

Testimony on behalf of the Marcellus Shale Coalition
House Committee on Transportation and Infrastructure Hearing
April 28, 2014

I'm Dave Spigelmyer, President of the Marcellus Shale Coalition. The Marcellus Shale Coalition is a regional trade association with national membership. The MSC was formed in 2008 and is currently comprised of approximately 300 producing and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, transmission, and gathering in the country, as well as the suppliers and contractors who service the industry.

Increased development and use of natural gas offers tremendous environmental and economic benefits to Pennsylvania and the nation. The activities associated with developing shale gas resources have provided a tremendous boost to our region, and affordable energy prices are helping to fuel increased, wide-ranging economic activity across the nation. A critical feature of the successful development of Marcellus Shale play is the construction of infrastructure necessary to gather the natural gas from the wellhead and transport it to consumers. Consistent and timely authorization of gathering pipelines and other midstream projects is essential to ensure that these construction projects proceed on schedule as planned. In the absence of predictable and timely authorization process, wells that are completed and ready to produce are stranded without a pipeline connection to transport the produced gas to market.

As present, there are hundreds of natural gas wells that have been drilled in Pennsylvania but are waiting on pipelines to be built to gather and transport the gas. These wells are not producing gas and, hence, are not generating any downstream economic benefits or royalties for landowners. Thousands of workers also are not being employed in construction activities and orders for new pipe are being delayed.

The primary cause for these delays is recent changes that were made to the way in which natural gas pipeline projects are reviewed and approved by the U.S. Army Corps in Pennsylvania. Federal jurisdiction over the construction of these projects applies in locations where the pipelines cross waters of the United States, pursuant to Section 404 of the Clean Water Act. In Pennsylvania, authorization for these projects typically is provided by a State Programmatic General Permit, issued pursuant to Clean Water Act § 404(e) – specifically, Pennsylvania State Programmatic General Permit.

The Pennsylvania State Programmatic General Permit No. 4 (PASPGP-4) was reissued effective July 1, 2011, by the Baltimore District of the Army Corps. As a result of the unilateral change adopted by the Baltimore District, the requirements for review embodied in Pennsylvania State Programmatic General Permit have created an inefficient process that is duplicative of state review and that does not provide any corresponding environmental benefit.

Prior to the changes embodied in Pennsylvania State Programmatic General Permit, the majority of these types of projects would have been authorized pursuant to the state's effective permitting program without individualized review by the Army Corps. This efficient permitting process provided close coordination with the Commonwealth of Pennsylvania, without unnecessary, duplicative effort,

and protected the waters of United States above and beyond the jurisdiction of the Army Corps. Now, the process being followed by the Army Corps requires virtually all pipeline projects (both small and large) to undergo individualized review by the Corps and provides that the Corps consider as part of pre-authorization review the total impacts of the “overall project,” rather than just the limited impact of the individual water crossing being authorized. This has led to substantial delays in authorization of projects and is hampering the ability of pipeline companies to develop and construct the infrastructure necessary to gather and transport natural gas from wells that are ready to produce. Our members estimate that the total pipeline permitting process now takes more than 145 days for projects that have only minimal, temporary impacts to waters of the United States. The total development process, including construction, can now take more than 16 months for even the most straight-forward project.

The approach to project authorization for these types of projects that is reflected in Pennsylvania State Programmatic General Permit is inconsistent with the goal of the Army Corps’ general permit program, and with its regulations, and represents a marked departure from the Army Corps’ longstanding approach of evaluating each individual crossing of a water of the United States separately. The goal of the general permit program is to provide an efficient process to authorize any activity in a category of activities, where the Corps has determined that the activities in the category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. Natural gas pipeline projects have only limited, temporary impacts to waters of the United States, with no net loss of such waters, and are ideally suited to the efficient review processes that are intended for the general permit program. Combining the total impacts of an “overall project” for

pre-authorization review of each individual water crossing, however, is fundamentally inconsistent with the goal of the general permit program of providing for efficient review and authorization of projects of a similar nature with minimal impact.

Combining the total impacts of an “overall project” for pre-authorization review of each individual water crossing also is inconsistent with the Corps’ definition of a “single and complete project” and the rationale expressed by the Corps when it adopted that definition more than 20 years ago. As explained by the Corps at the time, and followed consistently (until now) since:

“The purpose of separating out ‘linear projects’ [like pipelines] within the text of the definition for ‘single and complete project’ was to effectively implement the NWP [nationwide permit] program by reducing the effort expended in regulating activities with minimal impacts.”¹

The individualized and duplicative review that now exists in Pennsylvania, which focuses on the total impacts of an “overall project” rather than the limited impact of each individual crossing being authorized, is not consistent with the purpose articulated by the Corps more than 20 years ago in establishing the definition of a “single and complete project,” and it does not meet the goal of the general permit program.

No other District of the Army Corps where our members operate approaches the permitting function for gathering lines and other midstream projects in the manner now in place in Pennsylvania. In all other areas of the country where gathering pipelines and other midstream projects are being built, the Corps adheres to its

¹ 56 Fed. Reg. 59110, 59114 (Nov. 22, 1991).

regulatory definition of a “single and complete project” and evaluates each individual crossing of a water of the United States separately. No expanded definition of “project” is used to increase the scope of review by including multiple water crossings over a broad geographic area. This adherence by other districts to the regulatory definition of “single and complete project” is in accord with the Corps’ rules and allows for efficient review and permitting of projects that have minimal and limited impact to water resources.

Each of the natural gas gathering or other midstream projects that cross a water of the United States in Pennsylvania is subject to regulatory review by Pennsylvania Department of Environmental Protection, and is authorized by a state general permit or an individual permit issued by the Department. The activities authorized involve only minimal and temporary impacts to water resources, and those impacts are fully addressed and mitigated by the conditions of the state’s general or individual permit. The review by the Army Corps pursuant to the revised Pennsylvania State Programmatic General Permit does not alter the manner by which these projects are designed or constructed. The Army Corps review for these types of projects is unnecessary and duplicative and does not provide any meaningful environmental benefit. Yet, the Army Corps process imposes substantial administrative burden and associated costs – all of which are unnecessary and should be eliminated.

The delays and related cost increases created by this duplicative review process threaten to jeopardize the enormous economic boom to Pennsylvania associated with the development of the Marcellus Shale in a number of ways. The delays have adverse economic impacts to those who produce steel pipe, those who install new pipelines, and those who make use of efficient natural gas at lower cost to

expand downstream economic activity. The delays also impact the level of tax revenue paid to Pennsylvania and the United States.

By way of example only, a typical natural gas gathering pipeline construction project involving 5 miles of pipe would employ over 100 workers and 20 or more inspectors. There are hundreds of pipeline currently under agency review. Conservatively estimated, this means that more than 2,000 workers and 400 inspectors could now be working but are not.

Production orders for pipe also are impacted by these delays. The pipe used in these projects is predominantly made in the United States. The delays in permitting and constructing these pipelines, therefore, are affecting U.S. manufacturers and workers, as well as the pipeliners who build the lines, consumers who use efficient natural gas, and landowners who expect to receive royalties from gas production.

The delays and increased costs of connecting producing wells to market also can significantly influence a company's strategy for where to focus further development. Unpredictable and unnecessary regulatory burdens can lead companies to employ capital elsewhere and, for some, to stop development in an area altogether. The loss of economic activity, accordingly, relates not only to the wells already completed and ready to produce, but also to wells that could be being drilled if the conditions for development were more favorable.

As the President recognized by Executive Order, development of our domestic natural gas resources is vital to this country. Efficient and timely authorization of gathering pipeline and other midstream projects is essential to ensure that the country fully realizes the substantial benefits that the development of our shale resources presents. For these reasons, we ask for the support of this Caucus in

seeking to end the unnecessary and duplicative review process created by the recently modified Programmatic General Permit and, thereby, to eliminate the timing delays, administrative burden and other costs created by the Army Corps' approach to authorizing gathering pipelines and other midstream projects in Pennsylvania.