



SPECIAL PUBLIC NOTICE

PROPOSAL TO ACCEPT AND EXPEND FUNDS FROM THE PENNSYLVANIA
TURNPIKE COMMISSION TO EXPEDITE PERMIT APPLICATION REVIEW

U.S. ARMY CORPS OF ENGINEERS

BALTIMORE DISTRICT PHILADELPHIA DISTRICT PITTSBURGH DISTRICT

Special Public Notice: 23-29 Comment Period: July 18, 2023 to August 17, 2023
Corps Baltimore District POC: Marion Gall (814) 235-1761 marion.gall@usace.army.mil

This Special Public Notice announces that the United States Army Corps of Engineers, Regulatory Branches of the Baltimore and Philadelphia Districts and the Regulatory Division of the Pittsburgh District (Corps) are considering a proposal to accept and expend funds provided by the PENNSYLVANIA TURNPIKE COMMISSION (COMMISSION) to expedite processing of COMMISSION Department of the Army (DA) permit applications, subject to a series of limitations in accordance with: Section 214 of the Water Resources Development Act of 2000, as amended; 33 USC Chapter 36 Section 2352. Any finalized agreement shall be in effect for an initial period of five (5) years from the effective date, unless otherwise terminated by either party in accordance with procedures outlined in the Memorandum of Understanding between the Corps and the COMMISSION. This public notice solicits comments from the public on the proposed acceptance and expenditure of funds contributed by COMMISSION to expedite the evaluation of the COMMISSION's DA permit applications.

Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541), as amended and codified at 33 U.S.C. 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by non-federal public entities, public-utility companies, natural gas companies, or railroad carriers to expedite the evaluation of a permit application of that entity, company, or carrier related to a project or activity for a public purpose under the jurisdiction of the Department of the Army. The authority to accept and expend funds under Section 214 has been delegated from the Secretary of the Army to District and Division Commanders, including the Commanders of the Baltimore, Philadelphia, and Pittsburgh Corps Districts.

The COMMISSION is eligible to provide funds to the Corps under Section 214 as non-federal public entity.

Definition of non-federal public entities:

Non-federal public entities include state and local governmental agencies or government public authorities, as well as federally recognized Tribes. Examples of non-federal public entities include, but are not limited to, state and local transportation agencies, port authorities, and flood and storm water management agencies. One or more non-federal public entities may enter into a Section 214 funding agreement with the Corps.

Purpose for the proposed funding agreement:

The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual federal budget. The Corps expects that this agreement will allow for retentions of a higher staffing level. Without COMMISSION funding for additional staff, the Corps is unable to expedite the evaluation of COMMISSION Section 404 Clean Water Act, Section 10 Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection Research and Sanctuaries Act Department of the Army permit application(s) using current resources. Funds received from the COMMISSION would be used by the Corps to expedite the review of COMMISSION permit applications in accordance with the provisions of Section 214 of WRDA 2000, as amended. The Baltimore District (lead District), Regulatory Branch, would establish a separate account to track receipt and expenditure of the funds to ensure they would be expended for the intended purpose. Corps employees would charge their time against the established account when processing COMMISSION priority permit applications and conducting other related activities as specified below:

Activities for which funds would be expended:

Funds would be expended primarily on the labor and overhead of the Corps personnel processing COMMISSION priority permit applications. Such permit application processing activities would include, but not be limited to, the following: pre-application meetings, application reviews, jurisdictional determinations, site visits, preparation of public notices, preparation of correspondence, meetings, coordination activities, endangered species and cultural resource reviews, public interest review, distribution of public notices, analysis of alternatives, compensatory mitigation proposal reviews, preparation of environmental assessments or environmental impact statements, preparation of permit decision documents, compliance inspections, training, travel, outreach, the development of programmatic tools, the review of mitigation banking instruments, and participation in early project planning or coordination activities. Funds may also be expended to pay for support services to perform select duties, such as technical writing or review of specific technical or legal documents (e.g. biological assessments for endangered species or contracts to develop National Environmental Policy Act documents).

If the funds accepted by the Corps under a funding agreement are fully expended and are not renewed, any remaining tasks necessary to complete processing of the COMMISSION permit application(s) would be handled like those of any other non-participant, subject to the availability of funds.

How funds are expected to expedite permit review process:

Since the purpose of Section 214 is to expedite the permit review process, a Section 214 funding agreement is an ideal vehicle to improve the permitting process for COMMISSION projects that require a Corps authorization. The Corps and the COMMISSION believe that dedicated Corps project managers would be able to develop expertise in the types of projects performed by the COMMISSION, which could improve the efficiency of the review process. Further, based on experience and the volume of expected COMMISSION permit applications going forward, the Corps expects that using funds accepted from the COMMISSION to fund dedicated Corps project managers for COMMISSION permit applications would result in expedited reviews for COMMISSION projects. A Section 214 funding agreement would also improve the ability of the Corps and COMMISSION to coordinate and prioritize the review of projects based on COMMISSION project schedules and deadlines. In addition, hiring a dedicated Corps project manager for COMMISSION permit applications would also benefit the reviews of non- COMMISSION permit applications since existing Corps project managers that would otherwise be working on COMMISSION applications would have additional time to work on applications for other applicants.

Procedures to ensure impartial decision-making:

To ensure the funds would not impact impartial decision-making, the Corps would incorporate the following procedures into the funding agreement:

- a) All final permit decisions where funds were used for the permit review process would be reviewed and approved in writing by a Corps official that is at least one level above the typical Corps decision-maker. Funds accepted under the agreement would not be expended for review of such decisions by supervisors or other Corps officials in the decision-making chain of command. Additionally, the one-level-above reviewer would hold a position that is not partially or fully funded by COMMISSION for at least one year.
- b) Instruments for mitigation banks or in-lieu fee programs proposed for review by the funding entity would be signed by the District's Regulatory Branch Chiefs, an equivalent, or a higher-level position that is not funded by any funding agreement.

- c) All preliminary jurisdictional determinations (JDs) and approved JDs where funds would be used to complete the JD would have documentation in the administrative record that a non-funded Corps Regulatory Program staff member conducted a review of the determination. This review would not require a field review. For those approved JDs that require coordination with the United States Environmental Protection Agency, additional internal review would not be required.
- d) The Corps would not use funds accepted under this agreement to conduct enforcement activities; this includes, but is not limited to, the resolution of noncompliance issues.
- e) The Corps would comply with all applicable laws and regulations and would not eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration.
- f) To ensure transparency, the Corps would ensure the funding agreement and all final permit decisions carried out using funds accepted from the COMMISSION would be made available to the public on the Corps Headquarters' public web pages at: <https://permits.ops.usace.army.mil/orm-public#> and <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Section-214/>.

Impacts to the Regulatory Program:

We expect that this funding agreement would have a net positive impact on the Corps Regulatory Program's evaluation of other applicants' permit applications. The Corps would use the funds to maintain Corps project managers to process the COMMISSION's DA permit applications. This would allow existing Corps staff that would otherwise review COMMISSION applications to focus on the review of non-COMMISSION permit applications. The area of responsibility of the Corps applicable to the proposed funding agreement includes the geographic boundaries of the Commonwealth of Pennsylvania.

Consideration of Comments:

This public notice has a 30-day comment period. Following the review of comments received, the Baltimore District (lead District), Commander will determine if acceptance and expenditure of the funds is compliant with Section 214. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is compliant with Section 214, that the Corps would be able to preserve impartial decision-making, and that the timeframes of permit application reviews for

other applicants would not be adversely affected, the Corps may execute a Memorandum of Understanding with the COMMISSION pursuant to Section 214 and proceed to accept and expend such funds from the COMMISSION. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit application processing, or other appropriate justification. A final informational public notice will be issued regarding the District Commander's decision. If a Memorandum of Understanding is executed by the Corps and the COMMISSION and later amended to change the amount of funds previously furnished or to extend the duration of the agreement, no new public notice will be issued provided that the purpose of the agreement remains the same as described in this notice.

Submission of Comments:

Interested parties may submit, in writing, any comments concerning this proposal. Comments should refer to Special Public Notice No. 23-29 and be submitted by the comment due date of August 17, 2023. Comments must be sent by mail to the United States Army Corps of Engineers, Baltimore District, Regulatory Branch ATTN: Marion Gall, State College Field Office, Suite 101, State College, Pennsylvania 16801 or by email at marion.gall@usace.army.mil with Special Public Notice No. 23-29 in the subject line.