

July 18, 2025

The Honorable Lee Forsgren
Acting Assistant Secretary of the Army for Civil Works
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

RE: Proposal To Reissue and Modify Nationwide Permits; docket number COE-2025-0002; RIN 0710-AB56

Dear Mr. Forsgren:

The undersigned organizations are pleased to provide comments on the U.S. Army Corps of Engineers' (the Corps) proposal to **reissue and modify Nationwide Permits (NWP) (docket number COE-2025-0002; RIN 0710-AB56)**. We strongly support the reauthorization of the NWP program. However, we also recommend that the Corps consider additional measures, like conducting another rulemaking, to improve it further and ensure alignment with the Administration's objectives. While numerous enhancements could improve the NWP program, we identify some specific recommendations from recent initiatives for the Corps to evaluate and consider.

Building smart, modern, and resilient infrastructure through innovation and responsible development is among the top priorities for the business community. Streamlined permitting of projects with minimal adverse environmental impacts, made possible by NWPs, is critical for sectors including **energy and mineral development, commercial and residential construction, and transportation** to reduce delays and costs, support job creation, and foster economic growth in communities across our nation. They also serve an important role in achieving the goals established in the President's "Unleashing Energy Dominance" Executive Order 14154, issued on January 20, 2025, and others that focus on advancing access to critical minerals and reducing the anti-competitive impact of regulations. Without "streamlined" NWPs, proposed projects would require more costly and time-intensive individual permits under Section 404 of the Clean Water Act (CWA).

CWA Section 404(e) limits the duration of the NWPs to five years after issuance. If not reauthorized, they lapse. To ensure continuous availability, the Corps may have to act swiftly to propose and finalize a rulemaking reauthorizing the program. Unlike many other programs, the Corps must also ensure that numerous other steps are taken for the permits to be available (e.g. state certification under CWA section 401, reflect regional conditions, adopt regional wetland permits). We appreciate that given the time constraints, the Corps is moving swiftly to reauthorize the NWPs to ensure they remain available beyond the current March 14, 2026 expiration date.

We also recognize that when inheriting a soon-to-expire permitting program, expedited reauthorization may not fully reflect the priorities of the new administration. We understand that the Corps' political leadership did not have time to consider and incorporate the type of

significant federal permitting reforms in this NWP reissuance package that would align with the directives of Executive Order 14154 to alleviate “agency actions that impose... undue burden[s],” “expedite and simplify the permitting process,” reduce “delays and ambiguity [in] the permitting process,” and “provide greater certainty in the Federal permitting process.”

To address these issues, our organizations recommend that the Corps (1) finalize this proposal to ensure the continued availability of NWPs; and (2) identify and undertake additional actions, beyond this rulemaking, to institute lasting reform in the CWA Section 404 permitting process. Optimally, the Corps would undertake a second rulemaking to modify NWPs after the current one is finalized. This approach would ensure the continued availability of NWPs while providing an opportunity to achieve the Administration's goals for permitting reform. Other administrative actions, such as Regulatory Guidance Letters, Memoranda to the Field, and Planning Guidance, could offer further opportunities for meaningful reform.

There are many opportunities for reform in the NWP program. However, recent activities provide examples of modifications that would significantly alleviate permitting challenges and benefit critical projects. We recommend that the Corps consider and evaluate these changes for potential inclusion in a revised program.

- **Increase acreage thresholds.** The Corps should evaluate current acreage thresholds and consider increasing the acreage limits that determine eligibility for coverage under the NWPs. For example, the *Promoting Efficient Review for Modern Infrastructure Today (PERMIT) Act* (H.R. 3898) would raise the NWP acreage threshold from ½ to three acres.
- **Increase mitigation thresholds. The Corps should consider raising the minimum impact thresholds that trigger compensatory mitigation.** An increase in the wetland and stream compensatory mitigation acreage thresholds of General Condition 23 would reduce permitting delays associated with obtaining wetland and stream credits and drastically reduce projects’ compliance costs. Notably, the 2020 Proposal to Reissue and Modify Nationwide Permits cites the Corps’ Institute of Water Resources when noting “a substantial majority of fill impacts authorized by NWPs... were less than 1/10-acre in size...,” suggesting that “Project proponents likely designed their projects... to qualify for general permit authorization and avoid the cost of providing compensatory mitigation....”
- **Accelerate timelines.** If the Corps fails to meet the timelines of PCNs, project applicants should receive expedited permit processing to avoid unnecessary delays. Such timelines include those in General Condition 18 for notifying permittees within 45 days if their project may impact a listed species or habitat, followed by 60 days for informal consultation and 135 days for formal consultation. Speakers in the U.S. Senate Committee on Environment & Public Works hearing of February 19, 2025 on *Improving the Federal Environmental Review and Permitting Processes* expressed concern over such delays.

Because NWP's offer streamlined approval for projects that are similar, have minimal environmental impact, and meet specific conditions to protect aquatic ecosystems, they are essential for meeting the housing, energy, and infrastructure needs of all Americans. Economic growth catalyzed by artificial intelligence, data centers, and other emerging technologies will require significant increases in energy, water, and building and infrastructure development that can be accelerated only by smart public policy and permitting reforms, including a streamlined NWP approach. The Corps, Environmental Protection Agency, and other relevant federal partners would benefit from informal and formal discussions with the business community to more effectively address improvements that can further make the NWP's more effective.

Our organizations appreciate the opportunity to provide this feedback on the proposal to reissue and modify NWP's. We look forward to the finalization of the proposal and to continued modifications in the future.

Sincerely,

American Exploration & Mining Association
American Exploration & Production Council
American Farm Bureau Federation
American Gas Association
Associated General Contractors of America
American Road & Transportation Builders Association
ICSC
National Association of Home Builders
National Mining Association
National Stone, Sand & Gravel Association
U.S. Chamber of Commerce