



December 22, 2025

VIA ELECTRONIC MAIL AND FOIA.GOV

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Re: Notice of Violation of Affirmative Disclosure Duty, Request for Records of Final Individual Permits under § 404.

Dear FOIA Officer,

This letter serves to notify the U.S. Army Corps of Engineers ( “Corps”) of its ongoing violation of its duty to proactively disclose information under the “reading room” provisions of the Freedom of Information Act<sup>1</sup> (“FOIA”) and to request that the Corps immediately correct these violations by making publicly available through an online portal all final permitting decisions and associated documents issued pursuant to section 404 of the Clean Water Act.

This letter is submitted by the Center for Biological Diversity (“Center”), the Environmental Integrity Project (“Project”), and the Conservation Law Foundation (“CLF”). The Center is a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing good governance, transparency, and education goals of its membership and the general public in the

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<sup>1</sup> 5 U.S.C. § 552.



process. The Project is a nonprofit organization dedicated to protecting public health and our natural resources by holding polluters and government agencies accountable under the law. As America's environmental watchdog, the Project advocates for tough but fair environmental standards and empowers communities fighting for clean air and clean water. Conservation Law Foundation ("CLF") is a non-profit, member-supported organization that uses law, economics, and science to design and implement strategies that conserve natural resources, protect public health, and promote vital communities in New England.

### SUMMARY OF VIOLATION

The Corps is required, under FOIA's "reading room" provisions, to "make available for public inspection in an electronic format" records of all standard individual permits ("SIPs") granted under section 404 of the Clean Water Act, as well as amendments thereto and the below-described associated approval documents. These records should be made available as soon as a final permit or permit modification is issued by a District Engineer.<sup>2</sup> Currently, the Corps, upon issuing permits under section 404 of the Clean Water Act, is failing to proactively disclose permitting decisions and the associated records documenting the decision, in violation of this duty.

The records that the reading room provision obligates the Corps to proactively disclose are:

- a) the final, issued Department of the Army permit<sup>3</sup>;
- b) any issued permit modification<sup>4</sup>;
- c) the Memorandum for Record<sup>5</sup>;
- d) the Permit Application.<sup>6</sup>

The seriousness of the harms caused by this violation has increased in the last year, since the Corps began issuing expedited section 404 permits under emergency authorities based on President Trump's Executive Order 14156, "Declaring a National Energy Emergency."<sup>7</sup> For example, in just the past six months—or since June 2025—the Alaska District Office, among other districts, has already issued public notices for two SIPs that it is processing using these expedited emergency procedures,<sup>8</sup> and issued one SIP for the Oliktok Dock Facility pursuant to the same expedited emergency procedures.<sup>9</sup> These permits, and the approval process utilized by

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<sup>2</sup> *Id.* at § 552(a)(2); 33 U.S.C. § 1344.

<sup>3</sup> 33 C.F.R. § 325.5, e.g. ENG Form 1721 or an associated "Letter of Permission."

<sup>4</sup> *Id.*

<sup>5</sup> 33 C.F.R. 325.2(a)(6).

<sup>6</sup> 33 C.F.R. § 325.1.

<sup>7</sup> Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 29, 2025).

<sup>8</sup> U.S. ARMY CORPS OF ENGINEERS, Alaska District Standard Operating Procedures (SOP) for Processing of Permit Applications in Emergency Situations Pursuant to Executive Order (EO) 14156 and 33 C.F.R. 325.2(e)(4) (Mar. 26, 2025); POA-2018-00302 (Cama'i Gravel Pad); POA-2019-00122 (Ugnu Mine Site E, Cell 6).

<sup>9</sup> The Corps issued a final modification to POA-2020-00066 on Sept. 9, 2025. The modification retains the same permit number.



the Corps in their issuance, are issues of significant public interest.<sup>10</sup> Given the expedited timeframes for approval, their public availability is a matter of urgent need. As things stand, the public often lacks any means of learning about the permit decisions in a timely manner, let alone reviewing the records associated with these permits. This is because the Corps continues to violate FOIA by failing to publish its final opinions on these permit applications in a public reading room.

### PROACTIVE DISCLOSURES UNDER THE FREEDOM OF INFORMATION ACT

The purpose of FOIA is to “open agency action to the light of public scrutiny” and to remove barriers to access to public records.<sup>11</sup> Proactive “reading room” disclosures were expressly included in the 1996 Electronic Freedom of Information Act Amendments to further effectuate that purpose.<sup>12</sup>

Specifically, FOIA’s electronic reading room provision requires the Corps and other agencies to affirmatively disclose certain categories of records in an online, publicly accessible database. Two of those categories are: (1) “final opinions . . . as well as orders, made in the adjudication of cases” and (2) “copies of all records . . . that have been released to any person [under FOIA]” and “that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.”<sup>13</sup>

Final decisions on section 404 permit applications fit squarely within the first of these categories of required proactive disclosures. For the purposes of FOIA, “orders” include the “whole or a part of a final disposition . . . of an agency in a matter other than rule making *but including licensing*.”<sup>14</sup> “Licensing” is the “agency process respecting the grant, renewal, denial, . . . limitation, amendment, modification, or other conditioning of a license.”<sup>15</sup> A “license,” in turn, includes “an *agency permit*, certificate, approval, . . . or other form of permission.”<sup>16</sup> Final opinions on section 404 permit applications, therefore, constitute the final disposition of the

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<sup>10</sup> Carrie Klein, *Citing Trump Emergency Order, Army Corps Expedites Review for Line 5 Oil Pipeline in Great Lakes’ Wetlands*, INSIDE CLIMATE NEWS (Apr. 29, 2025), <https://insideclimatenews.org/news/29042025/army-corps-expedites-enbridge-line-5-oil-pipeline-great-lakes/>; Bill Girdner, *Attack on the Wetlands*, COURTHOUSE NEWS SERVICE (Feb. 20, 2025), <https://www.courthousenews.com/attack-on-the-wetlands/>; Carlos Andhonda, *Army Corps: Mountain Valley extension permit is ‘emergency’*, E&E NEWS (May 2, 2025), <https://subscriber.politicopro.com/article/eenews/2025/05/02/army-corps-mountain-valley-extension-permit-is-emergency-00321444>.

<sup>11</sup> *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976).

<sup>12</sup> See 5 U.S.C. § 552(a)(2).

<sup>13</sup> 5 U.S.C. § 552(a)(2)(A), (D).

<sup>14</sup> *Id.* at § 551(6) (emphasis added).

<sup>15</sup> *Id.* at § 551(9).

<sup>16</sup> *Id.* at § 551(8) (emphasis added).



Corps' licensing process and fall within the plain language meaning of the relevant provisions in FOIA.<sup>17</sup>

Applying the plain terms of the statute, therefore, all final section 404 permits and associated decision documents as detailed above must be posted, proactively, in a reading room “for public inspection in an electronic format.”<sup>18</sup> The Corps' failure to do so violates FOIA and impairs the ability of the Center, CLF, and the Project to pursue their organizational missions on behalf of their members.

### THE CENTER, CLF, AND PROJECT ARE HARMED BY THE CORPS' VIOLATION OF FOIA

In enacting FOIA's reading room provisions, Congress sought to combat the development of “secret [agency] law.”<sup>19</sup> Agencies are required to proactively disclose records that “constitute the ‘working law’ of an agency because they ‘have the force and effect of law.’”<sup>20</sup> The Supreme Court emphasized that a record which contains the “final disposition” of a proceeding is exactly the “kind of agency law in which the public is so vitally interested and which Congress sought to prevent the agency from keeping secret.”<sup>21</sup>

Final section 404 permit documents, especially those granted under the Corps' emergency processes, affect not just the legal rights of permittees, but also other affected parties such as the Center, CLF, and the Project which have interests in the resources and ecosystems that may be affected as a result of the activities approved by the permit. Accordingly, these final permitting actions are of significant public interest, in part because these opinions have the “force and effect of law.”<sup>22</sup> Without the ability to monitor and assess these permit decisions, the Center, CLF, and Project are unable to accomplish their core organizational missions—including advocacy and mitigation against impacts to the environment, public health, and wildlife. The Corps' continuing failure to abide by FOIA harms core organizational purposes of the Center, CLF, and the Project, as would a denial of the request contained in this letter.

At this time, the Corps has no uniform policy of proactively disclosing the decision documents associated with these permits. While the Corps' decentralized structure for granting permits means that some districts may publish these records as required (though the Center, CLF, and Project are not aware of any consistent public platform where these publications are taking

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<sup>17</sup> See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 158–59 (1975) (The Court uses a similar approach to interpreting statutory definitions to conclude that the memoranda there in question were records of “final opinions” made in the “adjudication of cases.”); see also *Int'l Tel. & Tel. Corp. v. Loc. 134, Int'l Bhd. of Elec. Workers, AFL-CIO (ITT)*, 419 U.S. 428, 443 (1975) (where the records constituted a final disposition in part because they “have some determinate consequences for the party to the proceeding.”)

<sup>18</sup> *Id.* at § 552(a)(2); see *CREW v. U.S. Dep't Just.*, 922 F.3d 480, 488 (D.C. Cir. 2019).

<sup>19</sup> *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 153 (1975).

<sup>20</sup> *CREW v. DOJ*, 922 F.3d 480, 486 (D.C. Cir. 2019) (quoting *NLRB v. Sears*, 421 U.S. 132, 153 (1975))(cleaned up).

<sup>21</sup> *NLRB*, 421 U.S. at 156.

<sup>22</sup> *Id.* at 153.



place), the Center, CLF, the Project, and the broader public have no ability to review records from key districts, even as those districts accelerate permitting timelines, abridge vital interagency consultations, and reduce opportunities for public input. This is why it is so urgently necessary for the Corps to disclose and clearly earmark those permit applications and permit decisions that receive emergency procedures.

At present, the Corps only provides public notice and access to Final SIP decisions.<sup>23</sup> Regardless of whether this very limited disclosure satisfies the requirements of the Corps' regulations implementing the Clean Water Act,<sup>24</sup> it *does not* satisfy the more rigorous disclosure requirements of FOIA. Members of the public, when attempting to locate actual permitting documents, are treated to a self-referencing loop in which the Corps database and individual Division webpages merely link back and forth to each other.<sup>25</sup>

Reinforcing the need for full compliance with the reading room provision, the Center currently has numerous unanswered requests made under section 552(a)(3) of FOIA that are pending before the Corps. These requests are pending before various Army Corps districts and include: Emergency CWA-ESA Permit Applications, FP-25-011249; Washington Emergency 404 Applications, FA-25-083; Ambler Road Project Permit – Permittee Info, FP-25-028501; Emergency CWA-ESA Permits (Second Request), FP-25-040613; Final Energy Emergency 404 Individual Permits (this request has not yet received an identification number from the Corps); Izembek Corps 404 Permit, CY25-009; EO 14156 - Paducah Uranium 404 Permit, FA-26-0028 /FP-26-004043. The fact that the Corps is systematically failing to respond to FOIA requests made for specific permitting decisions and associated documents underscores the need for the agency to comply with the law by proactively making all such records available in an expeditious manner.

Even further reinforcing the importance of complying with the reading room provision are recent changes to the Corps' processes for granting section 404 permits. On January 20, 2025, President Trump signed Exec. Order No. 14156 "Declaring a National Energy Emergency."<sup>26</sup> This order claims that a "far too inadequate" supply of "energy and critical minerals" had created an emergency consisting of an "inadequate and intermittent energy supply, and an increasingly unreliable grid."<sup>27</sup> The President directed the Corps to "identify . . . actions to facilitate the Nation's energy supply that may be subject to emergency treatment" and "to use, to the fullest extent possible and consistent with applicable law, the emergency Army Corps permitting provisions to facilitate the Nation's energy supply."<sup>28</sup>

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<sup>23</sup> U.S. ARMY CORPS OF ENGINEERS, ORM2, <https://permits.ops.usace.army.mil/orm-public> ("In compliance with our regulations at 33 CFR 325.2(a)(8), we are posting a list of issued and denied individual permits.").

<sup>24</sup> 33 C.F.R. 325.2(a)(8).

<sup>25</sup> See e.g., U.S. ARMY CORPS OF ENGINEERS, ORM2, <https://permits.ops.usace.army.mil/orm-public> and Army Corps Alaska District, Permit Application Public Notices, <https://www.poa.usace.army.mil/Missions/Regulatory/Public-Notices/>.

<sup>26</sup> Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025).

<sup>27</sup> *Id.* at 8434.

<sup>28</sup> *Id.*



In inconsistent and legally tenuous reliance on this EO, the Corps has expedited the processing of various permits in a manner that has largely excluded the public from the process.<sup>29</sup> It is therefore all the more important that the Corps comply fully with FOIA's reading room provision so that the public can at least be apprised when the Corps has processed and approved a permit based on the EO and the purported rationale for its decision to do so.

### CONCLUSION

The Corps is in violation of FOIA's reading room obligation with respect to final permitting decisions made under section 404 of the CWA. FOIA requires that the Corps respond to a request made under FOIA, including under the reading room provision, within 20 business days.<sup>30</sup> If the Corps fails to provide a determination in accordance with the schedule set by FOIA, the Center, CLF, and the Project will conclude that their request has been denied and will proceed accordingly. In order to discuss this request further, please contact the email addresses provided below.

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<sup>29</sup> For example, the Alaska District recently announced that a permit application, POA-2019-00122 Ugnuravik River PN, would receive expedited processing under EO 14156. The project, which is inconsistently described in the public notice, appears to involve both a gravel mine and an agricultural facility. ARMY CORPS ALASKA DISTRICT, Permit Application Public Notices, POA-2019-00122 Ugnuravik River PN <https://www.poa.usace.army.mil/Missions/Regulatory/Public-Notices/Public-Notices-View/Article/4325161/poa-2019-00122-ugnuravik-river-pn/>. A project of this nature does not appear eligible for expedited processes under EO 14156 since, on the one hand, agricultural activities are patently beyond the scope of the EO's purported "energy emergency" and, on the other hand, gravel mining is explicitly excluded from the definition of "critical minerals" adopted by the EO. *See* Exec. Order No. 14156, 90 Fed. Reg. 8433, 8436 (Jan. 20, 2025) citing 30 U.S.C. § 1606(a)(3).

<sup>30</sup> 5 U.S.C. § 552(a)(6)(A).