

**Catskill Mountainkeeper
Environmental Advocates of New York
Riverkeeper, Inc.
Scenic Hudson, Inc.
Sierra Club – Atlantic Chapter**

December 16, 2015

Via Electronic Mail and First Class Mail

Basil Seggos, Acting Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1010
basil.seggos@dec.ny.gov

**Re: SEQRA Lead Agency Coordination – Pilgrim Transportation of New York, Inc.
Pilgrim Pipeline Project**

Dear Acting Commissioner Seggos:

We write to request that the New York State Department of Environmental Conservation (“DEC”) assume State Environmental Quality Review Act (“SEQRA”) lead agency status to review the application submitted by Pilgrim Transportation of New York, Inc. to the New York State Thruway Authority (“NYSTA”) dated August 7, 2015, for a use and occupancy permit. Specifically, this application seeks permission for the longitudinal occupation of portions of the Thruway right-of-way for a proposed petroleum double pipeline.

Background

In total, the pipeline would span 360 miles, with one pipe carrying volatile, explosive Bakken crude south between rail transloading facilities in Albany and refineries in Linden, New Jersey, and the other transporting refined products north, with several lateral pipelines to major oil storage facilities along the way. The pipes would be 20” in diameter, capable of transporting 200,000 barrels of petroleum through the Hudson Valley in each direction, every day. The pipelines will be constructed in a “moving assembly line” cutting a swath through the Valley 100’ wide, as the area is clear cut and graded and a 6’x6’ trench is dug and blasted. If built, the pipeline will require a 50’ wide permanently cleared right of way as well as above-ground infrastructure, including four pump stations creating noise and potential visual impacts.

In addition to its construction and operation impacts, a rupture of the pipeline and a spill of thousands of barrels of crude oil or refined petroleum would devastate invaluable vital and sensitive areas. If the pump stations fail to shut down, petroleum will be spilled at a rate of 8,500

barrels per hour. The route travels through numerous Hudson Valley surface waters, floodplains and wetlands, coastal areas, wildlife habitat, forest and agricultural lands, drinking watersheds, and Catskill Park and the Harriman and Sterling Forest State Parks. The pipeline is proposed to not only cross the Hudson River twice, but also every major tributary to the Hudson, as well as both aqueducts that bring drinking water to New York City.

In addition, there is significant potential impact on the Ramapo River watershed, which is the source of drinking water for close to 3 million New York and New Jersey citizens, as well as on other sources of drinking water, from municipal wells to vulnerable aquifers. In terms of sensitive resources that will be placed at risk by the proposed project, the main pipelines would cross surface waters at 232 locations, with the lateral pipelines making another 25 crossings, and access roads impacting even more. The pipelines will cross 105 designated 100-year floodplains and 10 floodways, would result in permanent impacts on 148.2 acres of forest, causing fragmentation, would cross 292 wetlands (9.2 linear miles), and would pass through 5.8 miles of prime farmland and 7.6 miles of farmland of statewide importance. They will also pass through 12.59 miles of the state-designated coastal zone. Three Significant Coastal Fish and Wildlife Habitats are located within five miles of the project's Hudson River crossings, and the Catskill Creek Significant Coastal Fish and Wildlife Habitat is crossed by the main pipeline.

Because of the project's size and potential for both catastrophic and long lasting environmental impacts and its conflict with New York State environmental and climate change policies, the undersigned strongly urge DEC to assume lead agency status for the environmental review of the proposal under SEQRA. In addition, NYSTA's clear financial interest in the revenues generated from a use and occupancy agreement, if granted, presents a conflict of interest that makes NYSTA an inappropriate lead agency or co-lead agency.

The DEC Should Assume SEQRA Lead Agency Status

On November 16, 2015, NYSTA issued letters to involved agencies indicating that it was "considering" lead agency status for review of the project under SEQRA, and that if no other agency claims itself as lead agency, designation of NYSTA as lead agency "may be necessary" to initiate the environmental review process.¹ NYSTA classified the proposal as a Type I Action

¹ See November 16, 2015 Letter from New York State Thruway Authority to Marc Gerstman, Acting Commissioner, New York State Department of Environmental Conservation.

under SEQRA, which requires preparation of a full Environmental Assessment Form (“EAF”) and establishment of a lead agency prior to a determination of significance made using the information in the EAF.²

The undersigned have serious concerns about the potential impacts that this project will have on the natural resources of the Hudson Valley and beyond, including its implications for climate change as a new piece of fossil fuel infrastructure that will promote the continued use of carbon-emitting fuels for years to come. If the project goes forward, it must be subject to thorough and vigorous environmental review, with significant opportunity for public input. Therefore, we write to join numerous other parties, including an overwhelming majority of the municipal involved agencies that lie in the path of the proposed pipelines including four of six counties (Albany, Greene, Ulster and Rockland), all three cities (Albany, Kingston, and Newburgh), and 21 out of 26 other towns and villages, as well as a number of other interested parties, in their requests for the DEC to assume the role of lead agency in the environmental review of the project under SEQRA.³

DEC, as the State’s environmental agency, is in the best position to conduct the necessary and thoroughgoing environmental review that this project demands. The pipeline’s anticipated impacts are vast – there will be local, regional, and state-wide effects, impacting the sensitive and important natural and other resources of the Hudson Valley. Construction of two petroleum pipelines through the designated Hudson River National Heritage Area brings far too great a risk to the State of New York with no identifiable benefits.

The project will also have broad-ranging impacts as a major new piece of fossil-fuel infrastructure, intended for the interstate transport of highly explosive Bakken crude extracted by hydraulic fracturing (“fracking”) to refineries on the east coast, as well as refined products to internal markets. Introduction of such infrastructure in New York State at this time is inconsistent with established State policy and the Governor’s initiative to reduce greenhouse gas emissions and curb climate change and for the protection of human health and the environment. The DEC Commissioner’s Policy on Climate Change and DEC Action requires the DEC to consider climate change in all of its actions, including permitting. The proposal must be seriously vetted by the State’s designated environmental department in this context.

² See 6 N.Y.C.R.R. § 617.6.

³ Copies of the written resolutions and requests of several agencies are included with this letter.

Moreover, as the department with jurisdiction over the numerous natural resources beyond the Thruway right-of-way that stand to be affected, DEC has the broadest powers for investigation of the project's potential negative impacts and to conduct the necessary environmental assessment of the action. Finally, in order to avoid even an appearance of a conflict of interest, the NYSTA, which stands to benefit economically from the fees it would collect from a use and occupancy permit, should not conduct or play any other role in the environmental review of the proposal. For these reasons, DEC should assume lead agency status, rather than NYSTA.

Pursuant to SEQRA Regulations, the “DEIS” Prepared by the Applicant Should be Treated as an EAF and Public Scoping Must be Conducted

In addition to acting as lead agency, we urge DEC to comply with SEQRA's requirements regarding scoping and the opportunity for public participation in preparation of a DEIS.

The use and occupancy permit application was accompanied by a “Draft Environmental Impact Statement” (“DEIS”), prepared by the applicant, with no input from involved agencies or the public. Prior to any determination of significance, SEQRA requires the lead agency to take every reasonable opportunity to involve other agencies and the public in the SEQRA process.⁴ Given the proposal's size, complexity, and strong potential for numerous and broad-ranging significant environmental impacts, the participation of other agencies and the public in the environmental review is vital. Therefore, the DEC must use its authority to treat the “DEIS” submitted by the applicant as an EAF for the purpose of determining significance once it is established as the lead agency.⁵ Because it clearly has the potential for at least one significant environmental impact, DEC must issue a positive determination of significance, i.e. a positive declaration.⁶ And most critically, the positive declaration must be followed by public scoping to ensure that the full range of potential impacts, including cumulative impacts, are considered in a DEIS.⁷ These impacts include, among other things, the broader climate change impacts of the proposal (as required by DEC guidance), all regional impacts, such as impacts on drinking

⁴ See 6 N.Y.C.R.R. § 617.3(d).

⁵ See 6 N.Y.C.R.R. § 617.6(a)(iv).

⁶ See 6 N.Y.C.R.R. § 617.7(a)(1).

⁷ See 6 N.Y.C.R.R. § 617.8.

watersheds, and all local impacts, such as those on land use and local zoning ordinances that apply to the project.

Conclusion

In summary, the undersigned request that the DEC: (1) assume lead agency status for the environmental review of the Pilgrim Pipeline project under SEQRA; (2) issue a positive determination of significance; and (3) conduct public scoping to ensure that this large and multi-jurisdictional project that poses numerous significant environmental risks to the Hudson Valley and beyond is fully evaluated. DEC must act as the sole lead agency because it is the most appropriate State agency to do so, as well as to avoid any appearance of a conflict of interest on the part of the NYSTA.

Thank you for your attention to this request.

Sincerely,

Wes Gillingham,
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cc: (Via Electronic Mail):

Governor Andrew Cuomo
Peter Walke, Assistant Secretary for the Environment
Robert L. Megna, Executive Director, New York State Thruway Authority
Chris Hogan, Project Manager, Department of Environmental Permits
Dan Whitehead, Regional Permit Administrator, DEC Region 3
John J. Flanagan, Temporary President of the Senate
Jeffrey D. Klein, Independent Democratic Conference Leader
Andrea Stewart-Cousins, Democratic Conference Leader
Thomas F. O'Mara, Chair, Environmental Conservation
Michael H. Ranzenhofer, Chair, Corporations, Authorities and Commissions
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