

**Testimony of
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Good morning Chairman Barrar, Chairman Sainato, and members of the Committee.

My name is Ramez Ziadeh, and I am the Executive Deputy Secretary for Programs for the Department of Environmental Protection (DEP). On behalf of the DEP, I would like to thank you for the opportunity to testify on DEP's role in regulating pipeline construction.

To start, I would like to quickly cover the Department's role in permitting pipeline construction. Then, I will address the Department's compliance and enforcement activities; the Department's efforts towards interagency coordination; guidance that is currently under development; and the Department's role in pipeline siting. Finally, I would like to briefly touch on areas you might consider for future legislation.

Pipeline Permitting

The three main DEP regulations that relate to pipeline construction (each available online at www.pacode.com) are:

1. **Chapter 102**, which regulates erosion and sedimentation (E&S) from earthmoving activities. E&S Plans are required to be developed and implemented for all earth disturbance of 5,000 square feet or more. Additionally, a pipeline project that exceeds five acres of total earth disturbance would need to obtain an Erosion Control Permit and would need to implement best management practices to control stormwater runoff both during and following earthmoving activities;
2. **Chapter 105**, which regulates water obstructions and encroachments which are focused on activities in, along or across wetlands, rivers, lakes, and stream corridors; and

more than one DEP regional office's coverage area, DEP electronically posts project information – including permit applications, final permits, comment response documents, compliance and enforcement documents, and other supporting documents – on the DEP Pipeline Portal (Portal). Currently, the Department has information posted for the Mariner East 2, Atlantic Sunrise and PennEast projects.

DEP's Pipeline Portal can be found here:

<http://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/default.aspx>

For pipeline projects with more regional involvement, information may be found on the associated regional office's resources page by clicking the community information tab available at the following address:

<https://www.dep.pa.gov/About/Regional/Pages/default.aspx>

Compliance and Enforcement:

With regard to compliance and enforcement activities associated with pipeline projects, DEP works closely with County Conservation Districts to inspect projects to ensure compliance with the permit requirements. Projects are inspected on a regular basis by DEP and/or County Conservation District staff.

During construction, permittees must address inadvertent returns from horizontal directional drilling (HDD), spills of polluting substances, and impacts to water supplies in a manner that satisfies all requirements of Pennsylvania law, including the Clean Streams Law, the Solid Waste Management Act, and the Land Recycling and Environmental Remediation Standards Act. Impacts must be fully addressed prior to resuming the activity. DEP also investigates all complaints received from the public.

DEP has taken, and will continue to take, strong, appropriate actions should violations occur. DEP issues Notices of Violation (NOVs) and Administrative Orders requiring permittees to perform corrective actions for pipeline installation activities that violate requirements and Pennsylvania laws and/or regulations, cause pollution, or present risk of pollution. DEP will continue to include permit conditions that require work to stop when violations occur and require the violation to be resolved before work can resume. Additionally, DEP will continue to hold

permittees to the highest regulatory standards. In most cases, permittees cannot receive amendments to permits or have other work authorized until violations are remedied.

Agency Coordination:

DEP regularly and systematically coordinates with other state, local, and federal entities including Pennsylvania Emergency Management Agency (PEMA), local first responders, county emergency management agencies, the Pennsylvania Department of Conservation and Natural Resources (DCNR), the Pennsylvania Department of Transportation (PennDOT), the Pennsylvania Game Commission (PGC), the Pennsylvania Fish and Boat Commission (PFBC), the Pennsylvania Historical and Museum Commission (PHMC), the Pennsylvania Public Utility Commission (PUC), the US Army Corps of Engineers (USACOE), and the US Fish and Wildlife Service (USFWS).

With respect to landslides, sinkholes and subsidences that may impact a pipeline during or after construction activities, DEP is in regular communication with the PEMA and the PUC. When needed, DEP and PUC coordinate site inspections. It is not uncommon for citizens to report sinkholes on a construction site before DEP, as they are often witness to the event. Moreover, the regulated entity has independent obligations under PUC regulations to notify the Commission and address any safety risks in accordance with applicable safety requirements. DEP continues to work conscientiously to enhance interagency coordination and will remain diligent in notification to our sister agencies and regulatory colleagues.

Policy and Guidance Development:

DEP has been fully engaged in policy development related to pipeline permitting and construction. To assist in this effort, DEP assembled two stakeholder groups to specifically look at:

- Enhanced Best Practices in the design and execution of Horizontal Directional Drilling (HDD)
- Recommended Methodology and Factors to Consider to Complete an Alternatives Analysis under Ch. 105.

The stakeholder group meetings have recently been completed and we have made great progress. Draft guidance documents are currently under development, which we anticipate will be available for public comment by winter of 2020.

Pipeline Route:

With regard to pipeline routing, DEP has limited authority. All pipeline proponents are required to propose a route that complies with the requirements of the Department's laws and regulations and demonstrates that no feasible alternative exists with respect to impacts to water resources.

For Federal Energy Regulatory Commission (FERC) regulated projects, siting and routing go through a detailed process administered by FERC. Details can be found on FERC's website at <https://www.ferc.gov/>. The process is governed by federal regulations and is not dictated by state law or regulation.

A pipeline's route is selected by the pipeline company. DEP's environmental permitting regulations affect the pipeline's route in limited areas based upon potential impacts to water and wetland resources across the project corridor. However, the permitting changes do not result in widespread changes to the route chosen by the pipeline company. DEP cannot arbitrarily, and without regulatory basis, dictate where a pipeline is sited. Our regulatory basis is founded within our statutory authority.

Once installed, the regulation or enforcement of standard safety practices for the transportation of natural gas or natural gas liquids through the pipeline is outside the scope of the DEP's Chapter 102 and 105 (construction) permitting authority. The PUC and the federal Pipeline Hazardous Materials Safety Administration (PHMSA) oversee and enforce issues related to the safety of pipeline construction and maintenance/operation.

Legislation:

DEP would like to take this opportunity to offer some suggestions regarding legislation currently before the General Assembly or that could be taken up to improve public health and safety.

First, with respect to House Bill 1568, we applaud Representative Comitta's leadership on this issue. As noted earlier in this testimony, DEP and other agencies work collaboratively in what we believe to be the same spirit in which this legislation has been introduced. We support the concept of increased communication and transparency related to pipelines in the Commonwealth. Creating a board could facilitate more communication, collaboration, and transparency regarding information and issues related to pipelines.

The Administration would be supportive of this bill with some amendments to help ensure the proposed board best serves the needs of Pennsylvania, and we hope to work together with the Representative to this end. Most notably, the definition of “pipelines” needs to be refined to cover only transmission oil and gas pipelines. As it is currently written, it could include all gathering and distribution lines as well as pipelines that transport water and sewage. There also needs to be greater clarification regarding the kind of communication and information sharing that the board would be doing to ensure that we are not duplicating efforts already underway at DEP and other agencies.

Second, as noted above, DEP’s role in siting and routing decisions is limited to its regulatory responsibilities related to protection of water and wetland resources. As noted repeatedly, there is currently a gap in state law regarding siting and routing authority for projects that are not subject to FERC jurisdiction. Many other states have passed legislation to provide an enhanced role in siting decisions to their utility or public service commission. Governor Wolf has called for legislation granting siting authority to the PUC, and we believe many of the concerns raised by members of the General Assembly and the public could be addressed via such legislation.

Third, under the Clean Streams Law, DEP can – and does – respond when informed of private water supply impacts. In 2017, DEP put on court record its policies and practices used to respond, investigate, and resolve private water supply impacts in the oil and gas context. DEP can require termination of the activity causing private water supply impacts and can require restoration or replacement of the supply under most of our statutes.

However, DEP currently does not have the statutory authority to *regulate* private water wells. As such, at this time, DEP lacks:

- an inventory of private water supply wells (including location and connected facilities), and
- private water well construction standards.

Perhaps most important to note: DEP lacks the legal authority to require such information be provided to the state and to establish and enforce private water well construction standards. Without construction standards, private water wells can be improperly constructed, increasing the risk for the creation of pathways for bacteria and other contaminants to degrade the well water quality. Without full

records of existing water wells, it is difficult for DEP to proactively protect private water wells.

DCNR maintains a publicly available database that contains limited information on private water wells that has been voluntarily provided by residents. This database is incomplete, but it is the most comprehensive source available due to the limitations from the lack of authority regarding private water wells. In the absence of complete data, the pipeline companies have been directly reaching out to property owners along the project corridor to determine the existence of private water wells. The HDD Guidance underway by DEP will provide additional recommendations to pipeline companies for acquiring accurate data on private wells.

DEP will continue to respond to, and require restoration of, private water well impacts; however, it would be much more effective to be able to take a proactive approach rather than waiting until private water wells are already impacted. The Commonwealth cannot protect something that it does not know is there. We must reiterate that there is a need for a more comprehensive and effective approach to private water well protection.

Thank you again for inviting DEP to testify before the Committee on this important topic. We look forward to continuing to work with the General Assembly to address these issues. I thank you for your time, and I am available to respond to any questions you may have.