Nationwide Permits/Clean Water Act: American Gas Association Comments on US Army Corp of Engineers Solicitation of Input on Potential for Future Changes



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05/28/2026

The American Gas Association ("AGA") submitted May 15 comments to the United States Army Corp of Engineers ("Corp") regarding its federal registered notice seeking input on ways to increase efficiency of the Clean Water Act nationwide permit ("NWP") program. See 91 Fed. Reg. 1259 (March 16).

The Corp stated it would consider input from commenters and future rule making related to NWPs.

Section 404 of the Clean Water Act requires Corp authorization for discharges of dredged or fill material into waters of the United States. An individual permit authorizes specific activities on a case-by-case basis.

In contrast, NWP is a general permit that provides standing permission for all activities that fit the description of the permit. Such permits provide for pre-authorized permission for activities that conform with the standards of the NWP. Certain nationwide permits do require some type of authorization from or notice to the Corp prior to starting work.

The Corp is required to periodically renew expiring NWPs. However, besides renewing existing permits, the Corp also sometimes takes the opportunity to revise or add certain NWPs. The Corp noted in the March 16 federal registers notice that pursuant to its regulations, anyone may at any time, suggest the Chief of Engineers that he or she consider any new NWPs or conditions for issuance or or changes to existing NWPs. The Corp therefore sought input on a number of specified issues and also posed six questions for stakeholder input related to NWPs.

The AGA describes its organization as representing more than 200 local energy companies that deliver clean natural gas throughout the United States. It stated there are more than 79 million residential, commercial, industrial natural gas customers in the United States, of which 94%, more than 74 million customers – receive their gas from AGA members. By way of background, AGA's comments note:

- Natural gas and the infrastructure network currently support American's energy economy (for over a century) and will be needed in the future'
- Hundreds of millions of Americans rely on the infrastructure and energy it delivers;
- AGA members rely on the streamlined permitting process provided by the NWP program to facilitate the repair, maintenance, replacement, or construction of local gas utility pipeline infrastructure.

Components of the AGA comments include:

- Natural gas utilities reply to NWPs to perform critical construction and maintenance required to improve pipeline safety and enhanced reliability.
- Anomaly or direct assessments for pipeline programs are critical to the investigation of the integrity of assets and identification of potential corrosion or other abnormalities (NWPs 3 and 12 allow pipelines to finish this essential work on time);
- Pipeline relocation or replacement projects often result in improvements to the environment by installing new plastic or coated steel pipelines and use NWP 12);
- Repair and maintenance of above ground facilities include the installation of measurement or other integrity management of pertinences that are necessary for the continued safe operation of the pipeline system and due to their proximity to jurisdictional wetlands, avoidance is not a viable option;
- Installation of new services to meet growing demand relies on NWP 12 to install new gas mains and service lines to new customers;
- Environmental effects of AGA members which rely on NWPs typically are temporary, impact relatively small areas, and generally do not result in a permanent loss of the waters of the United States because of the NWP's stringent conditions;
- The course should improve the NWP program to help meet the United States' urgent need for additional energy and to expedite the construction of new infrastructure and references:
- Liquified natural gas
- Electric power generation
- Artificial intelligence
- Pipeline infrastructure remains a critical component to meet the United States' growing and changing energy needs.
- The Corp should remove the preconstruction notification requirement for pipeline projects greater than 250 miles in length;
- The Corp should designate permitees as non-federal representatives under the Endangered Species Act;
- The Corp should review regional conditions for consistency.

A copy of the AGA comments is attached.