



September 13, 2019

Patricia Cluelow, Supervisor
Application Support Unit
NJDEP Division of Land Use Regulation
501 East State Street
Trenton, NJ 08609

RE: Additional deficiencies for the PennEast pipeline Freshwater Wetlands and Flood Hazard Area Permit Applications

Dear Ms. Cluelow,

The Delaware Riverkeeper Network (DRN) is aware that the Freshwater Wetlands Individual Permit Application and Flood Hazard Area Permit Application submitted by PennEast Pipeline Company, LLC (PennEast) were deemed administratively deficient on September 4, 2019. DRN urges the NJDEP to deny the freshwater wetlands and flood hazard area permit applications now due to the irreparable harm the PennEast pipeline would cause. In addition, in order to be clear and to ensure you are not deemed to have waived your Clean Water Act authority, we urge you to explicitly and clearly reject any request for 401 certification as part of your denial.

In absence of a denial, DRN offers the following comments for the Department's consideration and will provide additional insights over time as we review the record.

Attachment G-1 of the PennEast application is an Environmental Report prepared by PS&S that provides details of the proposed regulated crossings of wetlands and streams. Regulated Crossing 98 states that,

“Wetland 022819_LD_1001_PFO/PSS/PEM has been identified as suitable or potentially suitable habitat for the following State-listed endangered or threatened species: savannah sparrow, grasshopper sparrow, and long-tailed salamander.”

The report also states that, *“The Transition Area is assumed to be 50 feet due to the lack of exceptional characteristics associated with the wetland feature.”*

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This 50-foot transition area assumption is incorrect because the wetland should be considered an exceptional resource value wetland. Per N.J.A.C. 7:7A Freshwater Wetlands Protection Act Rules (emphasis added),

“A freshwater wetland of exceptional resource value, or exceptional resource value wetland, is a freshwater wetland which:

- 1. Discharges into FW-1 or FW-2 trout production waters or their tributaries;*
- 2. Is a present habitat for threatened or endangered species; or*
- 3. Is a documented habitat for threatened or endangered species, and which remains suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat.*

The applicant appears to be ignoring the rules, which clearly state that documented and suitable habitat for threatened and endangered species qualifies a wetland to be of exceptional resource value; therefore such wetlands are eligible for a 150-foot transition or protective buffer area. Even if the wetlands are potentially suitable habitat, they were identified by the Department’s own Landscape Project mapping and Biotics database as historically being habitat and therefore their use as habitat is documented and likely still suitable. The difference between a 50-foot transition area and a 150-foot transition area is significant for water quality protection as well as for impacted species. An enhanced 150-foot transition area is particularly important to aquatic species such as long-tailed salamanders, which are sensitive to water quality changes. According to the Delaware Riverkeeper Network’s initial review, this 50-foot transition area “mistake” (or perhaps intentional oversight given how often it is repeated) is repeated multiple times throughout the application for the aforementioned species and additional species such as the bobolink and red-headed woodpecker. These mistakes occur at numerous wetlands within Regulated Crossings 88, 89, 90, 92, 93, 94, 96, 97, 98, 107, and 162A (11 total Regulated Crossings).

In addition, the Department’s deficiency letter dated September 4, 2019 states that temporary bridges and culverts are not exempt from flood hazard permits or authorization, an assertion that was incorrectly made by PennEast. Each of the proposed temporary bridges or culverts requires an Individual Permit review, and hydrologic and hydraulic calculations are required. It is highly unlikely that PennEast will be able to provide such accurate and sound analyses for their temporary structures in only 30 days.

This is not the first time that PennEast has submitted a deficient Freshwater Wetlands Individual Permit Application and Flood Hazard Area Permit Application to the Department and it will surely not be the last. PennEast has repeatedly demonstrated that it is unable to comply with the regulations despite being given multiple opportunities to do so. The Department cannot approve the permits for this project because the applications are simply too deficient to accept and impossible to rectify as PennEast has consistently proven. To the extent there is accurate information in the possession of the Department (whether provided by PennEast or third parties like the Delaware Riverkeeper Network) it is clear that PennEast cannot and will not meet the requirements of New Jersey law or its Clean Water Act 401 Certification requirements. Deficiency letters do not stop the clock on the Department’s decision-making that was started with PennEast’s application submission on August 8, 2019, as has been made clear by the Federal Energy Regulatory Commission’s (FERC’s) recent Order on Voluntary Remand re Constitution Pipeline Company,

LLC under CP19-5 et al. (FERC Accession No. 20190829-3090). It is clear to the Delaware Riverkeeper Network that PennEast is attempting to draw down the one-year timeline for the state to approve or deny a 401 Clean Water Act Water Quality Certification by submitting incomplete applications, eating up the 12 short months the Department has to undergo its review and make a decision. For these reasons, we urge the Department to immediately deny the PennEast Pipeline Project's Clean Water Act section 401 Water Quality Certification and to deny the NJ Freshwater Wetlands Individual Permit and NJ Flood Hazard Area Permit.

Sincerely,



Maya K. van Rossum
the Delaware Riverkeeper
Delaware Riverkeeper Network

Matthew McCann

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