

July 18, 2025

Major General Jason E. Kelly

U.S. Army Deputy Commanding General for Civil and Emergency Operations

U.S. Army Corps of Engineers

Attn: CECW-CO-R

441 G Street N.W.

Washington, D.C. 20314-1000

Submitted electronically via <https://www.regulations.gov>.

RE: Comments of the American Public Power Association on the U.S. Army Corps of Engineers' Proposal to Reissue and Modify Nationwide Permits (90 Fed. Reg. at 26,100; June 18, 2025) Docket ID No. COE-2025-0002

Dear Major General Kelly,

The American Public Power Association (APPA) appreciates the opportunity to submit the following comments in response to the U.S. Army Corps of Engineers' (the Corps) proposal to reissue and modify existing Nationwide Permits (NWP), general conditions (GC), and definitions, and to issue one new NWP (the Proposal).¹ APPA generally supports the Proposal, but we offer several recommendations below to bolster and further reduce the regulatory burden of Nationwide Permit (NWP) submittals under section 404 of the Clean Water Act (CWA) and section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental effects.

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. APPA represents public power before the federal government to protect the interests of the more than 55 million people that public power utilities serve, and the over 100,000 people they employ. APPA advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

¹ 90 Fed. Reg. at 26,100 (June 18, 2025) (Proposal).

Public power utilities are responsible for delivering affordable, reliable, and resilient energy services to communities nationwide. Given the substantial value the NWP program provides to public power utilities, APPA has maintained continuous engagement with the program and participated actively in the Corps' prior proposed NWP rulemakings in 2017 and 2020.² APPA appreciates the opportunity to provide support for the Proposal from the perspective of regulated entities with substantial NWP program experience, particularly in relation to electric grid infrastructure and electric utility industry operations. Delivering power from multiple sources nationwide requires infrastructure that frequently intersects with jurisdictional waters of the United States (WOTUS). The challenge of meeting national energy needs continues to intensify due to unprecedented demand growth and economic expansion across various regions of the United States. The utility industry is responding by expanding infrastructure to support these requirements and facilitate national growth. Streamlined CWA permitting processes are crucial for obtaining timely approval of the substantial energy infrastructure required to maintain a reliable and resilient electric grid that can accommodate increasing electricity demand. This requires APPA members to efficiently deploy new energy infrastructure while preserving existing systems through effective permitting and construction processes that enable rapid implementation of generation and transmission capabilities. The NWP program provides essential support for these critical activities, as recognized by the Administration. President Trump's recent Executive Orders demonstrate strong support for streamlining federal energy permitting processes. The "Unleashing American Energy" (EO 14154) and "Declaring a National Energy Emergency" (EO 14156) emphasize the need to expedite and simplify federal approvals for energy projects.³ EO 14156 specifically aims to promote domestic energy development nationwide.⁴

I. Executive Summary

APPA supports the Corps' proposal to reissue the NWPs in substantially the same form as the 2021 NWPs. We support the preservation of the longstanding "single and complete" project definition and the "no effect" determination under the Endangered Species Act (ESA) and urge the Corps to finalize the reissuance expeditiously. APPA further supports and makes the following recommendations:

- APPA supports clarifying the Notes for NWP 12 (*Oil or Natural Gas Pipeline Activities*), NWP 52 (*Water-Based Renewable Energy Generation Pilot Projects*), NWP 57 (*Electric Utility Line and Telecommunications Activities*), and NWP 58 (*Utility Line Activities for Water and Other Substances*) and recommends modifying Note 1 to add a one-year deadline to submit final construction documents;

² <https://www.regulations.gov/comment/COE-2020-0002-0310> and <https://www.regulations.gov/comment/COE-2015-0017-0510>.

³ EO 14154, Unleashing American Energy, 90 Fed. Reg. at 8,353 (Jan. 29, 2025).

⁴ EO 14156, Declaring a National Emergency, 90 Fed. Reg. at 8,433 (Jan. 29, 2025).

- APPA supports the Corps retaining its “no effects” decision, meaning the reissuance of NWP will have no effect on listed species or designated critical habitat, and ESA section 7 compliance is realized through GC 18 (*Endangered Species*), as appropriate;
- APPA believes the Corps' National Environmental Policy Act (NEPA) analysis, that “minimal cumulative adverse effects on the environment” are limited to activities under the Corps' authority, and are consistent with the revised framework and legal precedents⁵; and
- APPA recommends including a provision in GC 11 (*Equipment*) to allow for restoration requirements to be minimized or waived if the district engineer determines that such an area is likely to recover naturally within a reasonable timeframe.
- APPA supports the publication of approved categorical exclusions (CEs) in the Federal Register.

II. Background

When Congress established the NWP program under section 404 of the CWA, it recognized that many routine activities across the country would involve discharges of dredged or fill material yet would result in only minimal environmental impacts. To address this, section 404(e) authorizes the Corps to issue general permits for categories of activities that are similar in nature and have minimal individual and cumulative adverse environmental effects.⁶ The NWP program was designed to streamline the permitting process, reduce administrative burdens on both the Corps and the regulated public, and maintain strong environmental protections. Typical activities authorized under NWPs include:

- Bank stabilization and erosion control;
- Construction and maintenance of utility lines and road crossings;
- Residential and commercial development;
- Aquatic habitat restoration and enhancement;
- Energy infrastructure projects; and
- Agricultural and forestry-related discharges.

The Corps' current proposal remains consistent with the original legislative intent: to facilitate necessary development and infrastructure while safeguarding aquatic resources. This balance is essential for effective environmental governance and economic efficiency.

⁵ 90 Fed. Reg at 26,102.

⁶ See 33 U.S.C. § 1344(e)(1).

A. The Proposal Balances Congressional Priorities to Streamline Administrative Burden and Maintain Environmental Safeguards.

The Corps' proposal reaffirms its longstanding recognition that section 404(e) of the CWA is intended to reduce administrative burdens while encouraging environmentally responsible project design. By streamlining the permitting process, the NWP program incentivizes applicants to design projects that fall within NWP thresholds—thereby ensuring that the section 404 program continues to protect aquatic resources effectively.

Each NWP is governed by specific limits, terms, and conditions, along with numerous general conditions and defined terms. These are further supported by the NWP regulations at 33 C.F.R. Part 330 and supplemented by regional and district-specific conditions. Collectively, these safeguards ensure that all activities authorized under NWPs meet the statutory requirement of causing only minimal adverse environmental effects.

The Corps explicitly acknowledges that NWPs promote environmental protection by encouraging applicants to avoid and minimize impacts to aquatic resources in order to qualify for expedited authorization. As noted in the Proposal, this efficiency often allows project proponents to receive NWP verification more quickly than standard individual permits.⁷ This aligns with the experience of APPA members, who routinely design projects to avoid or minimize impacts to WOTUS. For example, when constructing or maintaining electric utility infrastructure—such as poles, substations, or rights-of-way that cross wetlands or streams—APPA members often rely on NWPs to authorize minor discharges efficiently and responsibly.

Moreover, the Corps' proposal highlights that additional environmental protections are built into the program through regional and activity-specific conditions imposed by district engineers. These conditions may further restrict NWP use based on local ecological considerations. Additional safeguards may also be applied by states, authorized Tribes, or the Environmental Protection Agency (EPA) through CWA section 401 water quality certifications (WQC) and Coastal Zone Management Act (CZMA) consistency determinations.⁸

B. The Corps' Proposal Reflects National Priorities for Electric Infrastructure Development.

The utility sector faces the unprecedented challenge of rapidly expanding energy infrastructure to meet growing national demand. This requires constructing new power generation facilities, upgrading and relicensing existing hydropower projects, and investing in advanced technologies, such as nuclear power. Supporting infrastructure, including pipelines, transmission lines, and distribution networks—must be built to deliver electricity reliably where

⁷ See 90 Fed. Reg. at 26,102.

⁸ See 90 Fed. Reg. at 26,107, 26,109; 33 C.F.R. §§ 330.4(c)(2), 330.5(c).

and when needed. Maintaining reliability and affordability remains crucial for customers and national security.

Given the strong national interest in efficient infrastructure development (as recognized in EO 14156 declaring a national emergency), streamlined permitting and environmental review processes are essential for building a reliable, safe, secure, and clean electrical grid. The Corps' reissuance proposal acknowledges that CWA section 404(e) aims to reduce administrative complexity, thereby enabling CWA section 404 program to protect the environment more effectively, including electric utility projects.

III. The Corps Should Expeditiously Finalize the Proposed NWP Reissuance.

APPA urges the Corps to promptly finalize the proposed NWP reissuance to prevent coverage lapses that could delay energy infrastructure development and to ensure states have sufficient time to respond, thus supporting cooperative federalism. The current NWPs expire on March 15, 2026; meeting this deadline is especially challenging given the requirement for a final round of inter-agency review by the White House Office of Management and Budget (OMB) prior to publication in the *Federal Register*. Adding to this time pressure, the Corps customarily seeks to finalize NWP reissuance 60 to 90 days before expiration to allow for procedural flexibility, including delays in publication, Congressional notification, and issuance of final CWA section 401 WQCs. Without expedient action, meeting the deadline on March 15, 2026, may be unrealistic. Accordingly, APPA urges the Corps to swiftly finalize the reissuance to prevent lapses in NWP coverage that could trigger regulatory uncertainty and disrupt critical infrastructure development.

Swift finalization of the NWPs is also critical to ensure that states have sufficient time to conduct their internal reviews of the NWPs, hold state-level public comment periods, develop and issue state-specific WQCs, and coordinate with agencies and the public to ensure that local environmental protections are integrated. Delays could force states into expedited decisions, risking diminished permit integrity or denial of certification altogether. Therefore, APPA urges the Corps to maintain a disciplined and timely schedule not only to avoid NWP lapses but also to honor the collaborative federal-state framework that underpins the CWA.

IV. APPA Supports the Reissuance of Utility Line NWPs.

APPA supports the proposed NWPs' reissuance, particularly NWP 3 (*Maintenance*), NWP 12 (*Oil or Natural Gas Pipeline Activities*), NWP 57 (*Electric Utility Line and Telecommunications Activities*), and NWP 58 (*Utility Line Activities for Water and Other Substances*). These utility line NWPs serve as fundamental tools for maintaining America's energy, water, and communications infrastructure. By authorizing limited discharges into WOTUS, these permits enable essential maintenance and construction work on electrical systems, fiber optic networks, water infrastructure, sewage systems, and pipeline networks that communities depend on for reliable, safe, and affordable services.

A. The Corps Should Preserve the Current Definition of Single and Complete Linear Project.

APPA supports the Corps' proposal to preserve the existing definition of "single and complete linear project" without modification.⁹ This definition establishes that a "single and complete project" encompasses "that portion of the total linear project ... that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location." Additionally, for "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."¹⁰ APPA also supports for the proposed Note 2 under NWP 57, which clarifies that "[f]or electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization."¹¹

The definition and proposed Note 2 align with the Corps' established regulations and long-standing practices for "single and complete linear project[s]," which are important for public power utilities. The Corps initially established the "single and complete" definition in 1988 regulatory guidance, noting that "[l]inear projects by their nature will likely have minimal impacts on several different water-bodies...."¹²

The Corps clarified that for "linear projects, the single and complete project requirement for individual NWPs will be applied to a water-body crossing at a single location" and that "multiple application of the NWP on a lengthy project" is allowed.¹³ In 1991, the Corps incorporated this principle into the Part 330 regulations, which aligns with the definition found in current NWPs:

For linear projects, the "single and complete project" (*i.e.*, single and complete crossing) will apply to each crossing of a separate water of the United States (*i.e.*, single waterbody) at that location; except that for linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a *single and complete project*.¹⁴

This definition embodies the reasonable understanding that discharges of dredged or fill material along utility lines, involving narrow crossings of separate and distant waters, generally produce minimal impacts both on individual waters crossed and cumulatively on watersheds. This occurs because small impacts on separate waters tend to dissipate over short distances and are often unlikely to accumulate within a watershed in measurable or ecologically significant

⁹ 90 Fed. Reg. at 26,166.

¹⁰ *Id.*

¹¹ 90 Fed. Reg. at 26,155.

¹² Regulatory Guidance Letter 88-06, at 1, 3 (June 27, 1988) available at <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll9/id/1360>.

¹³ *Id.* at 3.

¹⁴ 33 C.F.R. § 330.2(i) (emphasis added).

ways. Furthermore, the Corps has implemented safeguards to ensure that individual and cumulative effects of NWP's authorizing utility line-related activities remain minimal. The NWP's mandate consideration of and protection against cumulative effects at both nationwide and project-specific levels.

Note 2 also references 33 C.F.R. § 330.6(d), which governs the combination of NWP's with individual permits.¹⁵ Note 2 specifies that "[e]lectric utility line and telecommunication activities must comply with 33 CFR 330.6(d)."¹⁶ In accordance with these regulations:

portions of a larger project may proceed under the authority of the NWP's while the [district engineer] evaluates an individual permit application for other portions of the same project, but only if the portions of the project qualifying for NWP authorization would have independent utility and are able to function or meet their purpose independent of the total project... When a portion of a larger project is authorized to proceed under an NWP, ... construction will in no way prejudice the decision on the individual permit for the rest of the project.¹⁷

The term "independent utility" has been present in 33 C.F.R. § 330.6(d) since 1991.¹⁸ In the preamble to the 2017 NWP reissuance, the Corps verified that Note 2's purpose is to ensure that utility lines containing one or more crossings ineligible for NWP authorization undergo evaluation through the individual permit process.¹⁹ This aligns with APPA's member experience, where a utility line segment with an independent utility would qualify for an NWP.

For instance, within a 100-mile transmission line, there may be a requirement to connect two substations located one mile apart. If the utility line connecting these substations were essential even without the broader transmission project, it could operate independently to transport energy, and satisfy the conditions of NWP 57, it would qualify for NWP verification due to its independent utility. This small project segment could proceed under an NWP even if the overall longer transmission line required an individual permit.

Based on these considerations, there is strong support for both the definition of "single and complete linear project" and Note 2 to NWP 57.

B. No Modifications to NWP 12 are Needed.

NWP 12, as proposed, would continue providing authorization for oil and natural gas pipeline activities, maintaining the same scope as the 2021 version. Following concerns about NWP 12's use for pipeline projects, the Corps initiated a "formal review" of the permit on March 28, 2022, to evaluate potential next steps and modifications.²⁰ APPA is a member of the Utility

¹⁵ 90 Fed. Reg. at 26,155.

¹⁶ *Id.*

¹⁷ 33 C.F.R. § 330.6(d).

¹⁸ 56 Fed. Reg. at 59,110, 59,117, 59,140 (Nov. 22, 1991).

¹⁹ 82 Fed. Reg. at 1,889.

²⁰ 87 Fed. Reg. 17,281 (Mar. 28, 2022).

Water Activities Group (UWAG) and supports their detailed comments submitted previously related to the Corps review of NWP 12.²¹ No modifications to NWP 12 are warranted. As such, the Corps should avoid any revisions to the NWPs, including NWP 12, that would cause them to be unnecessarily restrictive or impose undue additional administrative burdens on the Corps and the public, particularly where there is no commensurate environmental benefit. Further, the questions posed in the March 2022 notice targeted general NWP operational principles and conditions, and any changes to NWP 12 could establish precedents affecting the whole NWP program, especially other utility line authorizations.

C. The Corps Should Finalize Its Proposed Clarifications to the Notes of NWP 12 NWP 52, NWP 57, and NWP 58 With a Slight Modification.

The Corps proposes minor clarifying modifications to the Notes of NWPs 12, 52, 57, and 58.²² These changes are intended to clarify the purpose and scope of each Note, identify the types of information that should be submitted to the National Ocean Service (NOS) or the U.S. Coast Guard (USCG), and provide updated contact information for both agencies. APPA generally supports the Corps' decision to finalize these minor clarifying changes to the Notes of NWPs 12, 52, 57, and 58. However, we recommend the following to provide further clarification.

APPA recommends modifying Note 1 to establish a clear one-year deadline for submitting "as-built" drawings after authorized work is completed. Members understand "as-built" drawings as final construction documentation that captures the project's actual built condition, incorporating any modifications or departures from original plans. These drawings are produced only after construction concludes and create a definitive record of the completed work rather than preliminary design concepts. Given their role in supporting the National Oceanic Atmospheric Administration (NOAA) and NOS nautical chart updates, APPA believes a one-year submission window provides reasonable time for preparation and delivery of these post-construction documents.

Regarding Note 8, APPA seeks to clarify that NWP 57 projects exempt from PCN requirements must still coordinate with the USCG by providing proposed structure, locations, and dimensions before construction commences. This proposed language would formalize what the Corps already indicated as its intention in the NWP 57 decision document.²³

V. APPA Supports the Corps' Conclusion that NWP Reissuance Has “No Effect” On Listed Species or Critical Habitat.

The Corps proposes no revisions to its existing “no effect” determination, under which the reissuance of NWPs is deemed to have “no effect” on listed species or designated critical

²¹ <https://www.regulations.gov/comment/COE-2022-0003-0623>.

²² 90 Fed. Reg. at 26,100, 26,112.

²³ NWP 57 Decision Document at 8.

habitat and therefore does not require ESAs section 7 consultation. APPA supports retaining this determination. Under GC 18 and 33 C.F.R. § 330.4(f), any activity authorized by an NWP that may affect listed species or critical habitat must first undergo formal consultation - or else the activity is not authorized. This framework ensures that project-level impacts are appropriately screened while allowing the broader NWP program to proceed efficiently and in full compliance with ESA obligations.

The Corps proposes a targeted revision to GC 18 (*Endangered Species*), removing reference to 50 C.F.R. § 402.17, which is a provision that was rescinded in the most recent updates to the ESA implementing regulations issued by the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS).²⁴ APPA supports this revision, as it ensures regulatory consistency with the current ESA framework.

VI. The Corps' NEPA Review Scope is Limited to Activities Under Its Direct Authority.

The Corps proposes revising NWP 23 (*Approved Categorical Exclusions*) to replace references to the rescinded Council on Environmental Quality's (CEQ) NEPA implementing regulations, which were removed from the Code of Federal Regulations.²⁵ APPA supports these updates, which reflect recent regulatory changes and reinforce the Corps' procedural compliance with NEPA.

The Corps recently updated its environmental review procedures to align with the interim final rule, the Fiscal Responsibility Act of 2023, and U.S. Supreme Court precedent.²⁶ Under these new procedures, the Corps' environmental assessments (EA) should be combined with CWA section 404(b)(1) guidelines documentation, public interest reviews, and findings of no significant impact. The EA should be concise and focus on reasonably “foreseeable effects” and alternatives. The Corps is applying these updated procedures to the reissuance of the NWPs. Under these procedures, the Corps only needs to analyze environmental effects from activities it directly controls and authorizes.

The Corps' environmental review scope is limited to impacts from activities under its jurisdiction - specifically, discharges of dredged or fill material into a WOTUS.²⁷ The agency is not required to analyze broader project effects beyond its regulatory authority. A recent U.S. Supreme Court decision supports this approach, clarifying that agencies must focus on environmental effects directly caused by their specific actions rather than projects “separate in time or place” that they do not control.²⁸

²⁴ Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation at 50 C.F.R. Part 402.

²⁵ 90 Fed. Reg. at 10,610, “Interim Final Rule: Removal of National Environmental Policy Act Implementing Regulations”, (February 25, 2025).

²⁶ 90 Fed. Reg. at 29,465.

²⁷ *Id.* at 29,478; see also U.S. Dep’t of Transp. v. Public Citizen, 541 U.S. 752 (2004) (holding that the scope of a NEPA review is limited to the effect of activities subject to the agency’s jurisdiction and control).

²⁸ *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. ___, 2025 WL 1520964 (2025).

For the NWP reissuance, the Corps appropriately focused its EA on impacts from the actual discharges and water-related work it authorizes, and not on broader project operations or effects outside its permitting authority.

Multiple court decisions have consistently held that environmental review laws don't expand an agency's regulatory scope beyond its statutory authority. Therefore, the Corps' focused approach to analyzing only the environmental impacts of permitted discharges aligns with both legal requirements and established precedent.

VII. The Corps Should Document Categorical Exclusions Approved in the *Federal Register*.

The Corps seeks comments on whether a Regulatory Guidance Letter is the best way to document the CE that are approved under NWP 23 or if another document, such as a *Federal Register* notice, would serve as a better notice to the public.²⁹ APPA recommends that the Corps use publication in the *Federal Register* to document the CEs approved under NWP 23. Not only does this approach improve transparency and public access, but it also ensures greater procedural stability, as documents published in the *Federal Register* cannot be easily changed or revoked by future administrations without undergoing formal rulemaking and public review. In contrast, guidance letters, while useful for implementation, can be changed or rescinded without the same level of public engagement or legal scrutiny. This added permanence would reduce the risk of policy whiplash for regulated entities between administrations.

VIII. The Corps Should Finalize Mat Restoration Requirements in GC 11 with Waiver Provisions for Areas with Natural Recovery Potential.

The Corps proposes to modify GC 11 by adding two new sentences that specify areas affected by the use of construction mats must be restored. While the Corps' Regulatory Impact Analysis (RIA) anticipates no change in the number of NWP authorizations resulting from this revision, APPA notes that the new requirement may have implications for post-construction costs that the Corps may not have considered.

Restoration activities - such as soil decompaction, regrading, and revegetation - can be costly and complex, especially in remote or sensitive areas. To avoid imposing unnecessary burdens on regulated entities, APPA recommends including a provision stating:

Where appropriate, restoration requirements may be minimized or waived if the district engineer determines that the affected area is likely to recover naturally to pre-construction conditions within a reasonable timeframe.

This approach would preserve environmental integrity while allowing for site-specific discretion, consistent with the Corps' broader permitting framework.

²⁹ 90 Fed. Reg. at 26,100, 26,112.

IX. Conclusion

APPA appreciates the opportunity to comment on the Proposal. APPA supports the Corps' effort to reduce burdens on the regulated public and continues to comply with the statutory requirement that NWPs authorize only activities with no more than minimal individual and cumulative adverse environmental effects. APPA encourages the Corps to finalize the reissuance in accordance with our recommended suggestions as soon as possible. Please contact Ms. Carolyn Slaughter, at 202-467-2900 or email CSlaughter@publicpower.org, should you have any questions regarding the above comments.