Other conditions like Regional Condition 4 continue this trend – it requires dredged and/or fill material placed within wetlands and other waters be free of contaminants.¹⁴

In addition to complying with applicable general and regional conditions of the NWP, all activities in the state of Louisiana are subject to permitting requirements from the Louisiana Pollutant Discharge Elimination System (LPDES). The LPDES program requires permits for the discharge of pollutants from any point source into waters of the state.

Discharges of stormwater from construction activities that disturb equal to or greater than one acre are required to obtain coverage under either *Master General Permit Number LAR200000 – Storm Water General Permit for Small Construction Activities* or *Master General Permit Number LAR100000 – Storm Water General Permit for Large Construction Activities*. Permit coverage is required from the “commencement of construction activities” until “final stabilization” as defined in the permits. These permits includes requirements like special conditions, management practices, specific prohibitions, and other non-numeric limitations to ensure discharges from construction activities will not cause any water quality impairment or violation of water quality standards.

The LDEQ’s *General Permit for Discharges from Small Municipal Separate Storm Sewer Systems – Master General Permit No. LAR040000* regulates discharges of stormwater from Small Municipal Separate Storm Sewer Systems (MS4s).¹⁵ MS4 systems required to obtain permit coverage include 1) small MS4s located in an urban area with a population of 50,000 or more people as determined by the latest Decennial Census by the Bureau of the Census (if a small MS4 is not located entirely within an urban area with a population of 50,000 or more people, only the portion that is within this urbanized area is regulated) and 2) those designated by the state administrative authority, including where the designation is based upon a petition under LAC 33:IX.2511.F.4. MS4 permittees are required to manage post-construction stormwater runoff from new developments and redevelopment projects in their area of coverage to prevent or minimize water quality impacts.¹⁶ Any project located within an MS4 area of coverage is required to comply with the requirements of the permittee’s MS4 Stormwater Management Plan. Post-construction discharges from the developments in compliance with MS4 Stormwater Management Plan should not cause any water quality impairment or violation of water quality standards.

¹¹ EDMS Document ID 15003744.

¹² EDMS Document ID 15003744.

¹³ EDMS Document ID 15003744.

¹⁴ EDMS Document ID 15003744.

¹⁵ EDMS Document ID 14076509.

¹⁶ EDMS Document ID 14076509.

Any other discharges of wastewater and stormwater are subject to applicable LPDES permitting requirements. Discharges not in compliance with the conditions and permit limitations of the aforementioned permits are subject to appropriate enforcement action.

The NWP 29 authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction of a single residence, a multiple unit residential development, or a residential subdivision. The NWP 39 authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features necessary for the use and maintenance of structures. Wastewater and stormwater discharges from these activities may cause or contribute to violations of water quality standards, including but not limited to, LAC 33:IX.1113.B.5.Toxic Substances, LAC 33:IX.1113.B.8.Nutrients, LAC 33:IX.1113.C.2.Chlorides, Sulfates, and Total Dissolved Solids, LAC 33:IX.1113.C.3.Dissolved Oxygen, LAC 33:IX.1113.C.5.Bacteria, and LAC 33:IX.1113.C.7.Ammonia. The Environmental Protection Agency has approved Total Maximum Daily Loads (TMDLs) for many of these parameters to ensure waterbodies in the state will meet water quality standards. Individual review is necessary to ensure projects authorized by these NWPs will comply with water quality standards and approved TMDLs.

Based on the information provided, the LDEQ has determined activities authorized by NWP 29 may have adverse effects on water quality or fail to comply with water quality standards in LAC 33:IX.Chapter 11, either through construction or wastewater discharges.

The LDEQ hereby issues a conditional water quality certification for the reissuance of NWP 29 only for activities associated with construction or expansion of a single residence pursuant to the attached State of Louisiana Nationwide Permit Regional Conditions. Activities permitted under this NWP that do not meet this criteria may fail to comply with water quality standards and should be considered for certification on an individual, case-by-case basis. Each project proponent that does not qualify must follow the procedures for obtaining a water quality certification found in LAC 33:IX.Chapter 15.

Based on the information provided, the LDEQ has determined activities authorized by NWP 39 may have adverse effects on water quality or fail to comply with water quality standards in LAC 33:IX.Chapter 11, either through construction or wastewater discharges.

The LDEQ hereby denies a water quality certification for the reissuance of the NWP 39.

The issuance of a conditional water quality certification for NWP 29 and the denial of a water quality certification for NWP 39 align with the proposed Regional Conditions for NWPs in the State of Louisiana.

V. CONCLUSION

Based on a review and evaluation of the administrative record, which includes the federal permit application and public comments, the Louisiana Department of Environmental Quality, Office of Environmental Services finds the reissuance and issuance of the NWPs, as proposed, is not expected to cause violations of Louisiana's Water Quality Standards and is expected to comply with Louisiana's Water Management Plan and all applicable state water laws, rules and regulations.

Water Quality Certification, **WQC 250618-01** is hereby issued to:

U.S. Army Corps of Engineers – Nationwide Permits Renewal and Reissuance

Issued on December 16, 2025

Amanda Vincent
Amanda Vincent, PhD, PMP
Assistant Secretary, Office of Environmental Services

December 16, 2025
Date

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY (LDEQ)

PUBLIC COMMENTS RESPONSE SUMMARY

**UNITED STATES ARMY CORPS OF ENGINEERS (Corps)
NATIONWIDE PERMITS (NWP) RENEWAL AND ISSUANCE
AGENCY INTEREST (AI) 149056
WATER QUALITY CERTIFICATION (WQC) 250618-01**

STATE OF LOUISIANA

The LDEQ, Office of Environmental Services has issued a WQC to the Corps for the reissuance of forty-four (44) NWPs, the issuance of one (1) new NWP, and their associated conditions and definitions. In addition, a conditional water quality certification has been issued for the reissuance of NWP 29. A water quality certification for the reissuance of NWP 39 has been denied. NWPs are general permits issued on a nationwide basis to streamline authorizations of activities that result in no more than minimal individual and cumulative adverse environmental effects. Activities authorized by the Corps under these NWPs will occur throughout the state of Louisiana.

The issuance of a water quality certification is a determination that the Project, as proposed, will not violate Louisiana's Surface Water Quality Standards and is in accordance with Louisiana's Water Quality Management Plan and all applicable state water laws, rules, and regulations. A WQC does not authorize the applicant to perform the proposed activity. It is not a permit. Under Section 401 of the Clean Water Act (CWA), a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a water quality certification is issued, or certification is waived. The issuance of applicable Louisiana Pollutant Discharge Elimination System (LPDES) permits may require the issuance of a federal permit or license and the associated water quality certification.

Louisiana Administrative Code (LAC) 33:IX.1507.D.1 requires applicants for WQCs publish a public notice one time in the official journal of the state and one time in at least one or more local newspapers or journals of general circulation in each parish in which the activity is to be conducted. However, per LAC 33:IX.1507.D.6. Other Notices, "Notices required by this Section for state certification shall be in addition to any other notice concerning the same activity by the applicant or any federal agency unless the various state and/or federal agencies have adopted a procedure for the issuance of joint public notices." Public notices regarding the NWPs and Louisiana Regional Conditions were published by the New Orleans, Vicksburg, and Fort Worth Districts of USACE on June 18, 2025.¹ Comments concerning water quality impacts from the Project were received during the public notice period. The commenters' complete statements are located in the LDEQ's Electronic Document Management System (EDMS).² The scope of this Public Comments Response Summary is limited to comments that pertain to the issuance of the water quality certification and water quality issues. The LDEQ defers to the Corps for comments not related to the issuance of the water quality certification or water quality issues.

All public notice and public comment activities were conducted in accordance with LAC 33:IX.Chapter 15. Water Quality Certification Procedures and Louisiana Revised Statute 30:2074.A.(3).

¹<https://www.mvn.usace.army.mil/Missions/Regulatory/Public-Notices/Article/4220671/2025-06-18mvn2026-nwpssp/>

² EDMS stands for Electronic Document Management System, the LDEQ's electronic repository of official records that have been created or received by LDEQ. Employees and members of the public can search and retrieve documents stored in the EDMS via this web application. (See <http://edms.deq.louisiana.gov/app/doc/querydef.aspx>).

In this Public Comments Response Summary, the LDEQ has responded to pertinent statements (questions and/or comments) received during the public notice period that concern the issuance of a water quality certification and water quality issues related to the Project. Issues identified from commenters' statements have been numbered below. Comments addressing the same topic have been grouped together. Documents containing the commenters' complete statements are located in the LDEQ's EDMS.³

COMMENT 1:

The Atchafalaya Basin, as it exists today, is the largest remnant of a once-huge floodplain that stretched across over 24-million acres from coastal Louisiana to southeast Missouri. The Basin is the last bastion of the Cajun culture and remains the largest set of contiguous wetlands in North America, the most important habitat for migratory birds in the Western Hemisphere, and the most productive wetland ecosystem in the world.

Beyond these ecological features, the Atchafalaya Basin's most important function is its role as a floodway protecting all of southcentral Louisiana from catastrophic floodwaters from the Mississippi River. In 1979, the U.S. Environmental Protection Agency alerted the Corps to the concerning rate at which the Basin was losing flood capacity. In that 1979 Memo, EPA provided the Corps with guidance on how to comply with the congressional mandate to manage the Basin to prioritize flood protection and water quality. The Corps has ignored the congressional mandates and recommendations from EPA; now, after decades of lackluster enforcement of environmental laws, ill-advised development, and unwise manipulation of the Atchafalaya Basin, the Basin has lost its ability to carry the project flood envisioned in the 1950s.

Not only this, but the Atchafalaya Basin has been the setting for repeated attacks on the public's right to engage in interstate commerce. Fundamental to the Corps' mission is the agency's duty to protect the rights of American vessels to freely navigate the waters of the United States while engaged in interstate commerce, but the Corps has allowed the Basin to be riddled with illegal gates and dams that impede lawful navigation and acts of interstate commerce. The Corps has even used nationwide and regional general permits on multiple occasions to authorize these impediments after-the-fact, despite the violating party's failure to provide the Corps with any Pre-Construction Notification. This practice protects those who flagrantly violate environmental laws and disrespect agency authority at the cost of the rights of fishers and crawfishers who are only seeking to earn a living. Because of this, ABK is strongly urging the New Orleans District to institute a regional condition on all nationwide permits to permanently cease after-the-fact authorizations for any activity for which a Pre-Construction Notification was not provided. In addition to that recommendation, ABK submits the following comments:

Comments on Regional Conditions for All NWP's:

Suggested Additional Conditions

The NOD should publish a regional condition that no regulated activity may cause the permanent loss or the conversion of greater than 1/2 acre of any wetlands, cypress swamp, open-water areas, or streams. When an activity will cause any of these aquatic areas to fill or be degraded, an individual permit should be required.

³ EDMS Document IDs 15003745 and 15003746.

Regional Condition 1 already prohibits the use of an NWP to authorize any activity that would result in the permanent loss or conversion of greater than ½ acre of cypress swamp, which should continue to be in place, but ABK recommends that the NOD expand on this condition in the manner described above. As explained in previously submitted comments on NWP 14, as well as below in the Comments on Regional Conditions for NWP 14, NWPs have been used by the NOD to authorize activity that has filled in streams that supply thousands of acres of wetlands with healthy water; blocking a single stream in the Atchafalaya Basin or elsewhere in Louisiana can result in catastrophic losses in wetlands and damage to ecosystems. In early 2022, the NOD used NWP 14 to provide after-the-fact authorization for a dam that was built in late 2021, with no notice or permit application being provided to the Corps prior to construction. This dam has since caused its stream to fill with sediment, massively degrading water quality for over 10,000 acres of wetlands and other waters, resulting in permanent damage that affects fish migration and public access to areas traditionally susceptible to commerce. Nearly every time, a dam built in the Atchafalaya Basin will restrict water flows and cause streams and wetlands to fill with sediment, and the NOD should never provide after-the-fact authorization for these destructive constructions.

Though Louisiana has been searching for ways to rebuild its shrinking coast by filling open-water areas on the coast with sand and building shoreline, the open-water areas in the Atchafalaya Basin are more vital than ever, as they represent great portions of irreplaceable flood capacity. In some instances, a project will be permitted in part because the activity's negative impact on wetlands is claimed to be "mitigated" by the creation of wetlands through the filling of open-water areas. This only decreases flood capacity in the Basin further and increases the risk of catastrophic flooding in the region.

In addition to the above suggested condition, ABK further requests that the New Orleans District institute a regional condition that requires a Pre-Construction Notification for all activity falling under NWPs when that activity occurs in the Atchafalaya Basin, and the NOD should cease all after-the-fact authorizations for activity not preceded by a PCN. In the Atchafalaya Basin, corporations and individuals consistently violate environmental laws and undertake environmentally destructive activity without notifying or seeking approval from the Corps. This would be less of a concern if the NOD were empowered to utilize every enforcement tool at the District's disposal to protect the environment, remedy violations of the law, and properly ensure compliance with relevant laws and regulations; however, the Mississippi Valley Network has made it clear that discretionary enforcement measures are discouraged, and Corps officials have routinely refused to seek civil penalties or other enforcement mechanisms that do not involve issuing after-the-fact permit authorizations.

The NOD should further add a regional condition that strengthens General Condition 23 to require greater than a one-for-one ratio when mitigating the loss of wetlands in the region. Moreover, the NOD should not categorize the conversion of open water areas to wetlands as mitigation, given that such conversion could result in a loss of flood capacity and deep water habitat and does not necessarily mean the ecosystem will benefit.

The NOD should not also permit the use of multiple nationwide permits to authorize a single activity unless the loss of waters is less than the acreage limit of the NWP with the lowest limit, not the highest, as is currently the case under the proposed General Condition 28.

Comment on Regional Condition 6

The NOD should amend provision (a) to expressly include the Atchafalaya Basin as an area requiring a pre-construction notification for any activity that will adversely affect greater than 1/10 acre of wetlands.

Comments on Regional Conditions for Specific NWP's:

Comments on Regional Conditions for NWP 2

The NOD should require a PCN for all activity in the Atchafalaya Basin seeking authorization under NWP 2. Placing structures in artificial canals can cause harmful sedimentation by impacting the flow of water, especially in areas like the Atchafalaya Basin that are riddled with pipeline canals. Even with conditions on the permit that require the minimization of adverse impacts to the water quality and water flow, permittees often underestimate the impact their actions will have on the environment. Accordingly, when deciding whether to authorize activity under NWP 2, the Corps officials should not assume that an action will have a positive or neutral impact on the environment simply because that is what the conditions require. Rather, every request for authorization under NWP 2, and every other NWP, should be evaluated from a neutral standpoint. Further, just as urged above, ABK requests that the NOD institute a regional condition for NWP 2 to require PCNs for every activity authorized under NWP 2, and activity not paired with a PCN should never be authorized after-the-fact.

Comments on Regional Conditions for NWP 12

ABK urges the NOD to prohibit use of NWP 12 in the Atchafalaya Basin or for any activity that would impact wetlands in the Atchafalaya Basin. If the NOD declines to do such, ABK urges the NOD to at least require a PCN for all activity within the Atchafalaya Basin. In areas where pipelines are abundant, allowing a great deal of activity to be authorized without public comment risks disaster. Though NWP 12 is meant to streamline the permitting process to allow these less-significant activities to be approved in a more timely manner, the cumulative impact of many activities authorized under NWP 12 in the same area can have a significant and destructive impact on the environment. This map shows how often NWP 12 was used in one area of Louisiana over the course of just a few years. Authorizing this much activity without public comment seems unwise, and we urge the NOD to decline to authorize any more work under NWP 12 in the future.

Comments on Regional Conditions for NWP 13

ABK urges the NOD to add a condition that prohibits the use of NWP 13 in the Atchafalaya Basin. This NWP includes requirements that a permit recipient remove certain things after the activity or construction is complete. In the Atchafalaya Basin, the NOD has consistently failed to ensure such removals occur, and the NOD has often failed to hold violators accountable when the permittee fails to remove temporary fills or any other constructions. Until the Mississippi Valley Network and New Orleans District can ensure that any temporary fills are actually removed, a regional condition should be instituted to disallow this permit.

Comments on Regional Conditions for NWP 14

In earlier comments, ABK opposed the issuance of NWP 14 and encouraged the Corps to withdraw NWP 14 because the agency has improperly authorized work under NWP 14 that failed to comply with the NWP's

requirements. In these regional comments, ABK urges the NOD to institute a condition for NWP 14 that prohibits its use in the Atchafalaya Basin. Presently, ABK is challenging the use of NWP 14 to provide after-the-fact authorization for a dam that is impeding navigation and blocking the natural flow of a waterway known as Pat's Throat Bayou. This lawsuit is challenging an action by the Corps that is part of a decades-long pattern of non-enforcement by an agency unwilling to hold violators accountable. ABK urges the NOD to carefully examine these facts and documents when considering whether to establish a regional condition denying the use of NWP 14 in the Atchafalaya Basin.

In October 2021, ABK sent a letter to the Corps, notifying the NOD of an illegal dam built across Pat's Throat Bayou and asking if an investigation or enforcement action was underway. Following this, ABK sent another letter to the Corps and the alleged violator, providing notice of intent to file a citizen suit for violations of the Clean Water Act related to the unpermitted construction of the dam on Pat's Throat. In the period after receiving notice of this violation but prior to the date on which ABK could initiate suit, the Corps reported the violation and issued a cease and desist order to the alleged violator. However, the NOD ignored the many concerns from ABK and other affected community members that Pat's Throat and the surrounding wetlands would fill with sediment if the dam was not promptly removed; instead, the NOD utilized NWP 14 to provide after-the-fact authorization for the dam. In response, ABK initiated its ongoing legal action challenging the improper use of NWP 14 to authorize the construction of Pat's Throat after-the-fact. The dam is blocking public access to thousands of acres of swamp, affecting the livelihood of local fishers and crawfishers. It is also blocking fish migration to their spawning grounds and destroying water quality. Some of the species of fish and shellfish most affected are crawfish, bass, perch, crappie, catfish, buffalo fish and garfish. The dam has yet to be removed, and the irreparable damage that ABK warned of is already occurring.

The above images show the dam on Pat's Throat Bayou shortly after its initial construction. Though the dam is very clearly impeding the ability to navigate along the waterway, water was still present on either side of the obstruction, and Pat's Throat Bayou had not yet filled in.

In the time since the dam was constructed, though, irreparable damage has occurred. As is seen in the pictures below from the summer of 2024, the stretch of Pat's Throat Bayou between the dam and the Atchafalaya River has completely filled in, with water only being visible on the other side of the dam.

By using NWP 14 to provide after-the-fact authorization for this dam, the NOD allowed this valuable aquatic ecosystem to be destroyed. This damage could have been prevented had the Corps heeded the warnings from ABK, local fishers, and other affected community members. But the Corps ignored our concerns; instead, the Corps provided after-the-fact authorization for the dam based on the facts provided to the agency by the alleged violator, and countless wetlands have been degraded and destroyed as a result. The Corps' refusal to listen to community members is concerning by itself, but the fact that these NWPs do not mandate a period for public comment on each authorization of work creates additional concern. Without public comment, the Corps will continue to base these decisions on the word of the alleged violator, risking more destruction of irreplaceable aquatic ecosystems. Until the NOD can ensure that NWP 14 will not be used in the future to authorize similarly destructive activities, NOD should institute a regional condition that prohibits its use, at least for all activity within the Atchafalaya Basin.

Looking at the Corps' use of other general permits, though, there is a clear pattern of misusing general permits to authorize work that fails to even comply with the conditions of the general permit being applied. As is exemplified by the documents included in Attachment A, the NOD has historically failed to ensure that

work authorized pursuant to a general permit actually complies with the permit conditions. The attached documents show how the NOD authorized work that violated the District's General Permit 13 (NOD-13) for years without any accountability or repercussions. It was only after ABK filed suit to challenge NOD-13 that the agency showed a willingness to reconsider the use of the permit in the Atchafalaya Basin. This practice of issuing general permits for destructive work without proper enforcement of environmental laws is directly contrary to the Corps' mission and duty to protect waters of the United States and the public's right to navigate freely on those waters. Continued use and misuse of NWP 14 in the Atchafalaya Basin will only open the Corps up to further litigation, as the agency has shown a pattern of wrongly authorizing work that directly violates the conditions of the general permit used for authorization. For these reasons, ABK strongly urges the NOD to discontinue the use of NWP 14.

Comments on Regional Conditions for NWP 27

The NOD should alter this regional condition to instead prohibit use of NWP 27 in the region altogether. If the NOD declines to do so, the current condition should be at least modified to not authorize any activity that would convert tidal wetlands, any wetlands in the Atchafalaya Basin, and/or open-water areas in the Atchafalaya Basin to another aquatic habitat type. In the Atchafalaya Basin, multiple aquatic ecosystem enhancement projects have been permitted over the past few decades, all of which were accompanied by assurances that they would result in a better environment with no adverse consequences; however, most all these projects have resulted in catastrophic sedimentation and destruction of wetlands. It is clear that not every enhancement or restoration project will actually result in benefits to the environment, so the Corps should not authorize these projects without public comment simply because they are framed as a restoration activity. The Corps should instead require these projects to apply for an individual permit. Those projects that will actually benefit the aquatic ecosystem in a way that resembles an ecological reference should not require an environmental impact statement and should easily be permitted through the IP process. The Corps should not risk damaging the environment for the sake of saving developers and property owners time. If the NOD declines to follow the suggestions provided in these comments, the NOD should, at a minimum, require a PCN for all activity under NWP 27 and refuse to provide after-the-fact authorization for any activity that was not preceded by a PCN.

RESPONSE 1:

Under Section 401 of the CWA, a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a Section 401 WQC is issued, or certification is waived. The scope of a CWA Section 401 WQC is limited to assuring a discharge proposed in a federally permitted activity will comply with applicable water quality laws, rules, and regulations. As such, the scope of this WQC is limited to the discharge proposed in the federal permit application.

Issues not related to water quality, such as flooding, navigation, and commerce, are not within the scope of CWA Section 401 WQCs. Under both 33 U.S. Code §1341 - Certification and the Louisiana Water Quality Regulations, the LDEQ is only authorized to review a water quality certification application for compliance with applicable water quality standards, rules, and regulations.

The Corps is responsible for determining the applicable permit for an activity. In addition to the nature of the activity itself, the size of impacts determines whether a particular activity may be authorized by an NWP. To obtain authorization for many NWPs, an activity cannot cause the loss of greater than ½ of an acre of waters of the United States.

Activities authorized by certain NWP's may result in discharges to waters of the United States. Section 404 of the CWA requires impacts to waters of the United States be avoided and minimized to the extent practicable. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) is required to ensure the individual and cumulative adverse environmental effects are no more than minimal. The Corps is responsible for determining applicable mitigation for activities authorized by the NWP's.

Division engineers with the Corps are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are an important mechanism to help ensure that the adverse environmental effects of activities authorized by the NWP's are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP's in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWP's may be more than minimal.

To receive an NWP authorization, project proponents must comply with all applicable General and Regional conditions of the Permit. Regional Conditions help ensure the adverse effects of the activities authorized by NWP's are no more than minimal, both individually and cumulatively. Several of the General and Regional Conditions are protective of water quality including but not limited to General Conditions 2 and 9.

The Corps is responsible for enforcing conditions of CWA Section 404 permits. However, it should be noted, the state of Louisiana has Surface Water Quality Standards located in LAC 33:IX.Chapter 11. Per LAC 33:IX.1107.A, "The standards provided in this Chapter are official regulations of the state, and any person who discharges pollutants into the waters of the state in such quantities as to cause these standards to be violated shall be subject to the enforcement procedures of the state as specified in R.S. 30:2025."

COMMENT 2:

The Louisiana Department of Conservation and Energy submitted comments regarding the NWP's consistency with the Louisiana Coastal Resources Program.⁴

RESPONSE 2:

Under Section 401 of the CWA, a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a Section 401 WQC is issued, or certification is waived. The scope of a CWA Section 401 WQC is limited to assuring a discharge proposed in a federally permitted activity will comply with applicable water quality laws, rules, and regulations. As such, the scope of this WQC is limited to the discharge proposed in the federal permit application.

Issues not related to water quality are not within the scope of CWA Section 401 WQCs. Under both 33 U.S. Code §1341 - Certification and the Louisiana Water Quality Regulations, the LDEQ is only authorized to review a water quality certification application for compliance with applicable water quality standards, rules, and regulations.

⁴ EDMS Document ID 15003746.