

August 13, 2016

Honorable Norman Bay, Chair
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
Re: Docket CP15-558-000 – Proposed PennEast Pipeline Project

Dear Chairman Bay, FERC Commissioners and FERC staff,

The non-profit organization HALT PennEast is writing to comment on the proposed PennEast Pipeline Draft Environmental Impact Statement (DEIS). We are intervenors in this matter, and represent hundreds of impacted landowners and other concerned citizens in the region who oppose permitting and construction of the PennEast Pipeline.

This comment is written in reference to Clean Water Act (CWA) 404 Wetlands permits. Section 404 permits are mentioned in 8 pages of the main DEIS file, on pages ES-6, 1-5, 1-6, 1-7, 1-10, 4-65, 4-69, and 4-71¹. It is further referenced in two areas of Appendix E, in sections 2.2 and 11.1², and 4 passing references in the third volume³.

All references (with the exception of Appendix E) refer to the 404 Wetlands permits strictly in terms of jurisdiction of the United States Corp of Army Engineers (USACE). Section 1.2.2 “U.S. Army Corp of Engineers” states:

The USACE is a federal agency within the U.S. Department of Defense with jurisdictional authority pursuant to Section 404 of the Clean Water Act (CWA) (Title 33 of the United States Code [USC], section 1344 [33 USC 1344]), which governs the discharge of dredged and/or fill material into waters of the United States.

Section 1.2.3 “U.S. Environmental Protection Agency” states:

The EPA also has the authority to review and veto permits issued by the USACE under Section 404 of the CWA.

Section 1.3 contains a table (Table 1.3-1) that lists all “Permits, Approvals, and Regulatory Requirements”. The 404 permit is listed under “U.S. Army Corps of Engineers – Philadelphia

¹ PennEast Draft Environmental Impact Statement CD-ROM, Volume-1

² ibid Volume-2

³ ibid Volume-3

and Baltimore Districts”. Under NJDEP in the same table, it notes “includes Federal wetlands certification”.

Other areas go on to strictly speak of the 404 permit in terms of USACE jurisdiction only.

Only Appendix E, which deals with the erosion and sedimentation plan, correctly and fully references 404 authority in the State of NJ:

Please note that the NJDEP has assumed federal Section 404 authority and no direct permitting is required through the Corps unless tidal waters are impacted. The NJDEP also uses the 1989 Federal Manual and not the Corps 1987 Manual (and applicable regional supplements) for wetland delineations.

The Association of State Wetlands Managers documents state assumption of 404 permitting in general terms⁴, noting:

States are particularly well-situated to address regional water management issues and to effectively interact with private landowners. Federal resource agencies play a critical role in maintaining a “level regulatory playing field” among the states and in helping to define common national goals under the Clean Water Act. While a number of states have strong wetland programs, only two states have assumed administration of Section 404. Instead other states have developed, or are developing, other types of cooperative permit programs, such as joint permitting,2 State Programmatic General Permits (SPGPs) or Regional General Permits (RGPs). However, since the U.S. Supreme Court decision on Solid Waste Agency of Northern Cook County (SWANCC) of 2001, interest in state assumption has increased.

Numerous benefits for such assumption is documented by the ASWM as well, including Improved resource protection, Increased Program efficiency, Use of state-specific resource policies and procedures, increased public support, and others⁵.

As mentioned, the State of New Jersey has assumed responsibility for 404 permitting, as is documented in the web page describing the relationship between the EPA, the NJDEP, and the department of land use⁶. In the memorandum of agreement between NJDEP and EPA on overseeing 404 wetlands permitting, it is noted that the EPA should oversee “major discharges” within the NJ program, noting “EPA oversees the NJDEP’s wetland program by reviewing certain wetland applications identified as “major discharges”.”⁷

Major Discharges are defined as:

⁴ Association of State Wetland Managers Fact Sheet, page 1
[http://www.aswm.org/pdf lib/cwa section 404 state assumption factsheets.pdf](http://www.aswm.org/pdf_lib/cwa_section_404_state_assumption_factsheets.pdf)

⁵ *ibid* page 6

⁶ http://www.nj.gov/dep/landuse/lu_epa.html

⁷ *ibid*

- 1 A draft general permit;
- 2 A discharge with reasonable potential to affect Federally listed or proposed endangered or threatened species as determined by the U.S. Fish and Wildlife Service;
- 3 A discharge of dredged or fill material which has the potential for adverse impacts on the waters of a state other than New Jersey;
- 4 A discharge known or suspected to contain:
 - 1 Toxic pollutants as identified by Section 307(a)(1) of the Federal act;
 - 2 Hazardous substances identified pursuant to Section 311 of the Federal act and Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§9601 et seq.;
 - 3 Toxic substances as defined by Section 3 of the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; or
 - 4 Hazardous waste as defined by Section 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.;
- 5 A discharge located in the proximity of a public water supply intake;
- 6 A discharge within a critical area established under State or Federal law, including but not limited to a National or State park; fish or wildlife sanctuary or refuge; National or historical monument; wilderness area or preserve; a site identified or proposed under the National Historic Preservation Act; or a component of the National Wild and Scenic Rivers system;
- 7 The filling of five or more acres of freshwater wetlands and/or State open waters;
- 8 Any regulated activity that results in a significant reduction in the ecological, commercial, or recreational values of five or more acres of freshwater wetlands or State open waters;
- 9 A culvert enclosure longer than 100 feet; or
- 10 Channelization of more than 500 feet of a river or stream.

Note that sections 2, 5, 6, 7, and 8 almost certainly apply to the PennEast application. In particular, we note that PennEast's proposed route is in close proximity to the Swan Creek Reservoir, which is an intake for a public water supply (Suez drinking water system for Lambertville, NJ), which would trigger section 5 above. The DEIS also states that 30 acres of wetlands would be impacted in NJ⁸, which argue triggers section 7 above. Sections 2, 6, and 8 would require additional agency input, but we have already shown two avenues to trigger EPA oversight. As such this would imply that the EPA should be involved in reviewing the 404 wetlands application as well.

At issue here is that the majority of the DEIS was written with the assumption that only the USACE had jurisdiction over 404 wetlands permits. This is especially evident in section "4.4 - Wetlands", where the DEIS applies only USACE standards and does not note that separate NJDEP 404 standards prevail in NJ, nor does it note the specific NJ triggering requirements for EPA oversight.

This is perhaps not surprising, in light of the qualifications of the Tetra Tech individual listed in Appendix J of the DEIS under "List of Preparers". The sections of the DEIS involved in "Water

⁸ DEIS section 4.4, page 4-66

Resources, Wetlands, Land Use, Recreation, and Visual Resources, Conclusions and Recommendations” was prepared by:

Schils, Nathalie B.A., Environmental Studies; International Relations, 2012, Tufts University

We assert that Ms. Schils is clearly not qualified to create a comprehensive DEIS that speaks to

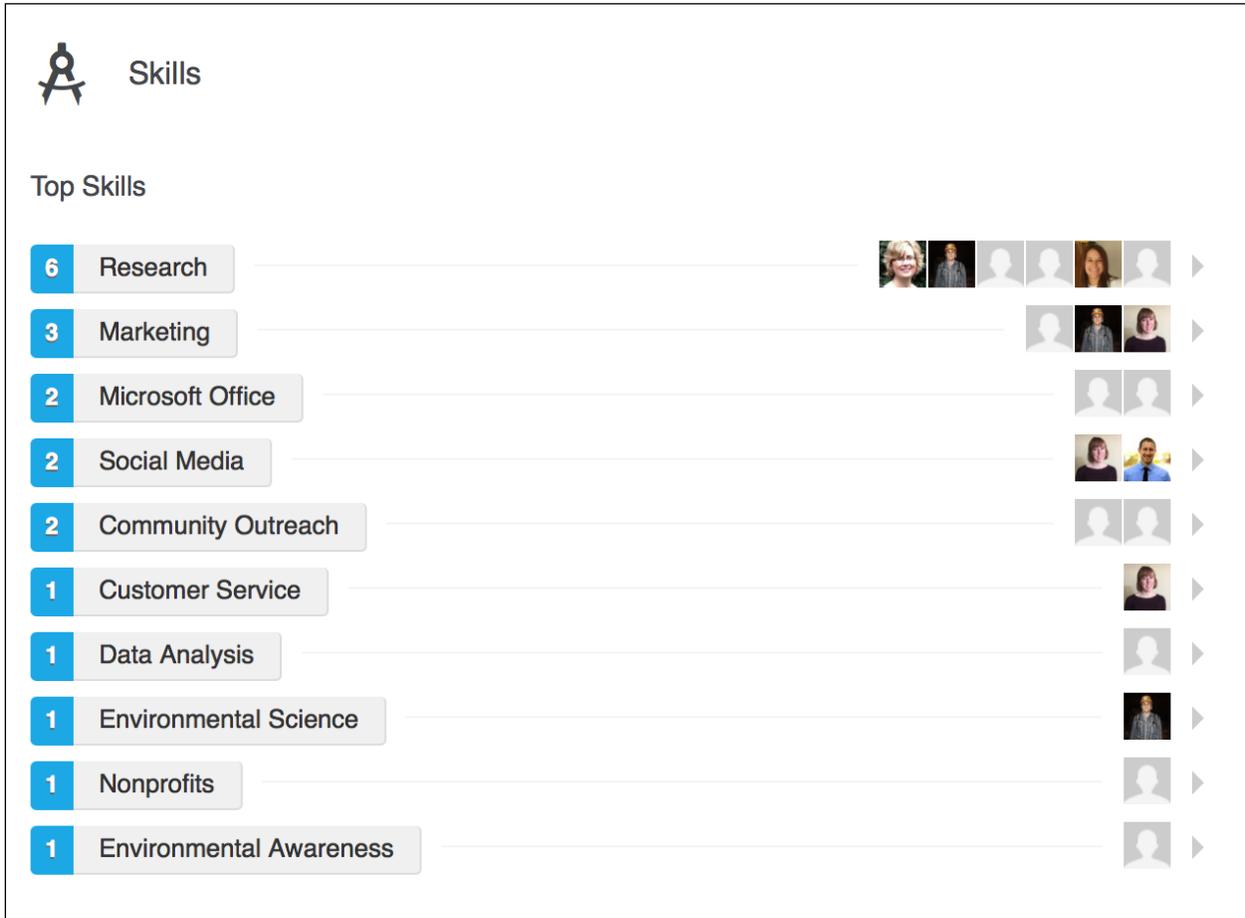
<p>Events Team Net Impact Boston August 2014 – Present (2 years 2 months) Boston, MA</p> <p>Plan events for Net Impact Boston Membership including monthly Sustainability Breakfast Series, Annual Meeting, and Speed Networking Night. Net Impact Boston is the local chapter of Net Impact, a global association with the goal of mobilizing professionals to use their careers to drive transformational change in their workplaces and the world.</p>	
<p>Sustainable Seafood Program Intern New England Aquarium September 2011 – April 2012 (8 months) Boston, MA</p> <p>I conducted environmental assessments of wild and aquaculture fisheries by researching how sustainably products are grown and harvested. These evaluations are used by the aquarium's corporate partners.</p>	
<p>Marketing Manager Tufts Student Resources April 2010 – June 2011 (1 year 3 months) Greater Boston Area</p> <p>As the Marketing Manager for TSR, Tufts' student-run business, I marketed TSR services like laundry packages and on-campus cafés through social media, posters, mailers and promotional events during Orientation week. I expanded our off-campus marketing partnerships and coordinated marketing campaigns of area businesses and restaurants to Tufts students. I managed several employees, maintained a budget and secured contracts totaling \$3,000.</p>	
<p>Customer Service Team Member Whole Foods May 2010 – August 2010 (4 months) Greater Boston Area</p>	

figure 1 - Nathalie Schils prior experience

water resources and wetlands. Her BA was issued only 4 years ago. Her Linked in page shown in figure 1 indicate her experience prior to joining Tetra Tech⁹:

⁹ Ms. Schils linked in page: <https://www.linkedin.com/in/nathalie-schils-056a9038>

Her prior qualifications listed therein include planning meetings and events, an 8 month internship to the New England Aquarium, a student services job at Tufts University, and working at Whole Foods. Further, her skills determined by peers at linkedin are defined are shown below:



We can see that Ms. Schills has few skills noted, and highest among them are Marketing and Microsoft Office. At the bottom are “Environmental Science”.

figure 2 - Nathalie Schills peer skills assessment

The Tufts University Site has a paper written by Ms. Schills dated December 2, 2011 for the class *Introduction to GIS*¹⁰. It is deeply disturbing that wetlands impacts in the DEIS are being determined by an individual who first learned how to use GIS systems less than 5 years ago.

¹⁰

<https://wikis.uit.tufts.edu/confluence/download/attachments/48211182/assignment+7+schils.doc>
x

CONCLUSION

At risk to HALT members are our homes, our farms, our businesses, our livelihoods, and our very families. Our environment, our drinking water. Wetlands that we have struggled to maintain in the state with the highest population density in the nation.

It is clear that the DEIS has been prepared by many people at many different levels of expertise, and that the DEIS is disjointed, inconsistent and inaccurate in a number of areas. We have demonstrated here that the DEIS is enormously inconsistent on the CWA 404 permits, that it has inaccurate information in many places, and does not fully capture the permitting environment in NJ, including EPA reporting requirements unique the state. We are further dismayed that the section on wetlands and water resources is sourced from a a self-described “environmental scientist” with only a 4 year Bachelors of Arts degree - and that only 4 years ago.

We aver that the wetlands sections of the DEIS are wholly inadequate and do not adequately address the unique permitting requirements in the State of New Jersey. The wetlands section must be revised to reflect the actual guidelines in the state. We further ask that a qualified professional be put in charge of such revision with experience commensurate to the enormous scale of this project, and for what is at stake for those who live in the region.