



August 1, 2011

EPA Docket Center
EPA West, Room 3334
1301 Constitution Avenue, NW.
Washington, DC 20460
Attention: Docket ID No. EPA-HQ-OW-2011-0409.

Re: Docket ID No. EPA-HQ-OW-2011-0409

Dear Sir/Madam:

The Interstate Natural Gas Association of America (“INGAA”) respectfully submits the attached comments to the U.S. Environmental Protection Agency’s (“EPA’s”) and U.S. Army Corps of Engineers’ (“Corps”) Draft Guidance on Identifying Waters Protected by the Clean Water Act (“Draft Guidance”). INGAA appreciates the opportunity to offer both agencies the perspective of America’s natural gas pipeline industry.

INGAA is a non-profit trade association that represents the interstate and interprovincial natural gas pipeline industry operating in North America. INGAA’s U.S. members transport over 85 percent of the nation’s natural gas through a network of 185,000 miles of pipelines.

Due to the linear nature of interstate natural gas pipelines, INGAA’s members have extensive experience with and interest in the process for obtaining Clean Water Act (“CWA”) permits and, in particular, Section 404 permits. While the Draft Guidance is focused on the substantive issue of defining “waters of the United States” subject to CWA jurisdiction, it has the potential to negatively impact Section 404 permitting both substantively and procedurally.

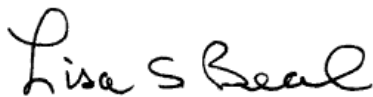
Substantively, the Draft Guidance significantly and improperly expands EPA’s and the Corps’ CWA jurisdiction with a cumbersome and difficult-to-implement definition that will increase the costs, timing, and administrative burden of Section 404 permitting with little conservation benefit.

Procedurally, the Draft Guidance casts a cloud on the use of preliminary Jurisdictional Determinations (JDs) and stands to delay all permitting by adding to an already overwhelming caseload. In accordance with the Corps' Regulatory Guidance Letter ("RGL") 08-02, many of INGAA's members follow the Corps' preliminary JD approach in lieu of obtaining an approved JD. This approach allows an applicant to assume that wetlands and waterbodies that will be affected by a proposed action are subject to CWA jurisdiction, foregoing the process for obtaining an approved JD, in exchange for waiving the right to challenge the assertion of jurisdiction. While the Draft Guidance does not appear to affect the process outlined in RGL 08-02, INGAA requests EPA and the Corps clarify that applicants will continue to have the opportunity to obtain a Section 404 permit based on a preliminary JD, avoiding the need to determine whether a wetland or waterbody is actually a water of the U.S. subject to CWA jurisdiction.

Furthermore, INGAA is concerned that the Draft Guidance will significantly delay Section 404 permitting, whether an applicant is seeking an approved JD or a preliminary JD. The Corps has limited staff resources, so the implementation difficulties and increased reach of the Corps' jurisdiction under the Draft Guidance will undoubtedly result in a backlog of all JD requests, and, thus, all permit approvals. INGAA recommends the Corps develop a separate permit approval track for applicants seeking preliminary JDs, to ensure the Draft Guidance does not undermine applicants' ability to use preliminary JDs "to move ahead expeditiously to obtain a Corps permit authorization."¹ At a minimum, the Corps should develop a mechanism that ensures that the Draft Guidance does not slow the process for obtaining preliminary JDs even as it triggers delays in issuing approved JDs.

Thank you for the opportunity to comment on the Draft Guidance. We very much appreciate your time and effort in this important matter. Please contact me at 202-216-5935 or lbeal@ingaa.org if you have any questions. Thank you.

Sincerely,



Lisa Beal
Vice President, Environment and Construction Policy
Interstate Natural Gas Association of America

¹ See RGL 08-02 at 3.