

New York State Department of Environmental Conservation

Division of Environmental Permits, Region 8

6274 East Avon-Lima Road, Avon, New York 14414-9519

Phone: (585) 226-2466 • FAX: (585) 226-2830

Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

July 16, 2007

Jaclyn A. Brillling, Secretary

Attention: Mr. John Strub

State of New York

Public Service Commission

Building 3

Empire State Plaza

Albany NY 12223-1350

Dear Mr. Strub:

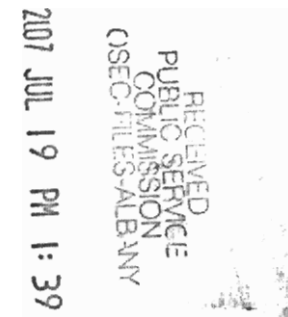
Re: Article 7 Project Review

Notice of Intent to Construct a Natural Gas Pipeline

Construct 24,920 ft of 6-inch steel coated gathering pipeline for the existing Deyo Road 6" Riser and then connect to the Ryers Creek Compressor Station

Fortuna Energy Inc.

(T) Caton & (T) Lindley, Steuben Co.



On July 12, 2007, the Region 8 office of the NYS Department of Environmental Conservation (DEC) received a copy of Fortuna Energy Inc.'s Notice of Intent to Construct a Natural Gas Pipeline for the above-referenced project.

The following includes our office's review comments on this project:

1. The project will not affect any NYS protected streams [Stream Classifications of C(T) or above] or regulated NYS Freshwater Wetlands or their regulated adjacent areas. Therefore there will be no requirement for the project to comply with the intent of the regulatory requirements found at Article 15 of the Environmental Conservation Law (ECL) / 6NYCRR Part 608 (Protection of Waters) and at Article 24 of the ECL / 6NYCRR Part 663 (Freshwater Wetlands).
2. The information provided with the Notice of Intent indicates that the proposed pipeline will cross seven (7) un-named intermittent drain, two (2) un-named intermittent creeks, one (1) un-named

Measures should be employed which will ensure that disturbed areas are returned to original grade and that a well-developed vegetation cover becomes established on disturbed soil areas.

Erosion and sediment control techniques must be employed so that pipeline construction activities located in or near the stream channels will not result in a violation of the NYS water quality standards for Class C waterbodies.

3. Work in certain waters and wetlands of the United States may require a permit from the U.S. Army Corps of Engineers (Corps). If a Corps permit is required, the Corps will request a determination (Water Quality Certification, pursuant to Section 401 of the federal Clean Water Act) that discharges from the proposed activities, for which an applicant is seeking a Corps permit approval, will comply with the applicable effluent limitations, water quality standards, and any other applicable conditions of New York State law. The New York State Public Service Commission has the jurisdiction to issue or deny a Section 401 Water Quality Certification for projects that are subject to Article VII of the Public Service Law. The Buffalo Office of the Corps should be contacted regarding permit jurisdictions. Their address and phone number are Chief, Regulatory Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo NY, 14207, (716) 879-4330.
4. We have reviewed the available information in the New York Natural Heritage Program databases on known occurrences of rare or state-listed animals and plants, of significant natural communities, and other significant habitats. No occurrences were found in the vicinity of the project site.

For most sites, comprehensive field surveys have not been conducted; the enclosed information only includes records from our databases. We cannot provide a definitive statement on the presence or absence of all rare or state-listed species or significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental impact assessment.

The NYS Natural Heritage Program databases do not include Federally-listed or proposed endangered or threatened species. For this information, we suggest that you contact the U.S. Department of the Interior's Fish and Wildlife Service, located at 3817 Luker Road, Cortland NY 13045 (607) 753-9334.

other technical assistance tools for preparing SWPPP can be found on this web page
<http://www.dec.state.ny.us/website/dow/toolbox/toolbox.htm> .

6. Based on information available on DEC's GIS database from the NYS Archaeological Site Map maintained by the State Historic Preservation Office of the NYS Office of Parks, Recreation, & Historic Preservation (NYS OPRHP), there is an archaeological sensitive area along the project route. The Notice of Intent indicates that Fortuna Energy has also identified the presence of the archaeological sensitive area.. Fortuna Energy report that they had conducted a Phase 1 Cultural Resource Survey for a previous project (Gillis to Harvey Extension), whose right-of-way parallels the right-of way of the instant project. The State Historic Preservation Office (SHPO) in the NYS Office of Parks, Recreation & Historic Preservation in their review of the Gillis to Harvey Extension Project would have no impact upon cultural resources in or eligible for inclusion in the State and National Registers of Historic Places. Fortuna has resubmitted the Phase I report to SHPO for documentation for the current project.

It is recommended that PSC should not approve a Certificate f Environmental Compatibility and Public Need until a copy of a "no impact" letter is received from NYS OPRHP.

If you have any questions regarding these comments, please contact me at 716-226-5390.

Sincerely,



Peter A. Lent
Regional Permit Administrator

cc: Mr. Eric Haskins, Fortuna Energy, Inc.