



April 17, 2017

Commissioner Martin Suuberg
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

***Re: Enforcement of Water Quality Certification and Sandisfield Order of Conditions
Pertaining to TGP Connecticut Expansion Project***

Dear Commissioner Suuberg:

I write concerning the Tennessee Gas Pipeline Company, L.L.C. (“TGP”) Connecticut Expansion Project (the “Project”), for which imminent tree felling in Otis State Forest is planned.

Last Friday, one of my colleagues, Cathy Kristofferson, spoke with a staff member of the Western Regional Office (“WERO”) of the Massachusetts Department of Environmental Protection (“MassDEP”) seeking answers to several procedural questions. The responses raised serious doubts as to whether your agency will enforce all of the Conditions of the 401 water quality certification (the “WQC”) issued for the Project. I seek clarification on several points.

First, Ms. Kristofferson asked whether the pre-construction meeting required under Condition 5 of the WQC had taken place. She was told that multiple meetings between WERO staff and TGP had been held, and that it was not clear to staff whether the specific meeting required under Condition 5 will occur. **Please clarify that this condition will be followed and whether this meeting will be open to the public.**

Ms. Kristofferson also raised the issue of the active vernal pools she observed last week, impacted by tire ruts in the existing right of-way that is planned to be used for the Project. While the Sandisfield Conservation Commission has issued an Order of Conditions (“OOC”) that it should be enforcing, MassDEP also has a duty to ensure that the OOC is enforced and the Wetlands Protection Act is followed. Relatedly, Ms. Kristofferson came away from the conversation without clarity as to MassDEP’s current position on whether debris from felled trees left in wetlands and streams would constitute impermissible fill. Last April, WERO Environmental Analyst David Foulis stated in an affidavit filed with the Federal Energy Regulatory Commission that “the felling of trees and leaving debris in place itself constitutes an impermissible discharge of fill.”¹ **Has the agency’s definition of “fill,” “discharge,” or “impermissible” changed from its definition a year ago?**

Ms. Kristofferson was referred to a MassDEP legal department regarding the fill question, and also when she asked how the agency intends to enforce Condition 34 of the WQC. Condition 34 requires that the “Fales” parcel acquired by TGP for mitigation be subdivided and a portion conveyed to the Commonwealth “prior to the initiation of any activities otherwise permitted” in the WQC. **Please clarify whether and the extent to which MassDEP will allow tree felling for the Project prior to the legal transfer in fee of the portion of land referred to in the plans of record as the “Fales Site.”**

¹ Affidavit available at <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14205417>.

What were intended by Ms. Kristofferson as simple procedural questions were met with deflection, leaving an overall impression of an agency not particularly concerned with the enforcement of its own permit. This impression is of course colored by the context of the Baker administration's continued efforts to chip away at the environmental agencies, undermine and eliminate regulations on the books, and expand gas infrastructure projects while claiming that the state has a "very limited role" in permitting interstate pipelines. The role of the Commonwealth is only limited to the extent that the Governor has made policy, staffing, and budgetary decisions that make sustainable energy policy and the robust environmental protection that the Commonwealth is known for nearly impossible.

Please ensure that Otis State Forest, and the waters of the United States within the Commonwealth in and around it, are protected to the full extent of the law, including the strict enforcement of all Conditions of the WQC.

Sincerely,



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