

PSEGESPEnvDocsPEm Resource

From: Fetter, Allen
Sent: Thursday, August 13, 2015 10:22 AM
To: Davis (NRO), Jennifer; 'O'Rourke, Daniel J.' (danorourke@anl.gov)
Cc: PSEGESPEnvDocsPEm Resource
Subject: FW: ACHP Proposed Stipulations
Attachments: ACHP Proposed stipulations.doc

FYI

From: Robillard, David L [mailto:David.Robillard@pseg.com]
Sent: Thursday, August 13, 2015 9:13 AM
To: Fetter, Allen
Cc: Mallon, James; Sindoni, Joseph M.
Subject: [External_Sender] ACHP Proposed Stipulations

Allen,

After yesterday's public conference call on the Section 106 MOA I went to the ACHP website and reviewed their Agreement Document Guidance information. Attached is a WORD document that contains the ACHP's proposed stipulations regarding procedures for responding to the unanticipated discovery of historic properties and procedures for responding to emergency situations. These stipulations were taken directly from the ACHP guidance document. Also in the attached document is our justification why these stipulations are not applicable to an Early Site Permit application.

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Hearing Identifier: PSEG_Site_ESP_EnvDocs_Public
Email Number: 87

Mail Envelope Properties (ee285a5006ec4246bcf07fa2ad331af2)

Subject: FW: ACHP Proposed Stipulations
Sent Date: 8/13/2015 10:21:35 AM
Received Date: 8/13/2015 10:21:41 AM
From: Fetter, Allen

Created By: Allen.Fetter@nrc.gov

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Tracking Status: None

Post Office: HQPWMSMRS07.nrc.gov

Files	Size	Date & Time
MESSAGE	1713	8/13/2015 10:21:41 AM
ACHP Proposed stipulations.doc		24966

Options

Priority: Standard

Return Notification: No

Reply Requested: No

Sensitivity: Normal

Expiration Date:

Recipients Received:

ACHP Proposed stipulations:

Are procedures for responding to the unanticipated discovery of historic properties or inadvertent adverse effects to identified historic properties included?

According to the Section 106 regulations, at 36 CFR §800.6(c)(6), where the signatories agree it is appropriate, Section 106 agreements should include provisions to address the subsequent discovery or identification of additional historic properties affected by the undertaking. Discovery provisions establish an expedited timeframe for notification and response procedures in the event a previously unidentified historic property or unanticipated effects are found during project implementation. They address one of the major "what ifs" involved in implementation of an undertaking by averting confusion and delay when something is found, particularly when the discovery involves human remains. Since the regulations do not mandate that every historic property be identified during the four-step process, a good discovery provision is like an insurance policy for the MOA or PA. If such provisions are not included in the agreement, discoveries would be handled in accordance with 36 CFR § 800.13(b). **This is not applicable because the ESP does not authorize any physical work.**

Are procedures for responding to emergency situations included?

Emergencies may arise during the implementation of any undertaking. The Section 106 regulations include emergency provisions at 36 CFR §800.12. The regulations define an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the governor of a state or another immediate threat to life or property. Section 800.12(c) of the regulations extends in most circumstances the provisions of Section 800.12(a) and (b) to those disasters and emergencies declared by local governments responsible for Section 106 compliance under the Department of Housing and Urban Development's (HUD) environmental regulations at 24 CFR Part 58. When consulting parties agree that it is appropriate, Section 106 agreements can establish procedures to expedite consultation or otherwise take historic properties into account during operations responding to emergencies and disasters. The ACHP encourages agencies to include such provisions in PAs wherever potentially applicable. **This is not applicable because the ESP does not authorize any physical work. The ESP does not apply to the existing operating units, therefore they are not part of this MOA. There are no "operations responding to emergencies and disasters" associated with the ESP. The other aspect is the responsibility now. I haven't done anything and now I'm responsible. If we lose this argument we need to ensure that the location of responsibility is limited to our site. That has to be explicit.**