07-T-1344
Comments

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 8
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Alexander B. Grannis
Commissioner

November 26 , 2007

Honorable Jaclyn A. Brilling
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

2007 NOV 29 PM 1:57

Attention: Mr. John Strub

Dear Mr. Strub:

Re: **Article 7 Project Review**
Notice of Intent to Construct a Natural Gas Pipeline
Construct 41, 105 ft of 6-inch steel coated pipeline to gather natural gas from the Lucas #1 Well (API #31-015-23928-0) and 200 feet of 4-inch coated steel pipeline to gather natural gas from the Pietila #1 Well (31-015-23925-00) and connect to the existing 4-inch Mallula #1 Well pipeline.
Fortuna Energy Inc.
(T) Van Etten, Chemung Co.

On November 9, 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. Pipeline Crossing of Cayuta Creek

In the vicinity of the Village of Van Etten, the proposed pipeline route will cross Cayuta Creek a NYS protected stream. The best usages of Class B waters are primary and secondary contact recreation and fishing. These waters shall be suitable for fish propagation and survival. In addition, the (t) designation indicates that Cayuta Creek is a trout stream. DEC records indicate that there are both wild and stocked Brown Trout in Cayuta Creek.

DEC is requesting the Public Service Commission, through the approval process associated with Article 7 of the Public Service Law, to have Fortuna Energy Inc. comply with the intent of the regulatory requirements found at Article 15 of the Environmental Conservation Law (ECL) / 6NYCRR Part 608 (Protection of Waters).

Because of its status as a protected trout stream, even with an issued permit, DEC would require that no disturbances occur to Cayuta Creek's streambed and stream banks from October 1 through May 15, in order to protect the trout fishery. If Fortuna Energy Inc's schedule would

include constructing the pipeline during this restrictive date period, DEC will only allow the crossing of Cayuta Creek to occur by utilizing Horizontal Directional Drilling or conventional boring methods, which Fortuna Energy has indicated are available options for stream crossings in their Notice of Intent documents. In order to avoid disturbance to stream banks by equipment, it would be preferred to have the bore pits no closer to the top of the stream bank than 50 feet. No wheeled or tracked equipment will be allowed to cross the trout stream. Appropriate erosion and sediment control measures must be implemented at the bore pit locations, so as to prevent any loose soil materials which may be carried by stormwater runoff from the construction activities from entering Cayuta Creek and resulting in a contravention of the water quality standards for this Class B(t) trout stream. All disturbed areas shall be returned to original grade and otherwise stabilized to prevent erosion and to promote the growth of a well established vegetative cover.

2. Two Pipeline Crossings of Un-named Tributary of Cayuta Creek

Also of concern to the water quality and fishery of Cayuta Creek are two proposed pipeline crossings of an unnamed tributary of Cayuta Creek with a Stream Classification of Class C, which flows to the east of Rumsey Hill Road (See NOI Exhibit A). From its terminus at the existing pipeline for Mallula No. 1 natural gas well, the proposed pipeline route will proceed east, crossing Rumsey Hill Road and then make its first crossing of the unnamed tributary of Cayuta Creek,. This first crossing is approx. 0.8 miles upstream from the unnamed tributary's confluence with Cayuta Creek. The second pipeline crossing of the unnamed tributary will occur at a point just 150 feet upstream of the tributary's confluence with Cayuta Creek. The un-named tributary at the second crossing is flowing across the valley of Cayuta Creek.

Even though this un-named tributary of Cayuta Creek has a Stream Classification of Class C and therefore is not considered a NYS protected stream, the close proximity of the most downstream crossing of the un-named tributary to the channel of Cayuta Creek could result in water quality and fishery impacts downstream in the protected sections of Cayuta Creek from the construction activities associated with the pipeline crossing.

As with the crossing of Cayuta Creek, if the most downstream un-named tributary crossing will be done during the October 1 to May 15 restrictive date period, DEC will require that the pipeline crossing of the tributary be done by utilizing Horizontal Directional Drilling or conventional boring methods with the same separations distances and erosion and sedimentation controls described for the Cayuta Creek Crossing in Comment 1.

The pipeline crossing further upstream on the un-named tributary of Cayuta Creek appears to be of sufficient distance from the tributary's confluence with Cayuta Creek, so that any of the various methods described in the Notice of Intent would be suitable, provided adequate erosion and sedimentation control measures are employed (See Comment 3).

3. Other Stream Crossings along the Pipeline Route

In addition to Cayuta Creek and its un-named tributary, the information provided with the Notice of Intent indicates that the proposed pipeline will also cross McDuffy Creek and one of its

tributaries, two tributaries of Langford Creek, and 2 other un-named streams. All of these streams have a stream classification of Class C in the New York State Stream Classification.

The Notice of Intent indicates that pipe construction across these streams may be by using open-cut dry crossing methods, Horizontally Directionally Drilled ("HDD") or be conventionally bored per Environmental Management and Construction Standards and Practices Plan (EM&CS&P) specifications.

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 channel will not result in a violation of the NYS water quality standards for Class C waterbodies.

4. NYS Freshwater Wetlands

The proposed pipeline route will not cross any 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 24 of the ECL / 6NYCRR Part 663 (Freshwater Wetlands). See Comment 9 for U.S. Army Corps of Engineers jurisdictions.

5. Hydrostatic Pipeline Testing

The Notice of Intent (Appendix 7-D) submitted by Fortuna Energy provides the following information regarding the water to be used for pipeline pressure and leak testing: Test water will be pumped from a local creek and transported to project site by truck. After the test, the test water will be drained into a sediment retention pond in the watershed of the local stream which the water was taken from with appropriate filtration measures in place.

For newly constructed pipelines, water discharged following a hydrostatic test of the pipeline integrity would be expected to contain only very small quantities of contaminants, if any at all. DEC will not require an applicant to pursue a full application review and permitting process in order to undertake a test which would result in a short-term discharge of essentially uncontaminated water for only 1 or 2 days. However, DEC would take a different approach if the proposed discharge of hydrostatic test water was to be from a previously used, existing pipeline, where there is a greater concern that the pipeline may contain significant quantities of contaminants. DEC would consider pursuing a permit for the discharge from the existing pipeline ,or , more likely, require that water not be discharged but be collected after the test and disposed of at an appropriate facility based on the results of testing.

While DEC will not require Fortuna Energy to obtain a SPDES Permit for hydrostatic testing of the new proposed pipeline, the following information will be required to be provided for DEC's review before a discharge of hydrostatic test water can occur. This information should be

submitted to my attention and I will coordinate review with the DEC's Region 8 Division of Water staff.

a.) The source of water and quantity of water to be used for the testing. (Cayuta Creek should not be utilized as a source of water due to the potential disturbances to its bed and banks during the withdrawal of water.)

b.) The location(s) where the water for testing will enter the pipeline and how will the water be transported to this (these) locations.

c.) The point(s) where test water will be discharged from the pipeline and the distance to and the identity of the watercourse(s) where the water will drain to. (Note previously stated concerns with disturbance of bed and banks of Cayuta Creek and the October 1 through May 15, restrictive dates for in-stream disturbances.)

d.) Provide a narrative description of the methods to be used for the hydrostatic testing. If a pig will be used to clear obstructions and debris from the new pipeline prior to the test, include the details for collection and disposal of the material collected by the cleaning operation. If a chlorinated source of water (e.g. from a public water supply source) will be used, the hydrostatic test procedures should include testing of chlorine levels at discharge.

e.) Provide a description of the best management practices which will be employed to dissipate the force of the discharged test water to reduce soil erosion and to allow settling of suspended solids in order to ensure that the discharge will be able to meet surface water quality standards. DEC would recommend that following employment of the energy dissipation and sediment control measures that the discharge be allowed to move as overland flow for a distance of 100 feet or more before there is a potential for the discharge to enter a defined drainage or stream channel, or wetland area.

f.) The Division of Water contact in DEC Region 8 is the Regional Water Engineer, Dixon Rollins, 585-226- 5468. Mr. Rollins should receive prior notification of the date of the commencement of the test and the location of the discharge of the hydrostatic water. The prior notification should occur at least 5 days prior to the commencement of the test.

6. NYS Natural Heritage Program Records of Rare, Threatened, and Endangered Species

The available information has been reviewed 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 results reported here only include 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.

7. Coverage under General SPDES Permit for Stormwater Discharges from Construction Activities (GP-02-01)

As this is a natural gas production related project, coverage under DEC's SPDES General Permit for Stormwater Discharges from Construction Activities (GP 02-01) will need to be obtained if the project will result in disturbance of more than 5 acres of soil. To obtain coverage under the General Permit, all conditions of the permit must be met, including the preparation and implementation of an appropriate Stormwater Pollution Prevention Plan (SWPPP), which will be implemented for for the project and the filing of a Notice of Intent (NOI) with DEC. The General Permit, information on filing the NOI and other stormwater related information, such as technical assistance tools, can be accessed through the DEC's stormwater webpage at http://www.dec.ny.gov/chemical/8468.html .

8. Review for Archaeologically Sensitive Areas

The project location is not located within an archaeologically sensitive area, 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).

9. U.S. Army Corps of Engineers (Corps)Approval and 401 Water Quality Certification from the NYS Public Service Commission

Although no NYS regulated Freshwater Wetlands were identified along the pipeline route, the Notice of Intent indicates that during the field review on October 31, 2007, seven wet areas were found within the pipeline route and 2 wet areas adjacent to the route. If a Corps permit is required for discharges to the waters of the United States (i.e. streams and their associated wetland areas) pursuant to Section 404 of the Clean Water Act, the Corps may 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. Fortuna Energy Inc. has included a request for a Water Quality Certification, if one is required, from the New York State Public Service Commission in their Notice of Intent submission.

If you have any questions regarding these comments, please contact me at 585-226-5390.

Sincerely,

Peter A. Lent

Peter A. Lent
Regional Permit Administrator

cc: Mr. Eric Haskins, Fortuna Energy, Inc.
U.S. Army Corps of Engineers, Buffalo District Office
Mr. Dixon Rollins, NYSDEC-Avon, Regional Water Engineer
Mr. Brad Hammers, NYSDEC-Avon, Bureau of Fisheries