

Pipelines and their Potential Environmental and Regulatory Conflicts

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By
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Princeton Hydro LLC.

Pipelines in the Landscape



Both photographs attributed to Delaware Riverkeeper Network

Natural Resource Impacts Associated with Pipelines

- Habitat Fragmentation
 - Fragmentation of core forest and impacts to areas sensitive species
 - Invasive species colonization
- Stream degradation
 - Direct impacts associated with construction
 - Additional impacts associated with loss of riparian zones including modified hydrology and increased water temperature
- Impacts to soils through excavation and compaction



DRN, Pike County, PA across the Sawkill Creek. June 2011

What is FERC

- The Federal Energy Regulatory Commission, or FERC, is an independent (Federal) agency that regulates the interstate transmission of electricity, natural gas, and oil. FERC also reviews proposals to build liquefied natural gas (LNG) terminals and interstate natural gas pipelines as well as licensing hydropower projects. The Energy Policy Act of 2005 gave FERC additional responsibilities as outlined in an updated Strategic Plan. As part of that responsibility, FERC **approves** the siting and abandonment of interstate natural gas pipelines and storage facilities.



NEW JERSEY

Environment vs. jobs

Pip

Pip
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pla

NEW JERSEY UTILITY COMPANIES ARE SET TO INVEST BILLIONS OF DOLLARS ON INFRASTRUCTURE THROUGHOUT NEW JERSEY

PIPER
PIPELINE
Holdings, LLC

Pipeline Forum at South Plainfield
High School 11.13.2104

Natural Gas Act of 1938

- **The Natural Gas Act of 1938 (NGA).** The NGA governs all aspects of interstate transportation and sale of natural gas, and gives the Federal Energy Regulatory Commission (FERC) authority over all pipeline projects.
- *Preemption circumvents state and local regulation unless there is a nexus to federal law.*



Delaware Riverkeeper Network, High Point State Park, NJ

Preemption

- **Preemption.** The Natural Gas Act preempts any state or local law relating to the transportation of natural gas in interstate commerce. A big exception is that when a federal law itself gives authority to the state to make a determination or issue a permit, the state action is NOT preempted, which means that when the state environmental or water quality agency issues a water quality certificate under section 401 of the Clean Water Act, it cannot be preempted by FERC.

FERC Pipeline Process Rule #8:



Find the weak spot

NEPA Policy

- Federal agencies shall to the fullest extent possible: (a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.
- Assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

Key Federal Regulations Applicable to the PennEast Pipeline

- Endangered Species Act
- Wild and Scenic River Act
- National Historic Preservation Act
- Clean Water Act
 - Section 404 wetlands
 - Section 401 Water Quality Certification *
 - Section 303 Water Quality Standards*
- Executive Orders, at least those that are applicable are also important
- Delaware River Basin Commission

Key Elements of Federal Law

Wetlands - Section 404 of the CWA

- An Individual wetland permit will require a detailed alternatives analysis in accordance with 404b1 guidelines that mandates the avoidance and minimization of regulated impacts.
- NJ and PA Water Quality Standards. Compliance with these standards should be very important.
- All wetland permits must be accompanied by a state issued water Quality Certificate.

New Jersey

- Freshwater Wetland Protection Act provides the basis for NJ's assumption of Section 404 of the Clean Water Act.
- How the states regulate other elements of the CWA may be cryptic and often overlooked but very important
- Flood Hazard Area Control Act and Stormwater Management Rules provide for 300 foot buffers/riparian zones designed to protect NJ's antidegradation streams.
This establishes a link to federal Water Quality Standards, Section 303 of the CWA.

Pennsylvania

- PADEP Exceptional resource value wetlands are *“Wetlands that are located in or along the floodplain of the reach of a wild trout stream or waters listed as exceptional value under Chapter 93 (relating to water quality standards) and the floodplain of streams tributary thereto”*. *This definition establishes a link to federal Water Quality Standards, Section 303 of the CWA.*
- **§ 102.14. Riparian buffer requirements** are also linked to the protection of antidegradation streams

Antidegradation Streams - PA

- Chapter 93 The water quality of Exceptional and High Quality Waters shall be maintained and protected.
- A person proposing a new, additional or increased discharge to High Quality or Exceptional Value Waters, who has demonstrated that no environmentally sound and cost-effective nondischarge alternative exists under clause (A), shall demonstrate that the discharge will maintain and protect the existing quality of receiving surface waters, except as provided in subparagraph
- N.J.A.C. 7:9B. Water Quality Standards

Antidegradation Streams - NJ

- **Category One (C1).** C1 waters are designated through rulemaking for protection from measurable changes in water quality because of their Exceptional Ecological Significance, Exceptional Water Supply, Exceptional Recreation, and Exceptional Fisheries to protect and maintain their water quality, aesthetic value, and ecological integrity.

Why are These Details Important?

- Ultimately the permit for the pipeline will need a 401 water quality certificate
- Can be the basis for a denial. Connecticut denied a major pipeline, Islander East Pipeline, as a result conflicts with the state's water quality standards, which are federally required by the Clean Water Act.
 - The pipeline co. twice applied for – and twice been denied – a water quality certification from Connecticut.
 - The Second Circuit held supported Connecticut's finding that the techniques proposed for installation of the pipeline violated state water quality standards by eliminating a significant area of nearshore waters from their existing and designated use.

Millennium Pipeline, Croton NY

- By early 2002, FERC had gave the pipeline a green light for most of its route and an amber light for a section in the coastal zone. FERC had certified a pipeline that did not comply with the straightforward requirements of the Federal Coastal Zone Management.
- Resulted in the rerouting of the pipeline.

TGP's Northeast Upgrade Pipeline Project

“Because the waterbody crossings would be completed in accordance with the construction and restoration methods described above and detailed in TGP’s ECPs and any site-specific measures that may be required by state permitting agencies or the COE, we conclude that impacts on waterbodies would be minor and temporary”.



Delaware Riverkeeper Photograph

This exact wording was used in the EA for Transco's Leidy Southeast Upgrade Pipeline

Using mitigation as a means to address all project impacts is simply unrealistic and based on similar projects unfounded

Review of Recent Pipeline EA's

- It is apparent that the report was designed to be an apology for a project that was predetermined to receive a finding of no significant impact.
- The position that mitigation will solve all of the pipelines impacts is not only unrealistic it is highly inaccurate and serves to mislead to the general public.
- Numerous regulatory compliance errors.



Delaware Riverkeeper Photograph

Wetlands Surface Water Impacts

These impacts are commonplace.

- PADEP fined PVR Marcellus Gas Gathering LLC of Williamsport, Lycoming County, \$150,000 for discharge violations that occurred during construction of the Coal Mountain pipeline in four Lycoming County townships during the fall of 2011.
- Wisconsin - Enbridge Energy Partners with a Notice of Violation for repeated failure to comply with the wetland and waterway permit, the Wisconsin Department of Natural Resources (WDNR). Fined over 1 million dollars <http://www.wisconsinwetlands.org/enbridge.htm#201405> Department of Justice (DOJ). 1.1 million dollar penalty

.....and more

- The state of New Jersey has fined the Tennessee Gas Pipe-line Company (TGP) \$175,000 for failure to replant vegetation in areas impacted by the company's pipeline expansion project.
- Problems associated with trench dewatering activities being conducted by Tennessee Gas Pipeline Company, Highland Lake in Sussex County experienced a significant influx of sediment. This sediment influx discolored the southern end of the lake.
- Pike County, numerous Erosion and sediment control violations.

Transco Mitigation Planting

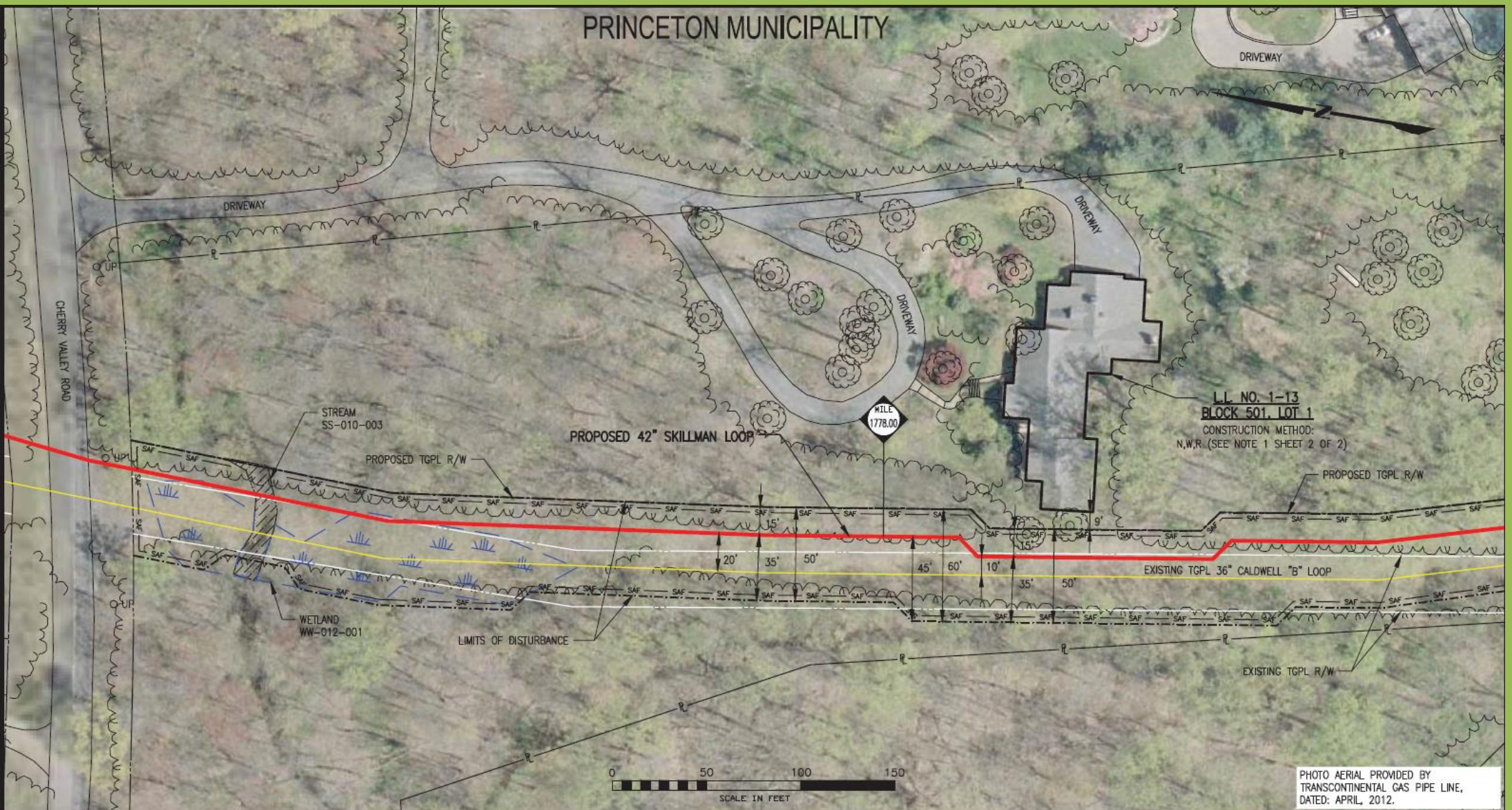


Closely Follow the Process

- Wetlands and streams were not identified on the project plans
- Blamed it on failure to obtain property access.
- Served to underestimate the area of impact to sensitive resources and to identify secondary impacts.



PRINCETON MUNICIPALITY

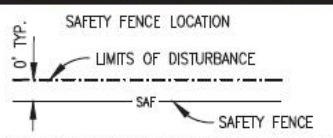


L.L. NO. 1-13
BLOCK 501, LOT 1
CONSTRUCTION METHOD:
N.W.R. (SEE NOTE 1 SHEET 2 OF 2)

PHOTO AERIAL PROVIDED BY
TRANSCONTINENTAL GAS PIPE LINE,
DATED: APRIL, 2012.

LEGEND

- PROPOSED 42" SKILLMAN LOOP
- EXISTING TGPL 36" CALDWELL "B" LOOP
- EXISTING TGPL R/W
- PROPOSED TGPL R/W
- PROPERTY LINE
- ROAD R/W
- LIMITS OF DISTURBANCE
- WETLAND
- SAF CONSTRUCTION SAFETY FENCE
- RESIDENTIAL STRUCTURE WITHIN 50' OF CONSTRUCTION
- SINGLE TREE
- TREE LINE
- X EXISTING FENCE
- S SANITARY SEWER
- W WATER LINE
- UP UTILITY POLE



THE LOCATION OF THE SAFETY FENCES SHOWN IN THE PLAN IS APPROXIMATE AND ADJUSTED FOR CLARITY. SAFETY FENCES LOCATED NEAR THE LIMITS OF DISTURBANCE SHALL BE INSTALLED AT THE LIMIT LINE AS SHOWN ABOVE.

DRAWING NO.		REFERENCE TITLE	
NO.	DATE	BY	REVISION DESCRIPTION
0	9/03/13	WGM	ISSUED FOR SUBMITTAL
1	9/10/13	WGM	ISSUED FOR FINAL REVIEW
2	9/18/13	WGM	ISSUED FOR FERC FILING
3	1/17/14	WGM	ISSUED FOR SUPPLEMENTAL FILING

W.D. NO.	CHK.	APP.
1129995	BB	MJH
1129995	BB	MJH
1129995	BB	MJH
1129995	JD	MJH

TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC
LEIDY SOUTHEAST PROJECT
RESIDENTIAL CONSTRUCTION PLAN
PROPOSED 42" SKILLMAN LOOP
FOR PROPERTY OF L.L. NO. 1-13
MERCER COUNTY, NEW JERSEY



DRAWN BY: WGM	DATE: 8/03/13	ISSUED FOR BID:	SCALE: 1" = 50'
CHECKED BY: JD	DATE: 1/17/14	ISSUED FOR CONSTRUCTION:	
APPROVED BY: MJH	DATE: 1/17/14	DRAWING NUMBER: 25-06-80/1777.97-D	SHEET 1 OF 2
WG: 1129995		1/16/2014	

References

- <http://lawofficesofcarolynelfant.com/wp-content/uploads/2010/06/FINALTAGguide.pdf>
- http://lawofficesofcarolynelfant.com/wp-content/uploads/2012/11/newfercpresentation_sm.pdf
- http://www.delawareriverkeeper.org/resources/Reports/SauerL_Achieving_Higher_Quality_Restoration_Along_Pipeline_Rights_of_Way.pdf

New Player in the PennEast Review

- Delaware River basin Commission just announced that they will review the proposed PennEast Pipeline
- A stalemate over regulations at the Delaware River Basin Commission has prevented natural gas development in the watershed since 2010. But the multi-state commission will now play a role in whether a new Marcellus Shale gas pipeline can move forward. The proposed PennEast pipeline would cut under the Delaware River at Riegelsville, Bucks County.

THANK YOU



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