

Supplemental Notice of Potential Permit Violations (MVN 2015-02295-WII)
Atchafalaya Basinkeeper and Gulf Restoration Network

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

June 1, 2018

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

Dear Mr. Guarisco,

Atchafalaya Basinkeeper and Gulf Restoration Network submit this Supplemental Notice of Potential Permit Violations, in addition to our original Notice letter sent on May 9, 2018, 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).

Atchafalaya Basinkeeper has identified additional, potential permit violations during on-site boat trips on the eastern portion of the Bayou Bridge Pipeline right-of-way in May 2018. As indicated in our Notice letter of May 9, 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. Construction has, to our knowledge, remained halted on inundated portions of the right-of-way closer to the east and west guide levees. However, on May 31, 2018, Basinkeeper observed the presence of some machinery and activity on the east side as described in further detail below. The potential permit violations discussed below include possible construction violations that, although identified in May 2018, may have been in place since before Judge Dick's injunction order in light of the high water levels that have permeated the Basin since late February 2018.

Monitoring Report:

On May 31, 2018, Atchafalaya Basinkeeper inspected the Bayou Bridge pipeline right-of-way on the east side of the Basin from the Gulf Intracoastal Waterway (GIWW) west to the end of the cleared right-of-way. We observed one excavator moving boards from a boardwalk into large piles at the landing area at the GIWW next to the Eastern Atchafalaya Guide Levee (approximate coordinates: 30.0908722222222, -91.3109305555556).

Crawfish season is at its height right now in the Basin. Trenching while the corridor remains inundated (as it is still to this date) will have significant impacts on water quality, impairing the fisheries that commercial fishermen are now actively fishing. Trenching and the piling of temporary spoil along the right-of-way, at this time, would also impact the navigability of these areas and impede upon the fishers ability to access these productive fishing grounds. The impacts

to water quality and navigability from trenching and piling temporary spoil along the right-of-way on the east side will harm crawfish production and commercial crawfishing interests in this area during this window of high productivity. Trenching will also accelerate siltation rates throughout the area. Thousands of wader birds will soon migrate into this area on the east side near the corridor and Lake Zadrack specifically. Active trenching and construction in this area while the water remains high could detrimentally impact these migratory species, their habitat and food sources.

On May 31, Basinkeeper measured the width of the construction right-of-way at the following locations on the east side of the Basin:

1. At the landing area at the Gulf Intracoastal Waterway next to the Eastern Atchafalaya Guide Levee (coordinates: 30.09087222222222, -91.31093055555556) – the width of the right-of-way clearing is **186.9 feet**
2. Moving westerly along the right-of-way at ROW site #1 (coordinates: 30.090886, -91.315594) – the width of the construction right-of-way is **89 feet**
3. Continuing west along the right-of-way at ROW site #2 (coordinates 30.090565, -91.318053) – the width of the construction right-of-way is **81.9 feet**

The Corps' Permit authorizes the pipeline construction activities in accordance with the attached drawings which indicate that the construction right-of-way width in wetlands shall not exceed 75 feet. *See* U.S. Army Corps of Engineers Permit # MVN-2015-02295-WII to Bayou Bridge Pipeline, LLC, at 1, (Dec. 14, 2017) (hereinafter, "BBP § 404 Permit").

On May 31, Basinkeeper also 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 May 31, 2018 at this location was: no water

Comparatively, the water depth on March 25 at this location was 46 5/8 inches (3.89 feet), and on April 7 at this location the water depth was 6 inches

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 May 31, 2018 at this location was 22.5 inches (1.87 feet)

Comparatively, the water depth on March 25 at this location was 110.5 inches (9.21 feet), and on April 7 at this location the water depth was 71 inches (5.91 feet)

The elevated water level, although now beginning to recede, continues to raise 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 failure to employ erosion/siltation protection measures during high water makes trenching and spoil piling along the corridor a threat to water quality.

On May 31, 2018 the water stage at Bayou Sorrel was 6.7 feet. Although the water level is slowly beginning to recede, at its current level, these areas should be navigable without issue. Before clearing of the pipeline right-of-way began for this pipeline project, Bayou Set was navigable for Basinkeeper's boat at a stage under 6 feet at the Bayou Sorrel gage. As described in our May 9, 2018 Notice letter, Dean Wilson of Basinkeeper traveled along the right-of-way and through Bayou Set on April 29, 2018. On this day, the water stage at Bayou Sorrel was 9.4 feet and Wilson's lower unit outboard engine was lifting mud were Bayou Set crosses the cleared right-of-way. (Coordinates: 30.09049444, -91.32694444). On May 31, 2018, this Bayou was not navigable by the same boat.

As noted in our May 9, 2018 Notice letter to the Corps, an issue of grave concern is the accelerated rate of sedimentation in these areas and the resulting impacts to the hydrology, particularly on the east side of the Basin. As previously noted, within the Williams Canal, where Bayou Set and the Williams Canal intersect along the pipeline right-of-way, we have observed accelerated sedimentation. The exacerbation of sediment into this navigable Bayou, used by recreationists and fishermen alike, is a consequence of the clearing of the pipeline right-of-way between Bayou Set and the Gulf Intracoastal Waterway, a significant sediment source. Cypress swamps in the area are filling in more rapidly. And while Fishermen are intentionally prop washing the Bayou to aid in navigation and remove some of the accretion, our tour boat that could easily navigate the Bayou at a water depth of under 6 feet just last year cannot navigate the Bayou this week at a water stage of 6.7 feet. 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. Additionally, the permit prohibits more than minimal damage to the hydrology of these wetlands. But as we are observing on the ground, these areas surrounding the construction activities are being significantly and negatively impacted.

Applicable Permit Parameters & Conditions

The above-identified lack of erosion/siltation control measures, excessive width of the cleared right-of-way and the hydrologic alternations as a result of construction activities present potential, additional ongoing violations by Bayou Bridge Pipeline, LLC of its Section 404 permit conditions.

General condition No. 2 states in pertinent part: "You must maintain the activity authorized by this permit in good condition and in conformance with the terms of this permit." *BBP § 404 Permit*, at 1.

As indicated above and in our May 9, 2018 Notice letter, Bayou Bridge is neither maintaining the activity in good condition in light of the exacerbated sedimentation in areas on the east side

of the Basin, ungapped spoil piles on the west side of the Basin, and the width of the construction right-of-way width exceeding permit limits, nor is the company acting in conformance with the terms of the Permit.

Special condition No. 9 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.

Exacerbated sedimentation and distribution of sediments into navigable bayous, canals and other waterways due in part to Bayou Bridge’s failure to implement adequate control measures to protect hydrologic conditions and depth interferes with the public’s right of free navigation in these previously navigable areas. Trenching while crawfish season is ongoing will interfere with the public’s right of free navigation and interstate commerce.

Special condition No. 12 provides in pertinent part: “The authorized activities *must not* cause more than minimal changes to the existing hydrologic conditions and flow characteristics in wetland areas or cause more than minimal degradation of water quality of any stream.” *BBP § 404 Permit*, at 4. (emphasis added).

Again, as indicated in above, construction activities have significantly altered the existing hydrologic conditions at Bayou Set and the Williams Canal along the east side of the pipeline right-of-way.

Special condition No. 13 states in pertinent part that “[a]ll work *shall* be done in accordance with the approved plans and confined to the permitted work area represented within the attached drawings.” *BBP § 404 Permit*, at 4. (emphasis added). In conjunction, special condition No. 19 requires the permittee to limit clearing, grading, dredging and filling to areas contained within the specified construction right-of-way and identified temporary work spaces. *Id.* at 5.

Although construction plans limit the construction right-of-way width in wetlands to 75 feet, as recently observed, at least on the east side of the Basin, the right-of-way exceeds the parameters provided in the approved plans and drawings attached to and incorporated in the Permit.

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.

We have again failed to identify any temporary sediment control measures or barriers (silt fences, straw bales, etc.) implemented by the company to protect pre-project hydrologic conditions and flow characteristics around the right-of-way in the Basin. These measures were particularly important in light of the annual water level rise in the Basin that began in late February 2018 and persists to this date.

Similarly, where Bayou Set, the Williams Canal and surrounding swamps are filling in with sediments, proper siltation control measures, such as building a berm where the right-of-way and

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Gulf Intracoastal Waterway intersect, 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. However, it is not too late to employ these measures now to mitigate this ongoing harm.

Despite repeated assurances from the Corps and the company of the minor impact construction and clearing will have on the Basin, and the many claims by Bayou Bridge that its construction activities comply with permit requirements, 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.

Especially during the annual high water season in the Basin, these channels and clearing of trees contribute to the significant movement of suspended sediments into interior swamps, as observed thus far at Bayou Set, the Williams Canal and surrounding cypress swamps.

In light of the identified potential permit violations by Bayou Bridge Pipeline, LLC in our May 9, 2018 Notice letter and June 1, 2018 Supplemental Notice letter, we respectfully request that the Corps' enforcement section consider the following actions:

1. Continue to inspect the locations identified in both Notice letters to ascertain whether Bayou Bridge Pipeline, LLC has complied with the terms of the Permit (*BBP § 404 Permit*, at 2, General condition No. 6);
2. Reevaluate the permit decision warranted under the circumstances, including alleged failure to comply with the terms and conditions of the Permit, and the introduction of significant new information regarding the accelerated rate of sediment distribution and hydrologic alteration in the project area (*BBP § 404 Permit*, at 3, #5(a), (c)); and
3. Suspend, revoke or enforce the Permit in accordance with procedures contained in 33 C.F.R. §§ 325.7, 326.4, 326.5, including costs for corrective measures. (*BBP § 404 Permit*, at 3).

Continued non-compliance with the Permit will contribute to the ongoing harms, continually disrupting the distribution of sediments, impeding navigation and impairing water quality and wildlife habitat across the Atchafalaya Basin. We appreciate your time and consideration of these concerns.

Respectfully submitted by,



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