



VIA ELECTRONIC FILING

February 12, 2017

US Army Corps of Engineers
Regulatory Division, CESWG-RD-P
PO Box 1229
Galveston, TX 77553-1229
swg_public_notice@usace.army.mil

Re: Comments on Proposed Regional Conditions for the 2017 Nationwide Permit Program

Dear Sir/Madam,

The GPA Midstream Association (GPA Midstream) appreciates the opportunity to provide comments to the US Army Corps of Engineers (USACE) pertaining to the proposed Regional Conditions for the 2017 Nationwide Permit Program. GPA Midstream has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA Midstream is composed of nearly 100 corporate members 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 or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing.

GPA Midstream members use the Nationwide Permit Program and will be impacted by this USACE proposal. GPA Midstream requests that the USACE take the following comments and suggestions under consideration when developing the final Regional Conditions.

- **Regional Condition 2** - GPA Midstream requests that USACE remove this Regional Condition, as it has no direct bearing on dredging or placement of fill material in a Water of the US. There are existing state regulations and programs in the State of Texas governing the spread of zebra mussels and other invasive species; therefore, this requirement is unnecessary. If USACE is unwilling to remove this requirement then GPA Midstream requests that USACE exempt pipeline projects from Regional Condition 2. The requirement could be overly burdensome for linear projects such as pipelines, which frequently encounter

numerous palustrine aquatic resource types during construction of a single linear project. Often times when this occurs the aquatic resources are within relatively close proximity and contained within the same watershed. The proposed cleaning and drying requirements would add significant delays to project timelines and high temperature pressure washing could result in the deposition of other unwanted materials in waters of the US. The potential negative consequences of imposing Regional Condition 2 on pipeline projects far outweigh the minimal benefits that would be gained.

- **Regional Condition 4** – GPA Midstream requests that the USACE either remove Regional Condition 4 or exclude the requirement to submit a PCN for impacts resulting from mechanized land clearing of scrub-shrub wetlands. First, the USACE decision document for Nationwide Permit (NWP) 12 determined that the discharges authorized by NWP 12 comply with the Section 404(b)(1) Guidelines, with the inclusion of appropriate and practicable conditions, including mitigation necessary to minimize adverse effects on affected aquatic ecosystems. Therefore, on the basis that activities authorized by NWP 12 will have no more than minimal adverse effects, there should not be a PCN requirement. Secondly, a vast majority of the scrub-shrub vegetation encountered on pipeline projects in the Galveston District are of little ecological value and generally reestablishes to the prescribed height defined in the regional conditions within two to three years. Following initial reclamation activities, the majority of a pipeline project's right-of-way revegetates naturally over time allowing for adequate re-establishment of scrub-shrub vegetation. GPA Midstream cautions USACE about the potential burden on agency resources and project delays if PCNs were to be required for every mechanized land clearing activity permitted under NWP 12.
- **Regional Condition 8** – As written this regional condition would require all activities within wetlands to require a PCN. GPA Midstream believes this requirement is unnecessary and over burdensome. GPA requests this requirement be removed or further information and justification be required from USACE.
- **Regional Condition 14** – GPA Midstream requests that the USACE remove the PCN requirement under this regional condition for construction and maintenance of linear pipeline projects. Temporary discharge of fill material was addressed in the decision document for NWP 12, 14, and 33 and it was deemed that this activity would cause no more than minimal adverse effects on the aquatic environment. Furthermore, NWP 12 already includes PCN triggers for clearing in forested wetlands and other activities that would cover potential adverse impacts to the listed types of wetlands. GPA Midstream cautions USACE about the potential burden on agency resources and project delays if PCNs were to be required for every temporary discharge of fill material in ½ acre or more of emergent wetland or 1/10 acre of scrub-shrub/forested wetland under NWP 12, 14, and 33.

- **Regional Condition 16(c)** – GPA Midstream requests that linear transportation projects continue to be authorized under NWPs 12 and 14 when crossing Columbia Bottomlands, provided construction activities take place in accordance with NWP general conditions. We concur with comments submitted on this matter by Perennial Environmental related to Regional Condition 16(c) and are including them below with minor revisions.

As outlined in the general conditions, “activities must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to “Waters of the United States” to the maximum extent practicable at the project site”. Additionally, the general conditions state that “mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.”

According to The Nature Conservancy, the Columbia Bottomlands encompass approximately 700,000 acres within the USACE Galveston District. Due to its size and location, it will be virtually impossible for many linear transportation projects in southeast Texas to reach coastal refineries or other infrastructure without crossing designated Columbia Bottomlands. As noted above, to be authorized under the NWP program, a project must first demonstrate avoidance and minimization. If it is determined that avoidance and minimization are not feasible, then compensatory mitigation is required to replace the loss of wetland and aquatic resource functions within a given watershed to offset an unavoidable adverse impact. Additionally, more definition to Columbia bottomlands vegetation and limits is needed. For example, would seedling and sapling bottomland hardwoods in PEM and PSS be included, would seedling/sapling/tree in various herbaceous stratus in the riparian areas of ephemeral/intermittent/perennial waterbodies be included, and how would the limits of JD or PJD in riparian areas potentially considered Waters of the US be defined?

Currently, any linear transportation project that results in the mechanized land clearing of a forested wetland within the Columbia Bottomlands is required to submit a PCN outlining avoidance, minimization, and a compensatory mitigation plan to the USACE for review and authorization. Through implementation of these best management practices, along with offsetting any unavoidable impacts to forested wetlands through compensatory mitigation, projects authorized under the NWP program result in only minimal adverse environmental effects.

If linear utility projects are no longer authorized under the NWP Program within Columbia Bottomlands, one of two scenarios will occur. A given project will attempt to commit to avoiding all forested wetlands via multiple horizontal directional drills (HDD); or an individual permit (IP) will be pursued. If the HDD option is pursued, large additional temporary workspace (ATWS) areas will be situated within uplands (usually forested) adjacent to every forested wetland crossing to provide sufficient workspace area for drill

pads, construction equipment, etc. This in turn will result in an increase of forest conversion and habitat fragmentation, as the Columbia Bottomlands contain numerous wetland and upland complexes throughout its designation. Additionally, there are many limiting factors such as points of inflection, minimum span lengths, etc. that can limit or prevent an HDD from being feasible. Additionally, the increased construction cost for this specialized technique is significant and will negatively impact our clients and the end users of these projects.

In our opinion, requiring an IP for any water of the US impact including forested wetland conversion within Columbia Bottomlands would result in a significant and unnecessary workload increase for regulatory branch staffing, as well as result in unrealistic project delays, since IPs do not have a regulated timeline for permit issuance.

- **Regional Condition 26** – GPA Midstream respectfully requests that USACE reconsider allowing the use of NWP within the San Jacinto River Waste Pits Area of Concern. Alternately, the USACE could consider limiting the retraction of NWPs in this area to activities within Section 10 waters only. The referenced area of concern encompasses upland areas and GPA Midstream believes that NWPs should be authorized above the high tide line and/or for activities that do not disturb the mud line below the water.

GPA Midstream appreciates the opportunity to submit comments on the USACE's proposed Regional Conditions for the 2017 Nationwide Permit Program. We offer our continued assistance to the USACE as it evaluates comments and remain available to provide additional data or answer questions that USACE may have. If you have questions please contact me at (202) 279-1664 or by email at mhite@GPAglobal.org.

Sincerely,

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association