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U.S. Army Corps of Engineers
Mr. David Olson
441 G Street NW
Washington, DC 20314-1000

Re: AGA’s Comments on Proposal to Reissue and Modify Nationwide Permits

The American Gas Association appreciates the opportunity to provide the U.S. Army Corps of Engineers comments on the reissuance of the existing nationwide permits, general conditions, and definitions. 81 Fed. Reg. 35186 (June 1, 2016).

The American Gas Association (AGA), founded in 1918, represents more than 200 state regulated or municipal natural gas distribution companies. AGA members serve 95 percent of the 72 million natural gas customers, representing more than 160 million people in the United States. AGA and its members are committed to continuing to improve the high level of safety and the culture of safety compliance throughout the natural gas distribution industry. Numerous AGA programs and activities focus on the safe and efficient delivery of natural gas to customers. Safety is the number one priority of AGA members.

I. NWPs Are an Essential Tool for Maintaining and Operating Natural Gas Utility Infrastructure

The Nationwide Permit (NWP) Program is essential to facilitate timely energy infrastructure projects so that natural gas utilities can continue to provide safe, reliable transportation of cleaner burning natural gas to businesses and residences. AGA members rely on nationwide permits to address regularly scheduled, time-sensitive repair and maintenance work, bank stabilization, removal of retired pipelines, and for various types of pipeline construction projects including new transmission and pipeline expansion.

Natural gas pipelines can be quite lengthy and often are in the vicinity of streams, wetlands and other jurisdictional waters. Where feasible, utilities will take steps to avoid stream and wetland crossings. However, when this cannot be accomplished and crossing is required, natural gas utility projects usually will have minimal temporary impacts on aquatic resources. Crossings often can be completed within a few days, and the narrow linear footprint of the project minimizes impacts to a few yards. Natural gas utilities implement best management practices to minimize sedimentation and other impacts, and are subject to a myriad of other federal, state and local regulations. The end result is that natural gas utility projects often have minimal and temporary environmental impacts and are the perfect candidate for nationwide permits.
The replacement of aging cast iron and unprotected steel pipe as well as early vintage plastic pipe that has been identified for accelerated replacement to enhance pipeline safety is a task often completed under a NWP. Not only are these projects important for improving pipeline safety, these replacement projects have contributed significantly to a declining trend in emissions from the natural gas system. The 2016 Environmental Protection Agency (EPA) Inventory of Greenhouse Gas Emissions and Sinks showed that emissions from local distribution systems decreased by 74 percent from 1990 to 2014. EPA attributes much of this decrease to the industry’s continued work to replace aging pipelines. Much of this important work in reducing methane emissions is authorized by NWPs.

If the NWP program were not available, natural gas utilities would need to seek an individual permit where projects impacted jurisdictional aquatic resources. Not only would it be incredibly burdensome on the Corps to review and process each of these permits, it would also be extremely time-consuming and costly for the permittee. As recognized by the Supreme Court in *Rapanos v. United States* found that a permit applicant will on average spend more than twice as long, 788 days as compared to 313 days, and nearly ten times as much money, $271,596 compared to $28,915, obtaining an individual permit compared to obtaining a NWP. AGA’s members confirm these estimates. For natural gas utilities, where approved by local or state utility commissions, these costs are borne by consumers. As a result, the increased costs associated with permit processing could be passed onto the consumer, with little to no benefit to show.

II. **AGA Encourages the Corps to Increase NWP Acreage Limitations and PCN Thresholds**

The Corps has specifically requested comments on whether to revise the current acreage limits and preconstruction notification (PCN) thresholds imposed on certain NWPs. As the Corps recognizes, NWPs are intended to streamline the permit process for those projects that have minimal adverse environmental effects so that the Corps can focus its limited resources on activities with greater impacts as well as providing regulatory relief for activities with only minimal impacts.

AGA encourages the Corps to increase the acreage limitations and PCN thresholds for NWPs, and especially those NWPs that play a critical role in energy infrastructure projects: NWP 12 – Utility Line Activities and NWP 13 – Bank Stabilization. These NWPs are necessary for the timely and efficient permitting of natural gas utility projects intended to rejuvenate aging infrastructure and respond to the multitude of regulatory requirements related to improving pipeline safety. By increasing the acreage limitations and PCN thresholds for these NWPs, the Corps would be fulfilling the Congressional mandate to streamline the permit process for projects that have minimal adverse environmental effects, while simultaneously advancing the Administration’s encouragement of expediting and reducing barriers to

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energy infrastructure projects.\(^3\) Increasing the disturbance threshold associated with NWP 13 – Bank Stabilization to exceed the 500 linear foot and one cubic yard per running foot below the ordinary high water mark limitations would be particularly useful. By expanding the thresholds and allowing a single NWP to cover a larger project, a more comprehensive project can be undertaken to stabilize banks in a preventive manner.

As the Corps considers increasing the PCN thresholds, AGA encourages the Corps to consider that pre-construction notification is no small task. The materials and information required to be provided in a PCN are substantial and require significant effort. Many times, the field surveys required by PCNs can only be conducted during growing seasons, which limits when these surveys can be conducted and can significantly delay a project or add significant time to the pre-construction process. Furthermore, if the PCN is submitted under a specific General Condition, the Corps may not be subject to any time limit associated with reviewing the PCN. The time-sensitive nature of some utility projects, whether related to other regulatory requirements or contractual obligations with the customer, does not always allow sufficient time for seasonal restrictions on pre-construction field work, leading to delays that compromise the safe, reliable and timely delivery of natural gas to residential, commercial and industrial customers. Taken as a whole, the obligation to submit a PCN is not insignificant and can result in a delay in projects and require additional resources to gather the requisite substantive information. AGA requests that the Corps consider establishing PCN thresholds that are consistent with the minimal adverse impacts associated with utility line projects and the purpose of the NWP program to streamline the permitting process.

If the Corps opts not to increase the acreage limits and PCN thresholds, then AGA urges the Corps to maintain the current acreage limits and PCN thresholds. The current acreage limits and PCN thresholds are the product of substantive public notice and comment and have been successively proven to meet the statutory objectives of the NWP program. That is, they are fully supported by the administrative record as including those projects that will have minimal adverse environmental effects. Since 2000, when the ½-acre limit was first applied for many of the applicable NWPs, advancements in technology and best practices have reduced the environmental impacts associated with many of these activities, such that the environmental impact is less than it was in 2000. As such, there would be no justification for decreasing the acreage limitations and PCN thresholds.

III. Application of the 2015 Revisions to the Definition of “Waters of the United States” Would Have Signification Implications for the NWP Program

AGA urges the Corps to recognize that the application of the 2015 revisions of the definition of “waters of the United States” (the WOTUS Rule) would significantly impede use of the NWP program and that many projects with minimal adverse environmental effects would no longer be eligible for coverage under NWPs. By expanding the definition of “waters of the United States,” the jurisdictional trigger for

permitting requirements under Section 404 of the Clean Water Act, the WOTUS Rule will result in an increase in the number of projects that are subject to Section 404 permitting requirements. In fact, the Corps and EPA have acknowledged that the WOTUS Rule will expand the number of waters deemed to be jurisdictional under the Clean Water Act. 80 Fed. Reg. 37,054, 37,101 (June 29, 2016).

The negative impact of the WOTUS Rule on the availability of NWPs will significantly affect the natural gas pipeline and utility industries, which rely heavily on the NWP program to authorize impacts associated with new construction, maintenance and time-sensitive repairs that result in temporary and minimal environmental impacts. By expanding the coverage of jurisdictional waters, particularly the concept of “adjacent” waters and “tributaries,” and the need for case-by-case jurisdictional determinations, fewer projects will qualify for NWPs and will instead need to go through the individual permit process, which will require additional Corps resources and significantly increase the time for permit processing. AGA members report that on average, application of the WOTUS Rule to the NWP Program would likely double the number of projects that would need to rely upon NWPs for authorization each year, and 2-3 additional individual permits each year. Relying on the cost and time estimates noted above, these increases in NWPs and individual permits would require significant additional resources.

When the WOTUS Rule was finalized, the EPA and the Corps expressed their commitment to “develop general permits and simplified procedures . . . to ensure that projects that offer significant social benefits . . . can proceed with the necessary environmental safeguards while minimizing permitting delays.” Application of the WOTUS Rule to the NWP program will frustrate the purpose of NWPs to provide a streamlined permitting process for those projects that will have minimal adverse effects. AGA encourages the Corps to recognize this inevitability and to stand by its commitment to minimize permitting delays. Should the WOTUS Rule be applied to NWPs, acreage limitations and PCN thresholds must be increased to allow projects with minimal adverse effects to use NWPs. In particular, because of the expanded number of waters that would be considered jurisdictional, AGA believes that the acreage threshold for NWP 12 – Utility Lines should be increased to at least 2 acres to ensure that each single and complete utility line project with minimal impacts can be authorized under the NWP.

As the Corps recognizes, the WOTUS Rule is currently stayed pending legal challenges. It is unlikely that a final decision on the status of the WOTUS Rule will be reached before the Corps issues the 2017 NWPs. However, critical definitions in the NWP proposal refer to provisions in the stayed WOTUS Rule. See, e.g., 81 Fed. Reg. 35213 (proposing to revise the definition of “ordinary high water mark” to be consistent with the WOTUS Rule). Because the WOTUS Rule is not yet in effect, and likely will not be in effect when the 2017 NWPs are finalized, the Corps should adhere to the Corps and EPA’s November 2015 joint memorandum responding to the nationwide stay, which directs both EPA and Corps staff to comply with the Sixth Circuit’s stay, and to resume use of the Agencies’ prior regulatory definition of “waters of the United States.”

To avoid any confusion with the NWP program, the Corps should comply with the Agencies’ directive, remove citations to stayed regulations, and clarify that the existing regulations and

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4 See EPA and Dep’t of the Army Memorandum, Administration of Clean Water Programs in Light of the Stay of the Clean Water Rule; Improving Transparency and Strengthening Coordination, at 2 (Nov. 16, 2015).
guidance will apply to the reissued NWPs. Upon conclusion of the litigation, the Corps may seek to amend the NWPs accordingly.

IV. Detailed Comments on Specific Nationwide Permits and General Conditions

AGA members rely on the NWP program to obtain streamlined approvals for natural gas pipeline installation, maintenance, repair and other projects supporting the safe and reliable delivery of natural gas. AGA members routinely rely on the following NWPs to support the construction and maintenance of infrastructure: NWP 3 – Maintenance, NWP 5 – Scientific Measurement Devices, NWP 6 – Survey Activities, NWP 13 – Bank Stabilization and NWP 12 – Utility Line Activities. Members also commonly utilize NWP 18 – Minor Discharges, NWP 51 – Land-based Renewable Generation Facilities, NWP 52 – Water-based Renewable Generation Pilot Facilities, and occasionally NWP 33 – Temporary Construction, Access, and Dewatering. AGA provides the following detailed comments on proposed changes associated with specific nationwide permits and general conditions that could directly affect natural gas utilities.

In addition to these permit- and condition-specific comments, AGA also requests that the Corps evaluate the use of regional conditions by Corps districts that eliminate the use of NWPs, prohibit combining NWPs, and impose additional PCN requirements that reach far beyond the intent of a streamlined permitting program. The inconsistency of NWP program implementation across Corps districts leads to significant delays and administrative challenges for companies operating in more than one district. AGA believes that these limitations frustrate the purpose of the NWP program and that many of the regional conditions are actually contrary to the purpose and intent of the NWP program. Regional conditions should be limited to those exceptions from the NWPs that are necessary to protect unique aquatic resources specific to the region implementing the conditions, and must continue to allow the minimal adverse environmental impacts requirement of projects that would otherwise qualify for NWPs.

A. Nationwide Permit 3 – Maintenance

NWP 3 authorizes the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, including temporary structures, fills, and work. 81 Fed. Reg. at 35,218. NWP 3 is critical for the implementation of natural gas pipeline integrity management, emergency repair, and pipeline safety programs and to meet associated deadlines mandated by the Pipeline and Hazardous Materials Safety Administration. The Corps is proposing to modify NWP 3 to authorize the removal of previously authorized structures or fills and to clarify the authorization of temporary mats. 81 Fed. Reg. 35198. AGA supports both modifications.

AGA appreciates the Corps’ clarification that NWP 3 authorizes the removal of previously authorized structures and fills. By including the removal of previously authorized structures, the Corps will streamline the removal process and provide an incentive for utilities to remove such structures when no longer in use. Although AGA supports this modification, AGA requests that the Corps clarify that NWP 3 would not require the removal of structures. In certain circumstances, abandonment in place is a preferable practice with less environmental impacts than would result from removal.
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AGA also supports the Corps’ clarification on the use of temporary mats to minimize impacts during regulated maintenance activities. The Corps expressly recognizes the use of temporary mats as a “best management practice” for minimizing impacts by protecting the uppermost layer of soil from ruts associated with heavy equipment. The use of temporary mats is environmentally beneficial and will only serve to further minimize environmental impacts.

AGA urges the Corps to explicitly authorize the placement of new or additional riprap or other structural armament on exposed pipelines and the removal of accumulated debris or sediment in the vicinity of exposed pipelines without imposing prohibitive PCN requirements. AGA members may rely on such streamlined authorization for routine maintenance. Consistent with other NWPs that authorize maintenance, there is no need for a PCN in these situations, because the impacts of such small, linear projects are minimal. A PCN may be triggered by General Conditions, but it should not be triggered by the maintenance of existing structures under the NWP program.

B. Nationwide Permit 12 – Utility Line Activities

AGA members routinely rely upon NWP 12 – Utility Line Activities, which authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States for crossing of those waters associated with the construction, maintenance, or repair of utility lines. Although sometimes lengthy, natural gas utility projects typically impact relatively small and discrete jurisdictional areas and create only temporary construction impacts and no permanent fill in waters or wetlands. This is due in part to the minimal nature of the crossing, which is buried underground. Following pipeline construction, the ground surface of waters and wetlands is restored to preconstruction contours and elevation, so no new permanent fill is typically created by pipeline construction or operation.

The Corps proposes several modifications to NWP 12. AGA generally supports these proposed changes, but recommends that the Corps make certain clarifications, discussed in more detail below.

1. Remediation of Inadvertent Returns

The Corps has proposed to revise NWP 12 to allow for actions necessary to remediate the inadvertent returns of drilling muds to the surface in jurisdictional waters resulting from the horizontal directional drilling installation of utility lines beneath those waters. 81 Fed. Reg. 35198. AGA appreciates the Corps’ proposal to authorize the remediation of inadvertent returns under NWP 12. The use of horizontal directional drilling is an important and effective method for avoiding impacts to waterways and wetlands. In limited situations, the inadvertent return of drilling mud to the surface may occur. AGA appreciates the Corps’ recognition that these inadvertent returns have minimal adverse environmental

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5 AGA appreciates the Corps statements to this effect, and the Corps recognition’ that a utility line crossing accomplished by directional drilling below section 404-only waters with no associated discharge of dredged or fill material would not require authorization. 81 Fed. Reg. 35211. However, AGA is concerned that the Corps’ statement suggests that the same directional drilling under a Section 10 water could require authorization. Consistent with aerial crossings of Section 10 waters, horizontal directional drilling at a specified depth should not require a full PCN because there is no reasonable expectation of it impacting the navigable water.
effects. When an inadvertent return occurs, there are established methods for addressing the inadvertent return that minimize environmental impacts. AGA encourages the Corps to continue using the term “inadvertent return” instead of “frac-out” to describe the situation.

2. AGA Supports the Corps’ Existing Definition of “Single and Complete Linear Project” and Requests the Corps Revise Note 2 to Eliminate Any Confusion

AGA continues to support the Corps’ definition of “single and complete linear project,” which includes all crossings of a single waterbody at a specific location, allowing for each crossing to be a “single and complete” project for NWP authorization. See 81 Fed. Reg. at 35,239. The 2012 NWPs included separate definitions for “single and complete linear projects” and “single and complete non-linear projects.” 77 Fed. Reg. 10184, 10290 (Feb. 21, 2012). In promulgating these separate definitions, the 2012 NWPs made clear that a key distinction between the two was that a single-and-complete non-linear project must have “independent utility,” whereas a “single and complete linear project” need not have independent utility within the overall linear project. Id. at 10263.

As with the 2012 NWPs, the definition of “single and complete linear project” in the proposed NWPs provides that “[f]or linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization.” Id. This longstanding Corps definition is justified by the diffuse impact of linear facilities and their minor impact on individual waterbodies. There is no justification for combining the impacts associated with separate and distant locations into one project for NWP authorization simply because there is a linear utility line that connects the two jurisdictional impact areas. AGA appreciates that the Corps continues to view each separate and distant crossing along a linear project as a single and complete project.

Consistent with this longstanding definition, the Corps has proposed to add a new Note 2 for NWP 12, which would clarify and confirm that crossings of waterbodies at “separate and distant” locations may qualify for separate NWP authorization. 81 Fed. Reg. 35,198. AGA supports this clarification.

Proposed Note 2 also cites 33 C.F.R. § 330.6(c), and would state, “Utility lines with independent utility6 must comply with 33 C.F.R. 330.6(d).” Id. at 35220. According to the Corps, this statement is intended to address combining NWPs with individual permits where components of a larger overall project that have independent utility might be eligible for NWP authorization while other components might require an individual permit. Id. The Corps describes 33 C.F.R. § 330.6(d) as applying to utility lines when “one or more crossings for a stand-alone utility line are not eligible for NWP authorization, but the remaining crossings for the utility line could satisfy the NWP terms and conditions.” 81 Fed. Reg. 35198.

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6 “Independent utility” is a defined term intended to determine what constitutes a single and complete non-linear project. See 81 Fed. Reg. 35238 (definition of “independent utility”). When promulgating the definition of “single and complete non-linear project,” the Corps explicitly stated that each single and complete linear project need not have “independent utility.” 77 Fed. Reg. 10263.
AGA believes it is confusing to include these two distinct concepts in Note 2: (1) crossings that qualify as a “single and complete linear project,” which do not require an “independent utility” determination; and (2) NWP authorization for portions of a larger project that also requires an individual permit, which does require an “independent utility” determination. The referenced regulatory provision, 33 C.F.R. § 330.6(d) has been in existence since 1991. AGA encourages the Corps to remove the second sentence, which merely restates an existing regulatory obligation, does not impose any new requirements or add clarity to the NWP 12, and only serves to add confusion.

Furthermore, AGA believes the Corps’ introduction of the “stand-alone utility line” concept in the preamble language should also be eliminated. The Corps describes a “stand-alone utility line” as a “utility line that has independent utility and can be operated on its own to transport materials or energy from a point of origin to a terminal point.” The preamble’s introduction of a new “stand-alone utility line” concept is confusing and does not help inform the determination under § 330.6(d) of whether portions of a larger project have “independent utility” and can proceed separate from the portions requiring an individual permit. To avoid confusion, the Corps should remove the concept of a “stand-alone utility line” from any the preamble discussion in the final rule.

3. **AGA Supports the Clarification That NWP 12 Authorizes the Use of Temporary Mats**

Similar to NWP 3, the Corps is proposing to clarify that NWP 12 authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the activity. For the reasons stated above, AGA supports this clarification.

**C. NWP 13 – Bank Stabilization**

NWP 13 – Bank Stabilization authorizes activities necessary for erosion control or prevention. The Corps is proposing to revise NWP 13 to clarify that it allows not only hard structural measures but also a wide variety of bank stabilization measures including vegetative bank stabilization and hybrid techniques using both hard and vegetative measures. 81 Fed. Reg. 35199. AGA supports this proposed revision.

As the Corps recognizes, the appropriate approach for bank stabilization is dependent on site conditions, and landowners and contractors may have preferences for specific approaches. In addition, there can be a substantial amount of variation in the effectiveness of a particular bank stabilization technique across these different environments. For these reasons, it is more effective for NWP 13 to have the flexibility to authorize a variety of types of bank stabilization measures.

**D. General Condition 18 – Endangered Species**

General Condition 18 – Endangered Species, imposes obligations to consult with the U.S. Fish & Wildlife Service (FWS) if an activity authorized under any NWP “may affect” a species listed under the Endangered Species Act or its critical habitat.
AGA encourages the Corps to revise General Condition 18 to recognize that when a non-federal permittee has an existing habitat conservation plan (HCP), there is no need to require the permittee to submit a PCN so that the activity can be analyzed under Section 7 of the Endangered Species Act (ESA). Requiring a PCN for an additional ESA review is duplicative of the requirements associated with the HCP and provides no additional protection for the species.

HCPs are partnerships between non-federal parties and the FWS to conserve the ecosystem upon which listed species depend. HCPs describe anticipated effects of a proposed activity on a species, and how those effects can be minimized or mitigated. Where the activity to be authorized by the NWP is covered by the HCP, the additional step of preparing a PCN and waiting for the required response from the Corps creates unnecessary cost and schedule constraints for non-federal permittees. The fact that an HCP exists authorizing the activity satisfies the section 7 consultation requirement and should ensure that the activity will not jeopardize the continued existence of the identified threatened or endangered species.

Instead of submitting a PCN for each activity, the non-Federal permittee could instead register or document the existence of an HCP with the Corps district on a one-time basis. The Corps would then be aware of the HCP and the fact that approved activities will not jeopardize these species. By eliminating the PCN requirement once an HCP has been entered into, the Corps will not be required to devote resources to activities that have already been extensively reviewed and considered by the FWS in approving the HCP. Eliminating the PCN requirement would also likely encourage more non-federal permittees to take the proactive step in obtaining programmatic HCPs that encompass larger areas containing multiple jurisdictional waters, thus furthering conservation efforts and eliminating unnecessary paperwork and review.

AGA also encourages the Corps to recognize the overbreadth of requiring a PCN whenever a listed species or designated critical habitat might be in the vicinity of the activity to be authorized under a NWP. Recent actions by the FWS have designated large swaths of land as areas where endangered species might occur. For example, the Indiana Bat is listed as endangered and its habitat covers broad swaths of numerous states. For the Indiana Bat and other species with similarly broad habitat ranges, it is unclear whether these designated habitat areas would be considered “in the vicinity” of an activity. This uncertainty could lead project proponents to always submit a PCN. As noted above, submitting a PCN is not an insignificant task, especially given the minimal adverse environmental impacts associated with these projects. Requiring a PCN for all listed species that may be in the vicinity frustrates the purpose of the NWP program to streamline those projects that have minimal adverse environmental effects. In addition, the required “mitigation” for these impacts would likely need to be located in areas outside the vicinity of the activity, which would be inconsistent with the Corps’ position that its jurisdiction is limited to the activity and the limited area surrounding it.

This could prove especially problematic for activities authorized under NWP 12 – Utility Lines, that have the potential to be quite lengthy, and could be “in the vicinity” of numerous species. AGA encourages the Corps to recognize the limited environmental impact of natural gas utility projects and
revise either NWP 12 or General Condition 18 to ensure that the term “in the vicinity” does not require excessive PCNs to the point of frustrating the use of NWP 12. AGA suggests that PCNs should only be required when the FWS has identified critical habitat that could be affected by the activity.

E. General Condition 32 – Pre-construction Notification and Section D, District Engineer’s Decision

Under General Condition 32 – Pre-construction Notification, the Corps is subject to a 45-day PCN review period. If the Corps does not act within this review period, the permittee can begin the activity unless the PCN was required by General Condition 18 – Endangered Species or General Condition 20 – Historic Properties. If the PCN is required under either of those conditions, the permittee cannot begin the activity until the Corps acts. 81 Fed. Reg. 35235. The Corps is proposing to revise Section D, District Engineer’s Decision, to “clarify that the 45-day PCN review period may be extended” if specific general conditions apply and “additional time is needed to complete” required consultations. 81 Fed. Reg. 35212.

AGA understands that the Corps is seeking additional flexibility to respond to PCNs where substantive consultations are required. However, AGA is concerned that the PCN obligations are already overly burdensome given the minimal impacts of these activities and that this proposed revision will only serve to further frustrate the Congressional mandate to provide a “streamlined” permitting option. The 45-day review period should apply to all PCN reviews. An extension of the 45-day review period should be a last-resort, should require documentation and substantiation as to why an extension is necessary, and should only be granted for a specific and predictable period of time.

AGA members report that in general, PCN review often does occur within one to two months. However, they also report that it is not unusual for a review to take 6 months to one year. In fact, one member company has had several experiences where it has taken the Corps one year from the time the PCN was deemed complete for the Corps to initiate a consultation with FWS. A PCN review of this length is contrary to the purpose of the NWP program to streamline the permitting process for projects with minimal adverse environmental impacts.

AGA recognizes the competing demands and limited resources faced by the Corps, and that extensions sometimes are necessary. In addition, when consultation is required with another federal agency, the Corps has limited ability to impose a deadline on the other federal agency. However, AGA believes it is critical that there be a 45-day review period for all PCNs and that any extension be time-limited and contingent upon the Corps documenting the steps taken to avoid the need for an extension and the justification for the extension. Similar review periods can be found in other federal regulations, such as EPA’s review of stormwater pollution prevention plans, where, if the agency does not act, then the plan is deemed approved. See National Pollutant Discharge Elimination System General Permit for Discharges from Construction Activities, Section 1.4 (2012).

Currently, when consultations between the Corps and another agency are lagging, in practice the permittee is responsible for facilitating the discussions. Under AGA’s proposal, if after 45 days, the PCN review is not complete, including any required consultations, the permittee could begin the activity unless
the Corps documents the steps taken to avoid the extension and that the extension is necessary. AGA suggests that the Corps provide a period of time associated with a possible extension for each type of consultation. For example, for an Endangered Species Act Section 7 consultation, an extension of 30 days would be available. For NHPA Section 106 consultation, an extension of 20 days would be available. Structuring the PCN review period in this manner puts more obligation on the Corps to enter into consultations in a timely manner, but also provides the Corps the flexibility for an extension. AGA believes that this balance of obligation is appropriate given the purpose and intent of the NWP program.

In addition, AGA understands that in some situations, the Corps is issuing repeated requests for information following the receipt of a PCN, contrary to General Condition 32. AGA encourages the Corps to issue guidance at the headquarters level that the request of information following receipt of a PCN should be limited to a single occasion and should be limited to the information required by General Condition 32(b).

AGA recognizes the resource constraints placed on the Corps and that delays can occur. One solution to more efficiently processing PCNs that several member companies have found useful and have advocated for is for the Corps to assign a project manager to an individual company, who would review and process all of that company’s permits. Such a project manager would be funded by the permit applicant. Member companies report that having a consistent project manager has increased the efficiency of reviews, resulting in fewer required resources for the Corps and faster permit processing for the companies.

V. Conclusion

The use of nationwide permits to authorize natural gas utility projects is a critical aspect of maintaining, repairing, and building the necessary infrastructure. AGA appreciates the opportunity to provide these comments to the Corps, and looks forward to continued discussions on these topics. If you have any questions regarding these comments, please contact Pam Lacey, placey@aga.org, or Christine Wyman, cwyman@aga.org.

Yours truly,

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