



VIA ELECTRONIC FILING

August 1, 2016

US Army Corps of Engineers
Attn: CECW-CO-R
441 G Street NW
Washington, DC 20314-1000

Re: Docket No. COE-2015-0017 (RIN 0710-AA73); Proposal to Reissue and Modify Nationwide Permits; Federal Register Vol. 81, No. 105 (Wednesday, June 1, 2016);

Dear Sir/Madam,

The GPA Midstream Association (GPA Midstream) appreciates the opportunity to provide comments on the US Army Corps of Engineers (Corps) proposal to reissue and modify nationwide permits (NWP). GPA Midstream is a non-profit trade organization made up of over 100 corporate members, all of whom are engaged in the processing of natural gas into merchantable pipeline gas, or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for approximately 92% of all natural gas liquids produced by the midstream energy sector in the United States. Our members also produce, gather, transmit, and market natural gas and natural gas liquids.

The Corps' NWP program is one of the country's most successful and highly utilized general permit programs, and is an important resource for GPA Midstream members. GPA Midstream supports the Corps' reissuance of the NWPs and strongly urges the Corps to ensure that the NWPs are reauthorized by March 18, 2017 to avoid a break in coverage. In order to achieve a seamless transition, GPA Midstream believes that the short timeframe in which this reauthorization is being conducted does not allow for significant changes from the existing NWP program. Any significant changes would necessitate a much lengthier public review and comment period than the Corps has provided.

I. General Comments

GPA Midstream appreciates the Corps' intent of attempting to streamline the process through some of the proposed changes; however, GPA Midstream offers this comment letter and urges the Corps to consider our concerns and recommended changes prior to issuing the final NWP

rule. GPA Midstream's comments address acreage limits and pre-construction notification (PCN) thresholds, include recommendations on NWP 3 and NWP 12, and expresses some concern over General Condition 19. Additionally, GPA Midstream believes the proposed rule could do more to address certain inconsistencies with regional conditions that often go well beyond the protection of specific resource types or geographic areas and have instead cast blanket conditions that seemingly deviate from the intent of the NWP. Some of the changes in the Corps' proposed rule could delay the reauthorization process altogether, create more inconsistency in regional interpretations, and generate scenarios that would increase the number of individual permit applications, resulting in a potential administrative burden on agency resources. GPA Midstream will elucidate on several of these issues in subsequent paragraphs, but requests that the Corps keep these significant potential negative outcomes in mind when preparing the final rule. GPA Midstream believes that a more streamlined NWP rule and pre-construction notification (PCN) will help Corps staff operate more efficiently and thus make the approval process more timely across all districts.

The Corps has requested input on the 2015 Revisions to the Waters of the United States (WOTUS) definition (2015 WOTUS Revisions). First, GPA Midstream suggests removing any references to the 2015 WOTUS Revisions in this rulemaking since the US Environmental Protection Agency's proposed WOTUS rule is stayed and under litigation that will likely not be resolved prior to reauthorization of the NWPs. The Corps should instead wait until the litigation and fate of the 2015 WOTUS Revisions are finalized, then undertake a separate rulemaking at that time to incorporate any necessary changes. It is inappropriate and premature to make references to a stayed rule in the Corps' NWP rulemaking. Any feedback received as a result of the Corps question about the 2015 WOTUS Revisions will likely complicate and hinder the NWP reauthorization process. Based on the large number of comments submitted to the US Environmental Protection Agency on the proposed 2015 WOTUS Revisions, the Corps can reasonably expect a large number of comments on this matter from a variety of perspectives. As previously stated, it is imperative that the Corps complete the NWP reauthorization process expeditiously, so that there will be no gap in coverage when the 2012 NWPs expire next year.

Although GPA Midstream does not feel the NWP rulemaking should request comments on, or include references to, the 2015 WOTUS Revisions, we would however like to express two major concerns. First, the proposed 2015 definition would greatly expand those areas considered jurisdictional and therefore subject more projects to Section 404 authorization and permitting. At a minimum, this would be expected to significantly increase the number of permit applications filed with the Corps, including those submitted under the NWP program, inevitably increasing Corps workload and lengthening permit review/processing timelines. Secondly, is the potential influence on the consideration of "single and complete" projects, particularly related to linear facilities. Currently, individual crossings of jurisdictional features by a linear facility at separate and distant crossings are considered single and complete projects for determining compliance with NWP threshold impact values. However, with an expanded definition of WOTUS and a

focus on consideration of the connectedness of jurisdictional features (e.g., within a floodplain), crossings previously considered to represent single and complete projects might no longer be considered as such. Additive impacts at “connected” individual features (e.g., isolated wetlands within a common floodplain) might lead to violation of NWP permit threshold values (i.e., exceed acreage impact allowances), forcing more projects/activities to pursue individual permits.

II. Comments on Individual Nationwide Permits

Nationwide Permit 3 Proposed Modifications

GPA Midstream generally supports the proposed modifications to NWP 3. We concur that the use of timber mats in jurisdictional waters generally serves to avoid or minimize impacts. In fact, timber mats have been utilized for years in such capacity to provide a platform for equipment to work from during the process of excavating pipelines or otherwise engaging in regulated dredge/fill activities.

Nationwide Permit 12 Proposed Modifications

GPA Midstream generally supports the proposed modifications to NWP 12 with a few exceptions. Per the above comment under Nationwide Permit 3, GPA Midstream supports the proposed modification to authorize the use of timber mats in jurisdictional wetlands and waters.

Directional drilling, when and where technically feasible and practicable, is a valuable tool used to avoid direct impacts to surface waters and wetlands, thereby producing a net environmental benefit. For this reason, GPA Midstream supports the proposed modification to authorize actions associated with remediation of inadvertent returns of drilling muds. Furthermore, we agree with the Corps’ description of drilling mud as a liquid slurry rather than fill material and that it is not subject to regulation under the Clean Water Act.

The Corps devotes much discussion in the proposed rule to the established definition of “separate and complete linear projects” at separate and distant crossings as it pertains to independent utility and 33 CFR 330.6(d). The Corps also clarifies that 33 CFR 330.6(d) requires that one or more separate and distant crossings of WOTUS for a stand-alone utility line must all be authorized by individual permit, even if individual crossings would otherwise qualify for coverage under NWP 12, if only one or more such crossings would require an individual permit. Although this addition cites existing regulations, GPA Midstream strongly disagrees with this approach and believes that inclusion of this language (1) creates confusion and (2) is contradictory to other language in NWP 12 and the definition of “single and complete project” and the recent “single and complete linear project” definition within the 2012 NWP, which appropriately allows for independent review of crossings that are at separate and distinct locations. Requiring single and complete projects that otherwise qualify for NWP 12 to be reviewed as a combined individual permit creates unnecessary additional administrative burden on the applicant and the Corps when the NWP has effectively already authorized the qualifying proposed activities. Use of the NWP 12 frequently requires single and complete linear projects to be reviewed by the Corps through the PCN process. The PCN provides more than adequate information for the District or Division Engineer (DE) to determine if the effects of the project are no more than minimal. Additionally, the DE has the discretion to determine, at any time, the cumulative adverse effects of activities in a particular watershed or district are more than minimal. GPA Midstream would also like to highlight that a vast majority of single and complete linear projects have only temporary impacts

and result in no net loss of WOTUS. GPA Midstream recommends deleting the discussion referencing 33 CFR 330.6(d) from the NWP 12 revisions.

GPA Midstream supports the proposed modification that clarifies that maintenance and repair activities on existing utility lines may be authorized by NWP 12. However, the proposed text included in new Note 6 providing this clarification is missing the word “that.” Note 6 should read, “This NWP authorizes utility line maintenance and repair activities that do not qualify...”

New Note 8 explains that PCNs for NWP 12 activities that require pre-construction notification must include information on all other crossings associated with the project/activity that require Department of Army authorization, even if those other crossings do not individually trigger notification thresholds. While the proposed rule discusses the potential use of this information, there is no specific explanation of why new Note 8 is warranted in the proposed NWP 12 modifications. GPA Midstream requests that the Corps specifically state the rationale for inclusion of the new Note 8.

III. Comments on Acreage Limits and PCN Thresholds in NWP 3 and NWP 12

GPA Midstream urges the Corps to maintain the existing acreage limits and PCN thresholds in NWP 3 and NWP 12. Within the current proposed rule it appears that the Corps has not adequately accounted for the impact of the 2015 WOTUS Revisions as they would pertain to acreage limits and PCN thresholds. No changes to acreage limits should be contemplated or undertaken until the fate of the 2015 WOTUS Revisions has been determined. If any changes to acreage limits are deemed warranted by the Corps, they should be addressed in a future rulemaking rather than the current NWP reauthorization rulemaking. GPA Midstream also strongly advises the Corps to avoid making any PCN threshold changes until the fate of the 2015 WOTUS Revisions has been resolved. Any such changes would be premature and potentially jeopardize a timely reauthorization of the NWPs.

IV. Comments on Proposed General Conditions

General Condition 19, Migratory Birds and Bald and Golden Eagles

GPA Midstream concurs with the Corps’ belief that there are other ways to comply with the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act beyond obtaining “take” permits. In fact, incidental “take” permits are not currently available for industrial activities under the Migratory Bird Treaty Act. However, GPA Midstream has marginal concerns that the Corps’ proposed modifications could increase the regulatory burden on applicants and create delays in the NWP approval process. Under the proposed modification, permittees would be responsible for contacting the US Fish and Wildlife Service (USFWS) to “determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available...” A requirement to consult with USFWS to determine applicable mitigation measures introduces the opportunity for USFWS to request compensatory mitigation under the Migratory Bird Treaty Act, which would subject permittees to increased project costs and delays, without the opportunity to actually obtain any sort of “take” permit. Although GPA Midstream does not have specific wording recommendations, we request that the Corps further consider this potential issue prior to issuing the final rule.

V. Comments on Proposed Regional Conditions

While GPA Midstream supports the Corps allowing DEs to determine regional conditions, we strongly encourage the Corps to establish guidelines to better focus the nature and extent of DE-imposed regional conditions and the circumstances in which they can be issued. Some Districts have seemingly gone beyond the protection of specific resource types and/or geographic areas, opting to issue broad or blanket regional conditions that appear to deviate from the intent of the NWP program, which is “to provide timely authorizations for the regulated public while protecting the Nation’s aquatic resources.” In many cases, the regional conditions seem to target specific activity types, in particular, utility line activities authorized by NWP 12. For example, in the State of Louisiana a regional condition requires a PCN for any activity seeking authorization under NWP 12 “regardless of impact acreage.” Another example in the State of Texas goes beyond the NWP 12 condition for submittal of a PCN for any activity that involves mechanized clearing of a forested wetland, and requires PCN submittal for any activity that involves mechanized clearing of a scrub-shrub wetland. Regional conditions such as these result in an increase in regulatory burden, are inconsistent with the intent of the NWP program, and unnecessarily delay numerous pipeline construction projects each year, at significant costs, while providing no additional environmental benefit.

GPA Midstream appreciates your consideration of our comments on the proposed revisions to the NWP program. As the process moves forward, please contact me at (202)279-1664 or mhite@gpaglobal.org if GPA Midstream can be of assistance.

Sincerely,

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association

