

CLEAN WATER ACT SECTION 404 REVIEW OF PIPELINE PROJECTS

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Thank you Chairman Shuster for inviting the Department of Environmental Protection to provide testimony before the Transportation and Infrastructure Committee on Pennsylvania's program for issuing permits for projects under a consolidated permitting process, and, more specifically, for oil and gas pipeline projects.

Before providing details on this process, I'd like to address another recent federal matter that may impact permitting in Pennsylvania. Last week, the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (Corps) published a proposed rule regarding the definition of Waters of the United States. This definition is to be used in determining the jurisdiction of the Clean Water Act with respect to the requirement for permits under Section 404, as well as other federal Clean Water Act programs. As the publication of the rule is recent and the rule is lengthy, the Department has not yet completed its review of the proposal. However, as Pennsylvania is home to over 86,000 miles of streams and rivers and 404,000 acres of freshwater wetlands, DEP feels that this proposed rule may be particularly relevant to Pennsylvania and fully anticipates providing formal comments to EPA. Prior to finalization of the Waters of the United States rule, DEP recommends that EPA or the U.S. Army Corps of Engineers Corps reach out to Pennsylvania to discuss the comments provided by the Department. Once completed DEP can provide those comments to Committee members and will make them available to the public as well. Due to our ongoing review, and our planned stakeholder outreach, I will not be providing testimony on that proposed rule today.

The commonwealth of Pennsylvania is a water-rich state and protection of these abundant water resources is vital to the health and vitality of Pennsylvania's citizens, environment and economy.

Pennsylvania has a vast energy portfolio, ranking second in the nation in natural gas production and fourth in the nation in coal production. Pennsylvania is the only producer in the nation of high-heat anthracite coal. The role of the Department of Environmental Protection is to ensure the environmentally responsible development of the commonwealth's vast energy resources which includes protection of the equally abundant freshwater sources.

In Pennsylvania, the Dam Safety and Encroachments Act, and the accompanying regulations found at 25 Pa. Code Chapter 105, require permits for stream and wetland encroachments complimentary to those required under Section 404 of the federal Clean Water Act. Under federal regulations, the Corps has the flexibility to develop "general permits" on a statewide, regional or nationwide basis. The Department worked with the Corps to develop a joint permitting process that consolidated the state and federal permitting process, making it more efficient and less time consuming without sacrificing environmental protection. In 1995, the Department and the Corps negotiated a statewide general permit, State Programmatic General Permit (SPGP-1), for projects in Pennsylvania that impacted one acre or less of waters of the United States, including wetlands. Projects with greater impact could not be authorized under this general permit and were required to obtain an individual Section 404 permit directly from the Corps.

The Corps first issued its Pennsylvania State Programmatic General Permit on March 1, 1995. This general permit is renewed every five years with the most recent renewal, the fourth generation also known as SPGP-4, having been issued on July 1, 2011. During the review process that led to the most recent renewal of SPGP-4, the Corps' interpretation and application of several terms, concepts and definitions used in the permit, as they related to pipeline projects, were modified. Specifically, these changes were intended to provide clarification of the process for permitting pipeline projects. Prior to the issuance of SPGP-4 in July 2011, the Department, in cooperation with Pennsylvania's representatives to Congress attempted to negotiate some changes to the Corps clarifications. Ultimately however, the

Corps did not make all of the changes recommended by DEP and Pennsylvania's Congressional representatives. This is noteworthy, as DEP will begin the process of negotiating the next permit renewal with the Corps next year (2015), in order to have SPGP-5 in place by July 1, 2016.

Under SPGP-4, the Corps defined three broad categories of impacts. Category I and II activities normally do not trigger any additional review by the Corps and are authorized when the Department provides state law approval. Category III activities, however, are reviewed by the Corps as well as the state. Examples of projects that require Corps review include projects with: impacts to threatened and endangered species, impacts of more than an acre of wetland, and impacts of more than 250 linear feet of stream. Recent data provided by the Corps indicates that approximately 13% of the projects authorized from 2011 – 2013 required concurrent review by DEP and the Corps. Of these projects, approximately 32% were pipeline projects.

To provide perspective and context on this joint permitting program, between July 1, 2011 and June 30, 2013 DEP reviewed approximately 9,500 authorizations under PASPGP-4. It is important to point out that this statewide general permit covers more than just pipelines - it covers many activities associated with land development in general such as: culverts, small bridges, docks, temporary stream crossings, and intake and outfall structures.

During the period July 1, 2006 through June 30, 2011, over 90 percent of the Corps authorizations were issued in less than 60 days from the date of receipt of a complete application. When there were review delays, they were typically associated with deficient application submissions.

SPGP-4 has been a critical tool used in consolidating Federal Section 404 and State Chapter 105 permitting processes in Pennsylvania. Although it was tailored to allow for "one-stop" authorization of projects under both Section 404 of the Federal Clean Water Act and the state Chapter 105 regulations, PASPGP-4 is a Corp permit and the Corps controls the extent to which a Corps review is necessary.

By signing Executive Order 2012-11, Gov. Tom Corbett charged the Department of Environmental Protection with developing and implementing a policy that results in more timely permitting decisions, provides clear expectations for applicants to improve the quality of permit applications, establishes performance measures for DEP's permit review staff, and implements electronic permitting tools to enhance internal operations. In November 2012, at the direction of Governor Corbett, DEP implemented the Permit Review Process and Permit Decision Guarantee Policy. Part of the implementation of this new policy was an effort to educate consultants and applicants on the expectations of the Department to ensure receipt of complete and technically adequate applications. Since November 2012, DEP has recognized an overall improvement of the quality of applications. DEP has observed that when the Corps receives a complete and quality permit application, review times are generally consistent with the national average of between 45 to 60 days.

Given the increase in permit workload particularly related to the expanding natural gas industry in Pennsylvania, the Department worked closely with the Corps and our Congressional representatives to ensure that the State and Federal permit processes are protective, but efficient. As early as 2012, there were discussions regarding the preferred permit for natural gas pipeline construction in the commonwealth, which included either the Corps Nationwide General Permit for utility line activities, referred to as Nationwide Permit-12 or the SPGP-4. The Department closely analyzed the issue and concluded a move away from use of the SPGP-4 at that time was not warranted because when compared to states where the Nationwide permit-12 was in use, the review timeframes for pipelines in Pennsylvania under SPGP-4 were comparable.

The consolidated state and federal permitting process under the State Programmatic General Permit has been effective. It allows for the environmentally responsible development of the commonwealth's vast energy resources. As we look to the upcoming renewal of the State Programmatic General Permit in 2016, the Department is optimistic that working together with the

Corps we will be able to re-evaluate the requirements of Nationwide Permit 12 and the State Programmatic General Permit with regard to the use of certain critical terms and definitions to bring greater consistency and efficiency into the implementation of these important Clean Water Act requirements.

Thank you for your interest regarding this issue and the opportunity for the Department to provide this testimony.