



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R06-OW-2014-05694; FRL- 9917-50-Region-6]

Clean Water Act: Proposed Section 404(c) Exemption

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) proposes to extend coverage under an existing Clean Water Act Section (CWA) 404(c) exception for the continued operation and maintenance of a portion of an electrical transmission line and a portion of a distribution line at the Bayou aux Carpes site in Jefferson Parish, Louisiana. The extension will authorize minimal discharges (approximately 1.35 cubic yards) to wetlands of dredged or fill material associated with ongoing activities by Entergy Louisiana, L.L.C. (Entergy) in order to provide electrical service to residential, commercial, military, industrial, and other facilities in nearby Plaquemines Parish.

DATES: Comments on this proposed action must be received on or before **[INSERT DATE 15**

BUSINESS DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be addressed to Ms. Barbara Keeler (6WQ-EC), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733. Comments may also be submitted by email to Ms. Keeler at keeler.barbara@epa.gov. All comments should directly address whether the Southern Natural Gas Pipeline exception to the 1985 Bayou aux Carpes CWA

Section 404(c) EPA Final Determination should be extended to cover the work requested by Entergy.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. Barbara Keeler by phone at (214) 665-6698 or by email at keeler.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: The Bayou aux Carpes CWA Section 404(c) site is located approximately ten miles south of New Orleans, Louisiana, on the West Bank of Jefferson Parish. The site includes about 3,000 acres of wetlands subject to federal jurisdiction under the CWA. The area is bounded on the north by the Estelle Pumping Station Outfall Canal, on the east by Bayou Barataria (Gulf Intracoastal Waterway), on the south by Bayou Barataria and Bayou des Familles, and on the west by State Highway 3134 and the “V-Levee.” In 2009, most of the site was incorporated into the Barataria Unit of the Jean Lafitte National Historic Park and Preserve and the site remains subject to the CWA Section 404(c) restrictions.

Entergy petitioned EPA for an exception to the October 16, 1985, EPA Final Determination for the Bayou aux Carpes site in Jefferson Parish, Louisiana, issued under Section 404(c) of the CWA. An exception was provided in the 1985 restriction for discharges associated with routine operation and maintenance of the Southern Natural Gas Pipeline Company pipeline. Subsequently, the exception was extended to cover minor discharges from emergency maintenance and relocation of a portion of another existing pipeline operated by Shell Pipeline Corporation. Both the original exception and the subsequent amended coverage were allowed based on determinations that the proposed activities associated with existing linear service utilities would be unlikely to result in unacceptable adverse effects to the Bayou aux Carpes CWA Section 404(c) site. The currently proposed coverage under the same exception is for a similar purpose and is projected to entail minor temporary impacts to the subject wetlands.

The October 16, 1985, Bayou aux Carpes Clean Water Act Section 404(c) EPA Final Determination and other background information are available online at:

<http://www.regulations.gov> (Docket No. EPA-R06-OW-2014-0569).

Background

Section 404(c) of the CWA authorizes EPA to prohibit, deny, restrict or withdraw the use of any defined area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. The U.S. Army Corps of Engineers (Corps) authorizes thousands of CWA Section 404 permits every year and EPA works with the Corps and applicants to resolve environmental concerns. Since the passage of the CWA in 1972, EPA has finalized 404(c) prohibitions or restrictions only 13 times. The use of this authority has typically involved major projects with unacceptable impacts on some of America's most ecologically valuable waters.

On November 15, 1985, EPA published (50 FR 47267) a CWA Section 404(c) Final Determination prohibiting, with three exceptions, future discharges of dredged or fill material to wetlands in the Bayou aux Carpes site. The CWA Section 404(c) action was based upon a thorough record of investigations, including field surveys, remote sensing and other technical analyses conducted by three EPA facilities, the U.S. Fish and Wildlife Service, the National Park Service, and the Louisiana State University Center for Wetland Resources.

The 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination included three exceptions. The first of the original three approved exceptions is for discharges associated with the completion of a specific design option for the Corps' Harvey Canal – Bayou Barataria Levee Project, which was never constructed. The second exception is for discharges associated

with routine operation and maintenance of the Southern Natural Gas Pipeline, under specified conditions. The third exception provides for possible future EPA approved habitat enhancement activities. EPA determined that these three types of activities would be unlikely to result in unacceptable adverse effects to the aquatic environment, as long as they were performed in accordance with any specified conditions and complied with any permit conditions that might be imposed by the Corps through the CWA Section 404 permit process. A provision was also included to allow other interests to petition EPA for reconsideration if, in the future, other activities were to be proposed for public benefit which would result in only minor impacts.

There has been only one major modification to EPA's 1985 decision to restrict discharges into the wetlands of the Bayou aux Carpes site. The modification was granted to the Corps in 2009 in association with the construction of flood risk reduction upgrades following Hurricane Katrina. On November 4, 2008, the Corps requested that the Bayou aux Carpes CWA Section 404(c) designation be modified to allow construction of a floodwall along Bayou Barataria and tying into the planned West Closure Complex, as part of the post-Hurricane Katrina upgrades known as the Greater New Orleans Hurricane and Storm Damage Risk Reduction System Project. This work was but a small part of the larger effort to reduce flood risks to the 250,000 people living on the west bank of the Mississippi River and to infrastructure supporting the greater New Orleans area by building a more resilient and reliable storm damage and risk reduction system, as directed by Congress.

Following a public meeting, opportunity for public comments, extensive interagency coordination and thorough ecological analyses, EPA approved the modification request on May 28, 2009, publishing the decision at 74 FR 143 (July 28, 2009). EPA determined that construction of the modified "T-wall" style floodwall within a 100 foot by 4,200 foot corridor (\leq

9.6 acres) on a previously impacted area of the Bayou aux Carpes site (along with commitments from the Corps that would minimize construction impacts and provide for mitigation, wetland enhancement and long-term monitoring) was an acceptable approach. EPA found that compelling circumstances justified a modification, that there were no less environmentally damaging practicable alternatives that would adequately address those circumstances and that all feasible means of minimizing adverse wetland effects to the Bayou aux Carpes site would be implemented. This decision to modify a CWA Section 404(c) Final Determination was unique in the history of such determinations and EPA granted the modification in the belief that it would achieve a balance between the national interest in reducing overwhelming flood risks to the people and critical infrastructure of south Louisiana while minimizing any damage to the Bayou aux Carpes Section 404(c) area to the maximum degree possible in order to avoid unacceptable adverse effects.

In addition to that modification of the 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination, EPA has considered very few requests for coverage under the original exceptions. In 1992, Shell Pipeline Corporation requested permission to allow the discharge of dredged and fill material effecting approximately 0.43 acres of wetlands in the restricted site in connection with a proposed below ground pipeline relocation. This work was necessary to facilitate the enlargement of a federal hurricane protection levee and to remedy the emergency reconstruction of a leaking temporary by-pass pipeline segment. In addition, future routine operation and maintenance activities associated with this pipeline were requested to be excluded from the CWA Section 404(c) restriction. After notifying interested parties of the request via *Federal Register* publication and coordinating with the Corps and other agencies, EPA granted the requests, publishing the decision at 57 FR 3757 (January 31, 1992). EPA concluded that

relocating the pipeline to non-wetlands was infeasible from the perspectives of engineering and public safety, the work would have only minimal and temporary effects on the wetlands at issue and the work was essentially the same as that envisioned under the second exception included in the 1985 Final Determination.

Over the years, additional requests for modifications have been the subject of initial analyses by EPA. In each of those cases, however, the petitioners did not complete the analyses required for an agency decision.

Proposed Activities

On August 18, 2014, Entergy petitioned EPA for an exception to cover anticipated temporary impacts to a total of 0.003 acres (approximately 1.35 cubic yards) of wetlands resulting from operation and maintenance activities for portions of an existing transmission and portions of a distribution line located partially within the Bayou aux Carpes Section 404(c) area.

The Barataria to Alliance Transmission line was constructed in the 1960's by Entergy's predecessor, Louisiana Power & Light. Of the 74,012 total transmission line length, an 11,543 foot section and 15 towers are within the 120 foot right-of-way that runs through the southern portion of the Bayou aux Carpes CWA Section 404(c) site. The distribution line and 15 wooden single poles course through approximately 3,415 feet within a ten foot right-of-way section of the Bayou aux Carpes site.

Entergy has requested permission to conduct preventative maintenance and inspections as required by Federal Energy Regulatory Commission regulations, North American Electric Reliability Corporation regulations, and Entergy's guidelines and procedures. Numerous techniques for minimizing impacts have been proposed and alternatives have been evaluated. The foreseeable activities are projected to temporarily effect no more than 0.003 acres of the

protected wetlands during the remaining 50-60 years of expected facility life. Entergy has requested that EPA extend authorization for this work under the 1985 EPA CWA Section 404(c) Bayou aux Carpes Final Determination exception that covers the routine operation and maintenance of a similar linear utility, namely the Southern Natural Gas Pipeline.

EPA proposes to extend coverage, as specified in the request from Entergy, under this exception because the work would have only minimal and temporary effects on 0.003 acres of wetlands and would not be considered to be unacceptable. Further, the activities to be conducted are essentially the same as that envisioned under the Southern Natural Gas Pipeline exception, which was granted in the 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination.

Dated: September 23, 2014.

William K. Honker,
Director, Water Quality Protection Division,
EPA Region 6.