



January 20, 2021

VIA ELECTRONIC MAIL

RA-EPPENNEAST@pa.gov

**Re: PennEast Pipeline Company, LLC, PennEast Pipeline Project—Phase 1
Permit No. E40-780, E13-185, E48-435, ESG02000160001**

To Whom it May Concern,

I submit this written testimony regarding the above-referenced applications on behalf of the Delaware Riverkeeper Network (“DRN”). Although I was present at the Pennsylvania Department of Environmental Protection’s (“PADEP’s”) January 13, 2021 virtual hearing to provide oral testimony, that venue was woefully inadequate for me and all members of the community that would be impacted by the PennEast Pipeline to voice our concerns about this project.

The entire virtual hearing process was deliberately organized so as to undermine opposition to the PennEast Pipeline. The hearing was held in the midst of a global pandemic that has everyone stretched thin in terms of time and emotional energy, and we have just come through the biggest holiday season of the year—the only time the people of our region had to try to regroup and recover from the onslaught of trauma they have been exposed to during this difficult year. Yet, PADEP expected community members to spend their holidays preparing for this hearing, only to be told that they would have merely three minutes to voice their concerns. Those three minutes were repeatedly interrupted by the timekeeper, who interjected with the amount of time left to speak, which left many members of the public frazzled and losing precious time from their brief opportunity to testify to reorient themselves. To top it off, the hearing failed to include video, which would have created a sense of community among those testifying and would help ensure accountability by showing that PADEP officials are actually listening.

The content of the hearing was also skewed by the order of individuals selected to present testimony, with the first four testifiers being pro-PennEast. If the testimony had been evenly divided between those in favor and those against the pipeline, this initial cluster of testimony may have been

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coincidental, but in fact, the balance of the testimony was overwhelmingly against the pipeline. Furthermore, PADEP's statements to the press mischaracterized the testimony presented at the hearing, as a spokesperson claimed that "Most of them are for it, a lot are against it." Anyone who attended and listened to the entirety of the hearing would agree that *most* community members are *against* this ill-advised project.

The truth is, the record is overloaded with evidence supporting denial of the permits requested by PennEast, and rescission of the premature Clean Water Act Section 401 Certification that was issued in 2017. PADEP pursued a similar rushed and biased permitting process in approving Sunoco's Mariner East II pipeline. We have all seen, and are still experiencing, the devastating consequences of those choices. PADEP's heightened constitutional obligations to protect environmental rights and its duty as a trustee to conserve, protect, and maintain Pennsylvania's natural resources requires the denial of the permits currently under review and the rescission of the 401 Certification.

We know from experience that the construction practices proposed for Penn East will lead to inevitable, irreversible, and foreseeable failures and pollution events both in the short term during construction and in the long term. DRN and other community monitors have witnessed this truth first-hand, time and time again, on other pipeline projects constructed throughout our region. These pollution events cause immense harm. And yet, shamefully, PADEP is accepting an application from PennEast that proposes these same failing construction practices. It would be a gross miscarriage of justice for PADEP to continue to accept and permit these same substandard practices and analyses that are currently inflicting irreparable harm and repeated sediment, hydrologic, thermal, floodplain, riparian buffer, and water pollution impacts that DRN, County conservation districts, and PADEP itself have documented time and time again along similar fracked and liquid gas pipeline projects. Slapping fines on gas pipeline operators after the harm is done is simply not enough for PADEP to fulfill its statutory and constitutional duties, especially in light of the information currently available. Our freshwater resources and associated floodplains and riparian buffers of the Commonwealth deserve better protection, and a denial of PennEast's applications is warranted and justified.

Phase 1 of the PennEast Pipeline is, in effect, a placeholder for the New PennEast Pipeline, with only half of its capacity subscribed. However, as it stands, Phase 2 cannot legally be constructed due to permit denials in New Jersey and a U.S. Court of Appeals for the Third Circuit ruling prohibiting PennEast from condemning land in which the State of New Jersey holds an interest. In addition, during the Federal Energy Regulatory Commission's virtual open public meeting yesterday, PennEast's Application for Amendment to its Certificate of Public Convenience and Necessity, which would allow it to construct Phase 1 of the New PennEast Pipeline separately from Phase 2, was struck from the agenda due to concerns about FERC's ability to modify a certificate that is currently pending before the U.S. Court of Appeals for the D.C. Circuit.¹

The PennEast Pipeline, as originally conceived, is on life support. Premature approval of Phase 1 would be inconsistent with Pennsylvania's Environmental Rights Amendment, as well as the Dam Safety and Encroachments Act and the Clean Streams Law, because approval would allow for the unreasonable degradation of the public natural resources for a pipeline with little to no utility. On the

¹ See Comments submitted to FERC on September 2, 2020 at Attachment A, which DRN hereby incorporates into this comment.

face of PennEast’s application, let alone its misrepresentations regarding the pipeline’s impacts, the project does not fulfill the mandates of the law.

- PennEast estimates that Phase 1 of the pipeline will result in a total wetland impact area of 17.354 acres and a permanent wetland conversion of 5.49 acres within the Delaware River watershed, yet its mitigation plan only calls for 14.31 acres of wetland *enhancement* and 0.08 acres of wetland *creation*.
- The proposed wetland mitigation sites are over twenty miles away from the proposed pipeline route in counties and sub-watersheds not even remotely affected by the project. This mitigation proposal in no way compensates for the loss of, or negative impacts to, Exceptional Value wetlands from the pipeline.
- PennEast’s “Wetland and Riparian Reforestation Plan” proposes the planting of native trees and shrubs to restore wetlands to pre-construction conditions. However, PennEast plans to monitor survivorship of these plantings for only five years. It will take thirty or more years for three in a PFO wetland to grow to pre-construction conditions, as even PennEast has acknowledged in previous applications.
- There are ninety-six waterbodies proposed to be crossed by Phase 1 within the Delaware River Watershed: sixty-five of them are High Quality, fourteen are Exceptional Value, and there are only two proposed to be crossed using hydraulic directional drilling (“HDD”) technology—at Beltzville Lake and unnamed tributaries of Pohopoco Creek. The violent pipeline construction and installation methods proposed by PennEast would be devastating, and totally at odds with the mandates of Pennsylvania’s anti-degradation requirements.
- There are a total of 130 wetlands in the Delaware River watershed crossed by Phase 1 of the project. Of these, ninety-two wetlands are Exceptional Value and only thirty-eight wetlands are labeled “other” (ordinary resource value wetlands). PennEast’s applications fail to reveal the extent of its proposed project’s impact on these majority-Exceptional Value wetlands, most of which will be crossed via open-cut methods, with only five using HDD.
- It is also critical that PADEP use its authority and consider upstream and downstream impacts that fracking and related infrastructure is causing and would be exacerbated if PADEP authorizes yet another pipeline project.

Last year, the North Carolina Department of Environmental Quality (“NCDEQ”), led by Michael S. Regan, denied a 401 Certification to the Mountain Valley Pipeline Southgate Project because it was “inextricably linked to, and dependent upon” completion of the MVP Mainline Project, which was subject to regulatory and legal roadblocks.² NCDEQ explained that approval of the MVP Southgate Project would result in unnecessary environmental harm in the event that the MVP Mainline Project was never built: “[A]llowing the most adverse environmental impacts—without certainty of the project’s utility upon completion—is inconsistent with principles of minimization.” In other words, it

² See Letter from S. Daniel Smith, Director, Division of Water Resources, North Carolina Department of Environmental Quality to Mountain Valley Pipeline LLC (Aug. 11, 2020), at Attachment B.

would be *imprudent* and *unreasonable* to allow the environmental degradation associated with the MVP Southgate Project to occur. Here, Phase 1 is similarly inextricably linked to, and dependent upon, completion of Phase 2, which, as it stands, will not be constructed. PADEP should, like NCDEQ, reject this phased approach due to the unnecessary environmental harm that would be caused by construction and operation of Phase 1, a project that would have minimal, if any utility at all, without Phase 2. While “principles of minimization” should be enough to motivate PADEP to deny PennEast’s applications and rescind the 401 Certification, PADEP’s heightened constitutional role as a trustee of the public natural resources prohibits it from performing its duties unreasonably, and from failing to consider the impacts of resource-related decisions on future generations, who may bear the brunt of an ill-considered permit approval for obsolete natural gas infrastructure.

Respectfully,

A handwritten signature in blue ink that reads "Maya K. van Rossum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Maya K. van Rossum
the Delaware Riverkeeper
Delaware Riverkeeper Network

Enclosures