US Army Corps of Engineers®

REGULATORY GUIDANCE LETTER

No. 07-03 **Date: September 19, 2007**

SUBJECT: Department of the Army Permit Processing for Proposed Natural Gas Projects

1. Purpose and Applicability

a. **Purpose.** To issue guidance regarding processing of Department of the Army (DA) permits for activities in waters of the United States associated with proposed natural gas projects that are subject to Sections 3 and 7 of the Natural Gas Act (NGA).

b. **Applicability.** This guidance applies to all proposed natural gas projects subject to Sections 3 and 7 of the NGA where DA permits are required under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. This Regulatory Guidance Letter (RGL) is consistent with the May 2002 *Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission (FERC)*, and the July 11, 2005 Memorandum of Understanding between the Department of the Army and the Federal Energy Regulatory Commission (FERC). Copies of these documents can be found at http://www.usace.army.mil/cw/cecwo/reg/mou/moumoas.htm.

2. Background

Section 313 of the Energy Policy Act of 2005 (EPAct 2005) amends the NGA to provide the FERC with additional authority to coordinate the processing of permit applications required under Federal law (including applications for DA permits) for proposed natural gas projects subject to NGA sections 3 and 7[1], and to maintain a complete consolidated record of decisions. FERC published regulations on October 19, 2006, which became effective December 26, 2006 (18 CFR Parts 153, 157, 375 and 385 – see http://www.ferc.gov/whats-new/comm-meet/101906/C-2.pdf).

EPAct 2005 designates FERC as the Lead Federal Agency for National Environmental Policy Act (NEPA) compliance, including the coordination of Federal authorizations, such as

[1]Under Section 7 of the NGA, FERC has jurisdiction over the transportation or sale of natural gas in interstate commerce and the construction, acquisition, operation and abandonment of facilities to transport natural gas in interstate commerce. Under Section 3, FERC is authorized to approve or disapprove applications for the siting, construction, and operation of facilities to import or export natural gas.

those required by the Endangered Species Act, the National Historic Preservation Act, and the Coastal Zone Management Act. Under FERC's regulations, natural gas project applicants (hereinafter referred to as applicants) are required to file applications for all Federal permits concurrent with or before filing their natural gas project applications with FERC. Applicants are also required to engage in pre-filing (i.e., pre-application) activities that include coordination with the permitting agencies to integrate permitting and NEPA activities.

3. Guidance.

a. In order to comply with EPAct 2005 and the FERC regulations, the following procedures shall be used when processing individual DA permits for natural gas projects:

1. During pre-filing (pre-application) process, the applicant coordinates with the Corps and addresses any potential permit requirements or concerns.
2. Applicant submits applications concurrently to FERC and the Corps. FERC will issue, within 90 days of receiving the application, a Federal Register notice of the schedule for the environmental review[2] if an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required.
3. Within 30 days of receipt of the permit application, the Corps must file with FERC, notice of the following:
    a. Whether the application is complete (per 33 CFR §325.1(d)(9)) and, if not, what additional information is needed for the application to be considered complete;
    b. The date the Corps must receive the necessary additional information;
    c. What, if any, information, plans, or studies are necessary in order to evaluate the permit application (i.e., mitigation plans)
    d. The anticipated effective date of the Corps' permit decision; and
    e. If applicable, any other requirements under Federal law[3] that may affect the schedule for the agency to act.
4. If the Corps requests additional information from the applicant at any time during application processing, the Corps must provide FERC a copy of that request within 10 days of the date of the request.
5. Federal authorizations are required no later than 90 days[4] after FERC issues its final environmental document (EA or EIS).

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[2] FERC notes that the schedule can be revised if unanticipated issues and circumstances arise and affect the time needed for review. In this case, the Corps' 90-day deadline for a decision on the permit would be based on the revised schedule. If applicants do not comply with requirements to conduct pre-filing coordination with the Corps, submit requested information, etc., the Corps should notify FERC and request a revised schedule, if necessary.

[3] This refers to instances in which the schedule for agency action is established by other Federal laws, such as the Coastal Zone Management Act or Section 401 of the Clean Water Act, which may include their own deadlines or timeframes for action by the Corps or other agencies (e.g, State environmental agencies).

[4] Per EPAct 2005, if an agency fails to act within the post-NEPA 90-day deadline set by FERC, the matter can be brought to the attention of the applicable U.S. Court of Appeals.

b. FERC's consolidated record:

1. Within 30 days of the date of the Corps' final decision[5], the Corps must provide a copy of the decision and an index of the administrative record to FERC[6]. The index must be titled "Consolidated Record" and reference FERC's docket number on the first page. A sample template is attached.
2. FOIA requests concerning Corps records will be directed to the Corps.

c. For projects that qualify for general permits, including nationwide permits, the Corps will process the application or pre-construction notification in accordance with existing practices and copy FERC on the verification letter (include the FERC docket number on the letter).

d. General Information:

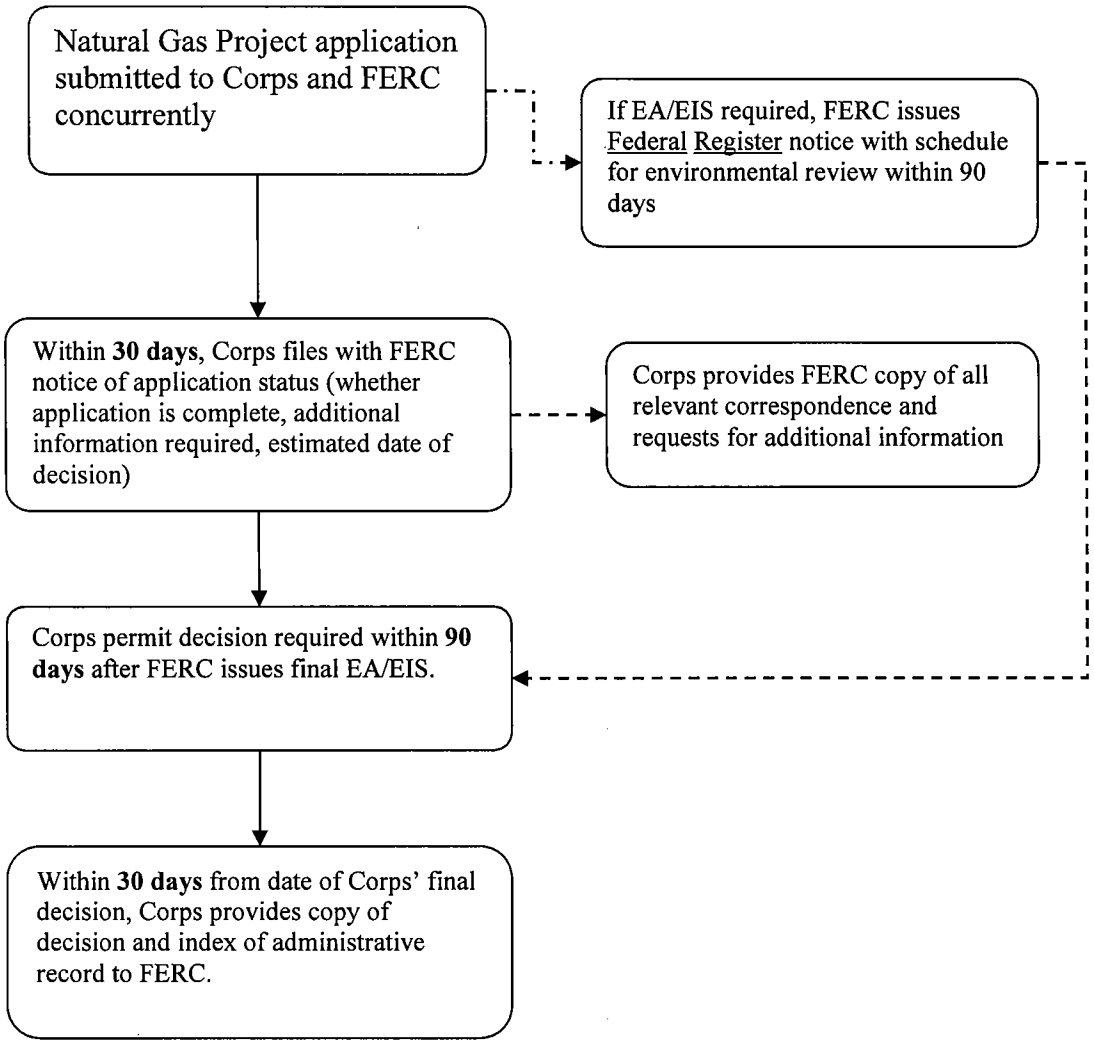
1. Copy FERC on all correspondence to the applicant or agent that is relevant to the permit decision.
2. Information may be submitted to FERC by electronic or hard copy.

4. <u>Duration.</u> This guidance remains in effect unless revised or rescinded.

DON T. RILEY
Major General, U.S. Army
Director of Civil Works

[5] A decision is considered final when it grants or denies an applicant authority to act, regardless of whether the decision is appealed.
[6] The Corps does not have to reproduce and transmit the contents of the entire record to FERC, provided the original materials are retained and available for a minimum of three years.

U.S. Army Corps of Engineers
NAME District
Consolidated Record
FERC Docket Number XXX
Corps Project Number XX-XXXX

Document Title	Tab or Page Number
Permit application with plans/drawings	
Jurisdictional Determination with supporting information	
Public Notice dated:	
Correspondence with applicant	
Correspondence with FWS	
Correspondence with NMFS	
Correspondence with EPA	
Section 106 correspondence	
Correspondence with State agencies	
Water Quality Certification	
Correspondence from public, with replies	
Correspondence from other stakeholders, with replies	
Mitigation Plan	
Combined Decision Document (EA/SOF, 404(b)(1) Analysis)	
Permit or denial letter	
Other Supporting documentation (aerial photos, topographic maps, soil survey maps, etc.)	
Relevant email, memoranda, notes	
Other:	

Flowchart For Processing of Individual DA permits for Natural Gas Projects