

Brad Guarisco
Chief Surveillance and Enforcement Section
Regulatory Branch
New Orleans District
U.S. Army Corps of Engineers
Brad.A.Guarisco@usace.army.mil
Via email and regular mail

May 9, 2018

Re: Notice of Potential Permit Violations, Bayou Bridge Pipeline, LLC (MVN 2015-02295-WII)

Dear Mr. Guarisco,

Atchafalaya Basinkeeper, Gulf Restoration Network and the Louisiana Crawfish Producers Association-West submit this Notice of Potential Permit Violations to the Corps' Regulatory Branch- Enforcement Section, identifying potential ongoing violations by Bayou Bridge Pipeline, LLC of the § 404 permit issued by the Corps on December 14, 2017 (MVN 2015-02295-WII).

The aforementioned organizations have identified potential ongoing permit violations during monitoring flights and boat-trips on both the East and West sides of the Basin between February and April, 2018. Following the Fifth Circuit's order staying District Court Judge Shelly Dick's February 23, 2018 order enjoining construction in the Basin, construction resumed on elevated ground on both the west and east sides of the Atchafalaya River. These areas have been inaccessible by boat since March. However, after a recent monitoring flight over the Basin, we can confirm that construction clearing has resumed in these areas of elevated ground on either side of the Atchafalaya River. Pipeline construction began in January 2018 and continued up Judge Dick's February 23rd order enjoining all construction in the Atchafalaya Basin. The below-described potential permit violations include possible construction violations identified before Judge Dick's injunction order, and after the appellate court's order staying the injunction pending appeal.

Monitoring Reports: February – April, 2018

February 27, 2018

On February 27, 2018, Atchafalaya Basinkeeper inspected the Bayou Bridge pipeline right-of-way on the west side of the Basin. From the West Atchafalaya Basin Levee moving east along the corridor to approximately 0.5 miles east of Bayou L'Embarras, Basinkeeper found that a total of 3.7 miles had been cleared. Basinkeeper observed signs of channel trenching and spoil piles on the north side of the right-of-way, from Bayou L'Embarras continuing one mile west along the corridor, without gaps required by the permit. U.S. Army Corps of Engineers Permit # MVN-2015-02295-WII to Bayou Bridge Pipeline, LLC, at 5, special condition No. 20 (Dec. 14, 2017) ("the permittee shall maintain an approximate 50 foot gap for approximately every 500 feet of

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temporary side cast material resulting from pipeline trench activities.”). The spoil pile without gaps also blocks navigation in violation of special condition No. 9 to the permit. *Id.* at 4.



The above two photos were taken by Dean Wilson on Feb. 27, 2018 on the west side of the Basin. These photos were taken from his boat (at 30.1439417, -91.63122222222222) facing north-east and north, depicting the spoil piles on the north side of the Bayou Bridge pipeline right-of-way.

March 2, 2018

On March 2, 2018, during an overflight of the Basin, Gulf Restoration Network identified blockages from pipeline construction at Crocodile Bayou (crossing the Bayou Bridge pipeline right-of-way 0.7 miles west of Bayou L'Embarras, at the following coordinates: at 30.143999, -91.637619). GRN noted the tread marks on the spoil pile located at Bayou L'Embarras extending one (1) mile west into Haha Bay, crossing Crocodile Bayou and Bay Barron, noting its apparent use as a road (see photo above from Feb. 27, 2018 monitoring boat trip confirming the presence of tread marks on the spoil pile).

Like ABK, GRN also identified that Bayou Bridge failed to create gaps in this spoil pile, in violation of conditions No. 9 and No. 20 of its Section 404 permit. *BBP § 404 Permit*, at 4, 5.

GRN notified the Corps of these concerns and potential violations via email on March 5, 2018.

March 25 & April 7, 2018

On both March 25 and April 7, 2018, Atchafalaya Basinkeeper inspected the Bayou Bridge pipeline right-of-way on the east side of the Basin. In the areas along the corridor accessible by boat, Basinkeeper observed no pipeline construction. Basinkeeper measured the water depth at the following locations:

1. At the landing area at the Gulf Intracoastal Waterway next to the Eastern Atchafalaya Guide Levee (coordinates: 30.09087222222222, -91.31093055555556)

The water depth on March 25 at this location was 46 5/8 inches (3.89 feet)

The water depth on April 7 at this location was 6 inches

Basinkeeper noticed a strong current from the GIWW, a significant source of sediment, moving into the right-of-way due to the absence of trees that would slow down the current.

2. At the end of the cleared right-of-way on the east side of the Basin (coordinates: 30.090213888888886, -91.35345000000001)

The water depth on March 25 at this location was 110.5 inches (9.21 feet)

The water depth on April 7 at this location was 71 inches (5.91 feet)

The elevated water level raised concerns regarding construction in the Basin due to the enhanced capacity of the pipeline trench to channel high-volumes of sediment-laden water into the interior of the Basin, distributing sediment into productive swamps, elevating the natural ground and disrupting the hydrology of these areas. Construction during high water exacerbates this process, and the inability to employ erosion/siltation protection measures (as outlined in special condition

No. 21 to the permit) during high water makes trenching and spoil piling along the corridor a threat to water quality.

April 17, 2018

On April 17, 2018, during another overflight of the Basin, Gulf Restoration Network identified new clearing areas adjacent to the Atchafalaya River. On the west side of the River, 1300 feet has been cleared. The areas previously cleared by Bayou Bridge before February 23, 2018, were under high water.

On the west side of the Basin, GRN identified that, despite GRN's March 5, 2018 complaint to the Corps, the spoil pile from Bayou L'Embaras west to Haha Bay still lacks the required gaps in accordance with applicable permit conditions. (*Photo below taken by GRN's Scott Eustis on April 17, 2018 Basin overflight*).



At this time, high water overtopped much of the spoil near Haha Bay.

Additionally, the previously-identified blockage at Crocodile Bayou likewise remains.

On the east side of the Basin, Bayou Bridge has cleared an additional 3280 feet from Lake Chicot to where Coon Trap empties into the pipeline right-of-way.

The high water covers the areas previously cleared on the east side and a strong current is moving into the right-of-way, carrying significant amounts of sediments into the interior swamps. The impact is an adverse alteration to the hydrology of the area, impacting wildlife, access/navigability and the management of flood waters.

April 29, 2018

In an email to the Corps on February 20, 2018, Basinkeeper notified the enforcement section of a blockage consisting of discarded bushes, branches and other debris at Bayou Set on the east side of the Bayou Bridge Pipeline right-of-way (coordinates where the blockage was identified: 30.0904944444444, -91.327). Upon later inspection, the blockage identified by Basinkeeper had been removed. However, recent travels along this portion of the right-of-way reveal that Bayou Set is filling in with sediments at an alarming rate. The exacerbation of sediment into this navigable Bayou, used by recreationists and fishermen alike, can potentially be contributed to, at least in part, the clearing of the pipeline right-of-way between Bayou Set and the GIWW, a significant sediment source.

On Sunday April 29, Dean Wilson of Basinkeeper traveled along the right-of-way and through Bayou Set. On this day, the water stage at Bayou Sorrel was 9.4' and Wilson's lower unit outboard engine was lifting mud where Bayou Set crosses the cleared right-of-way. (Coordinates: 30.09049444, -91.32694444). Before clearing of the pipeline right-of-way began for this pipeline project, Bayou Set was navigable at a stage under 6' at the Bayou Sorrel gage. Based on his experience and knowledge traveling through Bayou Set for many years, and based on his recent observations in the area, according to Mr. Wilson, where Bayou Set crosses the pipeline right-of-way, it appears to have accumulated over three feet of silt since construction began. Cypress swamps in the area are filling in more rapidly. Special condition No. 21 to the permit requires siltation control measures to be employed during construction. *BBP § 404 Permit*, at 5. Such reasonable measures should have been employed to prevent the filling in at Bayou Set and the surrounding swamps.

Applicable Permit Conditions

The above-identified blockages, failures to create gaps in the spoil piles and lack of erosion/siltation control measures present potential ongoing violations by Bayou Bridge Pipeline, LLC of its Section 404 permit conditions.

Special condition No. 20 of the §404 permit states: "As to avoid potential disruption and impediment to natural watercourses or hydrologic exchange along the authorized pipeline route during construction, to the greatest extent practicable, the permittee shall maintain an approximate 50 foot gap for approximately every 500 feet of temporary side cast material resulting from pipeline trench activities." *BBP § 404 Permit*, at 5.

Special condition No. 9 of the §404 permit provides that "[t]he permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States." *BBP § 404 Permit*, at 4.

Special condition No. 21 requires the permit to implement “adequate erosion/siltation control measures to ensure that no sediment or other activity related debris is allowed to enter waters of the state.” *BBP § 404 Permit*, at 5. Large amounts of debris, including tree clippings and large branches, have littered the corridor as a result of tree-clearing along the pipeline right-of-way on both sides of the Basin. Some of the debris has blocked waterways, including Crocodile Bayou as noted above, while other tree-clearing debris remained in the right-of-way, impeding navigation. The company does not appear to have implemented control measures to clean up the clearing debris or prevent debris from entering the waterways.

Additionally, when the water began its annual rise in the Basin, the undersigned organizations failed to identify any measures implemented by the company to ensure that sediment would not be allowed to enter the waters. As the water level began to rise in the weeks leading up to Judge Dick’s February 23rd injunction order, we failed to observe protection measures employed to prevent erosion or siltation related to the ongoing presence of un-gapped piled spoil along the north side of the corridor on the west side of the Basin. Now, the water has overtopped the spoil. We submit that the company was required to implement some degree of “adequate erosion/siltation control measures” with regard to the spoil piles to protect the waters from additional sediments in compliance with special condition No. 21. Similarly, where Bayou Set is filing in with sediments, proper siltation control measures employed in advance of the annual water rise in the Basin could have protected the navigability of this Bayou and the surrounding cypress swamps from the exacerbated sedimentation it is now experiencing.

Despite repeated assurances from the Corps and the company of the minor impact construction and clearing will have on the Basin, it is evident from monitoring efforts on the ground that tree-clearing, channel dredging and trenching, spoil piles and blockages have very real, significant adverse effects on the Basin’s ecosystems and hydrology. The temporary spoil piles, without the required gaps, disrupt the natural watercourse, capture sediments exacerbating accretion in these areas, and block navigation, commercial and recreational access of our members. Especially during the current high water season in the Basin, these channels contribute to the significant movement of suspended sediments into interior swamps, as observed at Bayou Set and surrounding cypress swamps.

In light of the identified potential permit violations by Bayou Bridge Pipeline, LLC, we request that the Corps’ enforcement section take proper action to investigate and enforce its §404 permit issued on December 14, 2018 to Bayou Bridge. *See* 33 U.S.C. § 1319. Continued non-compliance with its permit will result in ongoing harms, disrupting the distribution of sediments, impeding navigation and impairing water quality across the Atchafalaya Basin.

Respectfully submitted by,



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