



## UNITED FOR A HEALTHY GULF

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re: **MVN 2015-01668-WII** - Construct a New Refinery Grade Propylene Pipeline Within Ascension, Iberville, and St. Martin Parishes (**WQC 160112-02**)

Dear Mr. Little and Ms. Hill,

I am writing on behalf of Gulf Restoration Network (“GRN”), a diverse coalition of individual citizens and local, regional, and national organizations committed to uniting and empowering people to protect and restore the resources of the Gulf of Mexico. We have serious concerns about the application for a Section 404 Permit (**MVN 2015-01668-WII**) and Water Quality Certification (**WQC 160112-02**) submitted to the United States Army Corps of Engineers (“The Corps”) and Louisiana Department of Environmental Quality (“LDEQ”), respectively, by Enterprise Products Operating LLC (“The Applicant”).

The Applicant requests Section 404 permitting and a Water Quality Certification (“WQC”) for its proposed construction of a 65-mile, 10-inch, refinery-grade propylene pipeline (“The Project”). The Project would transport propylene from the Bayou Bouillon field to an existing underground gas storage (“UGS”) facility in Sorrento. In its present form, this potential project would impact over 160 acres of priceless forested wetlands. A project of this magnitude is surely significant in its own right. However, it also serves as yet another example of the continued existential threats faced by bottomland hardwood habitats. Although The Applicant proposes to buy mitigation credits from a bank within the appropriate district, we strongly encourage that maximum avoidance measures to be taken. There should also be a public hearing held near Sorrento, in order to gain further insight into this significant proposal.

GRN opposes The Applicant's request for a Section 404 Permit and WQC, and we ask The Corps and LDEQ to deny this request based on the following concerns:

**1. *Water Dependence of The Project has not been demonstrated by The Applicant.***

The intent of Corps regulation is to avoid the unnecessary destruction or alteration of Waters of the United States, including wetlands, and to compensate for the unavoidable loss of such waters. Corps regulations require that no discharge of dredged or fill material shall be permitted should there exist a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

Based on this provision, an evaluation is required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic ecosystem, irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. A permit cannot be issued, therefore, in circumstances where an environmentally preferable practicable alternative for the proposed discharge exists.

For proposed discharges into wetlands and other special aquatic sites, The Corps requires consideration of whether the activity associated with the proposed discharge is "water dependent." Water dependency is defined in terms of an activity requiring access or proximity to or siting within a special aquatic site to fulfill its basic project purpose.

The Applicant has not explicitly described its project purpose in the joint Corps/LDEQ Public Notice.<sup>1</sup> It can therefore only be speculated that The Project is meant to facilitate the storage of refinery-grade propylene via pipeline transport. Pipelines are inherently not water dependent, and The Applicant has not clearly demonstrated that The Project is an exception. The Applicant has also failed to demonstrate that practicable alternatives do not exist.

According to 40 CFR §230.10(a)(3):

[W]here the activity associated with a discharge which is proposed for a special aquatic site (as defined in subpart E) does not require access or proximity to or sitting within the special aquatic site in question to fulfill its basic purpose (i.e. not water dependent), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a

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<sup>1</sup> Joint Corps/LDEQ Public Notice:  
[http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2015\\_01668\\_PNALL.pdf](http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2015_01668_PNALL.pdf)

special aquatic site are presumed to have less adverse impact on the same aquatic ecosystem, unless clearly demonstrated otherwise.<sup>2</sup>

Wetlands are considered “special aquatic sites.”<sup>3</sup> There is no reason or explanation given by The Applicant concerning why this development must be sited in wetlands to “fulfill its basic purpose.” Since the burden of proof rests with The Applicant, it must therefore be concluded that this proposal is not water dependent. And according to the regulations, non-wet practicable alternatives must then exist.<sup>4</sup>

*In its present form, The Corps and LDEQ must deny The Applicant’s requests for a Section 404 Permit and WQC.*

## **2. Project Alternatives have not been addressed.**

In general, the regulations provide that no discharge of dredged or fill material shall be permitted: (1) if there is a practicable alternative to the proposed discharge; (2) if the discharge causes or contributes to violations of applicable state water quality standards; (3) if the discharge will cause or contribute to significant degradation of the environment; and (4) unless all appropriate steps have been taken to minimize potential adverse impacts.<sup>5</sup>

The Corps’ regulations also require that destruction of wetlands is to be avoided to the extent practicable.<sup>6</sup> The regulations further provide that “practicable alternatives” include “not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences.”<sup>7</sup> If a project is not “water dependent,” as is the case with a pipeline, the guidelines contain a presumption that a less environmentally damaging practicable alternative exists while also requiring that the applicant clearly demonstrates that practicable alternatives which would not involve discharge of fill material into special aquatic sites were not available.<sup>8</sup>

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<sup>2</sup> 40 C.F.R. §230.10(a)(3) (2009).

<sup>3</sup> 40 C.F.R. §230.41.

<sup>4</sup> It should be further noted that 40 C.F.R. §230.20(a)(2) allows for the consideration of alternative sites *not owned* by The Applicant if they can be reasonably obtained and utilized for the basic purpose. Here, where the basic purpose is pipeline development, it can be easily assumed that numerous non-wetland properties could be reasonably obtained to fulfill the basic purpose, and it is clearly within The Applicant’s burden to demonstrate otherwise.

<sup>5</sup> 40 C.F.R. § 230.10.

<sup>6</sup> 33 C.F.R. § 320.4(r).

<sup>7</sup> 40 C.F.R. §§ 230.5(c), 230.10(a).

<sup>8</sup> 40 C.F.R. § 230.10(a)(3).

Publicly-available documents provide no evidence that The Applicant has engaged in a proper alternative analysis, to determine if non-wet potential project sites exist. The alternative analysis must include direct, indirect, secondary, and cumulative impacts that take into account aspects of water quality, wildlife, and flood protection. Presently, the public has not received any information as to why The Project must be sited in The Applicant's preferred location.

Impacts to wetland areas could obviously be minimized if the development were relocated to non-wet regions. As noted above, a burden to show the non-existence of practicable alternatives rests with The Applicant, when the proposed project is located in a special aquatic habitat and is not water-dependent.

Because The Applicant has not shown The Project to be water dependent, it is then assumed under the regulations that practicable alternatives exist to aspects of The Project that impact Waters of the United States. The Applicant has failed to demonstrate adequate consideration of alternatives, or an avoidance of impacts to the maximum extent practicable. Therefore, GRN respectfully submits that The Corps cannot issue the requested permit under Clean Water Act Section 404.

*We request an adequate alternatives analysis in response to this letter.*

### ***3. Direct, indirect, secondary, and cumulative impacts must be fully considered.***

Given the information in the Public Notice,<sup>9</sup> it also does not appear The Applicant has fully considered the direct impacts, or even addressed indirect, secondary, and cumulative impacts of the proposed wetland disruption:

Direct impacts – The direct impacts of The Project are certainly significant. As seen in the below table, The Project disproportionately affects priceless forested wetland habitat. While the Applicant draws distinctions between “temporary” and “permanent” impacts, we at GRN hope to emphasize the time required for forested ecosystems to develop.

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<sup>9</sup> Joint Corps/LDEQ Public Notice:  
[http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2015\\_01668\\_PNALL.pdf](http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2015_01668_PNALL.pdf)

Table 1: Proposed wetland impacts (in acres) would disproportionately affect forested habitat

<i>Impact Type</i>	<i>Wetland Type</i>			<i>Total</i>
	<i>Forested</i>	<i>Scrub-shrub</i>	<i>Emergent</i>	
<i>Permanent ROW Conversion</i>	<b>39.5</b>	0.5	0.0	<b>40.0</b>
<i>Temporary Construction</i>	<b>118.9</b>	1.1	0.0	<b>120.0</b>
<i>Permanent</i>	<b>6.7</b>	0.0	1.2	<b>7.9</b>
<b><i>Total</i></b>	<b>165.1</b>	<b>1.6</b>	<b>1.2</b>	<b>167.9</b>

The fill of such a large area is in violation of federal and state anti-degradation policy, as well. The Louisiana policy states that “administrative authority will not approve any wastewater discharge or certify any activity for federal permit that would impair water quality or use of state waters.”<sup>10</sup>

Additionally, the Federal regulations have not been fully implemented. Per executive orders 11988 and 11990, in order to prevent impacts to wetlands certain aspects need to be analyzed. Title 18 of the Code of Federal Regulations states:

It is the policy of the Council to provide leadership in floodplain management and the protection of wetlands. Further, the Council shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing the National Environmental Policy Act. The Council shall take action to: Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction or modification of wetlands; Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative; Reduce the risk of flood loss; Promote the use of nonstructural loss reduction methods to reduce the risk of flood loss; Minimize the impact of floods on human health, safety and welfare; Minimize the destruction, loss or degradation of wetlands; Restore and preserve the natural and beneficial values served by floodplains; Preserve and enhance the natural and beneficial values served by wetlands.<sup>11</sup>

Given that the Public Notice does not thoroughly adhere to the executive order, The Corps and LDEQ should deny the permit application.

<sup>10</sup> LA. ADMIN. CODE tit. 33, pt. IX §1109(A)(2).

<sup>11</sup> 18 C.F.R. §725.2.

Indirect and Secondary impacts – The Project will further destroy wetlands that act as buffers to localized flooding events. The destruction of these wetlands would also certainly contribute to weakening the state’s storm defenses. The Code of Federal Regulations recognizes the significance of secondary impacts from wetland destruction by emphasizing that “minor loss of wetland acreage may result in major losses through secondary impacts.”<sup>12</sup> Where upwards of 160 acres of wetlands are involved, it is unacceptable that The Applicant offers no analysis of these probable impacts.

Cumulative impacts – The cumulative impacts on storm and flood protection must be taken into consideration. Approving this project could incite additional wetland destruction, in turn jeopardizing even more unique, regional habitat. When combined with similar wetland-destroying projects, this proposal would result in more flooding in nearby communities, *as well as degraded water quality in larger Atchafalaya and Mississippi River Basins*. The whole area must be looked at as an interrelated ecological unit in order to adequately assess the true cumulative impacts.

*Since the Public Notice does not assess, or even recognize, the potential direct, indirect, and cumulative impacts that will result from the disruption of almost 170 acres of wetlands, The Corps and LDEQ cannot approve this proposal as submitted.*

#### **4. The Public Notice fails to adequately describe the Mitigation Plan.**

Federal law also requires The Applicant to compensate for, or mitigate, the damages resulting from the destruction of our nation’s wetlands, should a permit be issued. In the public notice, there is only a mention of proposed plans to use a mitigation bank to offset any unavoidable project-related impacts.<sup>13</sup>

The Corps “must ensure that adequate [mitigation plan] information is included in the Public Notice to enable the public to provide meaningful comment,” providing exception only for data which is “legitimately confidential for business purposes.”<sup>14</sup> According to the joint EPA/USACE “Compensatory Mitigation for Losses of Aquatic Resources; Final Rule,” mitigation plans for all wetland compensatory mitigation projects must contain the twelve elements, including:<sup>15</sup>

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<sup>12</sup> 40 C.F.R. §230.41.

<sup>13</sup> Joint Corps/LDEQ Public Notice:

[http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2015\\_01668\\_PNALL.pdf](http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2015_01668_PNALL.pdf)

<sup>14</sup> 40 CFR § 230.94(b).

<sup>15</sup> 33 CFR § 322.4[c].

- ❑ site selection criteria
- ❑ baseline information for impact and compensation sites
- ❑ ecological performance standards
- ❑ monitoring requirements

The mere mention of legally-required details does not satisfy this requirement of “adequate information” to allow “meaningful comment.” Considering that localities in Southern Louisiana have a strong public interest in minimizing the effects of storm surge and localized flooding, the nature and location of compensatory mitigation is of vital importance to those who wish to provide public comments. As just one example, canopy-cover values ought to be publically provided, given the significant impacts to forests that make up the majority of this proposal’s potential wetland destruction.

For the sake of detail, further mitigation requirements in 33 C.F.R. § 332 are included below.

To satisfy the Clean Water Act, mitigation plans must provide a level of detail “commensurate with the scale and scope of the impacts”<sup>16</sup> and include the following information:

1. “A description of the resource type(s) and amount(s) that will be provided, the method of ecoregion, physiographic province, or other geographic areas of interest.”<sup>17</sup>
2. “A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site.”<sup>18</sup>
3. “A description of the legal arrangements and instrument, including site ownership, that will be used to ensure the long-term protection of the compensatory mitigation project.”<sup>19</sup>
4. “A description of the ecological characteristics of the proposed compensatory mitigation project site.... This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other

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<sup>16</sup> 33 C.F.R. § 332.4(c).

<sup>17</sup> 33 C.F.R. § 332.4(c)(2).

<sup>18</sup> 33 C.F.R. § 332.4(c)(3).

<sup>19</sup> 33 C.F.R. § 332.4(c)(4).

site characteristics appropriate to the type of resource proposed as compensation. The baseline information should also include a delineation of waters of the United States on the proposed compensatory mitigation project site.”<sup>20</sup>

5. “A description of the number of credits to be provided, including a brief explanation of the rationale for this determination,” including “an explanation of how the compensatory mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.”<sup>21</sup>
6. “Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures.”<sup>22</sup>
7. “A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.”<sup>23</sup>
8. “Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives.”<sup>24</sup>
9. “A description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the district engineer must be included.”<sup>25</sup> The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs).<sup>26</sup>
10. “A description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the

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<sup>20</sup> 33 C.F.R. § 332.4(c)(5).

<sup>21</sup> 33 C.F.R. § 332.4(c)(6).

<sup>22</sup> 33 C.F.R. § 332.4(c)(7).

<sup>23</sup> 33 C.F.R. § 332.4(c)(8).

<sup>24</sup> 33 C.F.R. § 332.4(c)(9).

<sup>25</sup> 33 C.F.R. § 332.4(c)(10).

<sup>26</sup> 33 C.F.R. § 332.6.

resources, including long-term financing mechanisms and the party responsible for long-term management.”<sup>27</sup>

11. “A management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising compensatory mitigation plans and implementing measures to address both foreseeable and unforeseen circumstances that adversely affect compensatory mitigation success.”<sup>28</sup>
12. “A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards.”<sup>29</sup>
13. The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs).<sup>30</sup>
14. The compensatory mitigation requirements must be clearly stated and include special conditions that “must be enforceable.” The special conditions must: “(i) Identify the party responsible for providing the compensatory mitigation; (ii) Incorporate, by reference, the final mitigation plan approved by the district engineer; (iii) State the objectives, performance standards, and monitoring required for the compensatory mitigation project, unless they are provided in the approved final mitigation plan; and (iv) Describe any required financial assurances or long-term management provisions for the compensatory mitigation project, unless they are specified in the approved final mitigation plan...”<sup>31</sup> “The special conditions must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.”<sup>32</sup>
15. “The real estate instrument, management plan, or other mechanism providing long-term protection of the compensatory mitigation site must, to the extent appropriate and practicable, prohibit incompatible uses (e.g., clear cutting or mineral

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<sup>27</sup> 33 C.F.R. § 332.4(c)(11).

<sup>28</sup> 33 C.F.R. § 332.4(c)(12).

<sup>29</sup> 33 C.F.R. § 332.4(c)(13).

<sup>30</sup> 33 C.F.R. § 332.6.

<sup>31</sup> 33 C.F.R. § 332.3(k).

<sup>32</sup> 33 C.F.R. § 332.3(l).

extraction) that might otherwise jeopardize the objectives of the compensatory mitigation project.”<sup>33</sup>

A key element of a legally adequate mitigation plan is the inclusion of ecological performance standards for assessing whether the mitigation is achieving its objectives, and these are described under 33 C.F.R. § 332.5:

“Performance standards should relate to the objectives of the compensatory mitigation project, so that the project can be objectively evaluated to determine if it is developing into the desired resource type, providing the expected functions, and attaining any other applicable metrics (e.g., acres).”<sup>34</sup>

And, further:

“Performance standards must be based on attributes that are objective and verifiable. Ecological performance standards must be based on the best available science that can be measured or assessed in a practicable manner. Performance standards may be based on variables or measures of functional capacity described in functional assessment methodologies, measurements of hydrology or other aquatic resource characteristics, and/or comparisons to reference aquatic resources of similar type and landscape position. The use of reference aquatic resources to establish performance standards will help ensure that those performance standards are reasonably achievable, by reflecting the range of variability exhibited by the regional class of aquatic resources as a result of natural processes and anthropogenic disturbances. Performance standards based on measurements of hydrology should take into consideration the hydrologic variability exhibited by reference aquatic resources, especially wetlands. Where practicable, performance standards should take into account the expected stages of the aquatic resource development process, in order to allow early identification of potential problems and appropriate adaptive management.”<sup>35</sup>

The information provided on impacts and mitigation is wildly insufficient to allow for meaningful comments, especially regarding bottomland hardwoods. However, what is clear is that the federal regulations are not being followed.

*To assure that minimization and mitigation in the same watershed and for the correct type of wetlands are occurring, we request that the mitigation banks and avoidance and minimization*

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<sup>33</sup> 33 C.F.R. § 332.7(a).

<sup>34</sup> 33 C.F.R. § 332.5(a).

<sup>35</sup> 33 C.F.R. § 332.5(b).

*statement used are included in the Public Notice, at the bare minimum. Since this regulation is not followed, the Public Notice is incomplete and must be reissued with a mitigation plan.*

***5. The final plan, with mitigation plan included, should be made available to the public before any permits are granted.***

We feel that the current Public Notice system is not adequate to fully involve the public in the Section 404 permitting process. The only items available to the public throughout the entire process are those associated with joint Corps/LDEQ Public Notice. And significantly, this information is released before The Corps and The Applicant go through the “avoid, minimize, and mitigate” process.

The public is therefore never given an opportunity to comment on the final project, including the mitigation plan. We have often been told that many changes happen to the permits before they are issued, but the public never sees them until the wetlands have already been filled and water quality altered.

*We request more information in the initial Public Notice (e.g., mitigation plans, efforts made to avoid impacts, necessity of project location, adequate alternative analysis, environmental assessments, etc.). Because this regulation is not followed, the Public Notice is incomplete and must be reissued with a mitigation plan.*

***6. We question whether any wetland mitigation could completely replace the functions and values lost.***

Should any impacts to wetlands occur because of The Project, mitigation is required. Given the history of failure of mitigation, particularly in the New Orleans District, we feel that it would be extremely difficult to replace the function and values of this particular wetland if offsite mitigation takes place. Recent scientific literature reviews of wetland mitigation sites have described these kinds of failure in detail, but the failure is due partially to the fact that the functions of wetland soils are largely unaccounted for:<sup>36,37</sup>

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<sup>36</sup> Spieles, D. J. 2005. Vegetation Development in Created, Restored, and Enhanced Mitigation Wetland Banks of the United States. *Wetlands*. 25:51-63.

<sup>37</sup> Moreno-Mateos D , Power ME , Comín FA , Yockteng R , 2012 Structural and Functional Loss in Restored Wetland Ecosystems. *PLoS Biol* 10(1): e1001247. [doi:10.1371/journal.pbio.1001247](https://doi.org/10.1371/journal.pbio.1001247).

[O]verall lack of recovery of biogeochemical functioning may have been driven largely by the low recovery of the carbon storage and the low accumulation of soil organic matter.

A recent LSU master's thesis has outlined the failure to replace ecological functions by the New Orleans District 404 regulatory branch.<sup>38</sup> Although acreages were replaced around a 1:1 ratio, a functional analysis showed that the acreage of improved wetland needed to replace ecological functions was close to 2.4:1 for every acre destroyed.

The mention of possibly purchasing compensatory credits is inadequate information to base an evaluation of cumulative impacts from loss of wetland function. Even if mitigation were to take place within the same hydrologic basin, we question whether any amount of acreage offsite would be able to replace the functions and values (local flood mitigation, local flora/fauna, etc.) that these wetland tracts currently perform.

As outlined in the previously-mentioned table, the majority of proposed work would impact forested wetlands (Table 1). While recreating habitat is already a difficult task, forested regions require perhaps the most ingenuity and commitment. Unlike their peers, these sorts of habitats develop over centuries. These time-scales are in stark contrast to those expected by regulators, so we accordingly question any accompanying mitigation measures as well as the 'temporary' classification.

As a whole, it is essential to avoid impacts to these unique bodies.

*We request more information in the initial Public Notice on efforts made to avoid impacts, necessity of project location, and agency comments.*

### **7. Neither Nationwide Permit 12 nor any other Nationwide Permit can be used for construction of any significant portion of The Project**

The Nationwide Permit 12 is one of several categories of general permits issued by The Corps for activities that will have minor environmental impacts. Nationwide Permit 12 applies to specific projects required in the construction of utility lines, which include pipelines, located in

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<sup>38</sup> WETLAND MITIGATION BANKS AND THE NO-NET-LOSS REQUIREMENT: AN EVALUATION OF THE SECTION 404 PERMIT PROGRAM IN SOUTHEAST LOUISIANA by Abbey Anne Tyrna  
[http://etd.lsu.edu/docs/available/etd-04102008-141642/unrestricted/Tyrna\\_thesixx.pdf](http://etd.lsu.edu/docs/available/etd-04102008-141642/unrestricted/Tyrna_thesixx.pdf).

waters of the United States. Federal regulations mandate that an applicant seeking a Nationwide Permit 12 must comply with general conditions.<sup>39</sup>

As set forth in the conditions, limitations, and restrictions:<sup>40</sup>

(e) Discretionary authority:

(1) A division engineer may assert discretionary authority by modifying, suspending, or revoking NWP [Nationwide Permit] authorizations for a specific geographic area, class of activity, or class of waters within his division, including on a statewide basis, whenever he determines sufficient concerns for the environment under the section 404(b)(1) Guidelines or any other factor of the public interest so requires, or if he otherwise determines that the NWP would result in more than minimal adverse environmental effects either individually or cumulatively.

(2) A DE may assert discretionary authority by modifying, suspending, or revoking NWP authorization for a specific activity whenever he determines sufficient concerns for the environment or any other factor of the public interest so requires. Whenever the DE determines that a proposed specific activity covered by an NWP would have more than minimal individual or cumulative adverse effects on the environment or otherwise may be contrary to the public interest, he must either modify the NWP authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the proposed activity is not authorized by NWP and provide instructions on how to seek authorization under a regional general or individual permit. . .

(4) NWPs do not authorize any injury to the property or rights of others.

To qualify for NWP authorization, the prospective permittee must comply with the applicable general conditions, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. The general conditions limit the application of Nationwide permits when they would affect:

- Aquatic Life Movements
- Spawning Areas
- Migratory Bird Breeding Areas
- Shellfish Beds
- Water Supply Intakes

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<sup>39</sup> 33 CFR § 330.4.

<sup>40</sup> §330.4, 2013.

- Management of Water Flows
- Fills Within 100-Year Floodplains
- Soil Erosion and Sediment Controls
- Removal of Temporary Fills
- Wild and Scenic Rivers
- Endangered Species
- Migratory Bird and Bald and Golden Eagle Permits.

A review of publicly-available documents shows The Project, as proposed, would be associated with many of the effects listed above. Moreover, The Project would result in more than minimal adverse environmental effects either individually or cumulatively and is otherwise contrary to the public interest. The Corps must accordingly modify the NWP authorization to reduce or eliminate the adverse impacts of pipeline construction (including any segment thereof) for which construction under NWP 12 or any other nationwide permit is sought. Or, The Corps must prohibit the use of NWP 12 or any other nationwide permit.

***8. The Project does not appear to offer any public benefit or be in the public interest.***

As already noted, The Corps must not only consider alternative pipeline routes, it must also choose the least-damaging practicable alternative.<sup>41</sup> The least-damaging practicable alternative is the “no action” alternative. This alternative goes to the heart of this entire process – whether there even exists a public need for The Project.

The proposed pipeline is presumably intended to boost propylene reserves, with the hopes to eventually sell the stocks to needy refineries. Various holding companies are therefore theoretically set to profit from The Project.

No mention however is made regarding how the actual residents of Sorrento would benefit from The Project. As seen in the months-long debacle in Porter Ranch, UGS facilities are inherently prone to unintended releases.<sup>42</sup> Increasing the volumes of stored gas intuitively raises these risks. As is typical with the petrochemical industry, community members here seem to be simply left with all the unaccounted, external costs of the proposal, in the form of reduced flood protections, heightened spill risks, and the countless other impacts associated with the climate-disrupting reliance on fossil-fuel infrastructure.

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<sup>41</sup> 40 C.F.R. § 230.10(a).

<sup>42</sup> After Nearly 4 Months, Porter Ranch Gas Leak Is Temporarily Plugged:  
<http://www.npr.org/sections/thetwo-way/2016/02/12/466527059/after-nearly-4-months-porter-ranch-gas-leak-is-temporarily-plugged>

Given the well-known volatility of energy markets, The Applicant ought to demonstrate the long-term viability of The Project. To demonstrate at least some of the projected project-related benefits, an analysis that includes no fewer than five years of historical market data should be included and weighed in the decision-making process. In the absence of significant demand for propylene expansion, it would be entirely nonsensical to destroy priceless bottomland hardwoods and further jeopardize the health and safety of Sorrento citizens.

## **SUMMARY**

- 1. Water dependence of The Project has not been demonstrated by The Applicant.**
- 2. Project Alternatives have not been addressed.**
- 3. Direct, indirect, secondary, and cumulative impacts must be fully considered.**
- 4. The Public Notice fails to adequately describe the mitigation plan.**
- 5. The final plan, with mitigation plan included, should be made available to the public before any permits are granted.**
- 6. We question whether any wetland mitigation could completely replace the functions and values lost.**
- 7. Neither Nationwide Permit 12 nor any other Nationwide Permit can be used for construction of any significant portion of The Project.**
- 8. The Project does not appear to offer any public benefit or be in the public interest.**

In conclusion, The Corps and LDEQ must take the mandates of the Clean Water Act seriously. These responsibilities are only heightened when faced with the inadequacy of The Applicant's public documents.

The Applicant has not shown that the basic purpose of The Project is water-dependent, has not demonstrated a lack of practicable alternatives, has not assessed significant impacts, has only vaguely described plans for compensatory mitigation, and has not explained how The Project offers public benefit or is in the public interest.

Over a decade since the 2005 hurricane season, GRN is beyond alarmed by the wetland destruction occurring throughout Louisiana and the rest of the Gulf Coast. We hope The Corps and LDEQ will weigh these comments and act upon them accordingly.

In order to keep us and the public properly informed, we request notification of denials, approvals, and/or changes to The Applicant's request for a Section 404 Permit and WQC. And as previously stated, we believe a public hearing should be held near Sorrento to gain further insight into this significant proposal.

We look forward to a written response.

For a healthy Gulf,  
[sent via e-mail]

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