



September 21, 2017

U.S. Army Corps of Engineers
Headquarters
441 G Street, NW
Washington DC 20313-1000

Via e-filing on www.regulations.gov

Re: United States Army, Corps of Engineers: Subgroup to the DoD Regulatory Reform Task Force, Review of Existing Rules, 82 Fed. Reg. 33,470 (July 20, 2017), COE-2017-0004

Dear Sir or Madam,

GPA Midstream Association ("GPA Midstream") appreciates this opportunity to submit comments to the U.S. Army Corps of Engineers ("Corps") regarding its regulatory reform initiatives and policies. 82 Fed. Reg. 33,470 (July 20, 2017). GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 100 corporate members of all sizes that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products ("NGLs") such as ethane, propane, butane, and natural gasoline. GPA Midstream members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. Our members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs.

Summary

GPA Midstream supports the Corps' review of regulations pursuant to President Trump's Executive Order 13,777 that directs federal agencies to establish a regulatory reform task force to consider the repeal, replacement, or modification of regulations imposing unnecessary regulatory burdens. Through its members, GPA Midstream has identified numerous opportunities to repeal, replace, or modify existing Corps regulations, guidance documents, and practices that inhibit job creation, waste resources through regulatory confusion, and impose costs that exceed any benefits.

I. The Corps Should Administer the Nationwide Permitting Program Consistently Across its Offices

The Nationwide Permit program under the Clean Water Act can be an invaluable tool for the midstream industry, as it authorizes a streamlined regulatory process for categories of

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substantially similar construction activities with minimal environmental impacts. *See generally* 33 U.S.C. § 1344(e); 33 C.F.R. § 323.2. These benefits, however, can be diminished significantly where Corps districts and divisions administer the Nationwide Permit program inconsistently. Existing regulations afford each district office considerable discretion to implement the Nationwide Permit program. 33 C.F.R. §§ 330.1(d), 330.4(e), 330.5. Without properly framed guidelines, this discretion can create regulatory uncertainties and project delays due to widely disparate interpretations of the Nationwide Permit program’s applicability or its core terms and conditions. Such inconsistencies can be crippling for infrastructure projects essential for our economy, such as pipelines, that are constructed through multiple Corps districts or divisions.

Specifically, the Nationwide Permit program’s current regulations broadly authorize Corps permit engineers to place conditions on or restrict use of a nationwide permit in “cases where they have concerns for the aquatic environment under the Clean Water Act section 404(b)(1) Guidelines or for any factor of the public interest.” *Id.* § 330.1(d). This broad discretion, however, produces an uncertain and sometimes difficult regulatory regime for projects seeking to be covered by a nationwide permit. GPA Midstream members report many instances where district or division engineers have disagreed with each other regarding a multi-district project, a multi-permit project, or with respect to similar projects proposed in different districts. Indeed, as a matter of general practice, some Corps districts are simply more receptive to using a Nationwide Permit than others.

GPA Midstream believes that the Corps should reduce this discretion in order to fulfill the purpose of the Nationwide Permit program. Indeed, an inconsistent exercise of discretion by different engineers in or among offices of the same federal agency undercuts Congress’ intent to streamline permitting procedures when it authorized the Corps to develop a nationwide permit program. 33 U.S.C. § 1344(d). Moreover, applying the same rules to similar projects differently creates uncertainty and delay, and thereby defeats the purpose and policy of the Corps’ Nationwide Permits program: “to regulate with little, if any, delay or paperwork certain activities having minimal impacts.” *Id.* § 330.1(b).

Accordingly, the Corps should review and consider how it can most effectively reform the way its permitting officials are granted and exercise discretion to implement the Nationwide Permit program. For one, the Corps should limit the discretion of individual engineers by revising the regulations or issuing guidance that would narrow their discretion by setting more specific criteria for permitting decisions. The criteria should be framed to match the central goal of a nationwide permit program to expedite the permitting process – and to better ensure the Corps makes consistent permitting decisions across offices in a transparent manner, based on the facts and sound science. In addition, the Secretary should direct regional and district offices to expand the use of multi-sector permits to minimize the adverse affects of differing interpretations among individual engineers. The Corps could also work with the Council on Environmental Quality (“CEQ”) to set up a process to resolve any differing interpretations that may remain among various Corps offices.¹

¹ The President has ordered CEQ to take on an expanded role in inter-agency environmental reviews to facilitate infrastructure projects. *See* E.O. 13,766 §§ 2, 3 (Jan. 24, 2017) (CEQ will identify high priority infrastructure projects and coordinate the development of expedited permitting and approval procedures with relevant agency heads); E.O. 13,807 §§ 5(b)(iv), 5(e) (Aug. 15, 2017) (CEQ will develop a framework for implementing the One

In short, the Corps should reform its Nationwide Permit program to ensure it implements the program in a manner that facilitates permitting, reduces undue discretion, and provides consistency, regulatory certainty, and transparency.

II. The Corps Should Examine Methods for Streamlining the Permitting Process

Nationwide Permit authorizations are often not completed in a timely fashion despite the requirement that the Corps administer the program “with little, if any delay” 33 C.F.R. § 330.1(d). Based on the observation of GPA Midstream’s members, these delays are often attributed to engineering resource limitations, high turnover among the Corps’ engineering staff, unnecessarily prolonged consultations with tribes and other agencies and a lack of a timeline or criteria for determining whether a request for verification of coverage is administratively complete. *Each* of these issues can *each* add between six and twelve months to a permitting process that should be implemented with “little, if any delay.” GPA Midstream suggests the following potential streamlining methods that could reduce burdens and alleviate delays.

Authorize Contract Resources to Address Corps Staffing Limitations. GPA Midstream understands that Congressional budgets dictate funding for staffing resources. However, unlike with other permitting agencies, current regulations do not authorize the Corps to use contract resources funded by prospective permittees seeking verification that an activity complies with a Nationwide Permit. As a result, our members have suffered significant delays as Corps engineers working on their requests have had as many as 70 other projects assigned to them. Employing contract resources would help alleviate the significant permit backlog accrued at many district offices and reduce the time for verifying coverage under Nationwide Permits. The use of contract resources may also increase the mandatory deployment time for District Engineers and Commanders so that they may provide greater leadership to office staff. Further, the promotion of Deputy Commanders to District Engineers would assist in providing greater leadership continuity and aid in the consistent interpretation of the Nationwide Permit program requirements. We see no reason why the Corps should not adopt this practice, especially when other agencies have found the use of contract resources to expedite decision-making.

Conduct Parallel Reviews, Develop Critical Path Timelines, and Improve Procedures to Minimize Consultation Delays. Delays from separate tribal and agency consultations, as well as the need for permits across Corps offices, can add many months or years to the process of obtaining Nationwide Permit coverage. These extended procedures have real consequences across our economy, causing delays in providing high-paying jobs to Americans and delays in bringing valuable resources to market. To minimize these delays, GPA Midstream suggests performing these consultations in parallel, instead of serially, as often occurs. Parallel processing requirements should also be implemented across multiple district offices where projects require multiple permits under Sections 10, 404, and 408.

GPA Midstream also recommends that the Corps develop and use a critical path timeline approach to each coverage request that would set mandatory check-ins for the requesting party, Corps, and any tribes or other agencies being consulted. These types of timelines are common

Federal Decision policy for infrastructure projects and otherwise coordinate agency review through guidance and resolving inter-agency disputes).

across private sector project management and would help structure the Nationwide Permit verification review process, allow for better inter-agency communications and teamwork across agencies, and help reduce delays. The critical path timelines could be standardized across Corps offices and districts to make work across the agency more consistent, transparent, and certain for requesting parties, and thereby eliminate or reduce inconsistent decision-making among and across Corps regions.

In conjunction with implementing the critical path timeline, we further suggest that the Corps review its procedures and develop a more systematic process that eliminates redundant steps and facilitates cross-agency communication and agreements. This will encourage infrastructure development without compromising the environment. Following standardized decision-making criteria and work processes will promote a more transparent process that will create certainty for the regulated community.

Adopt Completeness Determinations and Processing Deadlines at Least as Stringent as Those for Individual Permit Applications. Those seeking verification of coverage under a Nationwide Permit frequently encounter extensive delays due, in part, to one or more requests for additional information and because the Corps has no deadline to act on a permittee's request for verification. GPA Midstream requests that the Corps promptly adopt "completeness" and processing deadlines for requests for verification comparable to those governing individual permit applications. Despite the requirement that Nationwide Permit coverage be provided "with little, if any, delay," the Corps has not adopted criteria to govern requests for verification of coverage under a Nationwide Permit comparable to the detailed criteria under 33 C.F.R. § 325.2 for individual permits. Given the simplified nature of the Nationwide Permit scheme and the minimal environmental impacts by projects covered under Nationwide Permits, district offices should be able to provide a notice of completeness or a request for additional information within 15 days, similar to the requirements under existing Corps regulations, for much more complicated individual permit applications. *Id.* §§ 325.2(a)(1), (2). Further, the Corps has set regulatory deadlines for processing individual permit applications. *See id.* § 325.2(d). GPA Midstream urges the Corps to implement a similar set of processing deadlines for requests for verification of coverage under nationwide permits.

III. Other Recommendations

GPA Midstream also recommends the following potential regulatory changes to increase regulatory certainty, reduce permitting times, and otherwise eliminate unnecessary complications with respect to the Nationwide Permit scheme.

- Reduce the time for which a State must act on a permittee's consistency certification under the Coastal Zone Management Act from six months to 60 days. *See* 33 C.F.R. § 330.4(d)(6). Given the minimal environmental impacts involved in projects covered by a Nationwide Permit, providing a State six months to review a project's consistency with the Coastal Zone Management Act is needlessly long and inconsistent with the Nationwide Permit scheme's goal of providing coverage "with little, if any, delay."
- Where a Division Engineer seeks to modify, suspend, or revoke a Nationwide Permit authorization based on "concerns regarding the environment or other relevant factors of the

public interest,” 33 C.F.R. § 330.5, GPA Midstream recommends that Corps regulations specifically require consideration of the harm that suspension or revocation would have to those parties covered by the permits, including economic impacts to municipalities where the project is or would be located, workers, and contractors. Although the Division Engineer must “[c]onsider fully the views of affected parties,” we believe that “the public interest” should expressly include a more robust understanding of what is in the public interest. GPA Midstream believes that the regulation’s current wording emphasizes perceived or potential environmental impacts nearly to the exclusion of all other public interests.

- GPA Midstream submits that the Corps should create a publicly accessible database of Corps real estate interests. That would reduce regulatory uncertainty and permitting delays. Currently, it is difficult to identify those interests without contacting the Corps directly. Allowing direct public access to this information would also reduce administrative burdens on Corps engineers.
- The Corps should adopt guidelines to support the use of delineation data gathered by remote sensing technology. This could supplement data gathered through traditional site evaluations for use in jurisdictional determinations, especially where areas of a site are not accessible.

GPA Midstream appreciates the opportunity to submit these comments on the Corps’ regulatory reform initiative and is standing by to answer any questions that the Corps may have.

Respectfully submitted,

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