



October 18, 2017

*Submitted via electronic mail*

Ms. Mary Coulombe  
Chief, Natural Resources Management  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314-1000

Re: Regulatory Reform Task Force, Review of Existing Rules  
U.S. Army Corps of Engineers

Dear Chief Coulombe:

The American Exploration & Production Council (“AXPC”) is pleased to submit the following comments concerning items appropriate for repeal, replacement, or modification, in accordance with Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, as it relates to matters under the purview of the United States Army, Corps of Engineers (“USACE”) (Volume 82, Number 138). AXPC supports the Administration’s effort to review existing regulations across all government agencies and believes regulatory reform is particularly needed in respect to the energy industry, both to fuel economic growth and to ensure our nation’s energy dominance and security. AXPC appreciates USACE extending the deadline for public comment. Although it has chosen to focus its comments solely on the Nationwide Permit (“NWP”) Program, AXPC fully supports the comments filed by the American Petroleum Institute concerning this matter.

The NWP Program was established, in part, to create a *simplified, streamlined* process with the intent of easing the regulatory burden on both USACE and the regulated community. AXPC submits that the agency has moved away from this intention as its regions have increasingly placed prescriptive regional conditions on both their own regional general permits and the NWPs. Thus, the utility of the NWP Program is quickly diminished with the broad authority that the regions and districts enjoy. AXPC does not dispute that some regional variation is necessary. However, ensuring regulatory and operational certainty is essential and will require consistency from USACE in issuing its general and regional conditions and in its interpretation and application of those conditions. To that end, USACE must examine ways to promote consistency throughout the agency that facilitates permitting in a certain and transparent manner.

An item of specific concern regarding the broad authority of interpretation by district engineers is the revised language of General Condition 17<sup>1</sup> for the 2017 NWP, which states, “No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.” This new language is not adequately defined yet it appears to lower the standard for triggering individual permit activities. AXPC acknowledges that the 2017 NWP preamble states, “it [USACE] believes that the revised general condition will not change the number of activities that qualify for NWP authorization.” However, the standard of what is considered *minimal* and what is considered the full suite of *tribal rights* is at the discretion of the district engineer. Consequently leaving open the potential for inconsistency in application. To be clear, AXPC is not questioning the merit of such a general condition, just USACE’s abstention from providing guidance to narrow the interpretation.

To summarize, AXPC believes any effort(s) that USACE can undertake to reduce inconsistent application of its programs will be of great utility to the regulated community. Thus, USACE should seek to promote such efforts which encourages transparency while enhancing certainty. AXPC appreciates USACE’s consideration of the statements presented herein and appreciates the opportunity to participate in this public process.

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AXPC is a national trade association representing 34 of America’s premier independent natural gas and oil exploration and production companies. AXPC’s members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce crude oil and natural gas, and that allow our nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

Respectfully Submitted,



V. Bruce Thompson  
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<sup>1</sup> The General Condition 17 language was revised from the 2012 tribal rights general condition which read, “No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treat fishing and hunting rights.