

**Delaware Riverkeeper Network ~ Berks Gas Truth
New Jersey Sierra Club ~ Environment New Jersey
Clean Water Action ~ Sourland Conservancy
Bucks County Concerned Citizens Against the Pipelines
Holland Township NJ Citizens Against the Pipeline
Schuylkill Pipeline Awareness**

March 2, 2020

Commissioners &
Executive Director Steven Tambini
Delaware River Basin Commission
25 Cosey Road
P.O. Box 7360
West Trenton, NJ 08628-0360

Dear Mr. Tambini and Commissioners,

In a February 5, 2020 letter to the PennEast Pipeline Company, LLC ("PennEast") you stated:

"...the PennEast Pipeline Company is hereby directed within 30 days of the date of this letter to submit to the Commission such information about its proposed Phase 1 project as is needed to enable the Commission to determine whether or not Phase 1 is subject to the Commission's review."

First, it is clear that PennEast is still intending to pursue the entire project as originally proposed. PennEast should not be allowed to undermine or evade any review by any agency, particularly not the Delaware River Basin Commission ("DRBC"), by seeking to artificially segment its project into pieces for segmented review, approval and construction. PennEast has been clear it intends to still build the entire project as originally conceived and is in court seeking to do so; DRBC must still require that any application represents the full intended project, as it cuts through both Pennsylvania and New Jersey portions of the watershed.

Second, even if DRBC proposes to undermine its own authority by allowing segmented review of the project (an action the Delaware Riverkeeper Network is fully prepared to challenge in court), the Phase 1 project in Pennsylvania, even standing alone, is clearly subject to DRBC jurisdiction and review. There is no reason for DRBC to suggest that its jurisdiction is or should be in question.

Section 3.8 of the DRBC Compact provides in relevant part:

No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall

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have been first submitted to and approved by the commission, subject to the provisions of Sections 3.3 and 3.5. The commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such plan. The commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section.

The DRBC Rules of Practice and Procedure (“RPP”) classifies projects for review under Section 3.8 of the Compact into two categories, those deemed not to have a substantial effect on the water resources of the Basin and therefore not required to be submitted for DRBC review, and those deemed to have substantial effects on water resources of the Basin and therefore required to be submitted for Commission review. See RPP Article 3, Section 2.3.5.

With respect to natural gas pipeline projects, the RPP categorizes them as projects that *presumptively* do not have a substantial effect on the water resources of the Watershed and that therefore *do not automatically* require DRBC review. But then Section 2.3.5 A. says that:

Except as the Executive Director may specifically direct by notice to the project owner or sponsor, or as a state or federal agency may refer under paragraph C., ... a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

12. Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; **natural and manufactured gas transmission lines and appurtenances**; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; **unless such lines would involve significant disturbance of ground cover affecting water resources**; ...

RPP Article 3, Section 2.3.5.A(12) (emphasis added).

A clear and straightforward reading of the DRBC Compact and Rules of Practice and Procedure clearly contain four exceptions to the exemption that, if the stated conditions are met, trigger DRBC review for natural gas transmission lines and appurtenances:

- 1) if the Executive Director of the Commission specifically directs;
- 2) if any state or federal agency refers a project under paragraph C.;
- 3) if the project in question crosses an existing or proposed reservoir or recreation area that has been incorporated into the Comprehensive Plan; and
- 4) if the project involves a significant disturbance of ground cover affecting water resources.

The PennEast Project, including the Phase 1 project in Pennsylvania standing alone, will involve significant disturbance of ground cover affecting water resources of the basin and clearly requires a docket from the DRBC before it could be allowed to proceed with any level of construction, including

tree felling. The Phase 1 project in Pennsylvania includes over 68 miles of pipeline right of way, the vast majority of which will be located within the Delaware River watershed basin. Dozens of waterways will be cut in Luzerne, Carbon, and Northampton Counties and will suffer temporary and permanent harm. There will be temporary and permanent impacts to wetlands, floodways, and upland habitats that will inflict direct, indirect, irreparable and enduring harm on the water resources of the basin.

In addition, the project is still proposed to pass through Comprehensive plan areas such as Beltzville State Park, Beltzville Reservoir, F.E. Walter Reservoir, Hickory Run State Park and Weiser State Forest which clearly triggers DRBC review.

Let us remind you of DRBC's history when it comes to pipeline review. DRBC refused, despite repeated timely requests and legal analyses provided by the Delaware Riverkeeper Network, to exercise jurisdiction over the Tennessee Gas 300 Pipeline and the Columbia 1278 Pipeline. It was only after construction of the projects was well on its way, that the DRBC wrote the Delaware Riverkeeper Network and admitted it had made a mistake when it failed to properly exercise its authority over these projects. By the time DRBC admitted its error and determined that it would apply DRBC's Rules of Practice and Procedure to the two projects, it was too late to protect our natural and water resources because construction was already so far along. More recently, DRBC rushed through the Mariner East pipeline, artificially limiting its review and the opportunity for public review and comment—there too, the wrongly-truncated exercise of jurisdiction by DRBC has resulted in devastating impacts to basin resources because of the significant disturbance of ground cover associated with the project.

DRBC is on the path of making the same mistake when it comes to the PennEast pipeline.

Respectfully and Urgently,

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Karen Feridun, Founder, Berks Gas Truth
Jeff Tittel, Director, New Jersey Sierra Club
Doug O'Malley, Director, Environment New Jersey
Amy Goldsmith, State Director, Clean Water Action
Laurie Cleveland, Executive Director, Sourland Conservancy
Arianne Elinich, Founder, Bucks County Concerned Citizens Against the Pipelines
Lorraine Crown, Holland Township NJ Citizens Against the Pipeline
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