



Testimony of
Domenic Rocco, Acting Environmental Program Manager, Regional Permit Coordination Office
Pennsylvania Department of Environmental Protection
Joint Hearing on Pipeline Safety
Senate Environmental Resources & Energy and Consumer Protection & Professional Licensure
Committees
March 20, 2018

Good morning, Chairman Yaw, Chairman Yudichak, Chairman Tomlinson, Chairman Boscola and members of the Senate Environmental Resources and Energy, and Consumer Protection and Professional Licensure Committees.

My name is Domenic Rocco, and I am the Acting Environmental Program Manager for the Department of Environmental Protection's (DEP) Regional Permit Coordination Office. On behalf of the Department, I'd like to thank you for the opportunity to testify on DEP's role in regulating pipeline construction.

The DEP has four main regulations that relate to pipeline construction.

1. Chapter 102 regulates erosion and sedimentation from earthmoving activities. Erosion and Sediment (E&S) Plans are required to be developed and implemented for all earth disturbance of 5,000 square feet or more. Additionally, a pipeline project that exceeds 5 acres of total earth disturbance would need to obtain an Erosion Control Permit – and would need to implement best management practices to control stormwater runoff both during and following earthmoving activities.
2. Chapter 105 regulates water obstructions and encroachments which are focused on activities in, along or across wetlands, rivers, lakes, and stream corridors.
3. Chapter 93 establishes requirements to protect existing and designated uses of surface waters, and the level of water quality to maintain and protect such waters. It also protects water dependent threatened and endangered species and their critical habitat.

4. Chapter 106 regulates flood plain activities undertaken by political subdivisions of the Commonwealth (such as municipalities) and also public utilities.

A Joint Water Obstruction and Encroachment Permit combines into one DEP authorization both Ch. 105 and 106 activities, as well as a U.S. Army Corps of Engineers Clean Water Act Section 404 dredge and fill permit.

These regulatory programs relate to avoiding and/or minimizing pollution to water, water resources, and, in some cases, habitat. This is the DEP's jurisdiction – and we permit activities in these programs every day.

These permits are some of the most common in the Commonwealth, and represent significant environmental protections in our state laws.

Pipeline Permitting

For major pipeline projects, these are the primary permits that the Department may issue for construction of a pipeline.

In order to be as transparent as possible and provide the public with the most current information, the Department electronically posts the permit applications and the supporting documents to the DEP Pipeline Portal (Portal) for public review. The DEP Pipeline Portal can be found here:

<http://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/default.aspx>

Currently, the Portal contains information for the Mariner East 2 (ME2), Atlantic Sunrise and PennEast projects. As the Department receives more pipeline applications, DEP will create additional pages for interested citizens. DEP has also held many public hearings and extended public comment periods for these projects.

Erosion Control Permits (Chapter 102) are issued for each region that the pipeline will pass through. DEP's territory is split into six regions. Water Obstruction and Encroachments (Chapter 105) permits are issued for each county that the pipeline will pass through. For example, for the ME2 project, DEP concurrently issued a total of 20 permits: Three (3) Chapter 102 permits (1 for each DEP region – SW, SC, & SE); and 17 Chapter 105 permits (one for each county the pipeline passes through). For the Atlantic Sunrise project, DEP issued a total of 13 permits: Three (3) Chapter 102 permits and ten (10) Chapter 105 permits.

Current pipeline permits may include a number of project-specific special conditions to ensure environmental protection. The Department typically uses special conditions to enhance the protective nature of our permits. For example, these permit conditions can include the protection of private water supplies that may be impacted by regulated Chapter 105 activities to ensure drinking water sources are protected from pipeline construction activities. In the case of the ME2 project, the Chapter 105 permits contained over 100 special conditions. This is unprecedented and represented a heightened scrutiny by DEP over the applications.

The Department also requires that each pipeline application include detailed Prevention, Preparedness Contingency Plans (PPC Plan) to address inadvertent returns that might occur during horizontal directional drilling activities, operations performed in karst geology or in areas where mining has occurred, and the protection of water supplies.

Compliance and Enforcement

DEP works closely with our County Conservation Districts to inspect projects to assess and ensure compliance with the permit requirements. Projects are inspected on a regular basis by Department and/or County Conservation District staff. The ME2 pipeline project was somewhat unique in terms of construction schedule and scale. The 307-mile pipeline project has been constructed almost simultaneously across the Commonwealth. Such a massive one-time construction project is rare and has admittedly challenged the County and DEP resources. Permit reporting requirements, which were significantly enhanced through the DEP January Order, are enabling field staff to target active construction locations for timely inspection.

Permittees must address inadvertent returns from horizontal directional drilling, spills of polluting substances, and impacts to water supplies in a manner that satisfies all requirements of Pennsylvania law, including the Clean Streams Law, the Solid Waste Management Act, and the Land Recycling and Environmental Remediation Standards Act. Impacts must be fully addressed to the affected third party and the Department's satisfaction prior to resuming the activity. The Department also investigates all complaints received from the public.

The Department has taken, and will continue to take, strong, appropriate actions should violations occur. For example, the Department issued an administrative order shutting down ME2 for a month due to compliance issues – and lifted that shut down order only when all of the administrative order requirements were complied with and completed. The DEP also obtained a \$12.6 million penalty for violations that led to the issuance of the Order. The Department issues Notices of Violation (NOVs), and Administrative Orders requiring permittees to perform corrective actions for pipeline installation activities that violate requirements and Pennsylvania laws and/or regulations, cause pollution, or present risk of pollution. The Department will continue to include permit conditions that require work to stop when violations occur and require the violation to be resolved before work can resume. Additionally, the Department will continue to hold permittees to the highest regulatory standards available. In most cases, permittees cannot receive amendments to permits or have other work authorized until violations are remedied.

Pipeline Route

With regard to pipeline routing, the Department has limited authority. For Federal Energy Regulatory Commission (FERC) regulated projects, siting and routing go through a detailed process which can be found on FERC's website at <https://www.ferc.gov/>. Again, the process is governed by federal regulations, and is not dictated by state law or regulation. For non-FERC projects, the Pennsylvania Public Utility Commission (PUC) has limited involvement. The pipeline route is selected by the project proponent after consideration of many social, environmental, and geographical factors, and must comply with the requirements set forth in state utility law. Moreover, the Department's environmental permitting regulations can have an effect on a pipeline route based upon impacts to water and wetland resources across the project corridor. The Department cannot arbitrarily and without regulatory basis dictate a project line – our regulatory basis is founded within our statutory authority.

Once installed, the regulation or enforcement of standard safety practices for the transportation of natural gas liquids through the pipeline is outside the scope of the DEP's Chapter 102 and 105 (construction) permitting authority. The PUC and the federal Pipeline Hazardous Materials Safety Administration (PHMSA) oversee and enforce issues related to the safety of pipeline construction and maintenance/operation.

Legislation

The Department would like to take this opportunity to offer some suggestions regarding legislation currently proposed before the General Assembly. First, as noted above, the Department's role in siting and routing decisions is limited to its regulatory responsibilities related to water and wetland resources. As has been noted repeatedly, there is currently a gap in state law regarding siting and routing authority for projects which are not subject to FERC jurisdiction. Many other states have passed legislation to provide an enhanced role in siting decisions to their utility or public service commission. An overview of the interplay of federal and state regulatory regimes from the Congressional Research Service is available here:

<https://fas.org/sgp/crs/misc/R44432.pdf>. While DEP does not believe that the Department, as an environmental regulator, would be well suited to take on additional responsibilities for siting and routing beyond the environmental role it currently serves, it seems that many of the concerns raised by members of the legislature could be addressed via such legislation. Second, under the Clean Streams Law, the DEP can, and does, respond when informed of private water supply impacts. In fact, in 2017 the DEP put on court record its policies and practices used to respond, investigate and resolve private water supply impacts in the oil and gas context. The Department can require termination of the activity causing private well impacts and can require restoration or

replacement of the supply under most of our statutes. The Department did this in the ME2 case on more than one occasion – the permit terms and conditions require immediate cessation of drilling activity until and unless impacts are resolved.

The Department currently does not have the statutory authority to *regulate* private water wells. As such, at this time, the Department lacks:

- 1) an inventory of private water supply wells (including location and connected facilities),
- 2) well drilling standards, and
- 3) enforceable private well drinking water quality standards.

Perhaps most important to note: DEP lacks the legal authority to require such information be provided to the state and to establish and enforce standards. Without full records of existing water wells, it is difficult for the Department to proactively protect water wells. DEP did require Sunoco to utilize a database - maintained by DCNR with private well information that is voluntarily provided by residents – to notify well owners near the right of way. This database is incomplete, but is the most comprehensive one available due to the limitations coming from the lack of authority over private water wells.

The Department will continue to respond to and require restoration of private well impacts; however, the Department suggests that it would be much more effective to authorize the Department to protect private wells in permits rather than waiting until they are impacted. The Commonwealth cannot protect something that it does not know is there. The Department reiterates that there is a need for a more comprehensive and effective approach to private well protection and regulation.

Thank you again for inviting the Department to testify before the Committees on this important topic. The Department looks forward to continuing to work with the legislature to address these issues. I thank you for your time and I am available to respond to any questions you may have.