



**Testimony of
Patrick McDonnell, Secretary
Pennsylvania Department of Environmental Protection
Hearing on Pipeline Safety and Development
House Majority Policy Committee
July 17, 2018**

Good morning, Chairman Benninghoff, Representative Quinn, and members of the Committee. I am Patrick McDonnell, Secretary of the Department of Environmental Protection (DEP). I am joined today by Ramez Ziadeh, Acting Executive Deputy Secretary for Programs and Nels Taber, Senior Litigation Counsel for DEP's Office of Chief Counsel. On behalf of DEP, I'd like to thank you for the opportunity to testify on the Department's role in regulating pipeline construction.

DEP's regulatory authority in the pipeline development is limited to the earth disturbance activities and water resource impacts associated with the construction and maintenance of pipeline infrastructure. These regulations are contained in 25 Pa. Code Chapter 102, related to Erosion Control, and 25 Pa. Code Chapter 105, relating to Dam Safety and Waterway Management. The same regulations apply to all pipeline infrastructure projects such as watermains, sewer lines, and gas pipelines. DEP does not regulate the product conveyed through these pipelines.

DEP has three main regulatory chapters that relate to pipeline construction.

1. Chapter 102 regulates erosion and sedimentation from earthmoving activities. Erosion and Sediment Control (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 five 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 106 regulates flood plain activities undertaken by political subdivisions of the Commonwealth (such as municipalities), and public utilities.

A Water Obstruction and Encroachment Permit combines into one DEP authorization both Chapters 105 and 106 regulated activities. DEP coordinates our permit issuance of the Water Obstruction and Encroachment Permit with the U.S. Army Corps of Engineers Clean Water Act Section 404 Permit, which authorizes the discharge of dredged or fill material into Waters of the United States.

These regulatory programs relate to avoiding and/or minimizing pollution to water, water resources, and in some cases, habitat. This is DEP's jurisdiction; 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, the above are the primary permits that DEP may issue for construction of a pipeline.

It is extremely important to DEP to provide the public with the most current and up to date information relating to the status of these projects. DEP electronically posts the permit applications and the supporting documents for major pipeline projects to the DEP Pipeline Portal (Portal) for public review. DEP's Pipeline Portal can be found here:

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

Currently, the Portal includes information for the Mariner East 2/2X, Atlantic Sunrise, PennEast, and Shell projects. As DEP receives more pipeline applications, we will create additional pages for interested citizens. DEP has also held many public hearings and extended public comment periods for these projects.

For the Mariner East 2 Project, DEP concurrently issued 20 permits: Three (3) Chapter 102 permits (one for each DEP region – Southwest, Southcentral, and Southeast); 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. DEP 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 pipeline construction activities to ensure drinking water sources are protected. In the case of the Mariner East 2 Project, the Chapter 102 and Chapter 105 permits contained more than 100 special conditions. This is unprecedented, and represented heightened scrutiny by DEP over the applications.

DEP 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 terrain, or in areas where mining has occurred; and the protection of water supplies.

Compliance and Enforcement

DEP works closely with County Conservation Districts to ensure projects are regularly inspected to assess the permittee's compliance with all permit requirements. Projects are inspected on a regular basis by DEP and/or County Conservation District staff. The Mariner East 2 Project was 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 required DEP and the Counties and the Conservation Districts to exercise unprecedented oversight and take strong, swift action to hold the operator accountable. Among these actions, new permit reporting requirements, which were significantly enhanced through the DEP January Order, have enabled field staff to target active construction locations for timely inspection.

During construction, permittees must address any inadvertent returns that result from horizontal directional drilling activities, 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's and DEP's satisfaction prior to resuming the activity. DEP also investigates all complaints received from the public.

DEP regularly and systemically coordinates with state and federal entities and we will continue to do so. This includes Pennsylvania Emergency Management Agency (PEMA), local first responders, Counties, Pennsylvania Historical and Museum Commission (PHMC), Pennsylvania Department of Conservation

and Natural Resources (DCNR), Pennsylvania Fish and Boat Commission (PFBC), US Army Corps of Engineers (USACOE), US Fish and Wildlife Service (USFWS), Pennsylvania Department of Transportation (PennDOT), and Pennsylvania Game Commission (PGC).

With respect to sinkholes that developed in some locations during construction of the Mariner East 2 Project, DEP continues to be in regular and prompt contact with the Pennsylvania Public Utility Commission (PUC), and has coordinated site inspections accordingly. It is not uncommon for citizens to report suspected sinkholes to us, even though we are not the proper authority to do so. To that end, we ensure that prompt notifications are passed along to the PUC and will continue to be diligent in notifications to our sister agencies and regulatory colleagues.

DEP has taken, and will continue to take, strong, appropriate actions should violations occur. DEP issues Notices of Violation (NOVs), and Administrative Orders requiring permittees to perform corrective actions for pipeline installation activities that violate permit requirements and Pennsylvania laws and/or regulations, cause pollution, or present risk of pollution. Additionally, DEP will continue to hold permittees to the highest regulatory standards. In most cases, permittees cannot receive amendments to permits or have other work authorized until violations are remedied.

On January 3, 2018, DEP issued an administrative order shutting down the Mariner East 2 Project for a month due to compliance issues, and lifted that shutdown order only when Sunoco had complied with all of the requirements set forth in that order. DEP also assessed a historic \$12.6 million penalty for the violations that led to the issuance of the order, one of the largest penalties collected in a single settlement. DEP developed a grant program funded by this penalty which opened on May 7, 2018. The grant program was open to projects that result in water quality improvements within the 85 municipalities located along the Mariner East 2 Project corridor. Eligible grant applicants include the 85 municipalities, county conservation districts, incorporated watershed associations, educational institutions, and non-profit organizations. On June 20, 2018, the application period for the grant program closed. A total of 131 applications were received. The number of applications by region is as follows: Southeast Region - 31, Southcentral Region - 60, and Southwest Region – 40. The grant program has \$11,674,673 to award. Scoring of applications is underway and funded projects are scheduled to be announced late this Fall. It is important to note that this penalty was not collected to address the impacts caused by the project. DEP also held Sunoco responsible for adequately addressing all of the project impacts in accordance with the permit conditions and applicable rules and regulations.

Pipeline Route

With regard to pipeline routing, DEP has limited authority. For Federal Energy Regulatory Commission (FERC) regulated projects, siting and routing go through a detailed process. The company proposes the route, which is examined by the Commission. The Commission may suggest alternates and modifications to avoid or reduce effects to the environment, property and more. The process is governed by federal regulations, and is not dictated by state law or regulation. DEP's environmental permitting regulations can have an effect on a pipeline route based upon impacts to water and wetland resources across the project corridor. However, DEP cannot arbitrarily, and without regulatory basis, dictate a project line. Our regulatory basis is founded within our statutory authority. For non-FERC projects, the 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.

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 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

DEP would like to take this opportunity to offer some suggestions regarding legislation currently proposed before the General Assembly.

First, as noted above, DEP'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 that 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, *Pipeline Transportation of Natural Gas and Crude Oil: Federal and State Regulatory Authority*, 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 and the public could be addressed via such legislation.

Second, under the Clean Streams Law, DEP responds when informed of private water supply impacts. In 2017, 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. DEP can require termination of the activity causing private well impacts and can require restoration or replacement of the supply under most of our statutes. DEP has done this in the Mariner East 2 Project case on more than one occasion.

However, DEP currently does not have the statutory authority to *regulate* private water wells. As such, at this time, DEP 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 DEP to proactively protect water wells. DEP did require Sunoco to utilize a database maintained by DCNR that contains private well information 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 from the lack of authority over private water wells. In the absence of complete data in the state, the pipeline companies have been directly reaching out to property owners along the project corridor to determine the existence of private water wells.

DEP will continue to protect private wells through conditions set forth in its permits. DEP will continue to respond to and require restoration of private well impacts. However, DEP reiterates that there is a need for a more comprehensive and effective approach to private well protection and regulation to ensure that all private wells are protected in all DEP's regulatory programs.

Thank you again for inviting DEP to testify before the Committees on this important topic. We look 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.