

# PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

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July 10, 2015

**Via email (DEPPermitting@dec.ny.gov) and mail**

Mr. Stephen M. Tomasik  
DEC - Division of Environmental Permits  
625 Broadway, 4th Floor  
Albany, NY 12233-1750

**Regarding:**

**Application ID: 0-9999-00181/00009 - Water Quality Certification**

**Application ID: 0-9999-00181/00010 - Freshwater Wetlands**

**Application ID: 0-9999-00181/00011 - Water Withdrawal**

**Application ID: 0-9999-00181/00012 - Excavation and Fill in Navigable Waters**

**Application ID: 0-9999-00181/00013 - Stream Disturbance**

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Dear Mr. Tomasik:

On behalf of our client, Stop the Pipeline (“STP”), the Pace Environmental Litigation Clinic, Inc. (“PELC”) hereby supplements its February 27 and May 20, 2015 comments on the Joint Application for a Water Quality Certification (“WQC”) and four water related permits based upon newly acquired information. The certificate and four permits are being sought for the proposed Constitution Pipeline / Iroquois Compressor Station Project (“Project”). STP recently obtained documents through a Freedom of Information Act request made to the United States Army Corps of Engineers (“ACE”). Included in the documents was correspondence showing that the Constitution Pipeline Company, LLC (“Company” or “Applicant”) supplemented its Joint

Application for a third time. The files were transmitted to DEC on March 27, 2015, a month before DEC opened its second public comment period on the Company's application for a 401 WQC. However, these supplemental materials, and other pertinent information, were withheld from the public. To rectify the situation, DEC must make these documents available to the public, and officially reopen the comment period.

**I. DEC Failed to Notify the Public that the Joint Application Was Supplemented Prior to the Second Public Comment Period.**

On December 24, 2014 DEC issued a Notice of Completion for the proposed Constitution Pipeline, noting that the Joint Application was available on the Company's website and at six public libraries along the route.<sup>1</sup> The electronic and printed materials made available at that time included: (1) the original application, which was filed in August 2013; (2) a supplemental filing, from November 2013; and (3) a second supplemental filing made in August 2014.<sup>2</sup> On April 29, 2015, after the Company withdrew and resubmitted its Joint Application, DEC issued a new Notice of Completion, but failed to notify the public that significant new information had been submitted to DEC by the Applicant.<sup>3</sup> In its notice, DEC opened a short comment period, and emphasized there was no need to resubmit comments made during the first public comment period. DEC's public notice did not mention the third supplemental filing that was transmitted to DEC by the Company on March 27, 2015, and did not state that any new documents were

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<sup>1</sup> *ENB - Statewide Notices 12/24/2014*, N.Y. ST. DEP'T OF ENVTL. CONSERVATION (Dec. 24, 2014), [http://www.dec.ny.gov/enb/20141224\\_not0.html](http://www.dec.ny.gov/enb/20141224_not0.html).

<sup>2</sup> CONSTITUTION PIPELINE CO., Joint Application, *available at* <https://www.dropbox.com/sh/uqd0quuiifpt0j8/AADdMecLxKvzM0ruWyOxsQh5a?oref=e&n=358617499>.

<sup>3</sup> *ENB - Statewide Notices 4/29/2015*, N.Y. ST. DEP'T OF ENVTL. CONSERVATION (April 29, 2015), *available at* [http://www.dec.ny.gov/enb/20150429\\_reg0.html](http://www.dec.ny.gov/enb/20150429_reg0.html). ("This re-submitted application incorporates all application materials previously provided to the Department and made available for public review on December 24, 2014.")

available for public review. The Company did not post the supplemental filing on its website, the only place where the electronic files for the original application and first two supplements were made available.

The amount of new information withheld from public review by DEC was humungous, encompassing over one gigabyte of data in hundreds of discrete files. One of the Company's subcontractors told the ACE, as the supplement was being transmitted, "Lots of information coming your way!" (Exhibit 1, March 28, 2015 email). There is no question that an enormous amount of relevant information was transmitted to the agencies, and then withheld from public scrutiny. According to the Company's cover letter, the third supplemental filing included: (1) information gathered in the field from June 4, 2014 through December 1, 2014; (2) revised attachments, including the project narrative and the hydraulic and hydrologic analysis; and (3) new attachments, including a 424 page "Trenchless Feasibility Report" (Exhibit 2, cover letter). Thus, the third supplemental filing was not merely a minor supplement with a few inconsequential edits, but was rather a major submission containing significant new technical information.

In addition, DEC knew the public was concerned about these very topics, as countless people had testified and submitted comments about them. In spite of this public concern, DEC failed to inform anyone that major revisions had been made to the Joint Application, and failed to make the documents public, as it had done during the first comment period a few months earlier.

The "Trenchless Feasibility Report" was initially submitted to DEC on January 22, 2015, over a month before the initial public comment period closed. (Exhibit 3, cover letter). However, it was never made available (nor was its existence even made known) to the public, so there was

no opportunity to scrutinize the Company's claims that drilling beneath streams and wetlands was not feasible. In fact, the potential impact of clear-cutting every stream and road that must be crossed is profound, and trenching across hundreds of waterbodies is likely to lead to long-term violations of New York State water quality standards. The use of trenching is also contrary to DEC's own policy, as noted in the agency's comments to the Federal Energy Regulatory Commission ("FERC").<sup>4</sup>

The March 27, 2015 letter also stated that a Wetland Mitigation Plan would be submitted to the ACE and DEC as soon as it was available. According to a letter from the Company to the ACE, the Wetland Mitigation Plan was completed by April 3, 2015. (Exhibit 4). It therefore appears that DEC also withheld that document when it opened the second public comment period.

## **II. Substantial Survey Data is Still Missing from the Joint Application.**

The Applicant's third supplemental filing on its Joint Application includes data and analysis from field surveys through December 1, 2014. This means that all of the information from the properties that were surveyed after FERC issued its Certificate of Public Convenience and Necessity on December 2, 2014, and accessed through court orders issued through eminent domain proceedings, is still outstanding. According to Attachment I of the third supplemental filing to the Joint Application, sixteen percent of Delaware County had not been surveyed as of December 1, 2014. This information must be made available for public review and comment prior to the issuance of the 401 WQC and other required permits.

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<sup>4</sup> See, e.g., DEC, Scoping Comments, 3 (Nov. 7, 2012), available at [http://elibrary.ferc.gov/idmws/file\\_list.asp?accession\\_num=20121106-5145](http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20121106-5145).

**III. The Stormwater Pollution Prevention Plan Was Erroneously Withheld.**

On June 22, 2015, STP obtained the Company's April 2014 Stormwater Pollution Prevention Plan (SWPPP) through a Freedom of Information Law request that was made on October 2, 2014. The SWPPP was sent to DEC on April 29, 2014, almost eight months before DEC issued the Notice of Completion for the proposed Constitution Pipeline. (Exhibit 5, cover letter). The SWPPP should have been made available for public review and comment as part of the 401 WQC application as storm water flows are obviously directly relevant to and inseparable from an analysis of potential water quality impacts.

**IV. DEC should not condition a 401 WQC, or other permits, on information that will be acquired in the future.**

According to the ACE, the Company is requesting a 401 WQC, and other permits, conditioned on future studies and analysis. (Exhibit 6). This is not acceptable. The entire project has been reviewed in a piecemeal fashion, starting with an incomplete environmental impact statement by FERC, followed by an order conditioned upon pages of requirements. FERC's incomplete environmental review is currently being relied upon by DEC and other agencies to determine compliance with other laws, many of which have stricter standards than those under which FERC is authorized to act. Now the Company asks these agencies to further condition their approvals on future information and analysis. Lost in all of these conditional permits, certificates, and orders is a complete analysis that incorporates all of the environmental impacts of the proposed project. This piecemeal review is contrary to both federal and state laws.

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**V. Conclusion.**

We respectfully request that all of the missing information for the proposed pipeline be integrated and shared with the public, and the complete application with all supporting data then be made publicly available and reopened for public comment.

Respectfully submitted,



Daniel E. Estrin  
Supervising Attorney



Anne Marie Garti, Esq.  
Volunteer Attorney

cc: Patricia Desnoyers, Esq., NYSDEC  
Kevin Bruce, USACE