



Via Electronic Mail

December 7, 2016

Hon. Basil Seggos
Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12207-2942

RE: Need for Immediate Action to Halt AIM Pipeline Horizontal Directional Drilling

Dear Commissioner Seggos:

We write to urge the Department of Environmental Conservation to immediately investigate, and if appropriate, issue a summary abatement order to halt Algonquin Gas Transmission, LLC's ("Algonquin's") second horizontal directional drilling ("HDD") attempt for the Algonquin Incremental Market ("AIM") Pipeline. It is Riverkeeper's understanding that the second attempt is expected to occur at any moment. As such, we appreciate your prompt attention to this urgent matter.

The Commissioner has broad authority to halt an activity that may cause significant harm to the environment.¹ Summary abatement is appropriate when the Commissioner finds, after an investigation, that an activity:

(1) presents an imminent danger to the health or welfare of the people of the State, or result in or is likely to result in irreversible or irreparable damage to natural resources; and

¹ See N.Y. Env'tl. Conserv. § 71-0301; see also, *Standard Marine Servs. V. Jorling*, 625 N.Y.S.2d 186 (N. Y. App. Div. 1995).

(2) relates to the prevention and abatement powers of the commissioner in that the condition or activity pertains to or affects any of the objectives or goals of the Environmental Conservation Law, or relates to any of the permit, licensing, or regulatory programs of the Department....²

This activity is imminent, and, as the previous failed attempt shows, poses a significant threat to the Hudson River and adjacent wetlands. Moreover, this activity relates to the goals and objectives of the Environmental Conservation Law,³ as well as an authorization issued by the Department, namely, the § 401 Water Quality Certification for the AIM Pipeline.⁴

Algonquin's first attempt to pull the pipeline under the Hudson River was a complete failure. Section 4.3.2.3 of the Final Environmental Impact Statement ("FEIS") for the project expressly states that, "if *an* HDD in its proposed location proves unsuccessful, Algonquin would be required to identify a new location for the crossing or new methodology, and request approval for the new location or methodology with all applicable agencies."⁵ The first HDD attempt was clearly unsuccessful, as it resulted in "a break of the drill stem and the subsequent excavation of a wetland beyond the project approved workspace...."⁶ The excavation, as it turned out, was not even in the correct location to recover the broken drill stem. The Federal Energy Regulatory Commission characterized the attempt as a "serious violation" of its Order issuing the Certificate for the AIM Pipeline.⁷ Because an attempt has already proven unsuccessful, all subsequent attempts should be fully evaluated by all applicable agencies.

Furthermore, the second attempt modifies the HDD methodology, and raises significant concerns among environmental organizations and the public.

² N.Y. Comp. Codes R. & Regs. tit. 6, § 620.2(a); *see also*, N.Y. Env'tl. Conserv. § 71-0301.

³ *See* N.Y. Env'tl. Conserv. § 1-0101 (stating that it is the policy of the State to, *inter alia*, "conserve, improve and protect its natural resources and environment," to ensure that beneficial uses are "attained *without* ... unnecessary degradation or other undesirable or unintended consequences," and to "promot[e] patterns of development and technology which *minimize* adverse impact on the environment.") (emphasis added).

⁴ *See* N.Y. Comp. Codes R. & Regs. tit. 6, § 608.9. Riverkeeper supports NRDC's request to revoke the § 401 Water Quality Certification for the AIM Project. *See* Letter from Mark A. Izeman & Kimberly Ong, NRDC, to Basil Seggos, Commissioner, DEC (Nov. 21, 2016).

⁵ Federal Energy Regulatory Commission ("FERC"), Algonquin Incremental Market Project Final Environmental Impact Statement 4-46 (Jan. 2015) (emphasis added); *see also*, FERC Certification Condition 16 ("**In the event of an unsuccessful HDD at the Hudson or Still Rivers**, Algonquin shall file with the Secretary a plan for the crossing of the waterbody. This shall be a site-specific plan that includes scaled drawings identifying all areas that would be disturbed by construction.") (emphasis in original).

⁶ Letter from FERC to Algonquin Gas Transmission, LLC (Sept. 9, 2016)

⁷ *Id.*

Riverkeeper understands that Algonquin may be using steel casing, rocks, and sand to reinforce the drill hole. To our knowledge, those measures have not been evaluated by the Department or the U.S. Army Corps of Engineers. As such, the second attempt should not proceed until and unless Algonquin develops a new plan that is fully evaluated by all relevant agencies.⁸

The failure of the initial HDD attempt should raise significant doubts about the conclusion that “Algonquin’s implementation of the HDD method at the Hudson and Still Rivers will avoid in-stream disturbance of these waterbodies and is an appropriate technique for installing the pipeline at the Hudson and Still Rivers.”⁹ Therefore, we ask that you intervene to allow for a complete evaluation of the new HDD methodology immediately, before Algonquin does any further damage to the Hudson River.

Sincerely,



Paul Gallay
President and Hudson Riverkeeper

cc: Peter Walke, Chief of Staff, New York State Department of Environmental Conservation
Erin Doran, Staff Attorney, Riverkeeper

⁸ See FEIS at 4-46.

⁹ FERC Certification at 24 (citing FEIS at 4-6)