

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits & Pollution Prevention
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March 8, 2016

Re: *Potential lead agency dispute in the Matter of Application of Pilgrim Transportation of New York, Inc. to construct, operate and maintain two petroleum pipelines from the Port of Albany, Albany, New York to Linden, New Jersey*

Response due by March 21, 2016

Dear Potentially Involved Agencies:

On August 7, 2015, the New York State Thruway Authority (“Thruway Authority”) received an application for a Use and Occupancy permit from Pilgrim Transportation of New York, Inc. (“Pilgrim”) for the use and occupancy of approximately 91 miles of the Thruway Mainline Right-of-Way (Thruway ROW) south of Albany. Pilgrim proposes to construct, operate and maintain two petroleum pipelines immediately adjacent to one another (the “Project”) to transport petroleum product between the Port of Albany (in Albany, New York) and refining facilities located in Linden, New Jersey. According to the application materials that have so far been provided to the Department, outside of the Thruway ROW within New York State, the proposed pipeline route would be co-located with other roads, utilities and railroads for approximately 9 linear miles. Pilgrim would also need to acquire new rights-of-way for approximately 16 miles.

On November 16, 2015, the Thruway Authority forwarded the use and occupancy application to local governments and agencies that may be potentially “involved agencies”¹ under the State Environmental Quality Review Act (“SEQR”) requesting that these agencies indicate if they desire to become “lead agency” for the coordinated SEQR review of the Project. On December 21, 2015, the Department and the Thruway Authority determined that co-lead designation was appropriate for the environmental review of the proposed pipeline given the very unique circumstances of Pilgrim’s application and that each agency has distinct expertise to offer in the review of this complex proposal.²

¹An “Involved agency” means an agency that has jurisdiction by law to fund, approve or directly undertake an action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an “involved agency” notwithstanding that it has not received an application for funding or approval at the time the SEQR process is commenced.” 6 NYCRR §617.2(s).

² A copy of the Department’s letter dated December 21, 2015 responding to the Thruway Authority’s SEQR coordination letter and the co-lead agency agreement between the Department and the Thruway Authority are available on the Department’s website at <http://www.dec.ny.gov/permits/105174.html>.



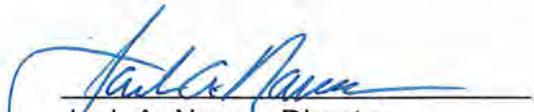
Department of
Environmental
Conservation

The Department is in receipt of letters from several municipal agencies that indicate disagreement with the co-lead agency arrangement and request that the DEC Commissioner designate the Department of Environmental Conservation as the sole lead agency pursuant to 6 NYCRR 617.6(b)(5). In sum and substance, these municipalities argue that the Department is in the best position to be lead agency and that the Thruway Authority's involvement would only create potential disagreement in the decision-making process. To this end, the Department and the Thruway Authority have also entered an agreement in the event that the two agencies remain co-lead. The agreement provides protocols if a disagreement were to arise between the agencies. This letter is being sent to potentially involved agencies to allow each of them to consider whether they wish to dispute the co-lead arrangement between the Department and the Thruway Authority under the Commissioner's lead agency dispute resolution process (6 NYCRR §617.6(b)(5)).

Please be advised that pursuant to 6 NYCRR 617.6(b)(5)(i) "any agency raising a dispute must be ready to assume the lead agency functions if such agency is designated by the commissioner." Thus, any agency or board responding to this letter should specifically indicate whether it is prepared to assume the role of lead agency for the full length of the project within New York State and it has capacity to do so, if it has not already done so. Second, any agency raising a dispute must specifically identify its jurisdiction over the action, and all relevant information necessary for the commissioner to apply the following criteria:

- (a) whether the anticipated impacts of the action being considered are primarily of statewide, regional, or local significance (i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency);
- (b) which agency has the broadest governmental powers for investigation of the impact(s) of the proposed action; and
- (c) which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

All correspondence should be directed to Mr. Kent Sanders, Deputy Chief Permit Administrator at the above address. Submissions may also be sent via email to: kent.sanders@dec.ny.gov. All submissions must be received no later than the close of business on March 21, 2016.



Jack A. Nasca, Director
Division of Environmental Permits

- c: List of Potentially Involved Agencies (attached)
Pilgrim Transportation of New York, Inc., through
Gilberti, Stinziano, Heintz & Smith, PC