



April 9, 2024

Mr. Joseph McMahan
Chief Regulatory Division
U.S Army Corps of Engineers
Attn: CECW-CO-R
441 G Street NW
Washington, DC 20314-1000

Re: **Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties.** [COE–2023–0004]. Submitted via: <http://www.regulations.gov> and historicpropertyreg@usace.army.mil

Dear Mr. Joseph McMahan:

The Marcellus Shale Coalition (MSC), a regional trade association with a national membership, appreciates the opportunity to submit comments regarding the above-referenced proposed rulemaking. The MSC was formed in 2008 and is currently comprised of approximately 140 producing, midstream, transmission 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, gathering, processing, transmission and utilization, in the country, as well as the supply chain companies, contractors and professional service firms who work with the industry.

The MSC appreciates the opportunity to offer the following comments on the above-referenced U.S. Army Corps of Engineers (USACE) proposed Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties. The member companies of the MSC are proud of their cumulative efforts to date to strengthen domestic energy production, meet the needs of America’s citizens and businesses, enhance our nation’s national security, all the while doing so in a manner that protects and enhances our shared environment. Our members are also extremely proud of their commitment and performance in producing the natural gas supplies our nation depends upon in the most environmentally conscious manner found anywhere in the world. Please find below comments on the proposed rule.

Comments

1. The MSC recommends that when revising Section 106 compliance procedures, USACE should consider the jurisdictional scope and authority of their federal action to determine a reasonable level of effort for Section 106 compliance in relation to a proposed project’s scale and scope. Further, USACE should develop streamlined internal procedures for projects qualifying for general or nationwide permit coverage as these activities are pre-determined to have minimal adverse effects.

2. Pennsylvania operates under a State Programmatic General Permit for typical projects that may impact or cross streams and wetlands. In an agreement with the USACE these permits are reviewed by the Pennsylvania Department of Environmental Protection (PADEP). The State Programmatic General Permit program is reviewed, and the permit is renewed every five years. The most current version, PASPGP-6, is not scheduled to be reviewed and renewed until 2026. The MSC is concerned with what will happen to the current PASPGP-6 if this proposed rule is finalized in advance of the state programmatic permit renewal, specifically the certainty of review and approval process for these general permits that only propose minimal potential impacts to wetland and stream resources. MSC urges the USACE to acknowledge these state permit programs and commit to not requiring this proposed rule on typical general permits, as doing so is costly, repetitive, and imposes unnecessary burdens on both the USACE and the regulated community.
3. Pennsylvania provides an option for both sequential and concurrent resource agency and earth disturbance permit reviews for all proposed land development projects, inclusive of oil and gas activities. Recently, in an effort to reduce their own permit times, the PADEP proposed to eliminate the option of concurrent reviews and wait for final resource agency approval before they start their review. This change in procedure will result in making permitting times for general permits even longer. The MSC recommends that the USACE provide a timeline guarantee for consultations, so as not to impact timelines for typical state earth disturbance permits.
4. As written, the proposed rule appears to require applicants to complete a Section 106 consultation with the USACE in upland areas which are outside the USACE's jurisdiction. The proposed rule states that if an eligible site may be impacted in an upland area the project will require consultation with the advisory council. Furthermore, it appears this is an unauthorized requirement since it seeks to impose an obligation on the permittee which is outside the jurisdiction of the USACE. MSC members have discussed this scenario with the local offices of the USACE and they have no answer with how this process would work. The MSC strongly urges removing the requirement of consultation in upland areas where the USACE does not have jurisdiction.
5. All guidance documents referenced in the proposed rulemaking should be available for public comment in advance of being finalized in order for the regulated community to provide substantive written feedback to the USACE. The USACE should adequately respond and address the comments prior to finalization of the rulemaking. Further, it is premature to remove Appendix C in advance of providing the referenced guidance documents on how this proposal will be implemented so there is clarity for the regulated community. The MSC recommends retaining Appendix C until it is appropriate to do so.
6. Within the proposed rulemaking the USACE has not provided an analysis on the economic impact and professional resources required for the regulated community to implement these new requirements. The MSC urges the USACE to provide this analysis prior to finalizing the rulemaking, and to allow for appropriate public comment on the analysis.

Conclusion

The MSC and its member companies take great pride in their efforts to conduct operations safely, efficiently, and in a manner that protects our shared environment and local communities, while at the same time meeting the critical energy needs of our citizens. We welcome the opportunity to discuss in greater detail any questions or need for clarification that you may have regarding our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Callahan". The signature is fluid and cursive, with the first name "David" being the most prominent.

David E. Callahan
President