

16. **In response to MDE's comment #28 that the location of all wetlands, wetland buffers, waters and floodplain impacts must be field verified by MDE staff, the response states, "Although AES has performed field surveys of most of the pipeline route, access has not been granted by all property owners along the entire pipeline route, and therefore on-ground mapping of the pipeline route and wetland water body resources for some properties has been completed to the extent possible using remote resources (aerial photography, GIs, property ownership info in public files, etc.)." Further, the response states, "Assuming FERC approves the Project and issues a certificate of public convenience and necessity, AES will complete land owner agreements and obtain access to the properties at that time, the impacts to wetlands and water body areas will be refined and resubmitted to the MDE and the ACOE and the appropriate mitigation measures will be updated as well." Please note that until this information is provided and verified, MDE will consider the application for a Nontidal Wetlands and Waterways Permit to be incomplete.**

Finally, your response to this comment notes that most Corps' districts and other states accept the practice of performing appropriate field checks of a representative number and type of wetland and water bodies on the overall route so that an understanding of the whole can be gained in a reasonable timeframe. Although MDE will discuss this approach/proposal with the Corps, at this point MDE believes that this is unacceptable and maintains its position that all wetlands and waterways crossings must be field verified, as deemed appropriate by MDE staff. At a minimum, MDE will identify all wetlands and waterways crossings that it deems necessary to field visit in the review of this application.

Response:

As stated in the response to MDE Comment 15, AES has performed field surveys for approximately 81 percent of the Pipeline Route, access has not been granted by all property owners along the entire pipeline route, and therefore on-ground mapping of the pipeline route and wetland/water body resources for some properties has been completed to the extent possible using remote resources. This situation is typical of linear infrastructure projects where 100% landowner consent for survey access is not feasible and, even if 100% were initially granted, agency and public input often modifies routing that requires re-visiting properties or surveying new property. For this reason, field surveys, data reduction, routing, and agency discussions are an iterative process to allow determination of sufficient information to characterize impacts and complete NEPA review, and then complete remaining design elements when project location and regulatory certainty is better developed. This minimizes the impact to landowners by visiting field crews, and optimizes field time of both project and agency staff needed to review field locations for tasks such as wetland delineation verification. This specific approach was discussed at a meeting of staff from the FERC, ACOE, USEPA, and AES on August 1, 2007 held at the ACOE Baltimore District office. Representatives of MDE were present and witnessed the discussion of this approach and how it would be carried out by the agencies with AES.

With respect to MDE's view that the application is "incomplete" until all properties have been field verified, AES assumes this statement applies in a technical sense (i.e., not all properties have been visited), and not administratively. In this way, it is presumed that MDE may still render findings relative to the NEPA process, and subsequent field verification would be used for permit condition development as appropriate.

AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC
Responses to MDE August 15, 2007 Data Request
Application Tracking Number: 200761377/07-NT-0125/07-WL-1301

AES plans to continue working with MDE and the ACOE to develop an appropriate strategy for field verification and recommits to development of a mitigation strategy based on the surveys completed to date. This strategy will then be extended to mitigate the impacts from the remainder of the Pipeline Route when surveys are completed.

Regarding the second paragraph of Data Request 16, it appears that MDE's inclusion of the language "as deemed appropriate by MDE staff" and "at a minimum" makes its practice of performing field checks consistent with the practice of most ACOE districts and other states referenced in AES's prior response insofar as MDE may decide to require less than full field verification of all wetlands and waterway crossings. AES is willing to work with MDE on any level of field verification required or deemed appropriate by MDE.