



May 27, 2022

Submitted electronically via: [www.regulations.gov](http://www.regulations.gov)

The Honorable Michael L. Connor  
Assistant Secretary of the Army (Civil Works)  
108 Army Pentagon  
Room 3E446  
Washington, DC 20310-0108

Subject: Docket ID No. COE-2022-0003, Notice of Virtual Public and Tribal Meetings Regarding the Review of Nationwide Permit 12; Establishment of a Public Docket; Request for Input

Dear Mr. Connor:

The Petroleum Alliance of Oklahoma (The Alliance) appreciates the opportunity to submit comments to the Department of the Army, Corps of Engineers (COE) regarding its notice and request for input on the review of Nationwide Permit (NWP) 12.

The Petroleum Alliance of Oklahoma represents more than 1,300 individuals and member companies and their tens of thousands of employees in the upstream, midstream, and downstream sectors and ventures ranging from small, family-owned businesses to large, publicly traded corporations. Our members produce, transport, process and refine the bulk of Oklahoma's crude oil and natural gas.

The Alliance's members will be directly impacted by any modifications, revocations, or suspensions the COE may conduct as a result of its review of NWP 12. Oil and natural gas production and the necessary pipeline infrastructure projects are key to solving many of the challenges the U.S. and the world are currently facing, and any additional regulation will only heighten those challenges. NWP 12 was updated in January 2021 and a comprehensive review was conducted by the COE at that time. There is no regulatory deadline or widespread, pervasive need warranting yet another revision so soon. The COE has a longstanding and consistent process of implementing NWP 12 for over 45 years, and any major change would require significant justification. For multiple reasons described below, we request that the COE discontinue its review and maintain NWP 12 as it currently exists.

### **Background.**

NWPs authorize certain activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 with no more than minimal individual and cumulative adverse effects to the environment. Section 404(e) of the Clean Water Act provides the statutory authority



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for NWP issuance, after notice and opportunity for public hearing, for a period of no more than five years after the date of issuance (33 U.S.C. 1344(e)).<sup>1</sup> Nationwide permits are a type of general permit designed to regulate with little, if any, delay, or paperwork for those discharges that will have only minimal adverse effects into federally jurisdictional waters and wetlands (see 33 CFR 330.1(b)).<sup>2</sup> These types of general permits are not new and are commonly used under various programs administered by other federal and state regulatory agencies. NWPs incentivize project proponents to reduce the adverse effects of their planned activities that would otherwise require an individual permit under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.<sup>3</sup> In addition, NWPs are an essential tool that provides an efficient and effective permitting process, and they reduce the administrative burdens on the COE and industry for minor activities allowing the COE to focus on projects with greater environmental impacts.

NWPs were first issued by the COE in 1977.<sup>4</sup> One such activity authorized in 1977 was for “Utility lines,” which included “any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication” (42 FR 37146). Over the iterations of the NWPs issued since 1977, this NWP has evolved and is commonly referred to as “NWP 12.”<sup>5</sup> In January 2021 (86 FR 2744), after a comprehensive review, NWP 12 was modified and reissued expressly for “Oil or Natural Gas Pipeline Activities.”<sup>6</sup> The COE has a longstanding and consistent process of implementing NWP 12 for over 45 years.

With the aforementioned information as context, we provide the following comments.

### **The COE does not provide any delegated authority to address climate change or environmental justice (EJ) issues.**

The COE states in its notice that the review of NWP 12 is in response to Executive Order 13990; however, it does not provide any statutory authority delegated by Congress to address climate change or EJ issues. The COE has not clearly defined EJ nor has it released its final EJ guidance for its regulatory programs. If the COE moves forward with its review, we request the COE provide its authority to address these issues, clearly define EJ, and release its final EJ guidance.

Additionally, there are many construction projects occurring daily across the U.S. that require the use of the COE’s NWPs. Many of these projects are identical or remarkably similar in nature to pipeline construction projects (e.g., NWP 57 [relates to electric utility lines and telecommunications] and NWP 58 [utility lines for water and other substances]). The COE cannot arbitrarily single out the review and amendments of NWP 12 regarding climate change and EJ issues without similar reviews and amendments to other NWPs.

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<sup>1</sup> 87 Fed. Reg. 17,281 (March 28, 2022).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.



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### **Any requirement that makes NWP 12 more complex or financially burdensome that delays or prevents pipeline infrastructure projects would be contrary to EJ priorities.**

Affordable, reliable, and accessible energy is essential necessity for everyone, and it hits at the core of the EJ issue. As the COE conducts its review of NWP 12, it must consider the needs of all consumers. Any efforts to make the NWP 12 permitting process more complex or more financially burdensome will disproportionately affect the poorest among us. If the COE proceeds ahead with any changes to NWP 12, it must consider how those changes will affect all American citizens' access to affordable and reliable energy.

In addition, local jobs in EJ communities are directly and indirectly created by pipeline infrastructure development. The COE must consider how any changes to NWP 12 will affect local jobs and impact small businesses.

### **The timing of the review of NWP 12 is unwarranted and inappropriate.**

The COE can modify, reissue, revoke or suspend NWPs before they expire; however, we think the review of NWP 12 is unwarranted and inappropriate considering the current challenges the U.S. and the rest of the world are experiencing. The COE notes in its notice that it will consider current issues in its review; however, we would like to emphasize the importance of these issues. In the U.S., the economy-wide inflation is the highest in 40 years (in April, inflation rose to 8.3 percent over the past 12 months), and the food prices increased 9.4 percent over the past 12-months.<sup>7</sup> The current national average gas price for regular is \$4.404 as compared to \$2.985 one year ago, and the soaring prices for goods and services are impacting all Americans.<sup>8</sup> Our members are experiencing continued supply chain and workforce issues that are not subsiding. We think that any efforts by the COE to make the requirements for NWP 12 more financially burdensome or make the permitting process more complex and time-consuming for oil and natural gas pipeline developers at this time will only heighten the ongoing challenges that average Americans are experiencing.

As previously stated, NWP 12 was reissued in January 2021, and it is not set to expire until March 2026. The COE has a longstanding and consistent process of reviewing and implementing NWP 12 for over 45 years. The COE points to claims made against one particular pipeline project but has not identified widespread and pervasive issues associated with NWP 12 that now warrant its review and revision. In addition, the COE poses questions in its Federal Register notice that appear it is considering a significant alteration in its approach to NWP 12. Any significant changes resulting from the COE's review of NWP 12 would require extensive justification as to why it is departing from the intent of the NWP program, and its review and implementation history. We request the COE discontinue its review and maintain NWP 12 as it currently exists, but if it moves forward, we request detailed justification for its actions.

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<sup>7</sup> U.S. Department of Labor, Bureau of Labor Statistics, May 11, 2022, [https://www.dol.gov/newsroom/economicdata/cpi\\_05112022.pdf](https://www.dol.gov/newsroom/economicdata/cpi_05112022.pdf)

<sup>8</sup> AAA Gas Prices, from website data on May 11, 2022, <https://gasprices.aaa.com/>.



**Pipeline infrastructure plays a vital role in delivering energy and products to manufacturers and consumers in a safe and effective means.**

Pipeline infrastructure provides the energy and products that make modern life possible. For example, it supports America's fuel and petrochemical industries<sup>9</sup>. Natural gas pipeline infrastructure is important to the power sector to ensure the reliability of renewable energy sources.<sup>10</sup> Additionally, it is one of the safest methods of transporting crude oil and natural gas.<sup>11</sup> Finally, a recent U.S. Energy Information Administration (EIA) analysis identifies the consequences (lead to higher prices) of halting new, currently unplanned natural gas pipeline construction.<sup>12</sup>

**Crude oil and natural gas pipeline infrastructure is integral to the Administration's efforts.**

The COE's review of NWP 12 and any resulting amendments that would make the permitting process more complex or financially burdensome that delays or prevents pipeline infrastructure projects would be contrary to the Administration's position. For example:

- On May 11, the Administration [announced](#) its efforts to make food more affordable for working families and to lower costs for farmers; however, this cannot be accomplished without production, transportation (e.g., pipelines), and refining of crude oil. Farmers cannot boost crop production without the use of fuel to plow, plant, harvest and get their produce to manufacturing facilities or market. In addition, they cannot enhance harvest production without fertilizer. The Administration states it will double funding for domestic fertilizer production; however, the manufacturing and production of fertilizer cannot be expedited without the pipelines to transport the natural gas (the feedstock to develop fertilizer) to the plants to produce the fertilizer.
- In April, the Administration [announced](#) its plans to ease gas prices by lifting the summertime ban on E15 fuel. Again, spurring the use of E15 cannot be accomplished without the production, transportation, and refining of crude oil to make gasoline – the largest component of E15.
- On March 25, the Administration [announced](#) a Task Force to reduce Europe's dependence on Russian fossil fuels. It specifically states that, "*The United States will work with international partners and strive to ensure additional LNG volumes for the EU market of at least 15 bcm in 2022, with expected increases going forward.*" Pipeline infrastructure is critical in transporting natural gas from where it's produced in the U.S. to the export terminals where it's converted to liquefied natural gas and shipped safely worldwide. The Administration's commitments cannot be accomplished in an expedited manner by placing additional unnecessary requirements in NWP 12 that would significantly delay or stop construction of natural gas pipelines.

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<sup>9</sup> AFPM website, May 18, 2022, <https://www.afpm.org/issues/transportation-infrastructure/pipelines>.

<sup>10</sup> North American Midstream Infrastructure – A near Term Update Through 2025, December 2020, <https://www.ingaa.org/File.aspx?id=38492>.

<sup>11</sup> INGAA website, May 18, 2022, <https://www.ingaa.org/Pipelines101/Safety.aspx>.

<sup>12</sup> EIA, Exploration of the No Interstate Natural Gas Pipeline Builds case, March 2022, [https://www.eia.gov/outlooks/aeo/IIF\\_pipeline/pdf/AEO2022\\_IIF\\_pipeline.pdf](https://www.eia.gov/outlooks/aeo/IIF_pipeline/pdf/AEO2022_IIF_pipeline.pdf).



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- The U.S. Senate, Committee on Environment and Public Works, submitted a letter on April 20, 2022, to Honorable Michael L. Connor, Assistant Secretary of the Army for Civil Works, pointing out a court filing by the Administration that recognized the benefits of NWP 12.<sup>13</sup> The COE's current review of NWP 12 and questions posed in the Federal Register notice are contradictory to the Administration's recent court filing.

### **The COE must consider the many benefits of crude oil and natural gas in its review of NWP 12.**

If the COE proceeds ahead with its review of NWP 12, it must consider the benefits of crude oil and natural gas, and how its actions may have broad implications here in the U.S. and abroad. For example:

- The benefits of U.S. oil and natural gas are now more evident than ever as we watch the current crisis in Ukraine and Europe.<sup>14</sup> In General H.R. McMaster's written [testimony](#) on April 6 to the U.S. House Committee on Energy and Commerce, Oversight and Investigations Subcommittee, he clearly and succinctly points out that it is time to recognize the interconnected nature of our economic and security challenges, and the intersection of energy security and national security. He states it is past time for this Administration to abandon its bias against fossil energy development, production, and use, and integrate energy security and climate policies, and remove bureaucratic and regulatory obstacles to progress.<sup>15</sup>
- Oil and natural gas play an indispensable role in providing products and solutions to improve human health and welfare, power the global economy, and make modern life possible,<sup>16</sup>
- Oil and natural gas companies play a significant role in state economies, contribute to state and local taxes, and royalties that pay for schools, universities, roads, and various essential services, provide good paying direct and indirect jobs, and improve the communities they work and reside in,<sup>17</sup>

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<sup>13</sup> U.S. Senate, Committee on Environment and Public Works, Letter to Honorable Michael L. Connor, Assistant Secretary of the Army for Civil Works, April 20, 2022, [https://www.epw.senate.gov/public/\\_cache/files/d/0/d0c48f77-6d8c-4167-88b3-4f53143e031f/A40FC9E6507A27F7379211CAE09372AF.04.20.2022-epw-minority-letter-to-asa-michael-connor.pdf](https://www.epw.senate.gov/public/_cache/files/d/0/d0c48f77-6d8c-4167-88b3-4f53143e031f/A40FC9E6507A27F7379211CAE09372AF.04.20.2022-epw-minority-letter-to-asa-michael-connor.pdf).

<sup>14</sup> Governor J. Kevin Stitt's letter to President Joe Biden, Jr., March 1, 2022, <https://oklahoma.gov/content/dam/ok/en/governor/documents/20210301%20Governor%20Stitt%20letter%20to%20POOTUS%20on%20Russia.pdf>.

<sup>15</sup> Testimony of Lt. General H.R. McMaster, Before the U.S. House Committee on Energy and Commerce, Oversight and Investigations Subcommittee, Hearing on "Gouged at the Gas Station: Big Oil and America's Pain at the Pump", April 6, 2022, <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Witness%20Testimony%20McMaster%20OI%202022.4.6%20.pdf>.

<sup>16</sup> American Fuels and Petrochemical Manufacturers, website information on May 5, 2022, <https://www.afpm.org/industries/products>.

<sup>17</sup> <https://oerb.com/economic-impact/>; <https://www.txoga.org/2021ceir/>;  
[https://www.nmoga.org/natural\\_gas\\_and\\_oil\\_industry\\_critical\\_to\\_new\\_mexico\\_post\\_pandemic\\_recovery?utm\\_campaign=icymi\\_new\\_report&utm\\_medium=email&utm\\_source=nmoga](https://www.nmoga.org/natural_gas_and_oil_industry_critical_to_new_mexico_post_pandemic_recovery?utm_campaign=icymi_new_report&utm_medium=email&utm_source=nmoga).



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- Oil and natural gas companies developing U.S. resources can provide the world affordable, reliable natural gas and crude oil in the most environmentally responsible manner as compared to oil and gas development elsewhere in the World,
- Petroleum and natural gas will remain the most-consumed sources of energy in the U.S. through 2050 ([Annual Energy Outlook 2022](#))<sup>18</sup>, and
- Clean-burning natural gas has enabled the U.S. to become the global leader in greenhouse gas emissions reductions.<sup>19</sup>

**Conclusion**

The Alliance appreciates the opportunity to provide comments to the COE regarding its review of NWP 12. We request that the COE discontinue its review and maintain NWP 12 as it currently exists. If you have questions, please contact me at [angie@okpetro.com](mailto:angie@okpetro.com) or 405-601-2124.

Sincerely,

Angie Burckhalter  
Sr. V.P. of Regulatory and Environmental Affairs

cc: Stacey Jensen, Office of the Assistant Secretary of the Army (Civil Works)

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<sup>18</sup> U.S. Energy Information Administration, Annual Energy Outlook 2022, March 3, 2022, <https://www.eia.gov/outlooks/aeo/>.

<sup>19</sup> [Global CO2 Emissions in 2019](#), IEA, February 2020; [U.S. Energy-Related Carbon Dioxide Emissions, 2019](#), U.S. Energy Information Administration (EIA), September 2020.