



**US Army Corps
of Engineers**
Philadelphia District
1650 Arch Street
Philadelphia, PA 19103-2004
Attn: CENAP-OPR

Special Public Notice

Date: April 15, 2025
Special Public Notice Number: 25-02
Special Public Notice Name: Special Emergency Processing Procedures for Activities under Executive Order 14156 (Declaring a National Energy Emergency) in the State of Delaware
Email: PhiladelphiaDistrictRegulatory@usace.army.mil

TO WHOM IT MAY CONCERN: The purpose of this notice is to advise the public that the United States Army Corps of Engineers (USACE), North Atlantic Division has established special emergency processing procedures in accordance with 33 CFR § 325.2(e)(4) for the National Energy Emergency established by Executive Order (EO) 14156, which was issued on January 20, 2025, under the President's legal authorities, including the National Emergencies Act (50 U.S.C. 1601 et seq.) and Section 301 of Title 3, United States Code. These special emergency processing procedures have been established pursuant to Section 4 of EO 14156 for activities associated with the identification, siting, production, transportation, refining, and generation of domestic energy sources, including energy infrastructure, that require Department of the Army authorization under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and/or Section 103 of the Marine Research, Protection, and Sanctuaries Act of 1972, as amended. For the reasons stated in Section 1 of EO 14156, the President has found that these activities would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard permitting procedures.

The purpose of this public notice is to announce the establishment of the special emergency processing procedures for the purposes of EO 14156 and provide information to the public about those special emergency processing procedures in Delaware (see enclosure).

APPLICATION SUBMITTALS: To apply for the use of special emergency processing procedures, the applicant must follow the existing application submittal processes. USACE has developed Department of the Army Delaware State Programmatic General Permits (SPGP) for certain activities in navigable waters of the United States located in substantially developed artificial tidal lagoons and their access channels (SPGP-18) and all other navigable waters of the United States (SPGP-20) in Delaware. Applications for these SPGP-18 or SPGP-20 activities should continue to be submitted directly to DNREC. If DNREC determines that the activity meets an SPGP-18 or SPGP-20, verification of the SPGP is issued along with DNREC's authorization.

If the activity does not meet an SPGP, then applications and pre-construction notifications (PCNs) for activities in waters of the United States should be submitted to the Regulatory Request System (RRS) at <https://rrs.usace.army.mil/rrs/>. Alternatively, the USACE, Philadelphia District is still accepting applications and PCNs for activities in

waters of the United States at PhiladelphiaDistrictRegulatory@usace.army.mil. Applications for activities in wetlands and waters regulated by the State of Delaware should continue to be submitted to DNREC.

Emails containing an incoming application should include the project name in the subject line and the request to be reviewed under this process. Emails including attachments larger than 15MB may not be receivable through the email system. Please do not send a share site link in emails for USACE to download an application as USACE has limited access to such sites for security purposes. Please send an email to PhiladelphiaDistrictRegulatory@usace.army.mil to request a DOD SAFE link to upload documents larger than 15MB. Additional information on the Regulatory Program can be found on our website at <https://www.nap.usace.army.mil/Missions/Regulatory>.

If you have any questions concerning these special emergency processing procedures, please contact the Philadelphia District at (215) 656-6728 or PhiladelphiaDistrictRegulatory@usace.army.mil.

Todd A. Schaible
Chief, Regulatory Branch

Special Emergency Processing Procedures for Delaware under Executive Order (EO) 14156 March 2025

1. PURPOSE: These special emergency processing procedures outline the process for the Philadelphia District to authorize energy related activities requiring Department of the Army (DA) authorization for energy and critical minerals identification, development, production, transportation, refining, and generation capacity under EO 14156, Declaring a National Energy Emergency.

2. AUTHORITY: Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344), and/or Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. § 1413)

3. REFERENCES:

- a. EO 14156 Declaring a National Energy Emergency, signed January 20, 2025 (90 FR 8433-8437)
- b. 33 CFR § 325.2(e)(4) – Emergency procedures
- c. CECW-CO Standard Operating Procedures for the United States Army Corps of Engineers Regulatory Program, December 2024
- d. CECW-OR Emergency Permit Procedures, December 11, 1997
- e. CEQ Memorandum, Emergencies and the National Environmental Policy Act Guidance, September 14, 2020
- f. 40 CFR Part 121 – State Certification of Activities Requiring a Federal License or Permit
- g. 15 CFR Part 930 – Federal Consistency with Approved Coastal Management Programs
- h. 50 CFR Part 402 – Interagency Cooperation – Endangered Species Act of 1973, as amended, specifically 50 CFR § 402.05 – Emergencies
- i. 50 CFR Part 600, Subpart K – Essential Fish Habitat Consultation under the Magnuson-Stevens Act
- j. 36 CFR § 800.12 – Emergency Situations
- k. Appendix C to 33 CFR Part 325, Paragraph 14. Emergency Procedures

4. BACKGROUND:

a. Executive Order 14156 Declaring a National Energy Emergency, issued January 20, 2025, includes the following statements:

Section 1. Purpose. The energy and critical minerals (“energy”) identification, leasing, development, production, transportation, refining, and generation capacity of the United States are all far too inadequate to meet our Nation’s needs. ...

Sec. 2. Emergency Approvals. (a) The heads of executive departments and agencies (“agencies”) shall identify and exercise any lawful emergency authorities available to them, as well as all other lawful authorities they may process, to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources, including, but not limited to, on Federal lands. ...

Sec. 3. Expediting the Delivery of Energy Infrastructure. (a) To facilitate the Nation’s energy supply, agencies shall identify and use all relevant lawful emergency and other authorities available to them to expedite the completion of all authorized and appropriated infrastructure, energy, environmental, and natural resources projects that are within the identified authority of each of the Secretaries to perform or to advance. ...

Sec. 4. Emergency Regulations and Nationwide Permits under the Clean Water Act (CWA) and Other Statutes Administered by the Army Corps of Engineers. (a) Within 30 days from the date of this order, the heads of all agencies, as well as the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works shall: (i) identify planned or potential actions to facilitate the Nation’s energy supply that may be subject to emergency treatment pursuant to the regulations and nationwide permits promulgated by the Corps, or jointly by the Corps and EPA, pursuant to section 404 of the Clean Water Act, 33 U.S.C. 1344, section 10 of the Rivers and Harbors Act of March 3, 1899, 33 U.S.C. 403, and section 103 of the Marine Protection Research and Sanctuaries Act of 1972, 33 U.S.C. 1413 (collectively, the “emergency Army Corps permitting provisions”); and (ii) shall provide a summary report, listing such actions, to the Director of the Office of Management and Budget (“OMB”); the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works; the Assistant to the President for Economic Policy; and the Chairman of the Council on Environmental Quality (CEQ). Such report may be combined, as appropriate, with any other reports required by this order. (b) Agencies are directed to use, to the fullest extent possible and consistent with applicable law, the emergency Army Corps permitting provisions to facilitate the Nation’s energy supply.

Sec. 8. Definitions. ... (a) The term “energy” or “energy resources” means crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum

products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606 (a)(3). ...

[NOTE: Per 30 U.S.C. 1606 (a)(3), the term “critical mineral” means any mineral, element, substance, or material designated as critical by the Secretary under subsection (c). The term “critical mineral” does not include – (i) fuel minerals; (ii) water, ice, or snow; (iii) common varieties of sand, gravel, stone, pumice, cinders, and clay.]

b. 33 CFR § 325.2(e)(4), states: *Division engineers are authorized to approve special processing procedures in emergency situations. An “emergency” is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. In emergency situations, the district engineer will explain the circumstances and recommend special procedures to the division engineer who will instruct the district engineer as to further processing of the application. Even in an emergency situation, reasonable efforts will be made to receive comments from interested Federal, state, and local agencies and the affected public. Also, notice of any special procedures authorized and their rationale is to be appropriately published as soon as practicable.*

c. Standard Operating Procedures for the United States Army Corps of Engineers Regulatory Program December 2024 supports each division developing emergency procedures, as well as essential points of contact.

5. PROCESSES:

a. The Philadelphia District should fulfill as many standard procedures at 33 CFR § 325.2(a) as are reasonably tailored to the energy emergency situation, but the district will not delay a timely response because of any standard procedures.

b. Public notices. For activities requiring standard individual permits, reasonable efforts tailored to the energy emergency, such as potentially including a 7 to 15-day public notice comment period, will be made by district regulatory personnel. The public notice will outline the rationale for the procedures and to receive comments from interested federal, state, and local agencies, tribes, and the affected and interested public.

c. Water quality certification. Section 401(a) of the Clean Water Act and 33 CFR § 325.2(b)(1)(ii) preclude the district from issuing a permit until Section 401 water quality certification has been obtained or has been waived, or if water quality certification has been denied. This remains true in emergency situations. If the activity requiring DA authorization is not eligible for a general permit where water quality certification has been granted (with or without conditions) or waived for the issuance of that general permit, an individual water quality certification is required to be obtained or waived. A

waiver may be deemed to have occurred if the certifying authority has not granted or denied water quality certification prior to the end of the established reasonable period of time (RPOT) for the water quality certification request.

i. 40 CFR § 121.6(b) - The federal agency and the certifying authority may jointly agree in writing to the RPOT for the certifying authority to act on the request for certification, provided the RPOT does not exceed one (1) year from the date that the request for certification was received. Such written agreements may establish categorical reasonable periods of time.

ii. 40 CFR § 121.6(c) - If the federal agency and the certifying authority do not agree in writing on the length of the RPOT, the reasonable period of time shall be six (6) months.

iii. For an activity that requires a water quality certification or waiver, if water quality certification has not been issued or waived for the issuance of a general permit, the district may issue a provisional notification instructing them to provide a copy of the water quality certification or waiver to the district for the general permit decision. If the emergency activity requires an individual permit and water quality certification or waiver is required, the district may issue a provisional notification instructing them to provide a copy of the water quality certification or waiver to the district for the individual permit decision.

iv. After a water quality certification has been granted or waived, the district shall provide written notification to Region 3 of the U.S. Environmental Protection Agency (EPA) so that the EPA may make a determination about potential neighboring jurisdiction effects pursuant to Section 401(a)(2) of the Clean Water Act.

d. Coastal Zone Management Act (CZMA) Consistency Determinations. Section 307(c) of the CZMA of 1972 requires any non-federal applicant for a federal license or permit to conduct an activity affecting land or water uses in the state's coastal zone to furnish a certification that the proposed activity will comply with the state's coastal zone management program. Generally, no permit will be issued until the state has concurred with the non-federal applicant's certification. For an activity that requires a CZMA consistency concurrence or a presumption of concurrence, if a concurrence or presumption of concurrence has not been issued for the issuance of a general permit, the district may issue a provisional notification instructing them to provide a copy of the CZMA consistency concurrence to the district for the general permit decision. If the emergency activity is to be authorized by individual permit and CZMA consistency concurrence or a presumption of concurrence is required, the district may issue a provisional notification instructing them to provide a copy of the CZMA consistency concurrence to the district for the individual permit decision.

e. Endangered Species Act (ESA) Section 7. If the district engineer determines an emergency energy related action may affect a listed species or designated critical

habitat, the district will coordinate with the U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) (depending on which listed species or designated critical habitat may be affected) to ascertain measures which will ensure that the emergency actions are not likely to result in a take of a species or jeopardize the continued existence of the listed species or destroy or adversely modify critical habitat in the manner provided for in 50 CFR 402.05. The term emergency is defined in the USFWS's and NMFS's Section 7 consultation regulations at 50 CFR § 402.05(a) as "...situations involving acts of God, disasters, casualties, national defense or security emergencies, etc."

i. Pursuant to 50 CFR § 402.05(b), "[f]ormal consultation shall be initiated as soon as practicable after the emergency is under control. The Federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats."

ii. Information submitted by the Corps will include: (1) a description of the emergency energy-related action and why it was needed; (2) justification for the expedited consultation prior to implementation of the action; and (3) impacts of the action on listed species or critical habitat.

iii. If formal consultation is required, as soon as practicable after the emergency is under control, the action agency initiates formal consultation with the USFWS and/or the NMFS if listed species or designated critical habitat have been adversely affected. Although formal consultation occurs after the response to the emergency, procedurally it is treated like any other formal consultation.

iv. If, after the district coordinates with the USFWS and/or the NMFS to obtain recommendations to minimize the effects of the emergency response action listed species or their critical habitat, and the district determines the emergency response action may affect, but is not likely to adversely affect listed species or their critical habitat, the section 7 consultation process can be completed if the USFWS and/or the NMFS issue a written concurrence for the "may affect, not likely to adversely affect" determination. That written concurrence may be dependent on the district including measures to minimize effects to listed species and designated critical habitat as permit conditions in the DA authorization.

v. For adverse effects to listed species and designated critical habitat, at the conclusion of consultation USFWS and/or NMFS will provide their opinion on the effects of the emergency action on listed species and critical habitat.

f. Essential Fish Habitat Consultation under the Magnuson-Stevens Act. The Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act require federal agencies to consult with NMFS on proposed actions that may adversely affect EFH.

i. NMFS's EFH consultation regulations at 50 CFR § 600.920(a)(1) state: "Consultation is required for emergency Federal actions that may adversely affect EFH, such as hazardous material clean-up, response to natural disasters, or actions to protect public safety. Federal agencies should contact NMFS early in emergency response planning but may consult after-the-fact if consultation on an expedited basis is not practicable before taking the action."

ii. In emergency situations, abbreviated consultations may be conducted under 50 CFR § 600.920(h) ["NMFS and the Federal agency may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 30 days for consultation..."].

iii. In emergency situations, expanded consultations may be conducted under 50 CFR § 600.920(i) ["NMFS and Federal agencies may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 60 days for consultation ..."].

g. National Historic Preservation Act Section 106.

i. The Advisory Council on Historic Preservation has provided information regarding how the Section 106 emergency procedures identified in 36 CFR § 800.12(b) for emergency actions declared under EO 14156.

ii. Agencies should follow the emergency procedures included in agreement documents if a project already had executed an agreement document under Section 106.

iii. Agencies should follow 36 CFR § 800.12(b)(2) where there is not existing agreement document, which would require agency notification to the ACHP, SHPO/THPO, and Tribes/NHO with an opportunity to comment within seven (7) days. The ACHP would support additional time to comment should the schedule allow. (Note: 36 CFR § 800.12(b)(2) further states the following: "If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.")

iv. The ACHP has extended the use of 36 CFR § 800.12(b)(2) throughout the duration of the above-mentioned E.O., until its rescinded.

v. Section 110(f) of the National Historic Preservation Act which addresses National Historic Landmarks would still require agencies to avoid actions that would harm National Historic Landmarks and include the National Park Service in the process.

vi. Appendix C to 33 CFR Part 325, Paragraph 14. Emergency Procedures. The procedures for processing permits in emergency situations are described at 33 CFR § 325.2(e)(4). In an emergency situation the district engineer will make reasonable efforts

tailored to the emergency to receive comments from the SHPO, the THPOs and the ACHP, when the proposed undertaking can reasonably be expected to affect a potentially eligible or designated historic property and will comply with the provisions of this Appendix to the extent time and the emergency situation allows.

h. Tribal consultation and the Corps' tribal trust responsibilities. The Philadelphia District recognizes the sovereign status of American Indian Tribal Governments (federally recognized American Indian Tribes), and our obligation for meaningful consultation on a government-to-government basis. The district are committed to fulfilling our nation's trust responsibility to federally recognized American Indian Tribes in accordance with the United States Constitution, Treaties, Presidential Executive Orders, statutes, and the Supreme Court decisions that gave rise to and define that responsibility.

i. Many different statutes, regulations, executive orders, and federal policies direct federal agencies to consult with federally recognized American Indian Tribes including the National Historic Preservation Act (NHPA), as amended. Section 106 of the NHPA, 54 U.S.C. § 306108, and its implementing regulations at 36 CFR Part 800, requires federal agencies to take into account the effects of projects they carry out, license, or financially assist (undertakings) on historic properties and provide the ACHP a reasonable opportunity to comment on those undertakings. The NHPA also requires that, in carrying out its responsibilities under the Section 106 of the NHPA review process, a federal agency must consult with any federally recognized American Indian Tribe that attaches religious and cultural significance to historic properties that may be affected by the agency's undertakings, 54 U.S.C. § 302706 (b). An accountable process to interact with federally recognized American Indian Tribes is mandated in Executive Order 13175, Presidential Memorandum on Tribal Consultation, Presidential Memorandum on Strengthening Nation-to-Nation Relationships, 26 January 2021, and Corps' Tribal Consultation Policy dated 5 December 2023.

ii. The Corps must document all efforts to initiate and carry out consultation with federally recognized American Indian Tribes under Executive Order 13175 and the Corps' Tribal Consultation Policy. Such documentation, in the form of correspondence, telephone logs, e-mails, etc., should be included in the agency's official Section 106 of the NHPA administrative record. The Corps should also keep notes so that the consultation record documents the content of consultation meetings, site visits, and phone calls in addition to information about dates and who participated. Doing so allows agencies and consulting parties to review proceedings and correct any errors or omissions, thus facilitating better overall communication.

iii. Providing Public Notices to federally recognized American Indian Tribes does not serve as government-to-government consultation, unless such has been agreed to through previous government-to-government consultation. For applicable emergency activities, the district will follow any Tribal consultation processes previously development through government-to-government consultation and provide notice that the proposed activity is subject to EO 14156.

i. 408 permissions. DPM CW 2018-10 directs the USACE Regulatory and Section 408 programs to synchronize their reviews under their respective authorities, in order to be responsive to Administration priorities and support efforts toward streamlined federal environmental reviews. The district has developed internal, synchronized processes and will coordinate on all activities subject to EO 14156.