

# Updates on our Battle Against PennEast Pipeline

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This is the 3<sup>rd</sup> anniversary of our first town hall on PennEast. We've done a lot of important work and 70% of the people in New Jersey along the route have denied them survey access. We've held them off for three years and now starts the next phase in our battle against this dangerous and unneeded pipeline. This presentation will go over the next steps in stopping PennEast.



# NJ Department of Environmental Protection (DEP)

- ▶ PennEast applied for their 401 Water Certificate and other water and wetlands permits.
- ▶ The DEP has rejected PennEast Pipeline's application for water permits because they do not have enough information for them to evaluate land use permits and their application is deficient.
- ▶ Since 65 percent of the route has yet to be surveyed, the DEP said they do not have enough information for any of these approvals.
- ▶ It is important DEP has rejected PennEast's application because without DEP approval, this pipeline cannot be built

**They won't be able to apply again until the next Administration.**

# Anti-Degradation of Streams

- ▶ The Clean Water Act's anti-degradation criteria protects high quality streams
- ▶ Many of these streams would be impacted by PennEast Pipeline
- ▶ The route will cut areas with steep slopes having a bigger impact on streams because of siltation and runoff.



Alexauken Creek

# Department of Environmental Protection

- ▶ 401 water quality certificates
- ▶ Stream encroachment
  - ▶ crossings, buffers
- ▶ Wetlands
  - ▶ fill, crossing, and buffers
  - ▶ Section 202 CWA
- ▶ Section 303 Water permit
- ▶ Flood hazards
  - ▶ fill, buffers
- ▶ Stormwater
- ▶ CAFRA Coastal Program
- ▶ Coastal Zone Management Act
- ▶ Green Acres
- ▶ Statehouse Commission
- ▶ Watershed Moratorium Commission
- ▶ Water allocation
- ▶ NJPDES (water discharge)
- ▶ Threatened and Endangered Species
- ▶ SHPO (historic reviews)
- ▶ Replacement trees on public lands
- ▶ Other land use permits

# DEP's Proposed Flood Hazard Rules

- ▶ The Christie Administration's new proposed Flood Hazard Rules would weaken protections for waterways in NJ.
- ▶ The new rules would increase development near high-quality streams and other environmentally sensitive areas
- ▶ This would make it easier to put in pipelines because it provides general permits and permit-by-rules for drilling pipelines under streams.
- ▶ It also eliminated the SWRPA which protects environmentally sensitive areas from development.
- ▶ Currently we are working to get a resolution voiding the rules passed in the Legislature

# DEP's Wetlands Rules

The DEP's new Freshwater Wetlands Rules will destroy many weaken protections and make it easier to build pipelines by:

- ▶ allowing for permits to last for 10 years, which under the law should only be five years before renewal.
- ▶ allowing for utility crossing and maintenance
- ▶ changing the general permits in the Wetlands Rules to be consistent with the weaker, more damaging Flood Hazard Rule general permits.
  - ▶ This includes GP2, which makes it easier to build pipelines through wetlands.

# The DEP's Rollback Rules

- ▶ The new Flood Hazard and Wetlands Rules will allow for Horizontal Directional Drilling (HDD) in environmentally sensitive areas.
- ▶ HDD: a method of boring to install underground pipe beneath bodies of water, roads or other environmentally sensitive areas.
- ▶ The DEP determined that HDD does not have environmental impact.
- ▶ In actuality, HDD is dangerous and recently caused water contamination in Pennsylvania
- ▶ By making the drilling a general permit or permit-by-rule, they are claiming it has *de minimus* impact. This removes public comment or say in the process.
- ▶ They are also neglecting to look at cumulative impacts.
- ▶ **We need the next Governor to block the Flood Hazard and Wetlands Rules to protect our environment and help prevent pipelines like PennEast.**



# Delaware River Basin Commission (DRBC)

- ▶ The DRBC controls the region within the river basin and manages water quality, withdrawals, droughts, floods, conservation and permitting for the river and its tributaries. They can stop this application.
  - Determines who has jurisdiction
  - Holds public hearings
  - Creates strict construction requirements
- ▶ PennEast has applied for Surface Water Withdrawal and Discharge permits to withdraw over 45 million gallons of water
- ▶ The DRBC has not yet scheduled hearings for the application but have agreed to host multiple hearings separate from the FERC process
- ▶ We're asking the DRBC to kick out PennEast's permits because they're deficient and to not even hold hearings on the EIS for being incomplete

# Federal Agencies and Reviews

- ▶ Army Corps of Engineers found deficiency in the application
  - ▶ PennEast Pipeline is still not in compliance with requirements
- ▶ Environmental Protection Agency found deficiency in the application
  - ▶ concerned because PennEast is still missing a significant amount of information
- ▶ US Fish and Wildlife Service found deficiency in the application
  - ▶ raised many serious concerns about the impact of this project not only on species, but the environment as a whole.
- ▶ PennEast must also prove that their application is consistent with the Coastal Zone Management Act

# Other Federal Agencies and Reviews

- ▶ Department of the Interior
  - ▶ 319 review if it impacts any historic structure or district on National Registrar of Historic Places
  - ▶ Federally preserved lands like National Parks, National Wildlife Refuges, preserved lands, etc.
  - ▶ Any New Jersey Green Acres lands purchased with federal Land and Water Conservation Funds need to be signed off on



# Federal Energy Regulatory Commission (FERC)

- ▶ Neil Chatterjee and Rob Powelson confirmed for FERC appointments
- ▶ This brings FERC to a Republican-led quorum
- ▶ They can now make decisions on pipeline and other project applications
- ▶ They could grant PennEast a Certificate of Necessity to allow PennEast to go on people's property and get the data they need for the permits.
- ▶ We are preparing for them to be on the docket by January



**FERC**

FEDERAL ENERGY REGULATORY COMMISSION

# Sierra Club vs FERC and Duke Energy

- ▶ Sierra Club won in the U.S. Court of Appeals challenging FERC on the Southeast Market Pipeline (Sabal Trail pipeline) project.
- ▶ Environmental groups and landowners challenged the decision to approve the construction and operation of three new interstate natural-gas pipelines in the southeastern United States without doing a proper environmental analysis.
- ▶ The Court agreed that under the National Environmental Policy Act (NEPA) FERC's Environmental Impact Statement was inadequate because it did not contain enough information on the greenhouse-gas emissions
- ▶ The Court also said that giving out a Certificate of Public Convenience was wrong because the pipeline didn't have all of its permits in place.
- ▶ This decision sets an important precedent and has good implications for PennEast Pipeline because the Court said FERC cannot give a Certificate of Public Convenience without all permits in place from state agencies.

## Bottom Line

FERC cannot approve the pipeline until state agencies like DRBC and DEP weigh in. Not only are there no applications yet in New Jersey, the DEP already rejected PennEast for being deficient. This means PennEast cannot get eminent domain or take people's properties until they get state and federal approvals, which they may never get. Now that FERC has a quorum, FERC may try to rubberstamp PennEast at their next meeting, but legally they can not approve PennEast yet.

# Tracking Fossil Fuel Project Cancellations Across the U.S.

Since the Keystone XL pipeline was rejected by Pres. Obama on climate grounds in Nov. 2015, at least 28 other proposed fossil fuel infrastructure projects in the U.S. have been halted. The reasons are complex, but are mainly a combination of unfavorable economic conditions, environmental concerns and local resistance. In some cases, officials rejected the projects or permits or extended the review process; in others, the companies canceled or delayed their plans.



# Progress Against Pipelines

- ▶ The Sierra Club is involved in more than a hundred pipeline fights across the country
- ▶ Despite these being major battles, we have made progress:
  - ▶ Constitution, Island East and Northern Access Pipelines were killed when denied water permits by their states.
    - ▶ The Constitution denial was just upheld in federal court.
  - ▶ Northeast Energy Direct withdrew their application due to public outcry
  - ▶ Stopped LNG ports: Port Ambrose, Exxon and BP Greenwich Twp. in New Jersey
  - ▶ We got FERC to deny the Jordan Cove LNG and Pacific Connector Pipeline
  - ▶ New Jersey has stopped the Independence and Market Link Pipeline
  - ▶ In Georgia, SC helped pass legislation stopping oil pipelines from getting eminent domain
  - ▶ Along with the Delaware Riverkeeper Network, we won an important lawsuit against FERC's attempts to segment the Tennessee Gas Pipeline
- ▶ Currently we are filing with Nebraska Public Utilities Commission to stop Keystone and we are also in court against DAPL



# Keeping the Fight Alive

- ▶ The key to fighting this pipeline is to **stay focused on the areas that will work** to stop it.
- ▶ We can't be diverted by putting effort into fighting things that don't actually slow down or stop a pipeline.
- ▶ We should be focusing on the 401 permits, DRBC, challenging FERC in federal court and other efforts that can work.
- ▶ Together we can stop PennEast!





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