

**BEFORE THE
UNITED STATES DEPARTMENT OF DEFENSE
DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS
WASHINGTON, D.C.**

Proposal to Reissue and Modify
Nationwide Permits

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Docket No. COE-2020-0002

**COMMENTS
OF THE
AMERICAN PUBLIC GAS ASSOCIATION**

November 16, 2020

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I. Introduction

The American Public Gas Association (APGA) submits the following comments for consideration by the Army Corps of Engineers (Corps) regarding the “Proposal to Reissue and Modify Nationwide Permits” (“Proposed Rule” or “NPRM”).¹ APGA is the trade association for approximately 1,000 communities across the U.S. that own and operate their retail natural gas distribution entities. APGA members include municipal gas distribution systems, public utility districts, county districts, and other public agencies, all locally accountable to the citizens they serve. Public gas systems focus on providing safe, reliable, and affordable energy to their customers and support their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications.

APGA generally supports the NWP program, as has promoted prompt permitting of critical energy infrastructure. While this NPRM contains many proposals, APGA’s comments are specific to the proposal to split Nationwide permit 12 (NWP 12) and issue two new Nationwide permits (NWPs), NWP C and NWP D. The Corps is proposing to divide the current NWP that authorizes utility line activities (NWP 12) into three separate NWPs that address the differences in how different linear projects are constructed, the substances they convey, and the different standards and best management practices that help ensure those NWPs authorize only those activities that have no more than minimal adverse environmental effects. If the NPRM is adopted, the Corps will modify the current utility line NWP 12 to authorize only oil and natural gas pipeline activities. Two proposed new NWPs would authorize activities associated with the construction, maintenance, repair, and removal of electric utility lines/telecommunication lines and utility lines that convey water, sewage, and other substances. The Corps states: “The intent of this proposal is to tailor these NWPs to more effectively address potential differences in how different types of utility lines are constructed, maintained, and removed, and to potentially add industry-specific standards or best management practices that would be appropriate to add as national terms to the applicable NWP to help ensure that the NWP authorizes only those activities that will result in no more than minimal individual and cumulative adverse environmental effects.”²

APGA believes that the proposal conflicts with the purpose and intent of the NWP program to streamline permitting. According to the Corps, “Nationwide permits are a type of general permit issued by the Chief of Engineers and are designed to regulate with little, if any, delay or paper work certain activities in federally jurisdictional waters and wetlands that have no more than minimal adverse environmental impacts.”³ If the purpose of the NWP program is to streamline permitting for jurisdictional waters and wetlands, then (in the case of NWP 12) the Corps should be agnostic to the product being transported by the utility, as is their mandate, and strive for fewer permits rather than more. APGA submits detailed comments on this conflict in the next section.

The Corps also provides three reasons for the split of NWP 12, each of which lacks justification.

- Perceived differences in best management practices for each utility sector disregards the common approach of joint trenching utility lines.

¹ Proposal to Reissue and Modify Nationwide Permits, 85 Fed. Reg. 57298 (September 15, 2020) [hereinafter, *NPRM*].

² NWP C authorizes electric utility line and telecommunications activities. NWP D authorizes all other utility line activities that convey other substances, such as potable water, sewage, wastewater, stormwater, brine or other products that are not petrochemicals. (See 85 Fed. Reg. 57,322)

³ 85 Fed. Reg. 57299.

- The assumed variances in pipe or conduit diameter for each utility sector overlooks the stark differences between gas distribution pipelines and transmission pipelines.
- The historically high percentage of NWP 12s used by the oil and gas sector compared to the other utilities ignores the increased investment in utility projects from all sectors.

These rationales fail to consider the unique operational characteristics of gas distribution pipelines. If the Corps decides to move forward with separating the permit, it must take into consideration the significant differences between distribution and transmission pipelines. Splitting the permit based on utility sector alone is not an appropriate way to separate the permit.

II. The environmental impacts of construction activities on waters of the US should be the basis for the categorization of Nationwide permits, not the products transported by infrastructure projects.

In the October 25, 2017 report in response to E.O. 13783, the Corps explains why certain construction activities are grouped under each NWP. The Corps states it “interprets the requirement for general permits to authorize categories of activities that are similar in nature broadly, to provide program efficiency, to keep the number of NWPs manageable, and to facilitate implementation by the Corps and project proponents that need to obtain Department of the Army (DA) authorization for activities that have only minimal adverse environmental effects.”⁴

Since 1977 the Corps has viewed all utility construction activities, regardless of product delivered, to be “similar in nature broadly.” APGA agrees with this 43-year old position and questions what, if any, changes to the construction and maintenance activities for utilities has necessitated the change. Regardless of the utility, these infrastructure assets are normally linear and buried.⁵ Therefore, when these assets are constructed, their environmental effects on waters of the US are broadly similar in nature.

The only consistent difference between the activities to remain in NWP 12 and those to be split into NWP C and D is the products the utilities are transporting. The product inside the pipe or conduit has no bearing on the environmental impacts to waters of the US from the construction and maintenance of the asset, the only consideration in purview of the Corps when issuing NWPs. The Corps supported this position in their October 17 report: “For utility lines, including oil and gas pipelines, the Corps’ authority is limited to regulating discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States, under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899, respectively.” For this reason, APGA maintains the proposal to split NWP 12 based on product transported, instead of environmental effects on waters of the US from construction and maintenance, is in conflict with the purpose of the NWP program and is consequently not a valid rationale for splitting the permit.

III. Assuming best practices exist only within individual utilities ignores the common practice of joint trenching or the use of utility corridors.

One of the most common practices within the utility industry to minimize environmental and societal impacts of utility construction projects is the utilization of joint trenches or utility corridors. Utilities routinely work together regardless of their product. The proposals ignore this reality.

⁴ Office of Assistant Secretary of the Army (Civil Works) / Office of the General Council. Review of 12 Nationwide Permits Pursuant to Executive Order 13783. September 25, 2017. <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll7/id/10241>.

⁵ The exceptions being stations and foundations for overhead utility lines.

The Common Ground Alliance (CGA) is a non-profit organization “dedicated to preventing damage to underground utility infrastructure and protecting those who live and work near these important assets through shared responsibility of [their] stakeholders.”⁶ Each year, CGA publishes a Best Practices Manual, which is the “preeminent and trusted resource for underground damage prevention with more than 160 practices that cover all phases of the safe digging process.” In its Best Practices Manual, CGA defines a joint trench as “a trench containing two or more facilities that are buried together by design or agreement.”⁷ The practice is so common that it is included as a question in their data gathering form, “Was the facility part of a joint trench?”

Furthermore, in the Planning & Design section of the Best Practices Manual, best practice #2-4 titled “Utility Coordination” recommends that “Project owners and facility owners / operators regularly communicate and coordinate with each other concerning future and current projects.”⁸ CGA refers to the Department of Transportation Federal Highway Administration (FHWA) Highway/Utility Guide in this best practice.⁹ The FHWA dedicates an entire section in their guide to joint planning by utilities and highway agencies. They explain:

“Development of the joint trenching concept began in the early 1970’s. Continued urbanization, residential and commercial construction, population growth, increased demands for utility services, and the advent of new utility services increased congestion of underground utility placement. Increases in accidental utility excavation, crowding of sub-surface space, haphazard location of many old utility lines, and lack of reliable underground utility information led many government agencies to develop procedures and practices to alleviate these problems and provide for more efficient and orderly use of space. Costs of joint utility trenches can be much lower than separate trenches, particularly for previous undeveloped sites.”

The report goes on to cite a Gas Research Institute (GRI) survey that indicated “75 percent of combined gas and electric utilities perform common placement of utilities.”¹⁰

With utilities in the United States offering diverse services such as electric and water in addition to gas, as many APGA members do, the practice of joint trenching will remain commonplace. If these “combination utilities” now have to utilize different NWP’s for their various installations, it is reasonable to question whether the proposed change adheres to the Corps’ mission for these permits. There are no barriers for the Corps to incorporate best management practices for all utility lines in NWP 12, so splitting the permit is unnecessary for this purpose and could actually deter the beneficial practice of joint trenching.

⁶ <https://commongroundalliance.com/Membership-Engagement/FAQs>

⁷ Common Ground Alliance. Best Practices – The Definitive Guide for Underground Safety & Damage Prevention. March 2020. <https://www.digalert.org/pdfs/bestpractices.pdf>

⁸ CGA Best Practices. 2-4. Page 9.

⁹ Department of Transportation. Federal Highway Administration. Highway/Utility Guide. June 1993. <https://www.fhwa.dot.gov/utilities/010604.pdf>

¹⁰ Gas Research Institute. Common Utility Placement System Advisory Committee Meeting. October 1990. Chicago, IL.

IV. Justification for splitting Nationwide Permit 12 cannot be based upon the diameter of the pipeline or conduit.

There are four separate categories of liquids and gas pipelines: gas distribution pipelines, intrastate gas transmission pipelines, interstate gas transmission pipelines, and liquid (e.g., oil) pipelines. Each of these categories of pipelines have unique purposes and physical and material attributes.

Gas distribution pipelines are significantly different in how they are constructed and in their diameter. In t

Natural gas distribution lines are typically significantly smaller in diameter than transmission gas and liquid pipelines. The Corps summarized that there “are usually 6 and 16 inches in diameter” but the vast majority are smaller.¹¹ Table 1 provides information from PHMSA’s Gas Distribution Annual Report 2019 statistics. The Corps stated that natural gas pipelines can range in size from 6 to 48 inches, however, almost 85% of natural gas distribution pipelines are 4-inches or less in diameter.

Table 1: Distribution of Gas Distribution Pipelines by Diameter¹²

Diameter	Percentage of Pipelines
Less than 2”	60%
2-4”	24.5%
4-8”	12.5%
8-12”	2%
> 12”	<1%

The industry utilizes the term “transmission” as it is defined by the Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA).¹³ Because this definition is so broad, the industry further divides gas transmission pipelines into intrastate pipelines and interstate pipelines. This is an important distinction because the differences in pipeline physical attributes ultimately impact the effects their construction may have on the environment. The Corps states “main transmission pipes for transporting natural gas are typically 16 to 48 inches in diameter.” However, this is only true for interstate gas transmission pipelines. More than 67% of intrastate gas transmission pipelines are 16-inches or less in diameter. See Table 2.

Table 2: Distribution of Gas Transmission Pipelines by Diameter and Function¹⁴

Diameter	Percentage of Intrastate Gas Transmission Pipelines	Percentage of Interstate Gas Transmission Pipelines
< 4”	9.5%	6%

¹¹ 85 Fed. Reg. 57,322.

¹² PHMSA Gas Distribution Annual Data – 2019 Statistics. <https://www.phmsa.dot.gov/data-and-statistics/pipeline/gas-distribution-gas-gathering-gas-transmission-hazardous-liquids>

¹³ Transmission line means a pipeline, other than a gathering line, that: (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field. (See 49 CFR 192.3)

¹⁴ PHMSA Gas Transmission & Gathering Line Annual Report – 2019 Statistics. <https://www.phmsa.dot.gov/data-and-statistics/pipeline/gas-distribution-gas-gathering-gas-transmission-hazardous-liquids>

4-8"	24%	11%
8-12"	22%	10%
12-16"	11.5%	7%
> 16"	33%	66%

APGA notes that the range in diameter of natural gas distribution and intrastate transmission pipelines (less than 2-inches to 12-inches) most closely aligns with the statistics that the Corps provided for water lines: "Distribution water lines are typically 4 to 12 inches in diameter (NRC 2006)."

For this reason, APGA asserts that the Corps's justification to split NWP 12 based on the diameter of the pipelines or assets is not well reasoned and cannot be the basis for the change.

V. The historic usage of NWPs for each utility sector is not an appropriate justification for the split.

In the NPRM, the Corps provides statistics on the historic utilization of NWP 12. In the Proposed Rule, the Corps notes the following:

"The majority of NWP 12 activities are for oil and natural gas pipeline activities. We examined a sample of NWP 12 verifications issued between March 19, 2017, and March 18, 2019, and found that 58 percent of the authorized activities were for oil and gas pipelines. Electric utility line and telecommunications activities accounted for 12 percent of the verified NWP 12 activities during that time period. Other utility line activities, such as water lines, sewer lines, pipes for conveying stormwater, wastewater, and brine, and other types of utility lines comprises the remaining 30 percent of the NWP 12 verifications issued."¹⁵

APGA has no reason to believe that the "sample" used but the Corp is accurate, or inaccurate. It is APGA's understanding that an applicant is not now even required to report the use of the pipeline unless its use meets one of the criteria for preconstruction notice. So it is not clear how the Corps reached these conclusions.

Neither is it clear that a sampling of the past is an adequate basis for predicting the future. There has been a surge in natural gas infrastructure in recent years. Recent Executive Orders and Presidential Memoranda highlight the need for other kinds of infrastructure:

- Water: President Trump's Executive Order 13956 "Modernizing America's Water Resource Management and Water Infrastructure"¹⁶ and the Presidential Memoranda on Promoting Reliable Supplies of Water in the West¹⁷
- Electric: President Trump's Executive Order 13920 on Security the United States Bulk-Power System¹⁸

¹⁵ APGA was unable find a publicly available database of past utilization of NWP 12 to validate these statistics.

¹⁶ <https://www.whitehouse.gov/presidential-actions/executive-order-modernizing-americas-water-resource-management-water-infrastructure/>

¹⁷ <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-promoting-reliable-supply-delivery-water-west/>

¹⁸ <https://www.whitehouse.gov/presidential-actions/executive-order-securing-united-states-bulk-power-system/>

- Broadband: The Presidential Memorandum for the Secretary of the Interior on Supporting Broadband Tower Facilities in Rural America¹⁹

APGA believes that that the utilization of NWP 12 will change over time to help bolster the infrastructure of the all utility sectors, including potentially shifting to address the needs of utility sectors' whose infrastructure is currently less secure/not as resilient. For this reason, APGA discourages the Corps from justifying a split based upon past experience.

VI. Conclusions

APGA strongly believes that a split of NWP 12 is inappropriate and unsubstantiated, as discussed above in detail. However, if the Corps ultimately decides to move forward with separating the permit, it must take into consideration the significant differences between distribution and transmission pipelines, which we addressed in Section III, as splitting based on utility sector alone is not an appropriate way to separate the permit.

Thank you for your consideration of our comments. Please do not hesitate to contact me with any questions.

Respectfully Submitted,
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Erin Kurilla
Vice President, Operations & Safety
American Public Gas Association
201 Massachusetts Avenue, NE
Washington, D.C. 20002
(202) 202-464-2742
ekurilla@apga.org

¹⁹ <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-interior/>