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Recent Executive Order Extends Beyond Section 401 Water Quality Certifications

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The Executive Order (EO) "***Promoting Energy Infrastructure and Economic Growth***," issued by the White House on April 10, 2019 has primarily been heralded as an effort to prevent states from blocking pipelines under their Clean Water Act ***Section 401 certification authority***. President Trump addressed a number of other energy issues in the same Executive Order, however, all attempting to remove barriers to energy projects in the U.S. As summarized below, these include a call for updating regulations governing LNG facility safety regulations, addressing sunset provisions in agreements for energy infrastructure on federal lands, and requesting reports assessing impediments to fuel supply in New England and export efforts in West Coast, and ways to promote economic growth in Appalachia.

The focus of the EO on identifying impediments to energy projects – whether existing or new infrastructure, domestic or export – is consistent with the current Administration's ongoing attempts to streamline those projects. At the same time, opposition to such projects by members of the public, including by states, has never been higher.

Section 4 – LNG Safety Regulations

The current safety regulations for LNG facilities, codified at 49 C.F.R. Part 193, were originally promulgated in 1980, and although some provisions have since been revised, the regulations generally remain outdated and out of synch with relevant industry standards. In light of market changes, there is renewed interest in building new or converting existing LNG plants in the U.S. to increase export capabilities. In order to better facilitate these projects, the EO, instructs the U.S. Department of Transportation (DOT) to propose and finalize revised and updated regulations using risk-based standards in a short 13-month timeframe. DOT is also tasked with proposing a rule within 100 days (and finalizing within 13 months) to authorize the transport of LNG by rail.

The administration within DOT that will be responsible for carrying out these directives is the Pipeline Hazardous Materials and Safety Administration (PHMSA). This comes at a time when PHMSA has been subject to budget cuts and is already under intense scrutiny by Congress for unaddressed prior Congressional rulemaking mandates during the reauthorization of the ***Pipeline Safety Act*** . One of the outstanding unmet mandates relates to small scale LNG facilities.

Section 6 – Rights-of-Way Renewals or Reauthorizations

The Secretaries of the Interior, Agriculture and Commerce are all called upon to develop a 'master agreement' regarding right-of-way in this new EO. The purpose of such an agreement is to pave the way for right-of-way renewals or authorizations to address sunset provisions contained in prior grants, leases and permits that allow for the presence of various forms of infrastructure on federal land. The siting of these utilities on federal lands as 'energy corridors' was encouraged by the 2005 Energy Policy Act. Under the new EO, renewal or reauthorization processes for all expired agreements are to be initiated by the respective agencies within one year.

Section 7 – Reports on the Barriers to a National Energy Market

Focusing in particular on New England states and West Coast regions, the EO directs DOT in consultation with DOE to submit two reports within 180 days. The first is to examine the "*inability to transport sufficient quantities of natural gas and other domestic energy resources to the States in New England*," by assessing (1) the economic and other effects; and (2) the impact of State, local, tribal or territorial actions. Notably, the EO suggests that DOT can expand this study beyond New England to other states and regions.

The second study is to address "*economic and other effects of limitations on the export of coal, oil, natural gas and other domestic energy resources*" in the West Coast, and similarly, to assess the contributions by State, local, tribal or territorial actions to those limitations.

Section 9 – Report on Economic Growth of the Appalachian Region

Lastly, the EO directs DOE to prepare another report within 180 days to focus on ways in which economic growth can be promoted in Appalachia, with a particular focus on the growth of petrochemical and other industries (including natural gas liquids, or NGLs).