



**US Army Corps
of Engineers**

Philadelphia District

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ATTN: CENAP-OP-R

Public Notice

Public Notice No.

Date

July 11, 2018

CENAP-OP-R-SAV/Shellfish Special Conditions

Application No.

File No.

**Special Public Notice for NWP Regional Conditions, Permit Special
Conditions And NJ SPGP-19**

In Reply Refer to:

REGULATORY BRANCH

**SPECIAL PUBLIC NOTICE ANNOUNCING CLARIFICATION TO CONDITIONS REQUIRING THE
USE OF “NON-POLLUTING MATERIALS” IN SHELLFISH HABITAT AND SUBMERGED
AQUATIC VEGETATION**

In 2003, this office developed specific special conditions requiring the use of “non-polluting” materials for structures in certain waters in the State of New Jersey. That action was taken at the request of the National Marine Fisheries Service (NMFS) based upon their concerns for adverse impacts to essential fish habitat. These special conditions have been implemented through regional conditions of the nationwide permits, the terms and conditions of New Jersey State Programmatic General Permits, SPGP-17 and SPGP-19, and all individual permit decisions, where applicable. NMFS had determined that shellfish, specifically hard clams, (*Mercenaria mercenaria*) provided a pathway to managed marine fisheries resources for the chemical leachates commonly found in treated lumber products used in marine construction. These materials are generally referred to as pressured treated lumber and would include such materials as chromated copper arsenate (CCA), alkaline copper quaternary (ACQ), and ammoniacal copper zinc arsenate (ACZQ)] as well as creosote. These special conditions have been utilized in locations with higher shellfish densities where shellfish production was determined to have high or moderate shellfish values. Maps for these high and moderate shellfish values are maintained by the New Jersey Department of Environmental Protection (NJDEP). A definition of shellfish habitat can be found in New Jersey Department of Environmental Protection rules on Coastal Zone Management. However, only those mapped shellfish areas described above have been conditioned through Department of the Army authorizations requiring the use of these “non-polluting materials”.

During the recent re-authorization of New Jersey State Program General Permit SPGP-17 (January 26, 2018), it was determined that the term “non-polluting materials” was not appropriate since the United States Environmental Protection Agency (USEPA) did not identify or define pressure-treat lumber products as a polluting material and there is no other Federal definition of this term. This revision in terminology was incorporated into the terms and conditions of SPGP-17. In order to avoid any confusion and/or inconsistency, this revised terminology is now being incorporated into all other Department of the Army authorizations, where applicable. The restrictions on treated lumber products for certain locations will remain in place. However, the term “non-polluting materials” is being replaced with the term “alternative materials”.

We believe that this terminology change reflects a clarification and does not alter the impacts to any aquatic resources subject to these terms and conditions. It should be further noted that these revisions to the language of nationwide permit regional conditions and SPGP-17 and SPGP-19 are applicable in both the Philadelphia District and New York District areas of responsibility within the State of New Jersey. Any questions concerning these revised terms and conditions should be addressed in writing to the Philadelphia District Office at the address on the letterhead of this notice or by calling this office at (215) 656-6728.

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