

EMERGENCY RULE

Office of the Governor

Coastal Protection and Restoration Authority

Cessation of Activities on Levees and Flood Control Structures

(LAC 43:XXXI.401)

In accordance with R.S. 49:214.5.2.A(6), R.S. 49:214.5.6(D), and R.S. 49:214.5.2.A(5) the Coastal Protection and Restoration Authority Board has exercised its emergency authority to utilize the full police power of the state to address the loss and devastation to the state and individuals arising from hurricanes, storm surges, flooding, and addresses activities that may obstruct or interfere with the safety and integrity of the levees. This Emergency Rule is effective at 5:00 PM, March 1, 2019 and shall expire on the earlier of its expiration date as provided by statute (R.S. 49:954), or upon the lifting by the Governor of the Declaration of Emergency set forth in Proclamation No. 33 JBE 2019.

Governor John Bel Edwards, through Proclamation Number 33 JBE 2019, declared a State of Emergency for the State of Louisiana due to imminent flooding of the Mississippi River and its tributaries and other state rivers and water bodies. To assist in affecting that proclamation and for the public safety and welfare of the citizens of Louisiana, the Coastal Protection and Restoration Authority Board is adopting these Emergency Regulations which restricts activities on all levees and flood control structures within the Coastal Area of Louisiana as defined in La. R.S. 49:214.2(4).

The authorization for emergency action in this matter is contained in R.S 49:214.3.1(A)(2), R.S. 49:214.3.1(B)(1)(k), R.S. 49:214.5.6(D), and R.S. 49:214.5.2.

Title 43

NATURAL RESOURCES

Part XXXI. Coastal Protection and Restoration Authority

Chapter 4. Emergency Prohibition of Activities on Levees and Flood Control Structures

§401. Restricted Use during Emergency

A. Purpose. Activities on and in the vicinity of riverine levees, flood control levees, and other flood control structures can impact the soundness and effectiveness of those levees and flood control structures. Threats are enhanced as river stages rise. Levee failure during high river stages can be catastrophic. The Mississippi River and its Tributaries (MR and T) have risen to dangerously high levels in recent days prompting a Declaration of Emergency by the Governor of Louisiana (Proclamation No. 33 JBE 2019), and currently pose real and present danger to life and property if levees and/or flood control structures are breached.

B. Effective Jurisdiction. These emergency prohibitions of activities on levees and flood control structures will be effective and enforced for all Mississippi River and Tributaries (MR and T) projects, or a federal, state or local flood control structure that is or is designed to prevent or reduce flooding, including but not limited to all levees and flood control structures south of the

Old River Control Structure, the Atchafalaya Basin and River, and any levee or flood control structure in the Coastal Area as defined in R.S. 49:214.2(4).

C. All pedestrian and vehicular traffic, including but not limited to, the driving and/or parking of vehicles, all-terrain vehicles, and mowing equipment, is prohibited within 300 feet of the levee centerline of the MR and T projects, or a federal, state or local flood control structure that is or is designed to prevent or reduce flooding except as provided in Subsection F.. In addition, work of any nature within 300 feet of the levee centerline of the Mississippi River and Tributaries (MR and T) projects, or a federal, state or local flood control structure that is or designed to prevent or reduce flooding (including but not limited to placement of dumpsters, heavy equipment, heavy machinery, heavy trucks and/or stockpiles of supplies of any significant weight (fuel tanks, piping, etc.), transport of heavy loads over the levee or disturbing the grass cover or seepage areas, all subsurface work within 1,500 feet of a MR and T levee, or a federal, state or local flood control structure that is or is designed to prevent or reduce flooding including but not limited to pile driving, digging, excavation, and trenching, and seismic surveys/demolition using explosives within 5,000 feet of any MR and T project, or a federal, state or local flood control project that is or is designed to prevent or reduce flooding is hereby prohibited during the Declaration of Emergency or until this Emergency Rule is rescinded. Temporary measures such as sandbags, gabion baskets, water-filled tubes or other temporary flood-fighting measures shall be subject to prohibitions on vehicular and pedestrian traffic and any activity that disturbs the performance of such measures, however, subsurface and permitting restrictions established herein shall not apply to such temporary structures.

D. No person shall tie or moor logs, rafts, boats, water craft, or floating objects of any description within 100 feet of the original toe of any levee (the original toe being that established when there is no water against the levee) or 180 feet from the centerline of the levee, whichever distance is further from the centerline of the levee, or, when the water is against the levees, tie or moor floating objects insecurely to mooring posts, revetments, trees or other stationary or supposedly stationary objects on the foreshore where they can be driven against the levees during windstorms or high water events.

E. Waivers to recognized, permitted and current businesses may be granted on a case by case basis, and are dependent on the surrounding surface and subsurface ground conditions in the vicinity of the proposed project or activity, the distance the project is away from the levee and the forecasted river stages. All applications for a waiver must provide a statement that the applicant agrees to hold harmless and indemnify the Coastal Protection and Restoration Authority Board, the Coastal Protection and Restoration Authority, levee districts and authorities, the state, or any employee or agent thereof for any and all liability arising out of the issuance or use of a waiver, including damage to any levee or flood protection structure. All waiver applications must include a copy of the applicant's existing permit and a detailed description of the activities for which a waiver is being requested. No waiver will be granted for subsurface work within 1,500 feet of a MR and T levee, hurricane protection project or a federal, state or local flood control project, and seismic surveys/demolition using explosives within 5,000 feet of any MR and T project, or a federal, state or local flood control project that is or is designed to prevent or reduce flooding. Requests for waivers shall be submitted to, the levee district of jurisdiction and:

Louisiana Coastal Protection and Restoration Authority, Operations Division, ATTN:
Billy Wall, P.E., P.O. Box 44027, Baton Rouge, LA 70804, CPRARquest@la.gov

F. The Coastal Protection and Restoration Board (CPRA Board) and the Coastal Protection and Restoration Authority (CPRA) recognize the historic nature of this high water event. In this regard, levee districts are permitted to coordinate with the U.S. Army Corps of Engineers, CPRA Board, CPRA, and other state and local law enforcement officials to establish limited viewing areas that have a full-time law enforcement presence when open to the public.

G. Authorization and Delegation. The Coastal Protection and Restoration Authority Board is authorized, in Revised Statutes Title 49, Section 214.5.2.A.(6), to establish procedures in accordance with the Administrative Procedure Act to enforce compliance with the comprehensive master and annual coastal protection plan as defined in R.S. 49:214 et seq, including but not limited to addressing activities that may obstruct or interfere with the safety and integrity of the levees. Revised Statutes Title 49, Section 214.5.6 (D) provides that the "full police power of the state shall be exercised" by the CPRA Board and CPRA "to address the loss and devastation to the state and individuals arising from hurricanes, storm surges and flooding". It is further authorized in La. Revised Statutes Title 49, Section 214.5.2.A.(5), to delegate any of its powers, duties and functions to the executive director of the Coastal Protection and Restoration Authority, and to state agencies and political subdivisions, including flood protection authorities or levee districts. This emergency regulation is enacted in furtherance of that authority. R.S. 29:724 authorizes the issuance of executive orders, proclamations and regulations in times of emergency. This regulation is promulgated in conjunction with the Governor's Declaration of Emergency (Proclamation No. 33 JBE 2019p) pertaining to the imminent threat of flooding of the Mississippi River and its tributaries.

H. Construction with Other Statutes, Ordinances and Regulations. To the extent any local ordinance, rule, regulation, and/or permitting requirement of a local governing body conflicts with the provisions of this regulation, this regulation shall control. However, nothing in this regulation shall be construed to supplant or override any local ordinance, rule, regulation, and/or permitting requirement that provides for a more stringent or restrictive limitation on use of a levee, hurricane protection project or a federal, state or local flood control project, and nothing shall be construed to prevent the simultaneous enforcement of this regulation and a consistent local prohibition or limitation. This regulation will not be construed to override existing limitations on use of levees, hurricane protection projects or federal, state or local flood control projects, including, but not limited to, the provisions of R.S. 38:213 (restricting riding or hauling on levees), R.S. 38:225, R.S. 38:226 or to interfere in any way with other statutory prohibitions of a more general nature, such as the trespass prohibitions found in Title 14 of the Louisiana Revised Statutes, all of which may be enforced simultaneously with this regulation.

I. Effectiveness. Except as noted in the following sentence, this emergency regulation is effective as of 5:00 P.M., March 1, 2019, and shall expire on the earlier of its expiration date as provided by statute (R.S. 49:954), or upon the lifting by the Governor of the Declaration of Emergency set forth in Proclamation No. 33 JBE 2019. This regulation shall become effective as to established and permitted commercial businesses operating within an area affected by this regulation 72 hours after the effective date and time of this regulation (as noted in the prior sentence), provided that if such permitted business has, prior to expiration of such 72-hour period, applied for a waiver as set forth above in Subsection D of this regulation, such waiver application shall act as a temporary waiver permit until CPRA has taken action on that business's waiver request.

J. Enforcement. The CPRA Board, CPRA, levee districts as well as all other state and local law enforcement officials are hereby authorized to enforce the provisions of this regulation.

K Fees, Fines and Penalties. Violators of this regulation shall be subject to a civil fine imposed by the Coastal Protection and Restoration Authority of up to \$10,000 for each violation. Second and any subsequent violations shall be subject to a civil fine of up to \$20,000 for each violation. Violators shall also be subject to the provisions of R.S. 29:724 (E) which provides for up to \$500 and six months in jail for violations of rules or regulations promulgated in conjunction with a declaration of emergency by the governor. Further, nothing in this regulation is intended to interfere with or prohibit the imposition of other applicable fines and penalties provided by other statutes and regulations in addition to those imposed by this regulation.

L. Non-Interference with Official Duties. This regulation shall not be construed to restrict the proper officers of the state or of any levee district or parish or the federal government and the employees and agents of such governmental entities while in the performance of their duty in inspecting, guarding, or repairing the levees or flood control projects.

AUTHORITY NOTE: Promulgated in accordance with R.S 49:214.3.1(A)(2), R.S. 49:214.3.1(B)(1)(k), R.S. 49:214.5.6(D), and R.S. 49:214.5.2

HISTORICAL NOTE: Promulgated by the Coastal Protection and Restoration Authority, LR 45:

Kyle R. "Chip" Kline, Jr.
Chairman