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2016  
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VIA US MAIL AND E-MAIL

U.S. Army Corps of Engineers  
Docket No. COE-2015-0017  
RIN No. 0710-AA73  
Attn: CECW-CO-R  
441 G Street, NW.,  
Washington, DC 20314-1000  
NWP2017@usace.army.mil

Re: Proposal to Reissue & Modify Nationwide Permits (**Docket COE-2015-0017**), Comments of the Ohio Oil and Gas Association

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Dear Sir or Madam:

The Ohio Oil and Gas Association (“Association” or “OOGA”) submits the following comments on the Proposal to Reissue and Modify Nationwide Permits (“NWP”) that was noticed on June 1, 2016 (81 Fed. Reg. 35286). We appreciate the opportunity to submit these comments to the proposed modifications that will help accommodate the increased public demand for energy while at the same time protecting the environment.

**Introduction**

OOGA is one of the largest and most active state-based oil and natural gas associations in the country and has been the representative of Ohio’s oil and gas producing industry since 1947. Its nearly 3,000 members are involved in all aspects of the exploration, development, production and marketing of crude oil and natural gas resources in the State of Ohio. Because of the small size of many of the Association’s members, they often rely on the Association as their primary source of information on industry trends, activities, tax changes, legislation and regulatory matters. The Association frequently participates in federal and state regulatory actions affecting the oil and gas industry.

The Association’s members utilize the NWPs to authorize impacts to streams and wetlands to construct energy-related facilities such as pipelines, well pads, condenser stations, roads and other oil and gas related facilities. The oil and gas industry frequently relies on NWP #12

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“Utility Line Activities” in particular for much needed pipeline construction in Ohio as well as NWP #3 “Maintenance,” and NWP #39 “Commercial and Institutional Developments.”

The Association submits these comments to encourage the continued development of oil and natural gas in a manner that is efficient and effective, while still protecting our natural environment.

## Comments

On June 1, 2016, the Corps published a Proposal to Reissue and Modify Nationwide Permits, soliciting comments on various aspects of the proposal, including the text of specific NWPs, general conditions, and definitions. Because oil and gas operations have only minimal impacts on Corps jurisdictional waters, such operations should not be prevented entirely, or unduly delayed, by needlessly burdensome regulatory requirements. The Association’s specific comments on the proposal are provided below:

- The Association reiterates its objections to the expansion of the scope of the “Waters of the United States” (“WOTUS”) jurisdiction by EPA’s rule. The rule expands the definition of WOTUS beyond the scope permitted by the Clean Water Act (“CWA”) and U.S. Supreme Court rulings. The rule is inconsistent with both SWANCC (531 U.S. 159 (2001)) and Rapanos (547 U.S. 715 (2006)). Certain waters that SWANCC specifically found not to be jurisdictional would qualify as jurisdictional and the rule applies a test that contradicts the plurality opinion in Rapanos. These objections were espoused in greater detail in the Association’s comments to EPA on November 14, 2014 in response to Docket ID No. EPA-HQ-2011-0880, located at tracking number 1jy-8fhx-1bzk.

An unnecessary expansion of the definition of WOTUS will lead to an increase in individual permits, further eroding the use of NWPs, thereby ignoring congressional intent to implement a stream-lined permitting process. Specifically, the Association believes that the uncertainty the rule creates will result in long delays in jurisdictional determinations, which will delay industry and development. With more jurisdictional WOTUS, permits would be required in previously unregulated areas. Resulting backlogs in permitting will cause further delays, all of which will stifle business and the economy.

- Regarding the general question of the Corps as to whether the ½-acre limit on loss of WOTUS should be retained, the Association requests that the Corps increase the acreage limitation for NWP #12, #14, and #39 to one acre. The Association opposes any decrease on the acreage limit. There is no basis for reducing the ½-acre limit and no benefit to such a reduction. A one-acre limit is consistent with the Corps’ goal of ensuring minimal environmental effect and with Congress’s intent for a streamlined permitting process, as it would reduce the administrative back-up from the individual permit application process. Moreover, for NWP #12 an increase in the limit is particularly appropriate because of the temporary nature of the environmental effects.



- Regarding a potential change to the Pre-Construction Notification (PCN) thresholds for NWP's that require PCN, the Association supports changes to increase the thresholds for NWP's #12 and #39. Requiring PCNs in certain circumstances is unnecessary to ensure that no more than minimal adverse environmental effects result from an activity. The Association recommends that the threshold for requiring PCN for NWP #12 be increased to a loss of greater than ½ acre of WOTUS rather than 1/10 acre. The Association recommends an equivalent threshold for NWP #39, to replace the current requirement for a PCN for all NWP #39 activities. Fewer PCNs would save significant time and allow more project proponents to obtain NWP authorization, improving the efficiency of the NWP program while continuing to protect water resources.

With respect to the impact of the PCN requirement on endangered species, the requirement should only be limited to jurisdictional areas that might affect the endangered species.

- The Association supports the continued authority of the Corps to issue waivers for an applicant surpassing the 300 linear feet limitation on losses of intermittent or ephemeral stream bed of certain NWP's where the district engineer has determined that the NWP activity will result in only minimal adverse environmental effects.
- The Association suggests that the 300 linear feet limit on losses of intermittent or ephemeral stream beds for several NWP's, including NWP #39, be increased or eliminated to allow greater losses to be authorized by the NWP, provided that the activity results in only minimal adverse environmental effects.
- The Association opposes the imposition of a linear foot cap that would restrict the total amount of loss to WOTUS that could be waived. Such a cap would increase the burden on the project proponent because projects that may have previously qualified for a NWP would require an individual permit. Further, since the NWP's authorize projects that have a minimal effect on the environment, setting a numerical cap on the total amount of loss that can be waived would likely be arbitrary. Whether the environmental effect is minimal does not depend on whether losses remain below a specific numerical limit, as numerous very small losses for a single and complete project could amount to over 1,000 linear feet while continuing to have a minimal effect on the environment. This arbitrary threshold also eliminates the ability for the district engineer to determine on a case-by-case basis whether the project has a minimal effect on the environment.

If a cap must be imposed, the Association requests that the cap be greater than 1,000 linear feet, at a level that data establishes will have more than a minimal impact.

The Association opposes any proposal to require compensatory mitigation for losses of WOTUS covered by a waiver because compensatory mitigation in this context is not



practical and is inconsistent with the principle that NWP's authorize projects causing only minor impacts on the environment. The purpose of compensatory mitigation is to ensure that the NWP activities result in no more than minimal individual and cumulative adverse environmental effects. By granting a waiver, a district engineer has already determined that the project has only minimal adverse environmental effects, rendering compensatory mitigation unnecessary and inappropriate.

If compensatory mitigation is required, the Association suggests that man-made constructed facilities constitute mitigation of impact.

- The Association supports all modifications to NWP #12.
- The Association supports all modifications to NWP #39.
- The Association supports all modifications to NWP #14.
- The Association supports all modifications to NWP #3.
- The Association supports all modifications to NWP #13.
- The Association supports the addition of NWP A regarding the removal of low head dams.
- The Association supports the addition of NWP B. The Association also supports the authority of a district engineer to issue a waiver when the activity is beyond 30 feet from the mean high water line or ordinary high water mark.

### **Conclusion**

The Association submits these comments in response to the rulemaking proposal issued by the U.S. Army Corps of Engineers. The Association appreciates the opportunity to comment on and suggest revisions to this proposal, and looks forward to continuing to work with the Agency on this matter. If there are any questions, you can reach the Association through its counsel at the contact information provided.

Very truly yours,



Shawn Bennett  
Executive Vice President

