



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

Submitted via www.regulations.gov

Re: “Notice of Solicitation of Input on Potential Future Changes to Nationwide Permits,” 91 Fed. Reg. 12591 (Mar. 16, 2026), Docket No. COE-2026-0001

GPA Midstream Association (“GPA Midstream”) appreciates the opportunity to provide comments to the U.S. Army Corps of Engineers (the “Corps”) regarding ways to increase the efficiency of the nationwide permit (“NWP”) program.¹

GPA Midstream has served the U.S. energy industry since 1921 and represents more than 50 domestic corporate members that directly employ 57,000 employees engaged in the gathering, transporting, processing, treating, storage, and marketing of natural gas, natural gas liquids (NGLs), crude oil and refined products, commonly referred to as “midstream activities.” The work of our members indirectly creates or impacts an additional 470,000 jobs across the U.S. economy. In 2024, GPA Midstream members had an economic impact of \$191 billion through operating 502,900 miles of gas gathering pipelines, gathering more than 91 billion cubic feet per day of natural gas, and operating more than 342 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.

GPA Midstream members include companies that frequently use NWPs to construct and maintain vital energy infrastructure. These projects are often small in scale and must be constructed quickly to maintain the integrity of the nation’s infrastructure and to avoid interrupting the nation’s supply of natural gas, crude oil, NGLs, and essential products derived therefrom. Midstream companies rely on NWPs to keep pace with market needs for natural gas, crude oil, and NGLs—including maintaining the availability and reliability of the U.S. domestic energy supply. Pipeline infrastructure is used to transport refined products, and to move raw materials and feedstock used to manufacture materials in nearly every sector of the U.S. economy. Therefore, the ability to use NWPs to eliminate unnecessary delay, costs, and burdens to cross streams, construct access roads, and maintain

¹ Notice of Solicitation of Input on Potential Future Changes to Nationwide Permits, 91 Fed. Reg. 12591 (Mar. 16, 2026).

infrastructure is imperative to the mission of GPA Midstream members and to critical supply chains nationwide.

GPA Midstream has a long history of engagement with the Corps on the NWP program, including detailed comments submitted in connection with prior reissuances and modifications.² GPA Midstream incorporates those prior comments by reference as applicable and adds to them here to address the Corps' request for input on future program improvements.

Executive Summary

GPA Midstream appreciates the Corps' request for input to improve the efficiency of the NWP program. As reflected in prior GPA Midstream comments, the NWP program is a critical and highly effective general permitting framework that enables timely authorization of projects with no more than minimal adverse environmental effects.

Over the nearly 50 years the NWP program has been in effect, however, inconsistencies and ambiguities have arisen that undermine efficiency and impose unnecessary administrative burdens on both permittees and the Corps. In particular, regulatory triggers for pre-construction notification ("PCN"), and differences and ambiguities in NWP general conditions, can delay routine, small-scale infrastructure activities that are essential to maintaining the safety, reliability, and availability of the nation's energy supply.

GPA Midstream's recommendations focus on:

- Aligning PCN triggers with actual environmental risk;
- Eliminating ambiguity and inconsistencies across NWPs and general conditions;
- Reducing duplicative or unnecessary procedural requirements; and
- Restoring the intended streamlined function of the NWP program.

I. NWPs 13, 14, and 18 – PCN Requirement for “Special Aquatic Sites”

The Corps should eliminate the condition in NWPs 13, 14, and 18 that requires PCN for any discharge of dredged or fill material into a “special aquatic site, including wetlands.”

This categorical trigger is overly broad and susceptible to being applied inconsistently by Corps districts. Unlike other PCN triggers tied to objective thresholds, it applies regardless of the size of impacts or quality of resources. Many wetlands—particularly low-quality or isolated wetlands—do not meaningfully contribute to ecosystem function as contemplated in the definition of “special aquatic site” at 40 C.F.R. § 230.3(m). However, under the current NWPs, PCN is required for activities impacting these wetlands in any amount. The requirement therefore captures activities that are, by definition, no more than minimally

² See, e.g., GPA Midstream Comments, Proposal to Reissue and Modify Nationwide Permits, Docket No. COE-2025-0002, 90 Fed. Reg. 26100 (June 18, 2025); GPA Midstream Comments, Proposal to Reissue and Modify Nationwide Permits, Docket No. COE-2020-0002, 85 Fed. Reg. 57,298 (Sep. 15, 2020).

impactful. Requiring PCN in these circumstances imposes administrative burdens without corresponding environmental benefit.

In addition, the term “special aquatic site” is not defined within the NWP, leading to inconsistent interpretation among Corps districts and encouraging over-notification that impedes projects without corresponding environmental benefit.

The Corps should eliminate this categorical trigger, which could be accomplished through a narrow revision to remove the PCN trigger for special aquatic sites in each NWP,³ or replace it with objective thresholds that account for acreage and/or resource quality.

II. NWP 18 – Clarification of Quantitative Threshold Applicability to Wetlands

The Corps should revise NWP 18 to clarify that its quantitative thresholds apply to discharges and excavation in wetlands.

As currently written, NWP 18 limits discharges and excavation to 25 cubic yards, as the maximum for using the NWP. It also sets a PCN threshold of 10 cubic yards. Both of these criteria are limited to activities occurring “below the plane of the ordinary high water mark or the high tide line”; however, the ordinary high water mark or high tide line is not a feature conducive to measurement in wetlands.

The Corps routinely uses NWP 18 to authorize fill/excavation in wetland areas, but the current language creates uncertainty regarding how to apply the quantitative thresholds in those areas. This uncertainty also causes inconsistent application among districts. The language in the NWP should therefore be revised so that it is clear the quantitative fill/excavation thresholds apply to discharges of dredged or fill material in wetlands. This clarification would promote consistent implementation and reduce unnecessary PCN submissions.

III. NWP 39 – Eliminate Blanket PCN Requirement

The Corps should revise NWP 39 to eliminate the blanket requirement that all activities authorized under this NWP submit a PCN.

Requiring PCNs for all activities authorized under NWP 39—regardless of impact—departs from the Corps’ standard threshold-based approach. There appears to be no meaningful justification for deviating from the Corps’ 0.10-acre threshold for other NWPs, and GPA Midstream is not aware of reliable quantitative information supporting why projects with less than 0.10-acre of impacts must be evaluated for more than minimal adverse impacts for commercial and institutional developments, while other types of projects with the same area of impacts need not be evaluated.

³ The Corps should delete, “; or (2) there is a discharge of dredged or fill material in a special aquatic site, including wetlands” in NWPs 14 and 18.

This departure from standard practice in NWP 39 creates undue administrative burdens for both applicants of projects with no more than minimal adverse impacts, and the Corps itself. It also diverts resources away from projects that warrant closer review. The Corps should instead adopt objective PCN thresholds, such as requiring notification only where impacts exceed 0.10 acre of waters of the United States. This approach would align NWP 39 with other NWPs and improve overall program efficiency.

IV. General Conditions 18 (Endangered Species) and 20 (Historic Properties)

A. Align PCN Triggers with ESA Effect Determinations

The Corps should revise General Condition 18 (“GC 18”) to align with the Endangered Species Act (“ESA”) Section 7 effect determination framework and U.S. Fish and Wildlife Service (“USFWS”) effect determinations.

GC 18 is meant to ensure that activities authorized under NWPs do not jeopardize the existence of listed threatened or endangered species or adversely modify designated critical habitat. Currently, however, GC 18 requires PCN where listed species “might be affected” or are “in the vicinity,” which exceeds the ESA’s consultation framework and creates confusion as compared with USFWS’s Information for Planning and Consultation (IPaC) Determination Keys.

Under ESA regulations, agencies distinguish between “no effect,” “not likely to adversely affect,” and “likely to adversely affect.” The USFWS effect determinations are “No effect,” “May affect – Not likely to adversely affect” (also known as “Not likely to adversely affect”) and “May affect.” Accordingly, GC 18 should be revised to clarify that PCNs are not required for activities that receive an effect determination of “No effect” or “May affect – Not likely to adversely affect” under IPaC, regardless of whether the activity would occur in the vicinity of any listed species or designated critical habitat. Such an approach would facilitate the appropriate use of NWPs and reduce PCN submittals where adverse effects are not reasonably anticipated. On the other hand, including a requirement within GC 18 for PCN submittal when listed species or designated critical habitat “might be affected” ignores the distinction between formal and informal consultation provided in the regulations (i.e., at 50 C.F.R., Part 420) and incorporates unnecessary consultations into situations with little to no risk of adverse effects.

B. Eliminate or Clarify “Vicinity” Standard

The phrase “in the vicinity of the activity” is undefined in both General Conditions 18 and 20 and creates significant uncertainty. This ambiguity in the text leads to inconsistent application among districts, encourages over-notification, and places undue risk on applicants attempting to determine compliance.

Particularly for small, routine projects—i.e., many projects for which NWPs are designed to be used, such as linear water crossings—the “vicinity” standard is particularly difficult to

apply and often results in unnecessary PCNs. The Corps should either remove this language or define it using an objective, clearly delineated boundary based on the reach of the Corps' jurisdiction (e.g., a specified distance from the jurisdictional feature).

V. Appendix C – Retain and Clarify its Continued Use

GPA Midstream supports the continued use of Appendix C to Part 325, Procedures for the Protection of Historic Properties, and urges the Corps not to adopt any proposal to rescind it (e.g., as had been proposed in 2024).⁴ Appendix C provides a clear and established framework for evaluating impacts to historic properties under Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, including how the Corps defines the permit area, identifies historic properties, and conducts consultation.

Removing Appendix C would introduce uncertainty regarding compliance expectations and likely result in inconsistent implementation across Corps districts. It would also increase the likelihood of delays and duplicative consultation by shifting projects into less predictable and more open-ended Section 106 processes. The Corps should confirm that Appendix C remains in effect and continues to govern historic property review for NWP.

VI. Coordination Timelines and Scope

The Corps should take steps to improve the timeliness and predictability of interagency coordination, particularly under Section 7 of the ESA and Section 106 of the National Historic Preservation Act (“NHPA”).

VII. As an initial matter, the enactment of enforceable statutory timeframes for USFWS and Historic Preservation Office review/consultation would greatly improve consultation processes and provide schedule certainty to applicants. Recognizing that such changes are beyond the scope of the Corps' rulemaking authority, other changes should be made to improve the process. For example, under General Condition 20(d), non-federal applicants must wait for notification from the Corps before initiating Section 106 consultation—even if consultation is clearly required. In practice, State Historic Preservation Officers often will not begin consultation until receiving such notification, resulting in unnecessary delays. These delays frustrate the purpose of the NWP program, which is to provide expedited authorization for activities with minimal impacts. Although the Corps may not dictate other agencies' reviews, it should make any available process improvements to increase interagency accountability and predictability for reviews.

VIII. NWP 12 – Eliminate 250-Mile PCN Trigger

NWP 12 requires PCN for any regulated activity associated with an overall project that is greater than 250 miles in length when the project purpose is to install new pipeline for the

⁴ Proposed Rule, Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties, 89 Fed. Reg. 9079 (Feb. 9, 2024).

majority of the distance of the overall project length. The Corps should eliminate the 250-mile PCN trigger for oil and natural gas pipeline activities.

In the 2026 NWP reissuance, the Corps remarked that it “has found that a length of 250 miles is both a good indicator of potential cumulative effects of an oil or natural gas pipeline while minimizing the potential for inconsistent implementation of the PCN requirement across districts.” 91 Fed. Reg. 788 (Jan. 8, 2026). However, the Corps did not offer a basis for that finding. The threshold lacks any rational connection to environmental impacts, because the length of a pipeline does not determine its effects on aquatic resources. Instead, impacts depend on site-specific conditions and construction methods. In some cases, a short pipeline segment may have greater environmental impacts than a much longer pipeline.

The threshold also conflicts with the Corps’ definition of a “single and complete project,” which evaluates linear projects on a crossing-by-crossing basis. By aggregating impacts based on total project length, the 250-mile trigger risks transforming the PCN requirement into a broad, catch-all notification requirement.

The Corps should remove this threshold and rely on the impact-based criteria it uses to determine PCN requirements in other NWPs.

IX. Recombine NWPs 12, 57, and 58

The Corps should recombine NWPs 12, 57, and 58 into a single NWP covering all utility lines, regardless of the substance conveyed.

Separating utility line activities based on the substance conveyed lacks a rational basis. Construction methods, environmental impacts, and mitigation measures—the subjects of Corps analysis and regulation—are fundamentally similar across oil and gas pipelines, electric lines, and other utility infrastructure.

The Corps has long recognized that these activities are “similar in nature” because they involve linear infrastructure transporting substances or energy. Fragmenting these activities into separate permits creates unnecessary administrative burdens, particularly where multiple utility lines are co-located within the same right-of-way and cross the same waters.

Recombining these NWPs would restore consistency, reduce duplicative permitting requirements, and improve overall program efficiency.

X. General Condition 11

General Condition 11 states that heavy equipment *must* be placed on mats when working in wetlands or mudflats; however, many wetland soil surfaces become as hard and impenetrable as adjoining upland areas in the summer or during prolonged drought and using mats in those circumstances is unnecessarily costly and burdensome. The Corps should add language to clarify that the condition applies only while inundated/saturated conditions exist within wetlands at the time of the crossing.

XI. General Conditions 18 and 20

Both General Conditions 18 and 20 require a PCN be submitted by non-federal applicants of proposed projects if listed (or proposed) species might be affected or might have the potential to cause effects on historic properties, respectively. The Corps acknowledges that “might” is a lower threshold than “may”, resulting in the preparation, submittal, and review of PCNs for an abundance of projects that ultimately are determined to have no effect or no adverse effect to these resources, as may have already been determined by the applicant and/or their qualified consultant. Corps should consider easing the effect threshold so that only projects that may have an adverse effect on listed species and historic properties are reviewed by an already-overstrained regulatory staff.

Conclusion

GPA Midstream appreciates the Corps’ efforts to improve the NWP program and respectfully submits that the recommendations above would significantly enhance its efficiency, clarity, and consistency.

By aligning procedural requirements with actual environmental risk, reducing unnecessary PCN requirements, and eliminating ambiguity, the Corps can ensure that the NWP program continues to fulfill its intended purpose—providing timely authorization for activities with minimal adverse environmental effects while protecting the nation’s aquatic resources.

GPA Midstream stands ready to work with the Corps as it considers future modifications to the NWP program.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Saulters", with a stylized flourish at the end.

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