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**COMMENTS OF THE AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS ON
THE U.S. ARMY CORPS OF ENGINEERS' REQUEST FOR COMMENT, "THE UNITED
STATES ARMY, CORPS OF ENGINEERS; SUBGROUP TO THE DOD REGULATORY
REFORM TASK FORCE, REVIEW OF EXISTING RULES"**

DOCKET NO. COE-2017-0004

82 FED. REG. 33470

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I. INTRODUCTION

The American Fuel & Petrochemical Manufacturers (“AFPM”) welcomes the opportunity to comment on the United States Army Corp of Engineers’ (“USACE”) Request for Comment entitled, “United States Army, Corps of Engineers; Subgroup to the DoD Regulatory Reform Task Force, Review of Existing Rules”¹ (the “RFC”). On July 20, 2017, in accordance with Executive Order (“EO”) 13777, “Enforcing the Regulatory Reform Agenda,”² USACE issued this RFC, seeking input on existing USACE regulations that may be appropriate for repeal, replacement, or modification. This RFC will supplement the Department of Defense’s periodic regulatory review and its activities mandated by EO 13771, “Reducing Regulation and Controlling Regulatory Costs.”³

The USACE administers multiple regulatory programs that impact all facets of the downstream and midstream petroleum and petrochemical sectors, including programs that are integral to the successful construction and operation of our nation’s pipeline infrastructure, refineries, and ports and waterways. These assets are vitally important to AFPM member companies and the American public. While USACE requirements serve to protect our environment, duplicative, overly burdensome, and unnecessary regulatory or permitting requirements have the potential to delay critical infrastructure projects without providing commensurate societal or environmental benefits. AFPM supports this regulatory review effort and encourages USACE to pursue regulatory reforms that ensure national and regional consistency, streamline processes, and remove regulatory ambiguity while ensuring environmental protection.

II. AFPM’S INTEREST IN USACE’S REQUEST FOR COMMENT

AFPM is a national trade association representing approximately 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity. AFPM’s member companies produce the gasoline, diesel, and jet fuel that drive the modern economy, as well as the chemical building blocks that are used to make the millions of products that make modern life possible—from clothing to life-saving medical equipment and smartphones.

¹ See Docket No. COE–2017–0004, 82 Fed. Reg. 33470, July 20, 2017, <https://www.federalregister.gov/documents/2017/07/20/2017-15231/united-states-army-corps-of-engineers-subgroup-to-the-dod-regulatory-reform-task-force-review-of>.

² On February 24, 2017, the President signed EO 13777, which established a federal policy “to alleviate unnecessary regulatory burdens.” To meet this goal, EO 13777 directs federal agencies to establish a Regulatory Reform Task Force (“Task Force”). One of the duties of the Task Force is to evaluate existing regulations and “make recommendations to the agency head regarding their repeal, replacement, or modification.” EO 13777 further directs each Task Force to identify regulations that: eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits and; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies. See “Executive Order 13777: Enforcing the Regulatory Reform Agenda,” February 24, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>

³ See “Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs,” January 30, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>.

To produce these essential goods, AFPM member companies depend upon an uninterrupted, affordable supply of crude oil as a feedstock for the transportation fuels and petrochemicals they manufacture. Furthermore, AFPM member companies require a reliable and safe transportation infrastructure to move materials to and from refineries and petrochemical facilities. Many AFPM member companies have made significant infrastructure investments to support and improve the efficiency of the transportation system, and to ensure the American people receive the fuels and petrochemical products they use daily in a safe, efficient, and cost-effective manner.

III. SUMMARY

In accordance with EO 13777, the Task Force is instructed to “seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, [and] trade associations” on regulations that are burdensome, outdated, ineffective, or that impose unnecessary economic burdens. In this document, AFPM is responding to USACE’s solicitation for input to help inform the Task Force in its evaluation of existing USCAE regulations.

AFPM appreciates the opportunity to provide comments on USACE existing policy statements, guidance documents, and regulations that could be repealed, replaced, or revised to remove unnecessary obstacles to transportation infrastructure projects. When identifying recommendations for reform, AFPM considered regulations that are overly burdensome, outdated, and ineffective. Where appropriate AFPM provided a discussion of the associated burden with the provision or policy, suggested recommended alternatives to the current practice, and cited real-world examples of how the provision or policy impedes infrastructure development.

While our comments are discussed in detail below, AFPM member companies generally support USACE efforts to expedite permitting timelines, ensure consistency across USACE regions, improve coordination with other federal and state agencies, and remove ambiguity and streamline regulatory text.⁴

IV. ARMY CORP OF ENGINEERS REGULATORY REFORM COMMENTS

A. Nationwide Permitting

Under § 404(e) of the Clean Water Act (“CWA”),⁵ USACE has the authority to issue general permits to authorize activities that have only minimal individual and cumulative adverse environmental effects. A nationwide permit (“NWP”) is a general permit that authorizes activities across the country, unless a district or division commander revokes the NWP in a state or other geographic region.

⁴ See also the Appendix of this document for a summary of AFPM comments on USACE regulations.

⁵ See <https://www.epa.gov/cwa-404/clean-water-act-section-404>.

General permits can be issued for a period of no more than five years. According to USACE, the goal in developing and authorizing NWP every five years is to update them and provide clarity and certainty for permittees while protecting wetlands, streams, and other aquatic resources. The NWP program also serves to streamline CWA implementation for linear infrastructure projects that may traverse multiple jurisdictions.

AFPM supports the continued use of the CWA § 404 general permit system to authorize minimal impacts to Waters of the United States (“WOTUS”)⁶ associated with linear utility projects and related infrastructure. Through the NWP program, USACE recognizes that minimal and often temporary impacts to WOTUS are associated with linear utility projects. The NWP program provides a regulatory framework in which USACE may evaluate a linear pipeline project to determine if unique project impacts are more than minimal and require alternative permitting. While AFPM supports the goal of the NWP program and efforts to frequently update this program, listed below are several recommendations for USACE to streamline, improve, and update this process. These comments are centered on two themes: regional consistency and review timelines.

Regional Consistency

Regional consistency is essential in ensuring the effectiveness of the NWP program. The lack of regulatory uniformity conflicts with the goals of the program and creates a patchwork of requirements. Currently, the NWP program is not administered uniformly across USACE districts and divisions. For example, an entity seeking a NWP for a project that traverses multiple USACE districts is required to submit materials and supporting analysis to multiple separate USACE districts. Typically, these applications are developed concurrently and utilize the same supporting materials, principles, and analyses. AFPM member companies have received opposite results with one USACE district being receptive to the use of the NWP, while another is not or requires additional analysis or supporting material. This lack of consistency results in considerable uncertainty and unnecessary project delays from obtaining additional analysis or support needed to convince the dissenting district without providing any environmental benefit.

National guidance on the use of various permitting options (*i.e.*, when it is most appropriate to use NWPs versus general or multi-sector permits) would provide the regulated community with much-needed regional consistency, as well as more certainty for prospective permittees. Further, AFPM encourages the USACE to use NWPs, and look for opportunities to streamline the NWP and other permit processes, such as the development of a critical project path, authorizing the use of contract resources, developing a single form, implementing a mechanism to prioritize projects in the national interest, and utilizing a project coordinator.

⁶ The definition of WOTUS delineates the jurisdictional scope of the Clean Water Act to “navigable waters.” This is important because all Clean Water Act programs including those under USACE authority apply only to WOTUS. The Clean Water Act grants discretion to the implementing agencies, including USACE, to define this term in regulations, and this has been further interpreted by the courts. It is important to note that the Environmental Protection Agency and USACE have proposed a rule to revert to the definition of WOTUS that existed prior to the 2015 Clean Water Rule. See <https://www.epa.gov/wotus-rule/proposed-rule-definition-waters-united-states-recodification-pre-existing-rules>.

More specifically, many permitting inconsistencies resulting from the NWP program are a result of the discretionary powers granted to USACE personnel through 33 CFR Part 330.⁷ For example, a division engineer may use his discretionary authority⁸ to modify, suspend, or revoke NWP authorizations for any specific geographic area, class of activities, or class of waters within his division, including on a statewide basis, by issuing a public notice or notifying the individuals involved. The notice will state his concerns regarding the environment or the other relevant factors of the public interest and allow for public comment. Those factors the divisions engineers use to determine when to modify, suspend, or revoke NWP authorizations are ambiguous, arbitrary, and left up to the discretion of the individual engineer. This level of discretion should be limited by incorporating specific criteria for the exercise of such discretionary powers, including that decisions must be rendered based on facts and science and in a transparent manner.

Moreover, multiple USACE divisions within one USACE district manage administrative programs that may apply to pipeline construction and operation activities. For example, a utility line construction project may require a CWA § 404 Permit related to WOTUS impacts, a CWA § 408 Permit resulting from potential impacts to a USACE civil works project,⁹ and a USACE Real Estate Outgrant if the project impacts USACE real estate interests. USACE divisions within certain USACE districts manage these programs independently, with little or no coordination, even though the permit applications for each program seek identical, or similar information, and involve similar environmental impact assessments. Further, each district has its own procedures and timeframes for processing the applications under its jurisdiction.

The overlap in administrative processes can create a significant burden on utility project proponents. As such, we recommend that USACE develop a more systematic process that eliminates redundancy and facilitates cross-agency communication and agreements. One way to eliminate inconsistent decision-making in the NWP and other programs would be for USACE to evaluate differing regional models, and then choose the most appropriate and efficient cooperating regional model to implement across all regions. Selection of the most appropriate model should include public notice and comment.

AFPM also encourages USACE to streamline coordination among its divisions by implementing a single form of application managed by a central permit coordinator. This would enable various agencies to work together as a team, provide additional certainty for the regulated community, and encourage infrastructure development without compromising environmental quality.

Timelines

Due to the number of federal and state agencies involved in the permitting process, as well as the multi-jurisdictional nature of permitting transportation infrastructure projects,

⁷ See 33 CFR Part 330, <https://www.law.cornell.edu/cfr/text/33/part-330>.

⁸ Discretionary authority means the authority described in 330.1(d) and 330.4(e) which the Chief of Engineers delegates to division or district engineers to modify an NWP authorization by adding conditions, to suspend an NWP authorization, or to revoke an NWP authorization and thus require individual permit authorization.

⁹ See <http://www.usace.army.mil/Missions/Civil-Works/Section408/>.

timelines for these types of projects are often lengthy and frequently delayed. This is the case with USACE, as NWP authorizations are often not completed in a timely fashion. For example, it can sometimes take multiple years for permittees to receive authorizations. In general, delays occur in three main aspects of the permitting process: (1) engineering resource limitations and turnover; (2) tribal consultations; and (3) U.S. Fish and Wildlife, National Marine Fisheries Service, and Environmental Protection Agency (“EPA”) consultations.

Regarding engineering resource limitations and turnover at the USACE, it is common for staff to change mid-project. This can be attributed to a variety of factors but is most likely the result of the USACE’s workforce composition of both civilian and military personnel. In particular, USACE military personnel often change duty locations as a result of new assignments or changing ranks. These staff changes often require that a project is restarted or that previous work or decisions are revalidated. These types of resource issues result in duplicative work and can add between six months to a year to the length of a project.

While delays on such large-scale projects have become commonplace, they are avoidable. Currently, many of these reviews and processes take place in a step-by-step fashion, with the next stage not beginning until the previous is completed. Delays could be alleviated by performing the consultations in parallel, rather than in series to avoid the compounding delays. In addition, developing a critical path timeline at project initiation that includes setting mandatory permittee and USACE check-ins would help structure the process and avoid these delays. Furthermore, USACE should continue efforts to improve processes related to major rehabilitation / renewal projects. Specifically, USACE should implement a priority-based schedule to help avoid the inefficient use of limited resources (*e.g.*, spreading available manpower and budget dollars across too many projects).

B. Contract Resources

Some agencies in the federal government, such as EPA, permit the use of contract workers to provide the analyses and supporting materials for permit applications and approvals. This contract support, while funded by the applicant, is often managed by the implementing agency. This type of agreement often can expedite the permitting approval process while freeing up limited government resources. AFPM supports this practice due to the flexibility and benefits it provides.

Current USACE regulations do not include an authorization allowing permittees to fund contract resources. Lack of this option has contributed to the significant project delays many AFPM member companies have experienced. Given that project engineers may handle as many as 70 projects at one time, providing an option for applicants to use contract resources providing additional assistance in evaluation would help alleviate the permit backlog and reduce the time it takes USACE to analyze and issue a permit.

The state of Texas recently implemented an expedited permitting system, which serves as a successful model for contract resource use. In Texas, at any point in the permitting process, a company may elect to have their permit expedited by paying a fee to cover staff overtime and/or contractor work needed to expedite the permit. The contract work continues to meet the

standards set by the state as the contract work is overseen by the state. This adds no additional cost to the government, while providing industry with a mechanism to expedite essential projects while continuing to maintain a robust environmental review process.

C. Permitting Performance Metrics

Lengthy permit reviews and regulatory uncertainty represent challenges to infrastructure expansion by serving as a disincentive for companies looking to invest in new opportunities or expand existing facilities and operations. While this RFC seeks comments on regulatory requirements to repeal, replace, and modify, some operational improvements may also benefit USACE. Specifically, USACE should monitor permitting review and approval processes and establish performance metrics. This could incentivize USACE to provide clear, concise, and consistent instruction to applicants in order to more efficiently process applications. Further, this may foster more frequent interaction between applicants and the USACE related to application packages. These performance metrics could be used to identify bottlenecks in the application process.

Comparing permitting metrics by permit category for the different USACE districts would provide an indication of the number of applications submitted, average length of review, number of permit applications approved, approved with modifications, or rejected, and regional performance. An appropriate metric used by some permitting entities is the length of time it takes to review and approve permit submittals. As an example, the Minnesota Pollution Control Agency utilizes these metrics for their environmental permitting programs, helping the regulated community make better-informed project planning decisions (e.g, providing applicants an indication of the expected permitting timeline). In addition, implementing national permitting performance metrics could in turn benefit USACE by helping the agency appropriately allocate its limited resources.

D. Emergency Permitting Procedures

Current USACE regulations¹⁰ authorize division engineers to approve special processing procedures in specific emergency situations.¹¹ While this regulation provides needed flexibility and has proven effective, its restricted applicability limits these potential benefits. Specifically, USACE's implementation of emergency permitting procedures does not adequately address pipeline operators' need to efficiently and effectively respond to potential pipeline integrity issues on an existing pipeline and comply with Pipeline Hazardous Material Safety Administration ("PHMSA") regulations.

For example, pipeline operators use monitoring tools to detect potential anomalies in pipeline infrastructure that may create a safety hazard. If an anomaly is identified, the pipeline operator may need to work with USACE to authorize excavation required to assess that pipeline.

¹⁰ See 33 CFR Part 325, <https://www.law.cornell.edu/cfr/text/33/part-325>.

¹¹ An "emergency" is a situation that would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. See <http://www.nap.usace.army.mil/Portals/39/docs/regulatory/regs/33cfr325.pdf>.

USACE’s definition of an “emergency”¹² is ambiguous and is unclear as to whether USACE interprets an “emergency” to include examining potential pipeline anomalies identified during a pipeline integrity inspection. This problem is further exacerbated by different districts’ interpretations of what constitutes an emergency.

PHMSA requires pipeline operators to respond to certain anomaly detections within five days. If the location of the anomalous reading occurs in a portion of a pipe that runs beneath a USACE-regulated waterway, pipeline operators may be required to submit a “Pre-construction Notice” under the USACE’s NWP program and receive USACE authorization before performing the integrity dig to investigate the anomaly and, if needed, repair the pipe. Given that an integrity dig involves minimal soil disturbance in the area of the detection and that area is returned to pre-construction conditions at the completion of the dig, we encourage USACE to consider the minimal impact of these operations in light of the potential benefits of the integrity management program.

Specifically, AFPM encourages USACE to modify its current emergency permitting regulations and guidance to address this situation by authorizing integrity digs under the NWP program without notice (*e.g.*, digs that fall within defined conditions, such as, disturb less than one-tenth of an acre of jurisdictional water) or clarifying that pipeline integrity digs qualify as an “emergency” as defined by 33 CFR 325.3(e)(4). This would improve pipeline operators’ ability to quickly respond and address potential pipeline integrity issues that may create a safety hazard.

E. Pipeline Abandonment

We encourage USACE to modify regulations relating to the NWP program to formally address projects involving pipeline abandonment. Pipeline abandonment is only currently addressed by USACE guidance, and the approach varies by USACE district. Disparities between regions’ interpretations of guidance can result in a patchwork of potentially conflicting requirements.

For example, some USACE districts manage pipeline abandonments under the terms and conditions of the existing general permit system while other districts address pipeline abandonments through individual permits or “Letters of Permission.” This uncertainty significantly impacts project planning which in turn can have a significant cost burden without a corresponding benefit.

For pipelines originally constructed under a NWP, the same NWP should address the conditions of abandonment under typical circumstances, limiting individual permit evaluations to a specific, narrow set of factors. These conditions and factors should be clearly presented in the terms and conditions of the general permit.

F. Real Estate Interests and Civil Works Projects

The USACE Directorate of Civil Works oversees civil works programs and water resource development activities, including flood risk management, navigation, recreation, and

¹² *Id.*

infrastructure and environmental stewardship. In addition, USACE districts include real estate divisions that perform the integral and vital role of acquiring and managing real property interests required for civil works, military, and environmental projects.

For activities that may impact USACE civil works projects and real estate interests (*e.g.*, USACE navigational servitudes and dredged soil disposal easements), project proponents are required to obtain USACE authorization prior to performing such work.

It is often difficult for project proponents to determine where and whether such interests exist because they are not clearly identified in any database or record. Consequently, project proponents are left to decide whether to make their own determination about potential permit applicability, or to seek USACE input. This can lead to inconsistent or unnecessary consideration of real estate interests and civil works projects and leave an infrastructure project vulnerable to unexpected delays. To remedy this issue, USACE should consider creating a process or guidance designed to determine or inform applicants when such interests apply. Applicants could then use this process or guidance to confirm whether authorization is required and avoid potential permit delays.

G. Projects of National Economic or Security Interest

Currently, USACE regulations do not offer a method for prioritizing nationally significant projects (*e.g.*, pipeline projects may serve a national economic or security interest). USACE should create evaluation criteria to determine when a project is in the national interest. While these projects would still undergo extensive environmental review, USACE would have authority to prioritize these projects and conduct expedited National Environmental Protection Act (“NEPA”) reviews. This could include allocating additional resources to the project or assigning specific personnel to assist in facilitating the permittee through an expedited permit review and decision process.

H. Clean Water Act

USACE and EPA’s implementation of the provisions of the CWA can have major impacts on transportation infrastructure projects such as pipelines. AFPM encourages USACE to work closely with EPA to ensure consistent implementation of the CWA, including efforts to avoid duplicative reviews and requirements. Current USACE requirements related to the CWA are unclear and require USACE to provide interpretations, adding complexity, uncertainty, and time to critical infrastructure construction schedules. In general, a more concise regulation that clearly defines USACE’s interpretation of the CWA and WOTUS would limit confusion.

The purpose of the CWA is to protect navigable waters from pollution, so EPA’s and USACE’s implementation should only include impacts to navigable waters. AFPM submitted comments¹³ related to WOTUS in response to EPA’s and USACE’s actions under Docket No. EPA-HQ-OW-2017-0203 and plan to submit additional comments at later stages in that

¹³ See “AFPM’s Comments on EPA’s Proposed Rule, “Definition of ‘Waters of the United States’ - Recodification of Pre-Existing Rules” (Docket No. EPA-HQ-OW-2017-0203-9860), submitted September 27, 2017, <https://www.regulations.gov/document?D=EPA-HQ-OW-2017-0203-9860>.

rulemaking process.¹⁴ AFPM reiterates these suggested revisions and clarifications related to how USACE defines certain important terms, such as “Tributaries,” “Adjacent Waters,” and “Drainage Ditches.”

I. Ports and Shipping Channels

USACE plays a vital role in the oversight of the nation’s ports and shipping channels. USACE should embrace efforts to streamline permit processes for private maintenance dredging activity and work to identify ways to better maintain federal channels at project depth. USACE must ensure that the nation’s ports and shipping channels are operational at the authorized depth year-round. Stable channel depths are critical for safe navigation and to support the nation’s commercial maritime network. While the comments below are not directly related to regulatory revisions, AFPM feels strongly that they warrant mention given the considerable impacts funding issues can have on ports and shipping channels, and consequently on AFPM member companies.

The lack of adequate funding for USACE’s maintenance dredging and channel protection has led to grounding of deep draft navigation vessels, closure of critical waterways, and re-routing of vessels that service the oil and natural gas sector, and deliver energy products. Additionally, there must be safeguards in place to protect the fees paid into the Harbor Maintenance Trust Fund to ensure the money is used to support the nation’s maritime infrastructure.

Recent examples of closures and reduction of port infrastructure capabilities in 2016-2017 include the Port of Anchorage and San Francisco Bay channel closures, and shoaling impacting ports in Stockton and Sacramento, California. These events disrupt ship traffic through the area, which negatively impacts commerce. Further, when the channels are not maintained properly, it prohibits larger ships from entering the waterways, lowering the efficiency of U.S. commerce and increases the potential for a maritime incident.

¹⁴ See <https://www.regulations.gov/docket?D=EPA-HQ-OW-2017-0203>.

J. Specific Comments for Repeal, Replacement, or Modification

In addition to the general comments above, the table below lists specific comments on USACE regulations for repeal, replacement, or modification.

Specific Comments on USACE Regulations for Repeal, Replacement, or Modification		
Citation	Suggested Revision(s)	Desired Outcome(s)
33 CFR Part 330	Include additional explanation and examples on the intended uses for the NWP program.	Improve the consistency of its use across USACE districts and divisions.
	As part of on-going review of WOTUS, the various definitions in this section need to be clarified and revised.	Limit confusion and enable consistent USACE application of WOTUS.
	The triggering thresholds that require permitting should be reviewed and revised.	Eliminate unnecessarily broad reviews and analyses.
	Consider exempting from review rights of ways and pipeline corridors that have previously gone through a NWP 12 process.	Eliminate duplicative review and streamline the NWP process.
33 CFR Part 330.1(d)	Limit the discretionary authority given to the district and divisional engineers to suspend, modify, or revoke NWP approvals.	Improve regulatory certainty for permit applicants and avoid arbitrary decision-making, which can delay projects even when NWP conditions are met.
33 CFR Part 330.1(e)	Enhance permit designs to clarify under what conditions the permittee must notify the district engineer.	Provide needed clarity on an ambiguous requirement.
33 CFR Part 330.4(d)(6)	Reduce the time a state must act on a USACE permittee's consistency certification to 60 days.	Streamlines the permitting process by reducing inaction.
33 CFR Part 330.4(e)	Reduce, limit, or otherwise provide specific criteria for the discretionary authority given to district officials to "modify, revoke, or suspend" an NWP.	Improve regulatory certainty for permit applicants and avoid arbitrary decision-making, which can delay projects even when NWP conditions are met.
33 CFR Part 330.5	Require that USACE consider the harm to the permittee when a valid permit is suspended or revoked, even though the permittee follows the permit requirements.	Provides accountability for decision-making and require USACE to clearly consider economic impacts.
33 CFR Part 230	Clarify that USACE NEPA analysis should not be expanded beyond the authority and jurisdiction of USACE.	Limits agency review to their statutory authority and area of expertise.
	Allow the use of prior NEPA analysis in areas previously reviewed where the analysis is still relevant and timely.	Eliminate duplicative review and streamline the NEPA process.

K. Conclusion

USACE's role in the safe and efficient movement of energy products and development of transportation infrastructure is essential. AFPM member companies support USACE efforts to expedite permitting timelines, ensure consistency across USACE regions, encourage collaboration with other federal and state government agencies, and clarify and streamline regulatory text. AFPM thanks USACE for the opportunity to provide input on the regulatory reform process. Please contact me at (202) 552-4374 or rbenedict@afpm.org if you wish to discuss these issues further.

Sincerely,

A handwritten signature in blue ink that reads "Rob Benedict". The signature is written in a cursive style with a blue color.

Rob Benedict
Director, Transportation and Infrastructure

V. APPENDIX: SUMMARY OF AFPM COMMENTS

Summary of USACE Regulations and Policies to be Repealed, Replaced, or Modified

Topic	Issue / Level of Burden	Alternative
Nationwide Permitting	<i>Regional Consistency</i> - Without regional consistency, a patchwork of requirements exists and this lack of uniformity conflicts with the goals of the program.	Amend regulations to eliminate broad discretionary powers of USACE personnel or provide criteria for the exercising of such discretion to ensure decisions are rendered based on facts and in a transparent manner.
	<i>Timelines</i> - Due to the multi-jurisdictional nature of permitting transportation infrastructure projects, timelines for these types of projects are frequently delayed.	Perform consultations in parallel rather than in series. Develop a critical path timeline at project initiation that includes setting mandatory check-ins to avoid delays.
Regional & Agency Coordination	There currently is limited coordination amongst USACE regions and federal agencies. The overlap in administrative processes can create a burden on project proponents without a corresponding benefit.	Streamline coordination among divisions with the implementation of a single application form managed by a central coordinator. Develop a process that eliminates redundant steps and facilitates cross-agency communication.
Contract Resources	Given USACE's limited resources and the prohibition on using contract support, projects are unnecessarily delayed.	Allow for the use of contract resources to help alleviate the permit backlog and reduce the time that it takes to analyze and issue a permit.
Emergency Permitting	Implementation of emergency permitting procedures does not adequately address pipeline operators' need to respond to pipeline integrity issues and comply with PHMSA regulations.	Modify emergency permitting regulations to authorize integrity digs under an NWP Program without notice, or clarify that pipeline integrity qualifies as an emergency.
Pipeline Abandonment	Pipeline abandonment is only addressed by USACE guidance and approaches vary by district. Such disparities between regional interpretations result in a patchwork of requirements.	Modify regulations relating to the NWP program to formally address projects involving pipeline abandonment.
Real Estate Interest & Civil Work Projects	Real estate interest and civil works projects are not clearly identified in any database or record causing uncertainty regarding when these interest must be considered.	Create a process or guidance to determine or inform applicants when such interests apply.
Projects of National Interest	Pipeline projects may serve a national economic or security interest, but USACE regulations do not offer a method to prioritize such projects, potentially delaying essential projects.	Consider creating evaluation criteria for projects in the national interest. While these projects would still be required to undergo environmental review, USACE would have authority to prioritize these projects and conduct expedited reviews.
Clean Water Act	The manner in which USACE defines key terminology under the CWA is not currently limited to projects that could impact navigable waters.	Revise the definitions for certain terms to ensure consistency across USACE regions and to align with the intention of the CWA.
Port and Shipping Channels	The lack of funding for USACE maintenance dredging and channel protection has led to grounding of vessels, closure of critical waterways, and re-routing of vessels to supply energy infrastructure.	Streamline the permit process for maintenance dredging activity and focus on maintaining channels' depth. Ensure the Harbor Maintenance Trust Fund is used to support the nation's maritime infrastructure.