

Improving Environmental Coordination of Oil and Gas Pipeline Permitting for States and Tribes: What Can be Done?

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Association of State Wetland Managers

This document was developed by the Association of State Wetland Managers with a [national project workgroup](#) consisting of state, tribal, federal, consulting business, academic and nonprofit members. The project was facilitated by Brenda Zollitsch, PhD, Senior Policy Analyst, Association of State Wetland Managers. For more information about ASWM, the project workgroup or other project materials, visit the [ASWM Pipeline Permitting Web Resource](#) or contact the Association of State Wetland Managers at (207) 892-3399.



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Introduction: A Growing Need to Improve Coordination Between State and Tribal Agencies and the Oil and Gas Industry for Review of Pipeline Permit Applications

Permitting of linear oil and gas pipeline projects involves complex processes, undertaken by a range of parties that are each working to address specific regulatory goals and requirements. In recent years, the growth of the natural gas industry has expanded pipeline development into states unaccustomed to pipeline permitting and has increased the number of permits necessitating review by states and tribes. While this growth is a critical economic driver, it comes with challenges as well. Pipeline development often results in short- and long-term, temporary and permanent impacts to environmental resources, including wetlands and other waters. Because of these impacts, states and tribes are tasked with working with pipeline project applicants to avoid and minimize impacts to aquatic resources and, where impacts are unavoidable, provide compensatory mitigation of impacted resources.

This document represents the culmination of a two-year project designed to identify and address challenges faced by states and tribes when working to provide effective and efficient coordination in the process of pipeline permitting of aquatic resources. ASWM's project findings provide an overview of common issues and proposes actions to more effectively coordinate between permitting agencies and oil and gas pipeline permit applicants. Also included are brief descriptions and links to resources ASWM has developed to support state and tribal pipeline permitting capacity-building efforts.

Project Findings

A wide range of issues that pose challenges for effective and efficient coordination of oil and gas pipeline permitting was identified by ASWM’s research into the needs of states and tribes. While each state and tribe has unique needs and circumstances, a number of common themes emerged. In the following sections of the document, ASWM provides associated suggestions for improved coordination that can be undertaken by states and tribes to help address these challenges. More in-depth information is documented in ASWM’s matrix of needs, associated potential solutions, useful contacts and supporting resources to aid states and tribes as they consider pipeline permitting projects (see aswm.org).

Common Oil and Gas Pipeline Permitting Issues Identified as Needing Improved Coordination between State/Tribal Permitting Agencies and Oil and Gas Pipeline Permit Applicants:

- 1) Clarity or Agreement about Permitting Process Steps, Requirements and Access Points:** There is a need to make the permitting process more transparent and predictable. Delays may occur due to submission of incomplete applications or unfulfilled requirements for data or analysis by the applicant. It is common for overly-general applications to be submitted that require follow-up and potential delays in approval. A need for clear communication of process steps where states and tribes can provide input, and points of access were identified during this project. New ways of conveying this information that are current and understandable by the range of key actors in the permitting process could improve this communication.
- 2) Staffing/Time Allocated to Review Growing Number of Permit Applications:** An increase in permit applications, restricted budgets and varied agency priorities have led many states and tribes lacking adequate staffing to efficiently review the growing number of pipeline permits requiring review. ASWM has also found a major shift in the wetland workforce. In recent years, many senior staff with decades of experience addressing impacts to aquatic resources are now retiring and being replaced by staff with less experience and training.



Reorganization has also happened in many states resulting in staff no longer working side-by-side with others involved in complementary elements of the permit review process. As a result, states and tribes may be operating with a reduced staff who may have limited training and a growing number of highly complex permitting tasks.

3) Training Opportunities on State/Tribal-level Regulations and Permitting: In many cases, there is limited time and money allocated for public/applicant training on natural resource regulations and permitting processes at the state and tribal level. This can result in an inadequate understanding of the appropriate application requirements for specific planned activities and when in the planning process to incorporate issues that may need to be addressed during the permitting process. Many states identify a growing need for access to anytime/anywhere training available for use by public and staff alike. In addition, the growing utility industry has changed many elements of construction and BMPs, leaving permitting staff unfamiliar with these projects and practices.

4) Involvement in the Planning Phase of Pipeline Projects may Result in Delays During the §401 Certification and Other State/Tribal Permitting Review Processes: The right to review, condition and certify federal permits of discharges into waters of the United States under the Clean Water Act §401 is a fundamental state right as part of cooperative federalism. In addition, many states have other laws regulating wetlands, lakes and streams that require specific permitting. However, for interstate natural gas transmission pipelines, frustrations often arise during the state regulatory process because applicants have worked through the environmental certifications of the FERC process, but then come up against additional state requirements.



Many times, this is because states and tribes do not participate in the planning process during the project design phase (either because they are unaware of this opportunity or have chosen not to participate) and/or there is a lack of understanding of permit requirements at the state/tribal level. In some, but not all cases, applicants may not receive information about state/tribal expectations for data, research, analysis and best practices, as well as specific geographic areas to avoid when creating the pipeline path until planning is already complete and/or difficult to change.

5) Complete Applications and Supporting Analysis: In the same vein, one of the leading reasons for delays reported by states and tribes is the submission of incomplete applications by pipeline project applicants. Incompleteness comes in many forms, but delays are most often due to a lack of data, alternative analysis, and efforts to avoid or minimize impacts. An example of this lack of completeness might be inadequate testing by the applicant to support decisions about horizontal directional drilling (HDD) activities. Challenges facing states and tribes may occur around lack of proper planning in the upfront design phase leaving the state

and tribal requirements as an afterthought, unclear expectations given by the regulating entity, a lack of transparency in the process and a lack of formalized best practices that can be adapted based on context and conditions.

- 6) **Shared Terminology, Concepts and Goals:** Representatives from state and tribal regulatory agencies, energy companies, consultants and other parties come to the permitting process with varied backgrounds, roles and specialized knowledge. A barrier to effective permitting often includes misunderstandings about what language and acronyms mean, the needs and goals of various involved parties for different actions, and how to work collaboratively to overcome these through the permit planning and review process.
- 7) **Consistency between Regulated Entities:** Inconsistencies can occur at any level of government (federal/federal-state, within a state/tribe, or at the state-local level. One frustration that exists for some states and tribes centers around inconsistencies in expectations, required practices or permitting procedures. This may occur within a specific agency or between agencies. In many cases, this emerges from parties not having worked together to identify an agreed upon process or to formalize forms, practices or expectations around what is required for a complete application.
- 8) **Expert and Legal Support to Address Complex Problems and Challenges:** At times, states and tribes may need to question the accurateness or completeness of a permit application. At these times, states and tribes benefit greatly from the support of external resource management and legal experts to assist in review and defense activities. Disagreement and/or confusion over the applicability of laws and regulations should be resolved with expert assistance that is often not available to permitting staff. Additionally, some states and tribes report that they lack access to specific expertise (e.g. endangered species, geological considerations, engineering), which may lead to delays.

Some other identified issues, while common, are more difficult to address through state and tribal regulations. Three examples serve as reminders of additional factors that can complicate efforts that states and tribes make to improve coordination in the permitting processes.

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- A leading example of a difficult problem in pipeline permitting is the piecemeal approach energy companies often take when applying for permits for larger pipeline development projects. Rather than presenting the entire project for review and permitting at one time, it is often broken into



- multiple permit applications presented as single and complete projects as defined by the Army Corps of Engineers. This approach does not allow for a comprehensive analysis of impacts from the whole project and makes it difficult to employ strategies that protect the larger watershed and its aquatic resources.
- Another common hard-to-address issue during review of projects regulated by FERC is the inability of permit applicants or regulators to gain access to land for assessment prior to eminent domain coming into effect. Without access to the land, assessments cannot be made about the impacts to water resources, including temporary and permanent impacts to wetland condition and functions.
- Finally, political uncertainty which can present at the federal, state or local level may present a challenge for states and tribes. Shifts in political focus can result in unpredictable efforts to reform/repeal existing regulations or new interpretations of regulatory language that serve as the foundation for permit review. Efforts to streamline permitting processes and shorten timelines may also change how effective states and tribes can be in their review efforts. Operating within this uncertainty can complicate state/tribal efforts to establish consistent and transparent permitting processes and develop regulatory expertise.



Strategies and Tools for States and Tribes

While there are many barriers that can complicate and slow permitting processes, there are also tools that exist or have been created as part of ASWM's project to address some of them. Using a need-based planning process, the project has identified the following **capacity building actions** that states and tribes may want to undertake as part of their oil and gas project permitting efforts:

- ✓ **Action 1:** Understand the value of and invest in creating training modules or education and outreach documents specific to pipeline projects for both the public/applicants and regulatory staff. Invest in an adequate number of well-trained staff to efficiently implement required permitting processes. Conduct regular training for both the public and permitting staff to ensure that they are informed of the latest policies and regulations, as well as specific resource considerations required for the review of permit applications. Permitting staff would benefit from increased training opportunities on pipeline methods and procedures. Pipeline project applicants would benefit from increased training on state/tribal regulations, processes and resources.

ASWM has created a menu of [resources that can be used by trainers](#) to supplement their state/tribal training resources, including guides, templates, archived webinars on key pipeline permitting topics, and checklists.

- ✓ **Action 2:** Develop and implement clear, transparent processes, including up-to-date process maps and documentation of what is required in a complete 401 Certification and other state/tribal-level resource permit applications. Engage in dialogue around the steps and points of access in the permitting process with partner agencies, applicants and consultant intermediaries to ensure common

understandings and expectations. Ensure that pipeline companies incorporate this as part of their planning processes.

ASWM has developed a [Process Mapping Guide, a Template Process Map and Example Process Maps](#) to assist states and tribes as they develop and use process maps.

- ✓ **Action 3:** Engage as early in the planning process as possible, including state/tribe participation in the pre-application phase to encourage adoption of planning and construction decisions that are compatible with the state/tribe's 401 certification and state resource regulatory review requirements and conditions (e.g. data required, analysis completed, specific best practices incorporated).

ASWM provides [suggestions for ways to more effectively engage in the pre-application planning process](#) (see pre-application planning BMPs in ASWM's Guide). Additional information is presented in [project webinars](#).

- ✓ **Action 4:** Work to identify potential differences in language, concepts and goals between the various parties involved in permitting and engage in dialogue with these parties to reach common understanding.

ASWM has created [language and discussion guides](#) to assist states and tribes with this work. These guides can be used to assist in improving communications within agencies, between agencies, between levels of government, and between regulator and regulated entities.

- ✓ **Action 5:** Identify and develop state/tribe-specific standardized best practices for various types of activities to ensure consistency and effective protection of aquatic resources. Establishing best practices will also set clear expectations that improve the efficiency and predictability of permitting processes. These may be voluntary or required and should be available to pipeline developers as they begin planning their development activities.

ASWM has developed a [Best Management Practices \(BMP\) Identification and Development Guide](#), as well as the document's appendices of BMP examples for administrative, legal and regulatory, planning, construction and post-construction BMPs to assist states and tribes in the process of formalizing expectations around pipeline development and maintenance activities.

Conclusions

For states and tribes that are either newly or increasingly engaged in oil and gas pipeline permitting, the pressure to find ways to coordinate with pipeline permit applicants before and during the permitting processes in order to avoid unnecessary delays is intensified. Limited resources and staff time require states and tribes to craft permitting processes that maximize the resources they have and secure additional support through better communications and strong partnerships. While some of the common issues that arise are harder to address than others, the findings and products of ASWM’s Pipeline Permitting Project provide some initial guidance in specific areas that may prove to be useful in these efforts.



Check out resources now available from ASWM’s Oil and Gas [Pipeline Permitting Project](#) designed to:

- Increase understanding about common issues preventing effective communication between state and tribal pipeline regulators and pipeline permit applicants during the permitting process and suggest potential solutions/share lessons learned
- Help states and tribes share their §401 certification and other resource permitting processes through process maps
- Identify and integrate pipeline permitting best practices into upfront planning and permitting processes
- Consider cumulative adverse effects in planning, application, and assessment activities
- Build shared understanding and improve communications between parties involved in pipeline planning and permitting activities
- Encourage regular, ongoing training for those involved in permitting processes (both state/tribal regulators and pipeline project applicants) to build general and technical capacity



ASWM Resources

Overview

The potential for multiple impacts (temporary, long-term and cumulative) from pipeline development projects necessitates extensive inter-agency and inter-sector coordination and the integration of best practices in the planning, administration, review and conditioning of permits.

ASWM has developed a range of tools and resources to build the capacity of state and tribal wetland programs to protect aquatic resources impacted by energy development through more informed and effective engagement in both the pre-application and §401 Certification phases of the permitting process.



Resources for States and Tribes

ASWM has developed a set of resources to assist states and tribes build their capacity to review natural gas and oil pipeline permits. These resources focus on the pre-application phase and the §401 Certification Process.

[Learn more](#)



Resources for Oil and Gas Companies and Consultants

ASWM has developed a set of resources that may help facilitate better communication between consultants who serve as intermediaries to energy companies and state/tribal regulators.

[Learn more](#)



Useful External Resources for Oil and Gas Pipeline Permitting

ASWM has developed a range of resources that may be of interest to other entities, including nonprofits, businesses, academia and other government entities.

[Learn more](#)

The [Association of State Wetland Managers](#) is a 501(c)(3) nonprofit incorporated in 1983 with the mission to incorporate sound science into wetland policy. For more information, contact Brenda Zollitsch, Senior Policy Analyst at Brenda@aswm.org or call (207) 892-3399. ASWM’s

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