



Citizens for Pennsylvania's Future
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July 30, 2009

John Hanger, Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

**Re: Water Obstruction and Encroachment Permit No. E15-780,
Transcontinental Gas Pipe Line Corporation,
East Brandywine, East Caln, East and West Whiteland Townships,
Chester County**

Dear Secretary Hanger:

On behalf of Citizens for Pennsylvania's Future (PennFuture), I am writing to request that the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP), appropriately enforce Special Condition No. 1 of the referenced permit (Permit) that DEP issued to Transcontinental Gas Pipe Line Company (Transco). As PennFuture understands it, Special Condition No. 1 prohibits Transco from conducting encroachment or construction activities related to a new pipeline crossing or existing pipeline removal located in the East Branch of Brandywine Creek or Ludwigs Run between pipeline stations 2269 and 2295 until the Department issues a permit amendment approving horizontal directional drilling (HDD) or another approved method.

Special Condition No. 1 appears to be intended to ensure that Transco complies with the regulations requiring that a person proposing a water encroachment avoid and minimize its impacts. See 25 Pa. Code §§ 105.13(d)(1)(ix); 105.1 (definition of "mitigation"). Implicit in the condition is a determination by DEP that the impacts of the encroachment using an "open-cut method" as proposed by Transco in its permit application can be avoided or further minimized by substituting HDD or another approved method.


On June 4, 2009, Transco submitted a "Permit Amendment Request" proposing a "split cofferdam installation method." Because the "split cofferdam installation method" is little more than a modified "open-cut method," DEP should reject the representations by Transco in its submission that the "split cofferdam installation method" would have fewer impacts than HDD. DEP already appears to have determined that HDD would have fewer impacts than an "open-cut method," consistent with the consensus of environmental, technical and county officials who have opined on this issue during the permitting process.

Transco appears to acknowledge that the “split cofferdam installation method” will not avoid or minimize impacts when it proposes “to provide \$2.25 million of funding for permanent and offsetting stream restoration and/or watershed improvement projects within the Brandywine Creek Watershed.” Transco must, however, avoid and minimize impacts before it can compensate for any remaining impacts. See 25 Pa. Code §§ 105.13(d)(1)(ix); 105.1 (“If the impact cannot be eliminated by following clauses (A)—(C) [including “[a]void and minimize impacts”], compensate for the impact by replacing the environment impacted by the project or by providing substitute resources or environments.”); see also Hatchard v. Department of Env'tl. Resources, 149 Pa. Commw. 145, 151, 612 A.2d 621, 624 (1992) (“We agree with DER that it was not required to consider Petitioner's mitigation measure of replacement wetlands because Petitioner could have satisfied the first step in the mitigation process by utilizing the available alternatives to filling in the wetlands. Therefore, DER properly applied its own regulations.”).

Transco admits that the “cofferdam installation will have direct, temporary impacts on the stream (e.g., temporary water quality effects and disturbance of the streambed, banks, and the adjacent riparian vegetation) which could be minimized or even avoided by an HDD installation” By offering to compensate for these impacts without first avoiding or minimizing them, Transco has skipped a crucial step in the mitigation process. For that reason, DEP must deny the “Permit Amendment Request”¹ and prohibit Transco from conducting encroachment or construction activities related to a new pipeline crossing or existing pipeline removal located in the East Branch of Brandywine Creek or Ludwigs Run between pipeline stations 2269 and 2295 until the Department issues a permit amendment approving the stream crossing by HDD or another approved method.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me at (215) 545-9694 or glass@pennfuture.org.

Sincerely,


Brian Glass *mele*
Staff Attorney

cc: United States Senator Arlen Specter
United States Senator Robert P. Casey
United States Representative Jim Gerlach
United States Representative Joseph R. Pitts

State Senator Andrew E. Dinniman
State Senator John C. Rafferty, Jr.
State Representative Curt Schroder
State Representative Duane D. Milne
Chester County Commissioner Terence Farrell
Chester County Commissioner Kathi Cozzone

¹ DEP must also deny the “Permit Amendment Request” because of Transco’s continuing violations of the Clean Streams Law. The Clean Streams Law states that “[t]he department shall not . . . amend any permit if it finds, after investigation and an opportunity for informal hearing that . . . the applicant has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations.” 35 P.S. § 691.609. The Notice of Violation issued to Transco on June 18, 2009, as well as the numerous and continuing violations occurring as recently as July 20, 2009, as documented in Earth Disturbance Inspection Reports issued to Transco, indicate a lack of ability or intention to comply with the Clean Streams Law, and provide another independent basis for denying the “Permit Amendment Request.”