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# Nationwide Permits/Clean Water Act: American Petroleum Institute and Other Energy Organizations Comments on US Army Corp of Engineers Solicitation of Input on Potential for Future Changes

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The American Petroleum Institute and a number of other energy related organizations submitted May 15 comments to the United States Army Corp of Engineers (“Corps”) regarding the Federal Register 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 other organizations joining the comments include:

- Independent Petroleum Association of America
- Western Energy Alliance
- Alaska Oil and Gas Association
- Colorado Oil and Gas Association
- Montana Petroleum Association
- New Mexico Oil and Gas Association
- North Dakota Petroleum Council
- The Petroleum Alliance of Oklahoma
- Utah Petroleum Association
- Center for LNG
- Natural Gas Supply

Collectively “API”.

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

Section 404 of the Clean Water Act requires Corps 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, an 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 Corps prior to starting work.

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

API, in the initial introduction to its comments, notes in part:

- The NWP program has been an important and highly effective one for over 40 years that is specifically designed for activities with minimal individual and cumulative adverse environmental effect under Section 404 of the Clean Water Act as well as Section 10 of the Rivers and Harbors Act.
- The streamlined process is intended to allow the Corps to focus its limited resources on projects with greater environmental impacts under individual permits, while providing timely and cost effective permitting for the regulatory community.
- By providing greater certainty while also protecting the environment, NWPs encourage investment and prevent many unnecessary costs and project delays.
- The existing NWPs and their terms and processes, are robust, legally durable, and fully in compliance with the applicable authorities.
- Many NWPs are considerably more protective than the minimum statutory requirements for a program that is intended for activity with minimal adverse effects.
- Some NWPs include onerous and overly burdensome terms and require processes that add more paperwork/unnecessary hoops, akin to the requirements for an individual permit.
- Support is expressed for the administration's goals to realign critical elements of the permitting system and look for ways to facilitate greater efficiencies than NWP programs.

The API comments provide detailed responses to the six questions posed by the Corps in the solicitation for input. NWPs specifically referenced for discussion in the API comments include:

- NWP 12
- NWP 57
- NWP 58
- NWP 39
- NWP 6
- NWP 14
- NWP 18

GCs addressed in the comments include:

- GC 18 (Endangered Species)
- GC 20 (Historic Properties)
- GC 32 (PCN)
- GC 23 (Mitigation)
- GC 11 (Equipment)

A copy of the API comments can be found [here](#).