

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Waterways Engineering and Wetlands

DOCUMENT NUMBER: 310-2100-001

TITLE: Policy for State Water Quality Certification Issuance for Interstate Natural Gas Transmission Pipeline Projects Regulated by the Federal Energy Regulatory Commission

EFFECTIVE DATE: Upon publication of notice as final in the *Pennsylvania Bulletin*

AUTHORITY: Clean Streams Law, 35 P.S. §§ 691.1 – 691.1001, Dam Safety and Encroachments Act, 32 P.S. §§ 693.1 – 693.27), other State statutes and implementing regulations that protect water quality; Section 401 of the Clean Water Act, 33 U.S.C. § 1341; Section 3(d) of the Natural Gas Act, 15 U.S.C. § 717b(d).

POLICY: The Department of Environmental Protection (DEP) will ensure that proposed interstate natural gas transmission pipeline projects regulated by the Federal Energy Regulatory Commission (FERC) comply with State law requirements necessary to protect the quality of the waters of the Commonwealth.

PURPOSE: The purpose of this policy is to set forth the DEP review process when an applicant requests State water quality certification for a FERC regulated interstate natural gas transmission pipeline project.

APPLICABILITY: This policy applies to the processing of requests for State water quality certification of proposed interstate natural gas transmission pipeline projects regulated by FERC.

DISCLAIMER: The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures will affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules that weight or deference. This document establishes the framework, within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 10 pages

State Water Quality Certification for FERC-Regulated Natural Gas Pipelines Projects

An applicant must obtain a State Water Quality Certification (SWQC) from the Department of Environmental Protection (DEP) before the Federal Energy Regulatory Commission (FERC) can authorize the applicant to construct an interstate natural gas pipeline project within the Commonwealth.¹ The SWQC fits within the basic FERC review process as outlined below.

- ***FERC Pre-Filing Process:*** An applicant can participate in an optional FERC process prior to submitting an application to FERC to solicit input from the public, as well as other Federal, state and local agencies, on a proposed project.
- ***FERC Application:*** An applicant must apply for a Certificate of Public Convenience and Necessity from FERC to obtain the authority to use eminent domain, when necessary, to acquire property needed for the proposed project.
- ***NEPA Environmental Review:*** Prior to issuing a Certificate of Public Convenience and Necessity, FERC must conduct an environmental review of the proposed project under the National Environmental Policy Act² (NEPA). FERC will issue an Environmental Assessment (EA) if it finds that the project will not have significant environmental impacts. For projects with significant impacts, FERC will issue a draft Environmental Impact Statement (EIS) for public comment prior to issuing a Final EIS.
- ***Federal, State and Local Environmental Authorizations:*** FERC's EA or Final EIS will identify conditions that the applicant must satisfy to ensure that the proposed project will not result in a significant environmental impact. FERC will identify other Federal, state and local environmental permits or authorizations that the applicant must obtain prior to construction.
- ***State Water Quality Certification:*** Prior to obtaining authorization to construct a proposed project, an applicant must provide FERC with a SWQC from each state through which the pipeline will be constructed. Unless a state waives its right to issue such a certification, each state must evaluate whether the proposed project will be constructed in a manner that achieves the state's water quality standards.
- ***Certificate of Public Convenience and Necessity:*** Upon completion of its environmental review, FERC will issue a Certificate of Public Convenience and Necessity that includes the environmental conditions developed through the NEPA environmental review process.³ The applicant will be required to satisfy these environmental conditions prior to FERC's issuance of a notice to proceed with construction. FERC must include SWQC conditions as environmental conditions of its certificate.

DEP is responsible for reviewing an applicant's request for a SWQC seeking to construct a FERC-regulated interstate natural gas pipeline project in the Commonwealth. In general, proposed projects that comply with State environmental laws and regulations will protect the quality of waters of the Commonwealth.

¹ See Section 401 of the Clean Water Act, 33 U.S.C. § 1341.

² 42 U.S.C. §§ 4321-4370h.

³ These conditions are typically included as Appendix A to a FERC Certificate of Public Convenience and Necessity.

At the time an applicant files an application with FERC for a Certificate of Public Convenience and Necessity, the applicant may not have sufficient information to apply for necessary State environmental permits and authorizations from DEP, particularly permits associated with stream or wetland crossings. For example, an applicant may not yet have access to all privately owned land along the proposed pipeline route necessary to delineate and field verify these water resources. For purposes of its FERC application, an applicant may use various resources in making a preliminary identification of water resources and a preliminary determination of potential project impacts to the water resources prior to field verification. This preliminary identification may be based on remote sensing, digital geo-spatial data, geographic information systems (GIS), light detection and ranging (LiDAR), eMAP, and other similar available sources.

If an applicant requests a SWQC, DEP can issue, deny, or condition a SWQC. DEP must act within a reasonable period, not to exceed one year from its receipt of a complete SWQC application. Through its review, DEP will determine if the applicant can protect waters of the Commonwealth during construction and operation of the proposed natural gas pipeline project by obtaining permits, authorizations or approvals required under existing State water quality programs. If so, DEP may issue a SWQC conditioned upon the applicant acquiring such permits, authorizations, or approvals. An applicant must comply with all conditions of the SWQC for the SWQC to remain valid and for the applicant to satisfy Section 401 of the Clean Water Act.

State Water Quality Certification Process

An applicant should take the steps recommended below to ensure effective coordination and timely completion of the SWQC process required prior to construction of an interstate natural gas pipeline in the Commonwealth:

1. ***Applicant Consultation with DEP:*** An applicant should consult with the DEP Regional Office(s) responsible for the area(s) where the proposed interstate natural gas pipeline project is to be located prior to submitting its application to FERC to discuss the State environmental permits, authorizations and approvals that will be necessary conditions of the SWQC to protect waters of the Commonwealth.
2. ***Submission of FERC Application:*** When filing an application with FERC for the proposed interstate natural gas pipeline project, the applicant should identify the need for an SWQC, as well as State environmental permits, authorizations and approvals identified during the consultation with DEP.
3. ***Applicant Request for State Water Quality Certification:*** Upon submission of its FERC application, the applicant should submit a written request for an SWQC to the DEP Regional Office responsible for the area where the *largest portion of the project* will be located within the Commonwealth. The request should be submitted on forms available from DEP and must include the information identified by DEP in the form instructions, as necessary, to evaluate the potential impacts to waters of the Commonwealth.
4. ***Public Comment on Draft State Water Quality Certification:*** When DEP has determined that the applicant has submitted a complete SWQC request, DEP will publish notice in the *Pennsylvania Bulletin* of its receipt of the SWQC request and of its proposed SWQC with any conditions DEP has determined are necessary to protect the waters of the Commonwealth. The notice will provide a 30-day public comment period. A sample notice is provided in **Appendix A**.

5. *State Water Quality Certification Issuance:* After the close of the public comment period, DEP will evaluate the comments received and determine if any changes to the proposed SWQC are necessary. DEP will publish notice of its issuance of the final SWQC in the *Pennsylvania Bulletin*. A sample notice is provided in **Appendix B**.

6. *State Permits, Authorizations and Approvals Required as SWQC Conditions:* As soon as an applicant has obtained all information necessary to apply for State permits, authorizations or approvals required as SWQC conditions, the applicant should submit complete permit applications, complete notices of intent (NOIs) for coverage under general permits, and any other complete requests for approvals to the appropriate DEP Regional Office or delegated County Conservation District. The applications, NOIs and other requests should be submitted on forms available from DEP or the delegated County Conservation District and should provide the information identified on the forms and in the instructions, as necessary, to process the applications, NOIs or requests. An applicant may use information developed as part of its FERC application, when appropriate, to fulfill requirements for State permits, authorizations or approvals. The applicant should make appropriate cross-references to the FERC application, however, to facilitate review by DEP or the delegated County Conservation District. By providing clear and complete information, the applicant will reduce the potential for requests for additional information and the associated delays in the processing of any State permit applications, NOIs, or other requests.

APPENDIX A

SAMPLE PUBLIC NOTICE OF APPLICATION AND DRAFT STATE WATER QUALITY CERTIFICATION FOR A FERC REGULATED PIPELINE PROJECT

Proposed State Water Quality Certification Required by Section 401 of the Clean Water Act for the [INSERT NAME OF PROJECT]

[Insert DEP Region] Region: Waterways & Wetlands Program, [insert address], [insert Program Manager's Name and Phone Number]

EA - [insert file number], [insert applicant's name] (Applicant), [insert applicant's address]. [insert project name] (Project), in [insert municipalities and counties in which the project is located], [insert ACOE District(s)]. The proposed project starts at [describe location] ([insert quadrangle name], PA Quadrangle N: --°, --', --"; W: --°, --', --") and ends at [describe location] ([insert quadrangle name], PA Quadrangle N: --°, --', --"; W: --°, --', --")

On [insert date], Applicant filed an application with the Federal Energy Regulatory Commission (FERC) under Section 7 of the Natural Gas Act (15 U.S.C. § 717f) seeking a certificate of public convenience and necessity to construct and operate its Project (FERC Docket No. [insert project number]). The FERC Environmental Assessment for the Project, which was issued on [insert date], may be viewed on FERC's website at www.ferc.gov (search eLibrary; Docket Search; [insert project number]).

On [insert date], Applicant requested a state water quality certification (SWQC) from the Pennsylvania Department of Environmental Protection (PADEP), as required by Section 401 of the Clean Water Act (33 U.S.C. § 1341), to ensure that the construction, operation and maintenance of the Project will protect water quality in Pennsylvania consistent with the requirements of State law and the Clean Water Act.

The Project, as proposed, includes approximately [insert length mile/foot] long, [insert pipe size]-inch pipeline to transport natural gas from [describe location] to [describe location]. The Project, as proposed, will require approximately [insert area] acres of earth disturbance, and impacts to [insert total length] linear feet of [insert stream names and classifications], [insert area] acre(s) of floodway, [insert area] acre(s) of temporary [insert wetland type(s)] wetland impacts, and [insert area] acre(s) of [insert wetland type(s)] permanent impacts.

PADEP is proposing to issue a SWQC to [insert Applicant's name] for the [insert Project name] that will require compliance with the following PADEP water quality permitting programs, criteria and conditions established pursuant to State law:

1. Discharge Permit – Applicant shall obtain and comply with a National Pollutant Discharge Elimination System (NPDES) permit(s) for the discharge of water from the hydrostatic testing of the pipeline associated with the Project pursuant to Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1 – 691.1001), 25 Pa. Code Chapter 92a (relating to NPDES permitting, monitoring and compliance), and all other applicable regulations.
2. Erosion and Sediment Control Permit – Applicant shall obtain and comply with an Erosion and Sediment Control Permit(s) for earth disturbance associated with the Project issued pursuant to

Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1-680.17), 25 Pa. Code Chapter 102 (relating to erosion and sediment control), and all other applicable regulations.

3. Water Obstruction and Encroachment Permits – Applicant shall obtain and comply with a Water Obstruction and Encroachment Permit(s) for the construction, operation and maintenance of all stream and wetland crossings associated with the Project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 673.1-693.27), and Flood Plain Management Act (32 P.S. §§ 679.101-679.601.), 25 Pa. Code Chapter 105 (relating to dam safety and waterway management), and all other applicable regulations.
4. Other Water Quality Requirements – Applicant shall obtain any other permits, authorizations or approvals required to construct, operate, and maintain the Project to achieve the water quality standards in 25 Pa. Code Chapter 93, including any permits, authorizations or approvals necessary from any interstate or international agency under an interstate compact or international agreement that has established water quality standards applicable to surface waters of this Commonwealth, including wetlands, more stringent than those in Chapter 93.
5. Water Quality Monitoring – PADEP retains the right to specify additional studies or monitoring to ensure that the receiving water quality associated with the Project is not adversely impacted by any operational and construction process that may be employed by Applicant.
6. Operation – Applicant shall properly operate and maintain at all times all Project facilities and systems of treatment and control (and related appurtenances) installed to achieve compliance with the terms and conditions of this SWQC and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.
7. Inspection – The Project, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of PADEP or the delegated County Conservation District to determine compliance with this SWQC, including all required permits, authorizations or approvals required by this SWQC. The Applicant shall provide a copy of this SWQC to an authorized representative conducting an inspection of the Project.
8. Transfer of Projects – If Applicant intends to transfer any legal or equitable interest in the Project or any portion(s) thereof, the Applicant shall provide a copy of this SWQC and copies of any permits, authorizations or approvals obtained to comply with the SWQC upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the PADEP Regional Office of such intent. Notice to PADEP shall include a transfer agreement signed by the existing and new owners containing a specific date for transfer of responsibility, coverage, and liability under the SWQC and any permits, authorizations and approvals obtained to comply with the SWQC. The new owner shall submit to PADEP a new application form for the SWQC and any permits, authorizations and approvals required to comply with the SWQC signed by the new owner.

9. Correspondence – All correspondence with and submittals to PADEP concerning this SWQC shall be addressed to:

Department of Environmental Protection

[Inset Regional Office]

[Insert Contact]

[Insert Address]

10. Reservation of Rights – PADEP may modify, suspend, or revoke this SWQC if (i) PADEP becomes aware of new facts about the Project that warrant such action; or (ii) PADEP determines that the Applicant has not complied with the terms and conditions of this certification. PADEP may require additional measures to achieve compliance with any applicable law or regulation.
11. Other Laws – Nothing in this SWQC shall be construed to preclude the institution of any legal action or to relieve Applicant from any responsibilities, liabilities, or penalties established pursuant to any applicable law or regulation.
12. Severability – The provisions of this SWQC are severable and should any provision of this SWQC be declared invalid or unenforceable, the remainder of this SWQC shall not be affected thereby.

Prior to issuance of the final SWQC, PADEP will consider all relevant and timely comments, suggestions or objections submitted to PADEP within 30 days of this notice. Comments should be directed to [insert contact and title] at the above address or through the Pennsylvania AT&T Relay Service at 800-654-5984 (TDD). Comments must be submitted in writing and contain the name, address and telephone number of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted.

[Secretary's Name],

Secretary

APPENDIX B

SAMPLE PUBLIC NOTICE OF FINAL STATE WATER QUALITY CERTIFICATION FOR FERC PIPELINE PROJECT

Final State Water Quality Certification Required by Section 401 of the Clean Water Act for the [INSERT NAME OF PROJECT]

[Insert DEP Region] Region: Waterways & Wetlands Program, [insert address], [insert Program Manager's Name and Phone Number]

EA - [insert file number], [insert applicant's name] (Applicant), [insert applicant's address]. [insert project name] (Project), in [insert municipalities and counties in which the project is located], [insert ACOE District(s)]. The proposed project starts at [describe location] ([insert quadrangle name], PA Quadrangle N: --°, --', --"; W: --°, --', --") and ends at [describe location] ([insert quadrangle name], PA Quadrangle N: --°, --', --"; W: --°, --', --")

On [insert date], Applicant filed an application with the Federal Energy Regulatory Commission (FERC) under Section 7 of the Natural Gas Act (15 U.S.C. § 717f) seeking a certificate of public convenience and necessity to construct and operate its Project (FERC Docket No. [insert project number]). The FERC Environmental Assessment for the Project, which was issued on [insert date], may be viewed on FERC's website at www.ferc.gov (search eLibrary; Docket Search; [insert project number]).

On [insert date], Applicant requested a State water quality certification (SWQC) from the Pennsylvania Department of Environmental Protection (PADEP), as required by Section 401 of the Clean Water Act (33 U.S.C. § 1341), to ensure that the construction, operation and maintenance of the Project will protect water quality in Pennsylvania consistent with the requirements of State law and the Clean Water Act.

The Project includes approximately [insert length mile/foot] long, [insert pipe size]-inch pipeline to transport natural gas from [describe location] to [describe location]. The Project, as proposed, will require approximately [insert area] acres of earth disturbance, and impacts to [insert total length] linear feet of [insert stream names and classifications], [insert area] acre(s) of floodway, [insert area] acre(s) of temporary [insert wetland type(s)] wetland impacts, and [insert area] acre(s) of [insert wetland type(s)] permanent impacts.

PADEP published notice of its proposed SWQC in the *Pennsylvania Bulletin* on [insert date] (___ Pa.B. ___) and received ___ comments from the public. PADEP has reviewed the comments received and [describe changes made to final certification].

PADEP certifies that the Applicant will comply with Section 401 of the Clean Water Act for the portion of the Project located in Pennsylvania by constructing, operating and maintaining the Project in compliance with the following conditions that implement permitting programs, criteria and conditions established pursuant to State law to protect waters of the Commonwealth:

1. Discharge Permit – Applicant shall obtain and comply with a National Pollutant Discharge Elimination System (NPDES) permit(s) for the discharge of water from the hydrostatic testing of the pipeline associated with the Project pursuant to Pennsylvania's Clean Streams Law (35 P.S.

§§ 691.1 – 691.1001), 25 Pa. Code Chapter 92a (relating to NPDES permitting, monitoring and compliance) and all other applicable regulations.

2. Erosion and Sediment Control Permit – Applicant shall obtain and comply with an Erosion and Sediment Control Permit(s) for earth disturbance associated with the Project issued pursuant to Pennsylvania’s Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1-680.17), 25 Pa. Code Chapter 105, and all other applicable implementing regulations.
3. Water Obstruction and Encroachment Permits – Applicant shall obtain and comply with a Water Obstruction and Encroachment Permit(s) for the construction, operation and maintenance of all stream and wetland crossings associated with the Project pursuant to Pennsylvania’s Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 673.1-693.27), and Flood Plain Management Act (32 P.S. §§ 679.101-679.601.), 25 Pa. Code Chapter 105, and all other applicable regulations.
4. Other Water Quality Requirements – Applicant shall obtain any other permits, authorizations or approvals required to construct, operate, and maintain the Project to achieve the water quality standards in 25 Pa. Code Chapter 93, including any permits, authorizations or approvals necessary from any interstate or international agency under an interstate compact or international agreement that has established water quality standards applicable to surface waters of this Commonwealth, including wetlands, more stringent than those in Chapter 93.
5. Water Quality Monitoring – PADEP retains the right to specify additional studies or monitoring to ensure that the receiving water quality associated with the Project is not adversely impacted by any operational and construction process that may be employed by Applicant.
6. Operation – Applicant shall properly operate and maintain at all times all Project facilities and systems of treatment and control (and related appurtenances) installed to achieve compliance with the terms and conditions of this SWQC and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.
7. Inspection – The Project, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of PADEP or delegated County Conservation District to determine compliance with this SWQC, including all required permits, authorizations and approvals required by this State Water Quality Certification. The Applicant shall provide a copy of this SWQC to an authorized representative conducting an inspection of the Project.
8. Transfer of Projects – If Applicant intends to transfer any legal or equitable interest in the Project or any portion(s) thereof, the Applicant shall provide a copy of this SWQC and copies of any permits, authorizations or approvals obtained to comply with the SWQC upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the PADEP Regional Office of such intent. Notice to PADEP shall include a transfer agreement signed by the existing and new owners containing a specific date for transfer of responsibility, coverage, and liability under the SWQC and any permits, authorizations and approvals obtained to comply with the SWQC. The new owner shall submit to PADEP a new application form for the SWQC and any permits, authorizations and approvals required to comply with the SWQC signed by the new owner.

9. Correspondence – All correspondence with and submittals to PADEP concerning this SWQC shall be addressed to:

Department of Environmental Protection
[Inset Regional Office]
[Inset Contact]
[Inset Address]

10. Reservation of Rights – PADEP may modify, suspend or revoke this SWQC if (i) PADEP becomes aware of new facts about the Project that warrant such action; or (ii) PADEP determines that the Applicant has not complied with the terms and conditions of this SWQC. PADEP may require additional measures to achieve compliance with any applicable law or regulation.
11. Other Laws – Nothing in this SWQC shall be construed to preclude the institution of any legal action or to relieve Applicant from any responsibilities, liabilities, or penalties established pursuant to any applicable law or regulation.
12. Severability – The provisions of this SWQC are severable and should any provision of this SWQC be declared invalid or unenforceable, the remainder of the SWQC shall not be affected thereby.

Any person aggrieved by this action may file a petition for review pursuant to Section 19(d) of the Natural Gas Act, 15 U.S.C. 717r(d), with the Office of the Clerk, United States Court of Appeals for the Third Circuit, 21400 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1790 within 30 days of publication of this notice, or within 30 days of receipt of written notice of this action, whichever occurs first. Important legal rights are at stake, so you should show this document to a lawyer at once.

[Secretary's Name],
Secretary