



Via Email

August 28, 2017

Technical Guidance Coordinator
Department of Environmental Protection
Policy Office
Rachel Carson State Office Building,
400 Market Street
Harrisburg, PA 17101

RE: Comments to Draft Policy for State Water Quality Certification Issuance for Interstate Natural Gas Transmission Pipeline Projects Regulated by the Federal Energy Regulatory Commission
DEP ID: 310-2100-001

Dear Technical Guidance Coordinator,

EQT Corporation ("EQT") respectfully submits the following comments regarding the Pennsylvania Department of Environmental Protection's ("DEP") draft "Policy for State Water Quality Certification Issuance for Interstate Natural Gas Transmission Pipeline Projects Regulated by the Federal Energy Regulatory Commission" ("Draft 401 Policy"). Specifically, EQT believes the Draft 401 Policy expands Pennsylvania's authority under Section 401 of the Clean Water Act and does not apply to those Federal Energy Regulatory Commission ("FERC") projects that fall under an automatic authorization nor should it apply to prior notice authorizations.

1. Limitations on 401 Certifications

The Draft 401 Policy interprets Section 401 of the Clean Water Act in a manner that would erase state-federal jurisdictional boundaries between upland areas and "waters of the United States" and would secure to the states broad new power to override the authority of the Federal Energy Regulatory Commission (FERC) to permit interstate natural gas pipelines.

The Draft 401 Policy is premised on the idea that DEP may not issue a 401 certificate for an interstate natural gas pipeline under the Natural Gas Act unless DEP reviews all aspects of the proposed pipeline's construction or operation, regardless of location or potential for discharge, to certify under Section 401 of the Clean Water Act that the project will be consistent with state water quality rules. This interpretation of the Clean Water Act would expand the scope of the 401 certification well beyond the statutory limitation to "discharges" into navigable waters and implicitly eliminate any regulatory distinction in federal law between point-source and non-point source discharges.

EQT urges DEP to adopt language in the Draft 401 Policy that specifically states that Pennsylvania's review and issuance of a 401 certification is limited to reviewing and certifying those sections of a FERC regulated pipeline that discharge into navigable waters.

2. Blanket Authorizations

The Draft 401 Policy sets up a process for obtaining an individual 401 certification for all FERC certificates. However, a subset of FERC authorizations allow for construction either automatically or after providing notice, pursuant to blanket certificates held by those FERC-regulated entities, and these authorizations are not addressed

in the Draft 401 Policy. These blanket certificates provide that, for projects under a certain dollar limit¹ (\$11.8 million for facilities constructed in 2017), a natural gas company may automatically undertake a restricted array of routine activities without the need to obtain a case-specific certificate for each individual project; further, no application is filed with the FERC for these 'automatic authorization' projects. For projects that cost more than \$11.8 million but less than \$33.2 million in 2017, the pipeline is required to submit a 'prior notice' application and if no protests are received within 60 days after FERC issues a notice of the project, the proposal is automatically approved without further order. For automatic authorizations, a new certificate of public convenience is generally not issued.

The Draft 401 Policy applies to projects that must apply for and obtain FERC certification. Because there is no application required nor a certificate issued, automatic authorizations are not subject to the Draft 401 Policy. The process set forth in the Draft 401 Policy is unnecessary for that type of project.

Moreover, prior notice authorizations should also not be subject to the Policy. As outlined above, the two types of projects that qualify for a blanket authorization generally are limited in scope and cost. Many of these projects are part of a compliance program, are required to maintain the integrity of an operating system, and are done to reduce the risk of future compliance and safety issues. Requiring the proposed process and an individual 401 certificate for these type of projects may result in safety issues due, in part, to the length of time it may takes to receive an individual 401 certificate.

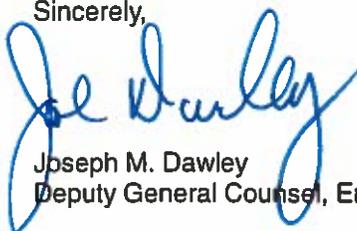
As noted in the first comment, a 401 certification under the Clean Water Act only requires a State to certify compliance with its water quality standards for those portions of a project that discharge to navigable waters. Under FERC's regulations, a project authorized under a blanket certificate must comply with the Clean Water Act by meeting the requirements set forth in FERC's staff's current "Upland Erosion Control, Revegetation and Maintenance Plan" and "Wetland and Waterbody Construction and Mitigation Procedures" ("FERC Water Procedures"). FERC Water Procedures specifically state 401 certification is only required for wetland and waterbody crossings.

In Pennsylvania, general permits for water encroachments and water crossings, as well as approved Army Corps of Engineering Nationwide permits for activities in navigable waters already provide for 401 certification. As such, if a project subject to blanket authorization requires any of those general permits and/or Nationwide permits, that project has the required 401 certification required by the Clean Water Act.

DEP should revise the Draft 401 Policy to address the unique nature of blanket authorizations. EQT proposes that DEP clearly state in the Policy that: 1) only those portions of a project that discharge to navigable water require a 401 certification; 2) those projects subject to blanket authorizations do not require individual 401 certifications; and 3) the issuance of a general permit or nationwide permit for water/wetlands crossing that already contains 401 certification is sufficient for projects subject to a blanket authorization.

Thank you for the opportunity to comment on the Draft 401 Policy. EQT will be contacting Ken Murin, Bureau of Waterways Engineering and Wetlands to set up a meeting to discuss 401 certifications and the Draft 401 Policy.

Sincerely,



Joseph M. Dawley
Deputy General Counsel, Environmental, Safety & Public Policy

¹ The dollar limits are updated annually.