



For Immediate Release

September 4, 2018

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3rd Circuit Rejects Atlantic Sunrise Pipeline Challenge

Philadelphia, PA – The U.S. Court of Appeals for the Third Circuit rejected legal actions filed by the Delaware Riverkeeper Network (DRN), Lancaster Against Pipelines (LAP) and Sierra Club challenging a Clean Water Act 401 Water Quality Certificate that the Pennsylvania Department of Environmental Protection (PADEP) issued for the Atlantic Sunrise Pipeline project.

“Once again the Third Circuit judge twisted themselves into pretzels to find ways to deny the rights of the people of Pennsylvania to challenge the lawfulness of a pipeline project and instead to advance the pipeline despite the fact that neither the public nor the DEP have an understanding of the full array of harms that will be inflicted,” said **Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network**. “With this ruling the court is taking from people their ability to challenge a pipeline project at a time that could make a meaningful difference and instead greasing the wheels for all future approvals needed from the state. The court is also creating the possibility that if in fact we were victorious in defeating future permitting for the project, that the people of Pennsylvania will have already lost their property rights via eminent domain to a project that might never be built. This ruling bootstraps in further the desire of the state to give all future needed approvals rather than have this kind of egg-on-its-face, yet again, as it did with the Constitution Pipeline – a project allowed to advance in Pennsylvania but that was later rejected by the state of New York and so now may never be built.”

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The Delaware Riverkeeper Network filed its lawsuit against the Pennsylvania Department of Environmental Protection (“PADEP”) on May 4, 2016, alleging that PADEP improperly issued a Clean Water Act Section 401 Water Quality Certification for the Atlantic Sunrise pipeline, a large scale gas transmission pipeline. The case was combined with similar challenges filed by LAP and Sierra Club. Delaware Riverkeeper Network and co-petitioners challenged PADEP’s issuance of the Clean Water Act Water Quality Certification for procedural and substantive reasons, including arguing that Pennsylvania failed to apply appropriate state standards for determining whether a 401 Water Quality Certification was proper and instead issued the certification contingent upon future state permitting of the project. The Delaware Riverkeeper Network and co-petitioners also challenged PADEP’s decision to issue the Certification without considering the ability of the company to comply with needed underlying state permits which would include consideration of the Pennsylvania Constitution’s Environmental Rights Amendment (“Article 1, Section 27”), and without allowing DRN and co-Petitioners to challenge the issuance of the Certification to the Pennsylvania Environmental Hearing Board (“EHB”) prior to federal court review.

Key findings of the court include:

- ⇒ Despite that Pennsylvania law says a PADEP permit/certification is not final until there has been the opportunity for a challenge to the EHB, that process does not apply in the context of FERC regulated pipelines and instead a state issued certification for a FERC regulated pipeline is ripe for judicial review on the date it is approved by the state;
- ⇒ PADEP was legally entitled to issue a Water Quality Certification despite failing to issue the permits upon which that Certification is based, including permits regarding erosion and sediment control, water obstruction and encroachments, and discharge of hydrostatic testing water;
- ⇒ PADEP does not have to consider Article 1, Section 27 impacts prior to issuing a water quality certificate for a FERC regulated pipeline given that those considerations will take place during consideration of the underlying permitting.

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About the Delaware Riverkeeper Network

Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the four states of the Delaware River Watershed (Pennsylvania, New Jersey, Delaware, New York) and at the federal level. DRN provides effective environmental advocacy, scientific monitoring, stream restoration, public education, and legal enforcement of environmental protection laws.