

April 2, 2020

By Electronic Mail

Pennsylvania Department of Community  
and Economic Development  
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**Re: Waivers for Energy Transfer capital projects**

To whom it may concern:

The COVID-19 pandemic has left the Pennsylvania Department of Community and Economic Development (“Department”) with a new and unexpected crush of work involving processing requests for waivers from the Governor’s Order requiring the closure of non-life-sustaining businesses. The Department has needed to process thousands of requests on short notice and in some circumstances without the benefit of in-house expertise to evaluate whether claims relating to safety and need are accurate. Clean Air Council writes to provide some clarity on requests which the Department granted for capital projects by pipeline company Energy Transfer, and to request partial rescission of that group of waivers. For context, Clean Air Council is a non-profit environmental organization with thousands of members across Pennsylvania. For more than 50 years, the Council has fought to improve the air quality across Pennsylvania. The Council’s mission is to protect everyone’s right to a healthy environment.

Energy Transfer requested and was promptly granted six waivers from Governor Wolf’s COVID-19 Emergency Order of 3/19/2020 so it could continue various aspects of its pipeline work in Pennsylvania. Combined, the waivers represent a broad collection of construction and maintenance activities that it will continue driving forward as the toll of the pandemic soars, claiming lives, health, and livelihoods across the Commonwealth and the nation.

Clean Air Council recognizes that there may be some extremely limited circumstances under which it could be safer for certain aspects of Energy Transfer’s pipeline work to continue than to be halted abruptly. One or two of the waiver requests are in fact reasonable. As a whole, however, the waivers that have been granted were broad and lacked critical supporting detail. The Council is deeply concerned that the granting of these waivers has created a situation that is ripe for abuse. Energy Transfer has a well known track record of blatantly evading regulation, violating permits, consistently refusing to report dangers to the public, and is even under multiple criminal investigations related to its pipeline work. Any waivers granted to Energy Transfer demand the highest level of technical scrutiny before being granted.

Below, the Council outlines some of the specific problems we have identified with regard to each waiver. The Council urges you to consider these concerns carefully and to limit the scope of the existing waivers accordingly. The Council also anticipates that Energy Transfer will request additional waivers and urges you to avoid granting them until a comprehensive and fully transparent review process is in place.

### **Waiver 1**

Waiver Request 1 seeks leave “to inspect and maintain the construction work spaces to ensure compliance with existing environmental permits, to maintain security at work spaces, and to address any safety concerns at work spaces as necessary.” Assuming a good faith interpretation of this request, Clean Air Council believes a waiver is reasonable for this purpose. However, the Department should seek clarity from Energy Transfer about what it means by “address any safety concerns at work spaces as necessary.” Specifically, this should not include conducting construction work to move sites toward completion.

According to Energy Transfer in Waiver Request 3, for example, “Completion of the HDDs at each of these [three] locations is necessary to address safety concerns.” As Clean Air Council explains below, there is actually no discernable safety reason to continue work at those HDD locations. Continuing work *causes risk* and does not promote safety. So the Department should narrow its first waiver to ensure that it cannot be interpreted as allowing work to continue at any work spaces as Energy Transfer in its sole discretion deems “necessary.”

### **Waiver 2**

The second waiver requested ten days to “completely stabilize, secure, and demobilize all construction sites.” At this time, that ten-day period has passed and all activity under the waiver should have been completed. Based on Energy Transfer’s history with the construction of the Mariner East Pipelines and the Revolution Pipeline, there is good reason to be skeptical that it has abided by the ten-day timeline. If the ten-day timeline has not been respected, this should weigh heavily against any future waiver requests. If Energy Transfer requests an additional waiver to stabilize, secure, or demobilize sites, that waiver must provide far more specificity. It is inappropriate to grant a blanket waiver for its 300-miles-plus Mariner East project. Energy Transfer should explain what is needed to stabilize, secure, and demobilize at each site. Those terms are vague and likely to be stretched by Energy Transfer beyond their common meanings, as it has done with other terminology related to its pipeline projects.

### Waiver 3

The third waiver request sought leave to complete horizontal directional drilling (HDD) at three locations that are at a “significantly-advanced stage of the HDD process:”

1. Loyalhanna Lake, Loyalhanna Township, Westmoreland County;
2. Livermore Road, Derry Township, Westmoreland County; and,
3. Raystown Lake, Penn Township, Huntington County.

Energy Transfer claims that “If SPLP is not permitted to complete this critical final work because it must cease all activities at these work sites for an indefinite period of time there is a significant risk that the HDD boreholes will collapse and be lost, creating adverse impacts to the environment and safety concerns. In fact this has occurred at other HDD locations during prior work stoppages on the Mariner East 2/2X Pipeline Project.” This claim is a mix of truth and fiction.

For context, Energy Transfer’s use of HDD has been disastrous across the board. It has led to massive sinkholes opening up in residents’ yards, requiring them to evacuate and abandon their houses, it has contaminated scores of private water wells across the Commonwealth, and it has led to hundreds of spills of drilling fluids on land and into streams and lakes. In fact, whereas Energy Transfer calls Raystown Lake in the waiver request “one of the Commonwealth’s premier natural recreational resources,” it does not disclose that the Pennsylvania Department of Environmental Protection earlier this year fined it \$1.95 million for contaminating eight acres of the bottom of Raystown Lake and failing to report that to DEP. *See* Jan. 16, 2020 DEP News Release, “DEP Issues \$1.95 Million Penalty to Sunoco Over Violations at Raystown Lake,” available at <https://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21798&typeid=1>. This is for the very same HDD that Energy Transfer requested it be allowed to continue, citing safety.

In late 2017, Energy Transfer and DEP entered into a Consent Order and Agreement after the same Energy Transfer HDD crossing of Loyalhanna Lake that it seeks to continue now experienced a series of pollution incidents leading to a “Known Impacts Area” over 17 acres in size, and contaminated private wells as well. *See In the Matter of Sunoco Pipeline L.P.*, Consent Order and Agreement of Dec. 15, 2017, available at <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/12-15-17%20-%20Westmoreland%20County.pdf>. Energy Transfer paid a fine of more than \$80,000 in that instance.

Turning to Energy Transfer’s argument, it is possible that some prolonged work stoppage may lead to some cave-in of the borehole being drilled. That may require some reworking of the hole upon resumption of work. However, such problems also occur during normal construction even without any work stoppages. Whether the risk of such commonplace construction problems

outweigh the benefit of stopping work to prevent the spread of COVID-19 is what the Department should analyze in this case. Unfortunately, Energy Transfer does not provide information such as how long the additional work would require its workers to be out in the field working closely together and potentially spreading disease, or which individuals it thinks would be subject to any safety issues that it purports to be concerned about, and what the nature of that risk would be. It is impossible for the Department to weigh the risks here.

What information Energy Transfer does provide is concerning. It says that the Loyalhanna Lake and Livermore Road crossings have not even completed the very first (pilot) stage of the drilling. This is not a “significantly-advanced stage” as it claims, but quite the opposite. This misrepresentation alone should lead the Department to rescind the waiver as to the Loyalhanna Lake and Livermore Road crossings, because it is based on false pretenses. The Department should then re-evaluate its waiver as to Raystown Lake after getting more information from Energy Transfer and from DEP, which has significant experience with and oversight of Energy Transfer’s HDD work.

#### **Waiver 4**

The fourth waiver request seeks permission to continue “a road bore presently underway at Pottstown Pike, located in West Whiteland Township, Chester County, and the open cut of a portion of Appalachian Drive, located in Middlesex Township, Cumberland County.” Energy Transfer’s argument for continuing work across Pottstown Pike is that “At Pottstown Pike, cessation of activities would mean the removal of equipment midway through the boring process, leaving an open bore hole underneath Pottstown Pike, creating the possibility of a road closure and/or collapse. In addition, the excavated pits to either side of the Pottstown Pike would remain open creating a public safety hazard.”

This argument is unconvincing. As explained above, continuing to bore under Pottstown Pike creates the possibility of collapse across *more* of the length of the crossing, not less. As of the date of the waiver request, only a fraction of the crossing had been bored. Stopping work does not necessarily increase that risk. Furthermore, any excavated pits can simply be fenced off. Neighbors have reported that there are no open pits at this site. Even if such pits existed, they would be left unattended during non-work hours anyway. The only difference during a work stoppage is that a larger portion of the day the pits would be unstaffed than they would be otherwise. Any such additional risk is minor compared to the risk of spreading disease during the COVID-19 pandemic.

Energy Transfer writes “With respect to Appalachian Drive, the roadway has been closed and there is an open cut in the roadway for approximately 356 feet of its 860 foot length. This situation could remain with the cessation of activity.” The crossing of Appalachian Drive has

been proceeding on and off for years now, and has been disastrous for the neighbors, causing significant structural damage to their homes and destroying their water wells. *See* Zack Hoopes, “Silver Spring Township road to be closed 2 months for pipeline installation,” *The Sentinel*, March 4, 2019, available at [https://cumberlink.com/news/local/communities/mechanicsburg/silver-spring-township-road-to-be-closed-months-for-pipeline/article\\_fabdd8b1-1a6c-5d86-b06d-cd206159507b.html#tracking-source=home-top-story-2](https://cumberlink.com/news/local/communities/mechanicsburg/silver-spring-township-road-to-be-closed-months-for-pipeline/article_fabdd8b1-1a6c-5d86-b06d-cd206159507b.html#tracking-source=home-top-story-2). Energy Transfer has caused hundreds of road closures across the state, and only now is it claiming that they are a safety hazard. While it may be inconvenient for Energy Transfer to need to stop work, that does not make it a safety concern for the general public that overrides the threat and risk of COVID-19.

## **Waiver 5**

The Waiver 5 request included several unrelated components, each of which Energy Transfer claims addresses a critical location “where cessation of all construction activities presents a serious concern for safety and security, or where ceasing construction may result in potential adverse impacts to human health or the environment.” These are empty terms that Energy Transfer did not bother to explain or support. Notably, after initially citing security as a chief concern, the waiver does not mention security again or provide a single example of a specific security concern. In addition, for Energy Transfer to suddenly feign concern for “potentially adverse impacts to human health and the environment” is inconsistent with the apathy it has consistently demonstrated toward its adverse impacts over its years of pipeline construction, as it accrued hundreds of violations and been charged millions of dollars in fines. By claiming a waiver is needed to prevent “potential adverse impacts to human health or the environment,” Energy Transfer has concocted a standard that it has consistently failed to meet even under the best of circumstances, and a standard that is far too low a bar to justify its work now, in the face of a deadly pandemic.

As to work at the specific locations that Energy Transfer has listed in the waiver, each wholly fails to qualify as life-sustaining work. Energy Transfer tried to justify continuing work at Piney Creek, Delmont Terminal, and Beckersville Terminal based on open excavation at those sites. Even giving Energy Transfer the full benefit of the doubt that it is ostensibly worried about someone from the public entering the site and falling, Energy Transfer has not explained why it cannot simply put up fencing. It has also not explained why this is suddenly a threat now, as opposed to however long the site has been open. If safety were a threat, it should have taken protective measures far sooner. The exposed pipeline at the Chestnut Hill site also raises an interesting contradiction with previous practice. Energy Transfer has regularly left pipes exposed to the elements despite subsequent safety concerns that may arise once the pipe is installed. This again appears to be a matter of Energy Transfer seeking to protect its financial interests. The exposed, inactive, unconnected pipe itself is not a threat to public safety, and

certainly not a life-or-death threat. Energy Transfer merely does not want to incur the cost later of using different pipe if this segment becomes damaged and it is caught trying to install it.

The requests to continue work at the HDD sites listed in this waiver are problematic for the same reasons set forth in the discussion of Waiver 3 above, which also addresses continuing HDDs. As previously noted, the risk of borehole collapse at each site is a technical, site-specific question best addressed to the Department of Environmental Protection. Energy Transfer has not provided nearly enough information to complete that analysis. For some of the sites, Energy Transfer requests a waiver “to allow SPLP to maintain groundwater that is surfacing and prevent flooding and safety concerns.” It is unclear what is meant by “maintain groundwater that is surfacing.” Energy Transfer should be preventing groundwater from surfacing. At some of its construction sites, Energy Transfer has been disrupting groundwater and causing flooding for years. It has not explained how the sites in the waiver are any different or more pressing. Imminent and serious flooding concerns may justify a waiver, but again, far more detail is needed about the specifics of the safety threat at each site. That information should be evaluated by the Department of Environmental Protection.

Energy Transfer also seeks to complete geotechnical surveying at the Valley Road location. After years of Energy Transfer refusing to complete needed geophysical surveys at problematic sites prior to starting construction, Clean Air Council is fully in support of these surveys being conducted. However, as Energy Transfer admits in the waiver request, the geophysical surveying is part of *planning* for mitigation. If construction at the site has truly stopped, as Energy Transfer claims, any grouting or other mitigation that the surveys would inform are part of planning for future construction, not something that needs to be done to address an ongoing emergency now.

To justify continuing work at the Hemlock Ridge Estates 8” Pipeline and Meter Station through June 15, 2020, Energy Transfer has cited a still-weaker rationale. It claims to be concerned about sediment discharge in an exceptional value watershed and an open ditch. It has not even attempted to cite a serious safety concern. It is well documented that Energy Transfer has consistently failed to prevent violations of its Erosion and Sediment Control permits throughout years of construction of the Mariner East Project and has sought to skirt protections not only for exceptional value watersheds, but also for countless exceptional value surface waters themselves, which are more highly regulated. It is highly disingenuous for Energy Transfer now to, when faced with a work stoppage, to claim concern for sedimentation and exceptional value watersheds.

## Waiver 6

In waiver request six, Energy Transfer seeks a waiver to be able to finish off its work stabilizing a slope along the Revolution Pipeline right-of-way. Energy Transfer avers that “This waiver request does not include any pipeline construction work, and only covers work to allow ETC to continue to comply with the requirements of the [Consent Order & Agreement].” If Energy Transfer indeed only works to do its required slope stabilization efforts, Clean Air Council agrees that this work is necessary for health and safety and merits a waiver. It was Energy Transfer’s shoddy construction practices that destabilized the slope in Beaver County leading to an explosion that destroyed a residential area and nearly killed residents. This is important and DEP-ordered remedial work.

In addition to these specific concerns, Clean Air Council is concerned, as well, by reports that Energy Transfer continues to do work at other sites that do not fall within the scope of the waivers the Department has issued. Whether the Department is the right entity to do so, the Commonwealth should not tolerate foreign businesses such as Energy Transfer acting as scofflaws and endangering the public during a pandemic. Much of the work Energy Transfer is continuing with takes place through residents’ yards, by residential care facilities, in apartment complexes, and otherwise in very close proximity to people who must now shelter in place. Construction work requires close contact for long periods of time. The danger this continued work presents to the public is clear.

Unless a true and verifiable urgent public safety need exists at a worksite, Energy Transfer should join the rest of Pennsylvanians in putting outdoor work on hold to prevent the spread of infection. Energy Transfer’s use of workers from across the country, many of whom lack private homes to conduct their lives and stay safe within, endangers our communities. The Department should, respectfully, partially rescind these waivers as described above except in any limited circumstances which may be justified—but which have not yet been justified.

Thank you for considering these comments and this request. Please keep us posted on any developments.

Sincerely,



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