

January 15, 2020

Via electronic mail (RA-
EPPENNEAST@pa.gov)

Department of Environmental Protection
Regional Permit Coordination Office
Rachel Carson State Office Building
400 Market Street, 10th Floor
Harrisburg, PA 17101



**Re: Comments on PennEast Applications for permits
ESG02000160002, E40-780, E13-185, E48-435, and E09-998**

To whom it may concern:

Clean Air Council, Citizens for Pennsylvania's Future, Sierra Club, Bucks County Concerned Citizens Against the Pipelines, and Cooks Creek Watershed Association ("Commenters") respectfully submit these supplemental comments on the applications for permits ESG02000160002, E40-780, E13-185, E48-435, and E09-998 ("Applications") sought by PennEast in support of its pipeline project ("Project"). We appreciate your consideration of these comments and hope they are helpful as you continue your review of application materials. Commenters incorporate by reference the comments submitted by them in May 2020 on these same PennEast permit applications.

I. The Department Should Hold In-Person Hearings When it is Safe to Do So.

While Commenters appreciate the Department holding a hearing on the Project on January 13, the Department should hold in-person public hearings on the Project in each county it would cross, at a time and under a procedure by which it is safe to meet. The grave and extensive impacts of this Project, and the intense public interest in it, merit more than a virtual hearing where participants cannot meet each other, cannot present materials, and are limited to three minutes' speaking time. Furthermore, there are many residents who are unable to participate electronically, uncomfortable with that process, or lack the bandwidth to do so reliably. Using the conventional means of public hearing--in a manner consistent with public safety and protection of the most vulnerable among us--is the right course for the Department.

Thank you for your consideration of this request.

II. Because the Project would cause an adverse environmental impact and any benefits are rapidly fading, the Department must deny any Chapter 105 permits.

Through review of the application materials, and through the totality of the comments, it should be clear to the Department that building PennEast would cause an adverse environmental impact as that term is used in 25 Pa. Code § 105.16(a), even after implementation of mitigation

measures. Section 105.16(a) mandates that, under those circumstances, “the Department will evaluate the public benefits of the project to determine whether the public benefits outweigh the environmental harm.” If the benefits do not outweigh the harm, the Department will not issue the permit. Benefits can include:

- (1) Correction and prevention of pollution.
- (2) Protection of public health and safety.
- (3) Reduction of flood damages.
- (4) Development of energy resources.
- (5) Creation or preservation of significant employment.
- (6) Provision of public utility services.
- (7) Other essential social and economic development which benefits a substantial portion of the public.

25 Pa. Code § 105.16(b). As the Project would cause pollution, endanger the public, and exacerbate flooding, (1) through (3) do not apply. The project is not a public utility, so (6) does not apply. As the public assumes all damage and injury from the project, which is for the benefit of a few corporate interests, (7) does not apply either. The only arguable benefits are under (4) and (5). If built, PennEast would provide temporary employment during construction and minimal employment during operation, so the benefit under (5) is marginal. For (4), if there is no public need for the energy resources, development of energy resources is not a benefit. As previous comments have already established, there is no need for this pipeline.

Comments submitted to the Department by Clean Air Council and others on May 1, 2020 discussed some of the purported benefits and the harms. At that time, it was obvious that the harms far outweighed the purported benefits. Since then, the scales have tipped even further towards the adverse impacts and away from benefits.

First, the likelihood that the Project would move ahead at all has diminished. Recent public statements by half of the consortium backing the Project--UGI Corporation and New Jersey Resources--reveal the companies backing off from the Project as its prospects dim. Michael Spille, Chairman of the West Amwell Township Environmental Commission, ably sets that forth in three comments on the FERC CP20-47-000 docket, attached here in full with their own exhibits as Exhibits A, B, and C.

While Commenters will not repeat those comments in full, a few things are worth highlighting. NJR is removing PennEast from its financial projections and planning capital expenditures on it to be minimal, tacitly acknowledging that its chances of being built are slim. UGI is doing the same, forecasting minimal capital expenditures and indicating the Project is on hold unless they are able to move forward in New Jersey, and regardless there is unlikely to be

construction in 2021. These companies have no every incentive to promote their own project, and their words downplaying it are plain and require no expert interpretation.

The worst-case scenario is that the Department issues the Chapter 102 and Chapter 105 permits for the Project, PennEast moves ahead with the clearing and construction authorized by those permits without waiting to see what happens in New Jersey, causing adverse environmental impacts, and then abandons the Project entirely when its appeals in New Jersey fail to bear fruit. In that situation, there will be all downsides with no benefits. This very result happened recently with the Constitution Pipeline project. The Department issued Permit No. ESG0011514002(1) and Permit No. E58-300A to Williams for the Constitution Pipeline on February 24, 2016. The company immediately began felling trees and causing other environmental impacts. It violated the permits multiple times,¹ required a series of modifications, and then ultimately closed out the permits without building the project in April of 2020.² The reason Williams scrapped the project is because it lacked key approvals in New York State. The parallels here are striking.

The result of the Department's approval of the pipeline permits is that dozens of miles of right-of-way was deforested, streams and wetlands were harmed, and landowners had their private property taken and harmed for, in the end, no reason.³

Overall, with the limited and speculative benefits and the significant downsides, the Department should not issue any Chapter 105 permits on the basis of 25 Pa. Code § 105.16(b). If the Department ultimately decides to grant the permits, it should specifically prevent any tree felling or other clearing of vegetation until all permits associated with the project are issued.

III. The Department Should Not Permit the Waste of Trust Resources.

Pennsylvania's constitution provides that the Commonwealth's natural resources are held in a public trust. The Commonwealth, as the trustee caring for this trust, "shall conserve and maintain them for the benefit of all the people." Art. 1 Sec. 27 (1971). As trustee, the Commonwealth "is a fiduciary obligated to comply with the terms of the trust and with standards governing a fiduciary's conduct." *Robinson Twp. v. Commonwealth*, 623 Pa. 564, 655, 83 A.3d 901, 957 (2013). A trustee has a fiduciary obligation, to manage the trust prudently, including maintaining and conserving the corpus of the trust. A trustee is required to exercise "common skill, common prudence and common caution" in managing trust resources. *In re Mendenhall*,

¹ See PADEP eFACTS, Site ID 776811, https://www.ahs.dep.pa.gov/eFACTSWeb/searchResults_singleSite.aspx?SiteID=776811.

² See Constitution Pipeline PADEP Permit Withdrawal, April 13, 2020, available at http://files.dep.state.pa.us/RegionalResources/NERO/NEROPortalFiles/CommunityInformation/ConstitutionPipeline/Constitution_PADEP-105-102-WQC_Close-Out%20Letter_20200413.pdf.

³ StateImpact PA, "Family that lost hundreds of trees to failed pipeline project settles with company, gets land back," July 3, 2020, <https://stateimpact.npr.org/pennsylvania/2020/07/03/family-lost-hundreds-of-trees-to-failed-pipeline-project-settles-with-company-gets-land-back/>.

484 Pa. 77, 81, 398 A.2d 951, 953 (1979). A prudent trustee would not waste the trust, diminishing the corpus of the trust without any accompanying benefit for the beneficiaries.

Here, the use of the corpus of the trust - Pennsylvania's natural resources - are proposed to be used in furtherance of a pipeline project that will, as discussed above, likely never be completed. The end result is likely to be the diminution of trust resources, harm to the environment, for no benefit to the beneficiaries of the trust, the people of Pennsylvania and future generations of Pennsylvanians. If the Department approves PennEast's application to construct Phase 1 of this pipeline, with the knowledge that that the purported benefits of the project are unlikely to come to fruition, it risks violating its fiduciary duty as trustee by wasting trust resources in violation of Article 1 Section 27 of the Pennsylvania Constitution.

IV. The Department Should Consider the Specific Points Commenters Raised in their May 1, 2020 Comments.

On May 1, 2020, Commenters submitted comments on PennEast's then-pending Chapter 102 and Chapter 105 permit applications. At that time, Commenters discussed the significant changes in the project since it was first proposed as well as PennEast's problematic choice to present the project to the Department in phases. Commenters also discussed various technical deficiencies and issues with PennEast's applications. Commenters continue to assert that PennEast's attempt to put forth a radically changed project in phases is an improper attempt to limit public participation and create a perception of inevitability regarding subsequent permit applications, and Commenters continue to raise the technical deficiencies and issues previously noted. Commenters therefore incorporate their arguments from their May 1, 2020 submission.

V. Conclusion

For the reasons expressed previously, and additionally as explained above, the Department should not issue the Chapter 102 and 105 permits which PennEast has applied for. Doing so would be contrary to the law, and it would be to the great detriment of Pennsylvanians who have the misfortune to live near the route or visit the parks and open spaces that PennEast is planned to cut through.

Sincerely,



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