

May 27, 2022

The Honorable Michael Connor
Assistant Secretary of the Army for Civil Works
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Re: Notice of Virtual Public and Tribal Meetings Regarding the Review of Nationwide Permit 12; Establishment of a Public Docket; Request for Input, [87 Fed. Reg. 17281 \(Mar. 28, 2022\)](#); Docket Number COE-2022-0003.

Dear Assistant Secretary Connor:

We, the undersigned organizations, appreciate the opportunity to comment on the U.S. Army Corps of Engineers' announcement of a formal review of Nationwide Permit 12 for oil and natural gas pipeline activities.

Because the U.S. Supreme Court's forthcoming decision in *Sackett v. EPA* is likely to be highly instructive on key issues relevant to this review, we urge the Corps to proceed cautiously with any deliberations until the Court issues a decision.

Building smart, modern, resilient infrastructure through innovation and responsible development has long been among the top priorities for the business community. We have established a strong record in balancing environmental stewardship and sustainability with economic development. Oil and gas pipelines play an essential role in reducing greenhouse emissions and providing energy security for the United States and our allies. This review should not be an "either or" proposition.

Our members have a substantial and direct interest in the NWP-12 review and in smart regulations that protect the environment, create jobs, drive innovation, and ensure a better quality of life for everyone. To accomplish these goals, regulations governing America's land, water, and infrastructure must be designed and maintained with the utmost care to ensure that regulations are effective in achieving their desired objectives, while simultaneously avoiding unnecessary environmental, social, and economic impacts. A strong, stable, and predictable nationwide permitting program will continue to ensure that the United States can prosper and grow sustainably and responsibly.

The following considerations weigh heavily in favor of maintaining NWP-12 in its current form:

- **Contributing to our national and energy security.** The current geopolitical crisis related to the Russian invasion of Ukraine underscores the need to maintain, and expeditiously augment and upgrade our domestic energy production and transportation infrastructure.
- **Ensuring utility and energy reliability.** The consistent delivery of certain sources of fuel (e.g., natural gas) for power generation is critical for reliable electricity across the United

States, which is crucial to our economic well-being and our national security. Simply put, natural gas is often required to balance the intermittent nature of renewables.

- **Providing the foundation for decarbonization infrastructure.** Natural gas has been among the leading contributors to reducing GHG emissions, both as a primary generation feedstock and to balance the increasing integration of renewable resources into our electric grid. Natural gas pipelines with little modification can also be utilized for blended hydrogen and renewable natural gas transmission as they are scaled-up as lower emissions energy sources.
- **Serving customers with affordable energy.** Rising energy costs and resulting energy burdens are a significant challenge for disadvantaged communities. Cost effective approaches to supporting the transmission of natural gas is an important element of ensuring affordable energy to all communities.
- **Providing predictability and regulatory certainty for NWP-12 and other Nationwide Permits.** Applicants are familiar with the current program and rely on existing processes to make planning and investment decisions and to maintain and harden infrastructure for resiliency. Significant changes would introduce instability and could even lead to litigation. Many businesses are considering new facilities or expanding existing sites right now. Without consistent application and processes, the resulting uncertainty hampers these businesses as they examine and consider significant expenses for future development. Additionally, such changes could have unintended impacts on other nationwide permits, including permits that facilitate wind and solar energy expansion, effective vegetation management for electric transmission infrastructure, and other routine maintenance.
- **Maintaining the five-year cycle.** Due to the complexity of renewing and implementing the NWPs (e.g., national, division, and district reviews, cost-benefit evaluations), we generally recommend keeping all permits in the same cycle and renewing them every five years to prevent expiration and confusion. Changes outside the current cycle that introduce new burdens, impose new requirements, and may deter companies from making investments and eliminate the certainty on which they depend.

For decades, the Corps' Nationwide Permitting program has served as an essential tool, facilitating the development of critical, resilient infrastructure that helps communities thrive. The Corps' nationwide permits, including Nationwide Permit 12, play an important role in facilitating infrastructure projects with lower environmental impact to accelerate meeting our ambitious climate and infrastructure goals. Data from the Corps show that, in 2018, the average time that it took to process a standard individual permit was 264 days. In contrast, average nationwide permit processing time was 45 days. The Corps' regulatory impact analysis prepared for the 2017 nationwide permits found that a typical nationwide permit verification costs \$4,308 to \$14,358 to obtain, whereas a typical individual permit costs \$17,230 to \$34,460 to obtain. This increased cost and time involved with obtaining an individual permit verification underscores the value of general permitting.

Finally, the Corps has raised questions concerning whether more opportunities should be provided for public comment regarding specific applications of NWP-12. While we support public engagement in significant decisions that impact the environment and affected

communities, duplicative process requirements should be avoided when existing statutes and regulations provide opportunities for public input concerning particular projects. This includes public engagement opportunities arising from authorization decisions by state and federal agencies that have different or broader jurisdiction regarding a project than does the Corps under the Clean Water Act and the Rivers and Harbors Act of 1899. As the Corps notes, the Corps' statutory authorities are limited; the Corps is not a general regulatory permitting authority for pipelines or other infrastructure. Its authority is focused on activities involving discharges of dredged or fill material and the obstruction of navigable waters. Therefore, we also suggest that any proposed modifications to the federal program and associated division and district changes, to the extent that such changes would impose significant new requirements, should be provided with a 120-day comment period to ensure thorough analysis and development of consensus approaches.

The nationwide permit program plays a critical role in an "all of the above" approach for deploying the energy and resilient infrastructure America needs. The program facilitates continued investment in needed infrastructure and encourages environmentally and economically sustainable modern energy options. The program allows the Corps and project applicants to streamline the permitting process for projects known to have only minimal impact on water resources. Nationwide permits provide general approval, with minimal delay and paperwork, for projects that are similar in nature, have minimal environmental impact, and can meet specific conditions and restrictions that guarantee strong protections for aquatic ecosystems. This process enables project applicants to dedicate resources appropriately by making sound, long-term investments while meeting regulatory requirements.

Such investments would better serve Americans, improve commerce and communication, bolster national security, and pave the way for the success of the next generation. The choice between environmental protection and a strong economy is also not an either/or proposition. Americans deserve both.

Sincerely,

America Chemistry Council
American Council of Engineering Companies
American Farm Bureau Federation
American Gas Association
American Petroleum Institute
American Exploration & Production Council
American Public Gas Association
Associated Builders and Contractors
Center for Liquefied Natural Gas
Independent Petroleum Association of America
National Association of Manufacturers
Natural Gas Supply Association
U.S. Chamber of Commerce