DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

Regulatory Branch

MAY 0 6 2014

SUBJECT: Permit Application Number NAN-2012-00449-UBR by Constitution Pipeline Company, LLC To Fill Approximately 154 Acres of Regulated Waters and Wetlands in New York and Pennsylvania To Enable Construction of a New 124-Mile-Long Natural Gas Pipeline

Constitution Pipeline Company, LLC
Attn: Timothy Powell
2800 Post Oak Boulevard
Houston, TX 77056

Dear Mr. Powell:

This letter provides a list of missing items preventing the Corps of Engineers from beginning the decision-making phase on Constitution's request for Department of the Army authorization to discharge fill material into 153.54 acres of regulated waters (including wetlands) of the United States to facilitate the construction of a new buried 124-mile-long, 30-inch-diameter, natural gas pipeline between Brooklyn Township, Susquehanna County, Pennsylvania and the Town of Wright, Schoharie County, New York.

Constitution's request was submitted to the US Army Corps of Engineers New York and Buffalo Districts, as a Pre-Construction Notification (PCN) under Nationwide Permit (NWP) Number 12, UTILITY LINES, as prescribed in the Federal Register dated February 21, 2012 (77 FR 10184); and to the Baltimore District under the Pennsylvania State Programmatic General Permit-4 (PASPGP-4). Your company's proposed 153.54 acres of regulated waters and wetlands filling work does not meet the criteria for verification affirmation under an existing general permit, based upon the criteria outlined in 33 CFR 330.1(d), including exceeding environmental standards in the Section 404(b)(1) guidelines, more than minor probable impacts on the aquatic environment, public interest factors, and on the project's inability to comply with NWP and PASPGP-4 General Conditions. As a result, we have determined that the regulated activities will continue to be reviewed within the individual standard permit process. Constitution's permit application will therefore continue to be reviewed within the individual standard permit process as one application for all three Corps of Engineer Districts.

The proposed regulated work includes the permanent filling and loss of 0.75 acres (0.43 acres in NY and 0.29 acres in PA) of regulated waters (including wetlands) of the United States to facilitate the construction of permanent access roads for future pipeline inspection and maintenance (i.e. forested wetlands, or scrub-shrub wetlands, or emergent wetlands areas are changed to upland).

In addition, the proposed regulated work includes the temporary discharge of fill materials into 24.44 acres (22.06 acres in NY and 2.38 acres in PA) of regulated waters (including wetlands) of the United States, resulting in a permanent conversion or change in the type of these waters (i.e. forested wetlands or scrub-shrub wetlands are permanently changed to emergent wetlands after the temporary regulated fill material is properly removed and area properly restored).

Further, the proposed regulated work includes the temporary discharge of fill materials into 128.35 acres (109.15 acres in NY and 19.20 acres in PA) of regulated waters (including wetlands) of the United States, resulting in no conversion or change in the type of regulated waters (including wetlands) of the United States (i.e. emergent wetlands remain emergent wetlands after the temporary regulated fill material is properly removed and area properly restored).

In summary, Constitution's application is to discharge fill material into a total of 153.54 acres (131.67 acres in NY and 21.87 acres in PA) of regulated waters (including wetlands) of the United States, based upon the applicant's submitted information. We acknowledge that to date, approximately 16% of the project length and 37% of the applicant-identified waters, wetlands, and streams have been delineated using remote sensing technology, which have yet to be verified on the ground. Based upon our recent face to face meetings, we understand your company and consultants continue to do field work to replace the remote-sensing results. We understand you will continue the field work to minimize these percentages as you obtain real estate access permissions. The Corps requires a higher percentage of field verification prior to beginning the decision-making phase, in order to have greater confidence in the amount of intrusion into the regulated aquatic environment and the resultant environmental impacts.

The proposed discharges of fill materials into 153.54 acres of regulated waters (including wetlands) of the United States must be in compliance with the Clean Water Act Section 404(b)(1) Guidelines (40 CFR Part 230). The Guidelines are the substantive criteria used in evaluating discharges of dredged or fill material under Section 404 of the Clean Water Act. Among other criteria, the Guidelines require that any discharge of dredged or fill materials into regulated waters (including wetlands) of the United States is the least environmentally damaging practicable alternative. Therefore, Constitution must submit to this office a written demonstration of compliance with the Guidelines. This must include a detailed analysis of alternatives to eliminate and/or minimize the amount of filling of regulated waters (including wetlands) of the United States. This includes discharge alternatives which would meet the purpose and need for your company's pipeline project. Specifically, based upon information we've received to date, it appears that Alternative "M", which would co-locate much of the project route along the existing I-88 corridor, may be a practicable alternative, which

may result in fewer environmental impacts. If an alternative is not practicable as defined at 40 CFR Part 230.10(a), include the explanation why it is not practicable in your company's submittal. We request that Constitution provide such a demonstration of compliance because it is needed for the Corps of Engineers to begin the decision-making phase on your company's application.

The fundamental precept of the Section 404(b)(1) Guidelines is that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern. In order for this determination to be made, your company must submit a cumulative effect analysis addressing the incremental impact of the proposed pipeline activities when added to other past, present, and reasonably foreseeable future actions within the vicinity of the proposed construction activities within the aquatic ecosystem.

In addition, 33 CFR Part 332 requires compensatory mitigation for permanent loss and/or permanent conversion of regulated Waters (including vegetated wetlands) of the United States. The 25.19 acres of proposed filling which meet this requirement must have compensatory aquatic mitigation that not only meets the requirements of 33 CFR Part 332, but that is also acceptable to the State of New York and the Commonwealth of Pennsylvania. At this time, based upon recent meetings, we understand your company's conceptual mitigation plan approach is that a combination of In-Lieu Fee and Permittee-Responsible mitigation will be used to offset justified and remaining unavoidable impacts to the aquatic environment from regulated filling activities. We request that your company provide such a compensatory mitigation plan as soon as possible for review because the final acceptable and State-approved plan is ultimately needed for the Corps of Engineers to begin the decision-making phase on your company's application.

As your company knows, the Federal Energy Regulatory Commission (FERC) is the Lead Federal Agency for your company's proposed pipeline project and their Final Environmental Impact Statement (FEIS) is anticipated to be issued on or about June 13, 2014. As the lead Federal agency, the FERC is responsible for documenting compliance with the Endangered Species Act (ESA) and with Section 106 of the National Historic Preservation Act. The Corps of Engineers cannot enter the decision-making phase on your company's application until all required consultation under the Endangered Species Act and National Historic Preservation Act is completed and finalized, and provided to this office. In addition, your company must provide this office a copy of the Federal Energy Regulatory Commission's Record of Decision on the

proposed pipeline project before the Corps of Engineers can enter the decision-making phase on Constitution's permit application.

Furthermore, your company must provide this office a Section 401 of the Clean Water Act water quality certificate (WQC) from the State of New York and the Commonwealth of Pennsylvania covering the 153.54 acres of filling of regulated waters (including wetlands) of the United States prior to the Corps of Engineers completing the decision making-phase on your company's permit application.

If questions arise concerning this letter, please contact my Chief, Upstate Section, Ms. Amy Gitchell at (518) 266-6364.

Sincerely,

Jodi M. McDonald
Chief, Regulatory Branch

Copy furnished:
CENAN-OP-RU (K. Bruce)
CELRB-TD-R
CENAB-OP-R
CENAD- Regulatory
CELRD - Regulatory
K. Bowman, FERC
R. Niver, USFWS
T. Sullivan, USFWS
L. Knutson, USEPA
S. Tomasik, NYSDEC
J. Buczynski, PADEP
P. Perazio, NYSOPRHP
L. Schubring, Williams
G. Hufnagel, AECOM