



January 14, 2022

National Fuel Gas Supply Corporation
c/o Daniel Young
1100 State Street
Erie, PA 16501

Re: State Water Quality Certification Notification
State Water Quality Certification
FM120 Insertion Project
DEP Application No. WQ0083221-001
APS ID No. 1030905; AUTH ID No. 1340458
McKean, Cameron & Elk Counties

Dear Mr. Young:

This is in reference to your request for Water Quality Certification under Section 401 of the Federal Clean Water Act, received by our office on January 19, 2021. The request relates to the FM 120 Insertion Project. The Project includes an approximately 12.5-mile-long, 6-inch FlexSteel pipeline insertion through an existing 1950's vintage bare steel 12-inch-diameter pipeline. The Project will take place in Sergeant Township, McKean County; the City of St. Mary's and Jones Townships, Elk County; and Shippen Township, Cameron County, all within the Commonwealth of Pennsylvania.

The Department of Environmental Protection (Department) has reviewed your request for 401 Water Quality Certification and hereby grants the 401 Water Quality Certification for the FM120 Insertion Project. The approved certification is attached.

Any person aggrieved by this action may challenge it in an appropriate legal forum. The state and federal courts are currently split on whether the proper forum to challenge a Department permit, authorization or approval for a facility or activity subject to the Federal Natural Gas Act, 15 U.S.C. § 717 *et seq.*, is the United States Court of Appeals for the Third Circuit or the Pennsylvania Environmental Hearing Board. *See Delaware Riverkeeper Network v. Sec'y, Dep't of Env'tl. Prot.*, 833 F.3d 360 (3d Cir. 2016); *Delaware Riverkeeper Network v. Sec'y, Dep't of Env'tl Prot.*, 903 F.3d 65 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 1648, 203 L. Ed. 899 (2019) and *Cole v. Dep't. of Env'tl Prot.*, 1577 C.D. 2019 WL 2420667 (Pa. Cmwlth Ct. June 15, 2021) (Pet. for Allowance of Appeal pending); *West Rockhill Twp. v. Dep't of Env'tl. Prot.*, No. 1595 C.D. 2019 WL 2426014 (Pa. Cmwlth. June 15, 2021) (Pet. for Allowance of Appeal pending).

You should promptly consult with a lawyer on the steps to take if you wish to challenge this action and to best protect your interests.

IMPORTANT LEGAL RIGHTS ARE AT STAKE. YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE.

If you have questions, please contact Kevin White, P.E., Environmental Group Manager, at 570.826.2015 or by email at kevwhite@pa.gov, and refer to the FM120 Insertion Project, WQ0083221-001, to discuss your concerns or to schedule a meeting.

Sincerely,



Domenic Rocco, P.E.
Director
Regional Permit Coordination Office

Enclosure: State Water Quality Certification

cc: GAI Consultants, Inc. (by email)
U.S. Army Corps of Engineers, Baltimore District (by email)
U.S. Army Corps of Engineers, Pittsburgh District (by email)
PA Fish & Boat Commission, Division of Environmental Services (by email)
Cameron County Conservation District (by email)
Elk County Conservation District (by email)
McKean County Conservation District (by email)
Shippen Township (by email)
City of St. Mary's (by email)
Jones Township (by email)
Sergeant Township (by email)

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**WATER QUALITY CERTIFICATION
FM120 Insertion Project**

**WQ0083221-001: National Fuel Gas Supply Corporation
Mr. Daniel Young
National Fuel Gas Supply Corporation
1100 State Street
Erie, PA 16501**

**McKean, Elk, and Cameron Counties
Pittsburg and Baltimore ACOE Districts**

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE WATER QUALITY CERTIFICATION (SWQC)
FM120 Insertion Project**

WQ0083221-001—DEP certifies that the construction, operation and maintenance of the Project complies with the applicable provisions of sections 301-303, 306 and 307 of the Federal Clean Water Act (33 U.S.C. 1311-1313, 1316 and 1317). The DEP further certifies that the construction, operation and maintenance of the Project complies with Pennsylvania water quality standards and that the construction, operation and maintenance of the Project will maintain and protect applicable Commonwealth water quality standards provided that the construction, operation and maintenance of the project complies with the following DEP water quality permitting programs, criteria and conditions established pursuant to Pennsylvania law:

1. *Discharge of Hydrostatic Test Water* –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 and Stormwater Management* –All projects proposing earth disturbance must implement best management practices (BMPs) to protect and maintain water quality pursuant to Pennsylvania’s Clean Streams Law (35 P.S. §§ 691.1 – 691.1001) 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. Applicant shall obtain and comply with an Erosion and Sediment Control Permit(s) for earth disturbance associated with the Project as provided in 25 Pa. Code § 102.5.
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. §§ 693.1-693.27), and Flood Plain Management Act (32 P.S. §§ 679.101-679.601.), 25 Pa. Code Chapter 105 (relating to dam safety and waterway management), 25 Pa. Code Chapter 106 (relating to floodplain 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 from any interstate or international agency as required by an interstate compact or international agreement that has established water quality standards applicable to surface waters of this Commonwealth, including wetlands.
5. *Water Quality Monitoring* – DEP retains the right to specify additional studies or monitoring to ensure that water quality in the receiving waters associated with the Project is not adversely impacted by any operational and construction process that may be employed by Applicant.
6. *Operation* – At all times, Applicant shall properly operate and maintain 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 DEP or the delegated County Conservation District to determine compliance with this SWQC, including all permits, authorizations or approvals issued to ensure the project shall maintain and protect state water quality standards as 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 appropriate DEP Office of such intent. Notice to DEP 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 DEP 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 DEP concerning this SWQC shall be addressed to:

Department of Environmental Protection
Regional Permit Coordination Office:
Domenic Rocco, P.E., Director
400 Market Street, Harrisburg, PA 17101
RA-EPREGIONALPERMIT@pa.gov

10. *Reservation of Rights* – DEP may modify, suspend or revoke this SWQC if (i) DEP becomes aware of new facts about the Project that warrant such action; or (ii) DEP determines that the Applicant has not complied with the terms and conditions of this SWQC. DEP 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.



1/14/2022

Domenic Rocco, P.E.

Date

Director

Regional Permit Coordination Office