



For Immediate Release

July 8, 2015

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Third Circuit Court of Appeals: Pennsylvania Department of Environmental Protection Improperly Excluded Documents from Judicial Review of a Natural Gas Pipeline Project

Bristol, PA – On July 7, 2015 the Third Circuit Court of Appeals issued an order finding that the Pennsylvania Department of Environmental Protection (“PA DEP”) improperly withheld a series of comment letters and expert reports from the “record” submitted to the court for review. The improperly excluded documents had been authored and submitted to PA DEP by the Delaware Riverkeeper Network as part of the comment review period for the for Transcontinental Pipe Line Company LLC’s (“Transco”) Leidy Southeast Expansion Project (“Leidy Southeast Pipeline”).

DRN filed a lawsuit against the Department on May 5, 2015, alleging that the Department improperly issued a Clean Water Act Section 401 Water Quality Certification for the Leidy Southeast pipeline, a large scale natural gas pipeline project.

During the Department’s review of the project the Delaware Riverkeeper Network submitted a series of seven comment letters and expert reports to the PA DEP identifying problems and deficiencies in Transco’s application material for a Section 401 Certification. However, the PA DEP did not include those documents in the official administrative record that would be reviewed by the court as part of the legal challenge. As a result, on June 30, 2015, the Delaware Riverkeeper Network filed a motion requesting that the Third Circuit Court of Appeals issue an order to compel the PA DEP to include the Delaware Riverkeeper Network’s documents in the official administrative record. Tuesday, June 7, the court agreed with the Delaware Riverkeeper Network’s arguments and ordered that the PADEP improperly withheld the documents from the court’s review.

“It is troubling that we have to go to such great lengths to get a fair hearing when it comes to the harms to communities and the environment of pipeline projects. PA DEP is supposed to be representing communities and the environment, not the pipeline companies. Excluding documents from their own review and from that of the courts is a clear effort designed to disenfranchise the public and to benefit the pipeline companies and it is wrong – it should not require a court order for PADEP to understand that,” said Maya van Rossum, the Delaware Riverkeeper.

“This ruling represents a significant success,” said Aaron Stemplewicz, staff attorney for DRN, “as the court agreed that the PA DEP cannot hide documents that directly contradict its actions from judicial review.”

The briefing for the case, *Delaware Riverkeeper Network, et al. v. Pennsylvania Department of Environmental Protection, et al.* (Docket No. 15-2122), is scheduled to conclude in late August with disposition of the matter to take place in the last week of September.

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