

Spring 2015

## What to do when a pipeline is coming to town

By David Peifer, ANJEC Project Director

Communities all over New Jersey are dealing with proposals for new petroleum pipelines or for the expansion of existing pipeline facilities. Currently, there are five proposed pipeline projects that are active in the State and more can be anticipated. Municipalities, environmental commissions and citizens may be confused because the familiar regulatory framework under the Municipal Land Use Law generally does not apply to long distance linear projects like pipelines. The companies proposing these projects are also generally well-funded, enjoy a favorable regulatory framework and have the power of eminent domain to acquire rights of way.

But there are some ways towns can help to minimize some of the negative impacts of pipeline construction.

The five projects currently active may be grouped into three categories based on how they are regulated: interstate natural gas, intrastate natural gas, and oil or refined product lines (either interstate or intrastate).

### Interstate natural gas pipelines

The siting and construction of Interstate natural gas pipelines are governed by the Federal Energy Regulatory Commission (FERC) (<http://www.ferc.gov/>). Safety issues, operations and maintenance are governed by the Federal Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) (<http://www.phmsa.dot.gov/>). Although safety concerns are often directly related to siting, the PHMSA's authority only comes into play after a route has been selected. Concerned local governments and citizens often find this bi-furcated regulatory approach frustrating and confusing.

FERC issues a Certificate of Public Convenience and Necessity, which, by FERC's definition, "...allows the recipient to engage in the transportation and/or sale for resale of natural gas in interstate commerce or to acquire and operate facilities needed to accomplish this." FERC rarely denies issuing these certificates, and opportunities for the public to participate are limited and complex.

However, local governments, environmental commissions and concerned citizen's can participate in the FERC/NEPA process. As a federal agency, FERC is subject to the requirements of the National Environmental Policy Act (NEPA).<sup>1</sup> Although FERC's process pre-empts municipal control, the NEPA procedures provide opportunities for public and municipal input. Information on the NEPA process is found on the Council on Environmental Quality's website at [www.whitehouse.gov/administration/eop/ceq/](http://www.whitehouse.gov/administration/eop/ceq/).

*(continued)*

Key to the NEPA process is the preparation of an ***Environmental Impact Statement*** (EIS), an Environmental Assessment (EA) or a categorical exclusion (CE). The EIS is the most intensive evaluation and is almost always required for something on the scale of an interstate natural gas pipeline. NEPA Rules<sup>2</sup> govern the process and contents of EIS preparation.

The first opportunity the public has to participate in the EIS process is during what is called the “scoping period.” FERC may hire a consultant to assist with both scoping and EIS preparation. Scoping takes place at the beginning of the EIS process and involves one or more public meetings, during which public testimony is taken either verbally or in written form. Following the close of the scoping period, the FERC staff and consultant will prepare the draft EIS following the rules established under NEPA.<sup>3</sup> The public can comment on the draft EIS and these comments may be incorporated at the agency’s discretion. The final EIS then is published in the *Federal Register*.

Importantly, the EIS contains an alternatives analysis that includes the “no build alternative” and may also include actions to avoid, minimize, mitigate or compensate for environmental damage. Local governments, environmental commissions and concerned citizens can follow the progress of the project by using FERC’s online system at [FERC.gov/docs-filing/elibrary.asp](http://FERC.gov/docs-filing/elibrary.asp). It is important to express concerns during the scoping period and to follow the development of the EIS. FERC often seems to make a “finding of no significant impact” (FONSI) for these projects.

Importantly, the New Jersey Department of Environmental Protection (NJDEP) also has a review and permitting role for projects crossing the State under provisions of the *Federal Clean Water Act*. These NJDEP processes also allow for public and municipal input, and the most meaningful opportunity for municipalities and environmental commissions to have an impact is probably through the NJDEP permit system, especially with regard to wetlands, flood hazard areas, threatened and endangered species and historic resources. It is important to review the permit process and take advantage of all opportunities for public comment. Remember that the permitting process can be iterative, because it may cause the right of way to move in response to potential impacts.

### Preparing comments

First, gain an understanding of the proposed pipeline route. Perhaps the best available information on the proposed route can be obtained directly from the applicant. Once the proposed route is known, evaluate potential impacts by comparing the route to your local Environmental Resources Inventory (ERI) and other municipal planning documents like open space plans or other special studies. If your municipality does not have a digital ERI you can use the NJ DEP’s GeoWeb online system supplemented by your local knowledge to prepare comments.

Be as complete and thorough as possible to safeguard the options for later legal action. Have all issues of concern on the record. Overall, the analysis approach should call for avoidance of impacts first, minimization of impacts second and, only after these have been accomplished, mitigation, either on site or off site, can be entertained.

### **Intrastate and oil or refined product pipelines**

FERC does not regulate intrastate natural gas lines or product lines. In these cases, the NJ DEP process described above is still the best opportunity for local comment.

*(continued)*

## What impacts can be expected?

The construction impacts of all pipelines are remarkably similar. Typically, once a right of way has been secured by the applicant, the route is cleared of all vegetation and shrubs and stumps are removed. This may have a profound impact on contiguous wildlife habitats by creating “edges” in forested areas that allow the growth of invasive species and separate formerly contiguous forest parcels. Land cover can readily be determined from the ERI. Overall, tree removal should be avoided or minimized by routing the project through non-forested areas. While operational requirements for pipelines dictate that the right of way will not be allowed to reforest, areas of temporary disturbance, such as work space and access roads, should be reforested wherever possible.

Clearing and initial grading also will increase the potential for soil erosion and sedimentation. Special stabilization techniques are required, especially when the route traverses steep slopes and highly erodible soils. Topsoil should always be segregated for redistribution on the disturbed areas. Slopes and soil conditions are easily determined from the ERI.

Pipelines commonly cross streams and wetland areas. When these crossing cannot be avoided, special techniques to minimize disturbance, compaction, sedimentation and erosion are necessary. Replanting disturbed wetlands and stream corridors is vital to maintaining overall environmental quality.

Historic and cultural resources, including above- and below-ground features, should be carefully evaluated along the route. These features should be avoided wherever possible. If there is no alternative, they should be carefully recorded prior to disturbance.

There are other common impacts from pipeline construction that may continue to need attention after construction is completed. Soil erosion control and re-vegetation may require several growing seasons and provisions for evaluation and retreatment must be made part of the permits.

It is important to continue to remember that pipelines are large construction projects and that thorough planning is the most important part of the process. If a pipeline project is coming to your municipality, it is important to assure that there is long term continuity and adequate resources for assuring minimum environmental impact.

The New Jersey League of Municipalities has provided some additional guidance for municipalities, primarily on issues other than environmental impacts:

[www.njslom.org/letters/2015-0129-Pipeline.html](http://www.njslom.org/letters/2015-0129-Pipeline.html)

[www.njslom.org/letters/2015-0120-Gas-Pipeline.html](http://www.njslom.org/letters/2015-0120-Gas-Pipeline.html).

<sup>1</sup> 42 U.S.C. §§4321-4370h

<sup>2</sup> [https://ceq.doe.gov/ceq\\_regulations/regulations.html](https://ceq.doe.gov/ceq_regulations/regulations.html)

<sup>3</sup> [http://energy.gov/sites/prod/files/NEPA-40CFR1500\\_1508.pdf](http://energy.gov/sites/prod/files/NEPA-40CFR1500_1508.pdf)