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May 10, 2007

Ms. Denise Sloan
U.S. Army Corps of Engineers
Galveston District CESWG-PE-RE
P.O. Box 1229
Galveston, Texas 77553-1229

Re: USACE Nationwide Permits

Dear Ms. Sloan:

The letter is in response to your letter dated April 3, 2007, requesting certification of the United States Army Corps of Engineers (USACE) Nationwide Permits (NWPs) pursuant to Section 404 of the Clean Water Act. These NPWs were published in the Federal Register (Part II, Vol. 72, No. 47, pages 11092-11198) on March 12, 2007. The regional conditions for these NWPs for Texas were proposed in a public notice dated October 12, 2007.

Under Texas Natural Resources Code, Title 3, and the Texas Water Code, Chapter 26, the Railroad Commission of Texas (RRC) has responsibility for the prevention of pollution that might result from activities associated with exploration, development, and production of oil, gas, or geothermal resources of the State and to prevent operations dangerous to life or property. Texas Natural Resources Code, §91.101, and Texas Water Code, §26.131, grants the RRC jurisdiction for water quality certifications for federal permits covering activities associated with the exploration, development, and production of oil, gas or geothermal resources that may result in discharges to waters of the United States. No person may conduct any activity subject to RRC jurisdiction pursuant to a Corps permit if that activity may result in a discharge into to waters of the United States within the boundaries of the State of Texas, unless the RRC has first issued a certification or waiver of certification under 16 Texas Administrative Code §3.93 (Rule 93). This certification decision is limited to those activities under the jurisdiction of the Railroad Commission of Texas (RRC), which generally include activities related to the exploration, development, and production of oil and gas and geothermal resources, including pipeline transportation.

This office has reviewed the U.S. Army Corps of Engineers Nationwide Permits 2 (Structures in Artificial Canals), 3 (Maintenance), 6 (Survey Activities), 7 (Outfall Structures and Associated Intake Structures), 8 (Oil and Gas Structures on the Outer Continental Shelf), 12 (Utility Line Activities), 14 (Linear Transportation Projects), 16 (Return Water From Upland Contained Disposal Areas), 18 (Minor Discharges), 19 (Minor Dredging), 20 (Oil Spill Cleanup), 25 (Structural Discharges), 38 (Cleanup of Hazardous and Toxic Waste), 43 (Stormwater Management Facilities), 46 (Discharges in Ditches), and 47 (Pipeline Safety Program Designated Time Sensitive Inspections and Repairs). The Texas Commission on Environmental Quality (TCEQ) has certified that the activities authorized by NWPs 2, 8 and 20, unconditionally, and by the remaining NWPs with conditions, should not result in a violation of

the established Texas Surface Water Quality Standards as required by Section 401 of the Federal Clean Water Act and pursuant to 30 TAC Chapter 279. This office has reviewed the TCEQ's certification and concurs with the certification determination for activities to be performed under these NWPs that are associated with oil and gas activities under the jurisdiction of the RRC.

The RRC has reviewed the Notice of Reissuance of Nationwide Permits for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (31 Texas Administrative Code Section 505.30), and has determined that the action is consistent with the applicable goals and policies of the CMP, with the following condition:

> As soon as the Corps and the Texas Parks and Wildlife Department complete work to establish the boundaries and adjacent wetlands, for all discharges proposed for authorization under nationwide permits (NWP) 3, 6, 7, 12, 14, 18, and 19 associated with oil and gas exploration, development and production under the jurisdiction of the Railroad Commission of Texas and into coastal natural resource areas in the following areas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 27 and the Corps will coordinate with the resource agencies as specified in the NWP General Condition 27(d):
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> 1. Mission-Aransas National Estuarine Research Reserve;
> 2. Armand Bayou Coastal Preserve;
> 3. Christmas Bay Coastal Preserve;
> 4. Welder Flats Coastal Preserve; and
> 5. South Bay Coastal Preserve.

The RRC reserves the right to modify this certification should it be determined that significant cumulative or secondary impacts are occurring as a result of the activities authorized by the USACE under these NPWs.

Please contact me at (512)463-7308 or leslie.savage@rrc.state.tx.us if you have any questions or require additional information.

Sincerely yours,

Leslie Savage, CMP Coordinator and Water Quality Certification Agent
Oil and Gas Division, Railroad Commission of Texas

Cc: Mr. Mark Fisher, Water Quality Division
Texas Natural Resource Conservation Commission (via fax)

Jarrett O. Woodrow, Director of Coastal Conservation, Coastal Fisheries Division
Texas Parks and Wildlife Department (via fax)