



US Army Corps
of Engineers ®
New England District

Fact Sheet

ARMY CORPS OF ENGINEERS REGULATORY PROGRAM PUBLIC HEARING INFORMATION HANDOUT

Applicant: Algonquin Gas Transmission Co. and Islander East Pipeline Co.

August 5, 2003

696 Virginia Road, Concord, Massachusetts 01742-2751

REGULATORY HISTORY

The U.S. Army Corps of Engineers began regulating the nation's waters in 1899 when Congress passed the Rivers and Harbors Act (33 U.S.C. 403). The primary focus of this act was the protection of navigation. In 1968 increasing national concern for the environment and water resources led to the adoption of the "Public Interest Review." This process considers fish and wildlife values, conservation, pollution, aesthetics, ecology, and other factors in a review designed to balance the favorable impacts against the detrimental impacts. "The National Environmental Policy Act of 1969, as amended, set forth requirements for federal agencies to use an integrated approach in planning and decision-making and requires that any project that significantly effects the environment must have an Environmental Impact Statement. The 1972 amendment to the Federal Water Pollution Control Act and issuance of the 1977 Clean Water Act expanded Corps authority beyond traditional navigable waters, to all waters of the United States, including wetlands. Additional regulations promulgated by the Environmental Protection Agency clarified that a permit cannot be issued unless the proposed activity complies with a set of guidelines designed to protect wetlands and other special aquatic sites from unnecessary destruction or degradation.

CORPS JURISDICTIONS

In this particular case, the Corps has regulatory jurisdiction over the discharge of dredged and fill material and the placement of structures in navigable waters. Corps jurisdiction encompasses any activity with the potential to alter or modify the course, condition, location or capacity of a navigable water.

The Corps jurisdictions in this case are:

- ◆ Section 404 of the Clean Water Act that regulates the discharge of dredged or fill material in waters of the United States, to include wetlands.
- ◆ Section 10 of the Rivers and Harbors Act that authorizes the Corps to regulate structures and work in navigable waters of the United States.
- ◆ the Clean Water Act, 404(b)1 guidelines, the federal environmental regulations governing the filling of waters and wetlands.
- ◆ the National Environmental Policy Act. The Federal Energy Regulatory Commission also known as FERC, is the lead federal agency for preparing the EIS.

REGULATORY APPROACH OF THE CORPS OF ENGINEERS

- ◆ The Corps is neither a proponent nor opponent of a permit proposal.
- ◆ The Corps determines the project purpose, the extent of the alternatives analysis, determination of which alternatives are practicable, which is the least environmentally damaging, the amount and type of mitigation and all other aspects of the federal decision-making process.
- ◆ Corps regulations require denial of a discharge if it does not comply with the Environmental Protection Agency's (404)(b)(1) guidelines. The fundamental precept of the guidelines is that discharges of dredged or fill material into waters of the United States, including wetlands, should not occur if there is a practicable alternative to the proposed discharge with less adverse impact on the aquatic ecosystem. Only the Least Environmentally Damaging Practicable Alternative (LEDPA) may receive a Corps permit.

- ◆ No permit will be issued to an applicant until certification has been provided that the proposed activity complies with the state of Connecticut's Coastal Zone Management program, and state water quality standards, or the Connecticut Department of Environmental Protection has waived its right to do so.
- ◆ The decision whether to issue a permit, and if so the conditions under which it will be allowed to occur, will be based on an evaluation of the probable impacts of the proposed activity and its intended use on the public interest.

The specific weight of each factor is determined by its importance and relevance to the particular proposal. Accordingly, how important a factor is and how much consideration it deserves will vary with every project. Full consideration and appropriate weight will be given to all substantive comments received in response to our Public Notice and our Public Hearing.

The following general criteria will be considered in the evaluation of every application:

- ◆ Relative extent of the public and private need for the proposed project.
- ◆ The practicality of using reasonable alternative locations and methods to accomplish the objective of the proposed project.
- ◆ The extent and permanence that the proposed activity is likely to have on the public and private uses to which the area is suited.

TYPICAL PROCEDURE FOR PROCESSING A PERMIT APPLICATION

1. Public Notice

The Corps uses the Public Notice as the primary method of alerting interested public agencies and private individuals to the proposed activity, and of soliciting comments and information, which the Corps uses, to evaluate the probable impact of the activity on the public interest. The District Engineer will consider all comments received in response to the Public Notice in subsequent actions on the permit application. Receipt of the comments will be acknowledged, if appropriate, and they will be made a part of the administrative record of the application.

2. Public Hearing

The Corps holds a public hearing if it is determined that additional information is necessary in order to move forward with the review of the application, and a hearing is the best way to obtain the necessary information. The primary purpose of this hearing is to collect information in order to complete review of the permit application.

3. Public Interest Review

The Corps undertakes an evaluation of the proposed activity in order to determine probable impacts. During this evaluation, expected benefits of allowing the activity are balanced against foreseeable detriments. Evaluation factors may include conservation, economics, aesthetics, cultural values, food and fiber production, navigation, recreation, water quality, safety, needs and welfare of the people.

4. Decision Documentation

In accordance with the record and applicable regulations, the Corps will determine whether or not a permit should be issued. The Corps evaluation process will attempt to balance the benefits that may reasonably accrue from a proposal against its reasonably foreseen detriments. As noted above, only the least environmentally damaging practicable alternative can receive a Corps permit. A statement of findings or record of decision will be prepared for all permit decisions.

COMMENT PERIOD

The public comment period is open until August 15, 2003.

For information on the **Corps process** or to submit written comments, please contact:

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For more information on the permit application, please visit our website at: <http://www.nae.usace.army.mil/projects/ct/islandereast/pipeline.htm>