



Ohio Environmental Council

**Comments of the Ohio Environmental Council
Regarding
The 401 Water Quality Certification Application for the Falcon Pipeline**

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Ohio EPA-DSW

Attention: Permits Processing Unit
P.O. Box 1049
Columbus, Ohio 43216-1049

May 30, 2018

RE: 401 Water Quality Certification Application for the Shell Pipeline Company's Falcon Ethane Pipeline Project, Ohio Section.

The Ohio Environmental Council (the "OEC") would first like to thank the Ohio Environmental Protection Agency (the "Ohio EPA") for scheduling a public hearing regarding the 401 Water Quality Certification following intense interest from our organization and other interested groups like Sierra Club. Our members and the public notice when the agency listens and appreciate when the Ohio EPA takes time to fully understand and address the concerns of local communities.

Thus, the OEC submits the following comments in an effort to continue that important dialogue between the Ohio EPA and its public allies. We hope that as the agency considers whether to approve or deny the Shell Falcon Pipeline Project's Section 401 Water Quality Certification Application (the "Application"), it remembers the concerns emphasized in our comments and the comments of other interested parties.

Introduction

Shell has designed the The Shell Falcon Pipeline Project (the "Pipeline") as a common

carrier ethane supply pipeline that will transport product from resource supply points in Pennsylvania and West Virginia to a planned petrochemical plant in Monaca, Pennsylvania. 43.6 miles of the Pipeline will traverse Ohio lands, streams, and wetlands, with an approximate total surface disturbance of 554 acres.¹

In Ohio, the Pipeline will impact 131 stream segments and 68 wetlands, with more than 10,000 feet in total proposed stream impacts.² Additionally, it will impact 5.98 acres of wetlands. Shell has stated that its Preferred Alternative will include 3 horizontal directional drilling (HDD) locations in Ohio, a 100-foot right of way (ROW), and will cost approximately \$80 to \$90 million.³ The Minimal Degradation Alternative would reduce the 100-foot ROW to 75 feet where practical, expand the HDD crossings to avoid additional ecological resources, and would cost approximately \$90 to \$100 million. Shell proposes its No Degradation alternative as including an HDD crossing at every stream and/or wetland, with an approximate cost of \$2.7 billion.⁴

The OEC submits these comments with a focus on four concerns. First, the Ohio EPA should require Shell to submit a more detailed Antidegradation Analysis that includes more detailed Minimal Degradation Alternatives. Second, the Ohio EPA should require Shell to pursue a more thorough Mitigation Plan that aligns with recent regulations proposed by the Agency. Third, the Ohio EPA should remember that because this Pipeline is not an interstate natural gas pipeline, this Application is the only significant moment of government oversight for the project. Thus, if the Ohio EPA approves the Application, it should structure its conditions so that it retains significant oversight over the construction and operation of the project.

Finally, the Ohio EPA should emphasize cumulative impacts in its decision to approve or deny this Application. Shell freely recognizes that this project is just one cog in a larger plan to develop a massive petrochemical hub across the Appalachian region. As companies construct more and more facilities and pipelines across Ohio, West Virginia, and Pennsylvania, the cumulative impacts to environmental resources will cause degradation beyond what any single project may implicate. The Ohio EPA must consider this reality in each application moving forward.

¹ See *Item 5: Proposed Project Antidegradation Analysis*, Shell Falcon Pipeline Company, <http://wwwapp.epa.state.oh.us/dsw/401Applications/FEP/Antidegradation%20Analysis.pdf>.

² “The total stream impacts include 3,696-linear feet of ephemeral streams, 6,275-linear feet of intermittent streams, and 1,775-feet of perennial streams.” *Id.*

³ The Applicant’s recent “Response to Technical Comments” has committed additional Horizontal Directional Drills for particular wetland and waterbody crossings, though the Agency hasn’t clearly communicated this to the public either at the hearing on May 23, 2018 or through an obvious posting of these technical comments.

⁴ *Id.*

I. The Ohio EPA should require Shell to submit a more detailed Antidegradation analysis that includes minimum degradation alternatives that achieve meaningful protection of water quality.

Shell has proposed three alternatives in its Water Quality Certification: the “Preferred Design Alternative,” the “Minimal Degradation Alternative,” and the “No Degradation Alternative.” The Ohio EPA’s regulations in OAC 3745-1-05 and elsewhere govern the Application and its Antidegradation Analysis. In part, the Administrative Code allows the Director of the Ohio EPA to “require the applicant to implement a non-degradation alternative, a minimal degradation alternative or a mitigative technique alternative to offset all or part of the proposed lowering of water quality, if the director determines that the alternative is technically feasible and economically justifiable.”⁵ An Application’s “minimal degradation alternative,” as defined in the regulation, should be an alternative to the Preferred Alternative that “would result in a lesser lowering of water quality.”⁶ Finally, ORC 6111.30 states that a 401 Water Quality Certification must include “descriptions, schematics, and appropriate economic information concerning the applicant’s preferred alternative, nondegradation alternatives, and minimum degradation alternatives for the design and operation of the project.”⁷

Shell has not provided sufficient documentation nor an adequate minimal degradation alternative in its Application. Consider the following side-by-side analysis of the three proposed designs for the Pipeline in Ohio:

Design Alternative	Attributes	HDD Sites	Cost
Preferred Design Alternative	100-foot ROW; 3 HDD locations	SCIO-01, Milepost 3, crossing state route OH-151; SCIO-02, Milepost 26.8, crossing township road 285B; SCIO-03, Milepost 31.9, crossing the Ohio River near mile 939.64.	\$80 - \$90 million
Minimal Degradation Alternative	100 foot ROW, except 75-foot ROW at stream and wetland crossings where practical	Same HDD crossings, but the crossing include additional resources. SCIO-01 includes two wetlands and one stream; SCIO-02 includes a stream; SCIO-03 still crosses the Ohio River	\$90 - \$100 million
No Degradation	Utilizes HDD	HDDs for all 131 streams and 68	\$2.7 billion

⁵ OAC 3745-1-05(C)(5).

⁶ OAC 3745-1-05(A)(14).

⁷ ORC 611.30(A)(8). While it may have its own issues, consider the Antidegradation Analysis of the Rover Pipeline Project, which includes a much more thorough consideration of the issues when compared to Shell’s Antidegradation Analysis. *Item 5: Proposed Project Antidegradation Analysis*, Rover Pipeline, (November 2015), http://web.epa.state.oh.us/dsw/401Applications/Rover/Rover_Item%20-%20Antidegradation%20Analysis.pdf.

Alternative	crossings for each stream and wetland and would result in no disturbance to environmental resources	wetlands	
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If the Ohio EPA chooses to approve this Application, it must condition that approval on a more comprehensive and protective minimal degradation alternative. The minimal degradation alternative proposed by Shell only slightly modifies the Preferred Alternative; it only protects two streams and two wetlands from potential temporary or permanent impacts. In no way does changing just two HDDs and using a smaller ROW “where practical” constitute meaningful “lesser lowering of water quality.” Shell instead proposed an alternative that only slightly modifies their Preferred Alternative, than compares those two plans to an extremely costly No Degradation Alternative.

In its “Response to Technical Comments,” the Applicant identifies the “Minimal Degradation Alternative” route as the “Least Environmentally Damaging Practicable Alternative.” However, in additional sections of the “Response to Technical Comments” the Applicant has already committed to designing and potentially implementing additional HDDs for select water resources (such as the proposed crossing of Elk Lick (SCIO-07). If the Applicant can develop additional crossings and propose those crossings for certain water bodies not intended to receive an HDD in either the Minimal Degradation Alternative or the Preferred Design Alternative, then the Minimum Degradation Alternative is not the “Least Environmentally Damaging Practicable Alternative.”

Thus, Ohio EPA should require Shell to propose a new “Minimum Degradation Alternative” that actually protects additional streams and wetlands along the route as a “Least Environmentally Damaging Practicable Alternative.” Shell could easily develop an Alternative that is still reasonably cost effective yet protects these important resources in eastern Ohio. A wide variety of options exist between the \$100 million cost and the \$2.7 billion cost. For instance, Shell could propose a Minimum Degradation Alternative that uses HDD crossings for all Category 3 Wetlands and Perennial WWH Streams along the proposed route for the Pipeline, except in instances where geographic concerns make such crossings impossible or would likely cause inadvertent returns.

Prior to the hearing on May 23, 2018, the OEC planned to request that the Ohio EPA require the Applicant to provide additional documentation for its Antidegradation Analysis as provided under ORC 6111.30(A)(8). Given communication with the Agency following the hearing, the OEC recognizes that the Applicant has provided this additional documentation.

Notwithstanding that recently provided documentation, Shell's original Antidegradation Analysis was just six pages, with only narrative criteria summarizing the differences between the three alternatives. Shell did not do its due diligence in proposing viable alternatives in its original Application. It appears as if Shell designed its Minimum Degradation Alternative in such a way that the company would suffer little if "required" to develop that project, rather than a robust Alternative that meaningfully results in a lesser lowering of water quality, as required by statute.

As emphasized in later sections, the Ohio EPA must post new material provided by the Applicant in the Index for a 401 Water Quality Certification so the public can easily access the new files. For meaningful public input, all interested parties should see the same files that the Ohio EPA can see up to the public comment deadline. While the files technically exist through Ohio EPA's eDoc website, many members of the public will not know to utilize those resources nor how to use the interface.

After reviewing the Ohio EPA's technical comments, the OEC recognizes that Ohio EPA has made meaningful and significant requests of the Applicant regarding its Antidegradation Analysis and other components of the Application.⁸ The Agency should continue pushing the Applicant to institute better and more environmentally protective methods. The Agency should make these technical comments more publicly visible so that interested parties also recognize the questions already considered. Such preemptive action would reduce the work of interested parties and avoid unnecessary questions from the public if we readily know the Agency has already asked those questions.

II. The Ohio EPA should require Shell to justify its Mitigation Plan as required by recent regulations promulgated by the agency.

Shell asserts that it expects no wetland acreage loss will occur due to the Pipeline, and that "5.77 of 5.98-acres of wetlands impacted are proposed as temporary impacts." Shell further claims:

"There are 0.03-acre of PFO wetlands and 0.18-acre of PSS wetlands proposed to be impacted by the Project. There will be no wetland acreage loss associated with these impacts; however, the forested scrub-shrub communities will be permanently converted to, and maintained as an herbaceous community type."⁹

⁸ For instance, in its Technical Comments the Agency requests explanations for why the Applicant has proposed to impact through open-cut trenching three designated Warmwater Habitat streams, two designated Exceptional Warmwater Habitat Streams, and four streams with an existing use of Coldwater Habitat. The Ohio EPA must keep us this line of questioning throughout its correspondence with the Applicant and condition the Permit on avoiding impacts to these resources.

⁹ Supra FN 1.

Shell further states:

“Proposed stream impacts will be restored to original contours during the restoration phase of Project construction. The total proposed stream impacts include 3,696-linear feet of ephemeral streams, 6,275-linear feet of intermittent streams, and 1,775-feet of perennial streams.”¹⁰

Finally, Shell describes the impacts to aquatic biota as follows:

“Potential impacts to aquatic biota located in streams segments will be temporary, short-term impacts. Long-term and/or permanent impacts to aquatic biota are not anticipated. Temporary impacts will occur during active construction of each individual stream segment. Each stream crossing will be constructed during low-flow, and/or dry conditions....Habitats and aquatic biota populations will be able to exist within the impacted reach of stream similar to conditions prior to construction. Decline in number and/or composition of species is not anticipated to occur as a result of the pipeline construction.”¹¹

Shell has presented the potential impacts to these streams and wetlands under the assumption that temporary impacts will necessarily not result in long-term or permanent impacts to these environmental resources. However, the company does not consider what it will do if such impacts are greater than anticipated. In addition, Shell should account for what actions it will take if the Pipeline ruptures or explodes after construction, and the impacts that will occur if such an event happens.¹²

Furthermore, Ohio EPA should require Shell to perform its compensatory mitigation at a mitigation bank, rather than through the in-lieu-fee program that the company proposes. While the regulations are not yet effective, OAC 3745-1-54(E) will require compensatory mitigation to be provided by applicants in the following preferred order:

- (1) “At a mitigation bank, approved in accordance with 33 C.F.R. Part 332.8, with a service area including the same watershed as the location of the proposed wetland impacts that provides credits for the appropriate wetland category and type.
- (2) Through an in-lieu-fee program, approved in accordance with 33 C.F.R. Part 332.8, with a service area including the same watershed as the location of the proposed wetland impacts that provides credits for the appropriate wetland category and type.

¹⁰ Id.

¹¹ Id.

¹² In February, a Pipeline in Noble County exploded. That particular pipeline was the 24-inch Seneca Lateral, operated by Tallgrass Energy. While infrequent, such hazards do occur and can potentially cause unforeseen damages to environments and communities. Erin O’Neill, *Pipeline Explosion in Noble County*, The Marietta Times, (February 1, 2018), <http://www.mariettatimes.com/news/2018/02/pipeline-explosion-in-noble-county/>.

- (3) At a permittee-responsible compensatory mitigation site located in accordance with 33 C.F.R. Part 332.3(b).¹³

Under the new regulations, applicants can only deviate from the “preferred order” if they demonstrate all of the following:

- (1) “Description of the available credits for each approved mitigation bank or in-lieu fee program with a service area including the same watershed as the location of the proposed wetland impacts.
- (2) Description of the costs associated with the proposed compensatory mitigation and each preceding option outlined in paragraph (E)(1) of this rule.
- (3) Discussion of how the proposed compensatory mitigation will provide a greater ecological benefit than each preceding option outlined in paragraph (E)(1) of this rule.”¹⁴

Even before the Ohio EPA promulgated regulations that clarified this hierarchy, the requirement for information specifying why an Applicant deviated from the established hierarchy already existed. ORC 6111.30 states that “mitigation projects shall be approved in accordance with the hierarchy specified in 33 C.F.R. 332.3 unless the director determines that the size or quality of the impacted resource necessitates reasonably identifiable, available, and practicable mitigation conducted by the applicant.”¹⁵ In its Antidegradation Analysis, provides only the following representation to justify its decision to pay into the In-Lieu Fee Program as compensatory mitigation:

“No wetland loss of acreage is proposed for this Project in Ohio. Only 0.03-acres of PFO wetland community conversion to PEM wetland community will occur. SPLC proposes to pay into the In-Lieu Fee Program as compensatory mitigation for this project. For more detail, please see Item 7 to review the Project Mitigation Plan. All other proposed impacts to the Project will be considered temporary, as the stream and/or wetland feature will be restored to pre-construction contours following the pipeline installation. For more information, please see Appendix B.”¹⁶

The Antidegradation Analysis references an “Item 7,” yet Item 7 does not appear to be attached with Shell’s Application. If Item 7 is in fact attached with Shell’s Application, the public deserves to have better access to that document because it is not readily identifiable in Shell’s application materials.¹⁷ The OEC can easily find Shell’s “Permittee Responsible

¹³ OAC 3745-1-54(E)(1).

¹⁴ OAC 3745-1-54(E)(2).

¹⁵ O.R.C. 6111.30(I).

¹⁶ *Supra* FN 1.

¹⁷ To reference Rover’s 401 Water Quality Certification application once again, which may not have necessarily been entirely sufficient in its own right, it did provide a Proposed Mitigation Plan that outlined its use of approved mitigation banks and where necessary, it justified its use of In-Lieu Fee Programs for mitigation. *Item*

Mitigation Plan” developed for the state of Pennsylvania, but the company has not provided a similar document for Ohio.

Following correspondence with the Ohio EPA after the hearing on May 23, 2018, the agency provided the OEC with directions to access the Applicant’s “Response to Technical Comments” submitted after ruling the agency considered the Application “Administratively Complete” on February 5, 2018. In the Agency’s technical comments, the agency notifies the Applicant that it has not submitted a Mitigation Plan for Ohio, only for Pennsylvania. We question the Agency’s conclusion that an Application can simultaneously be “Administratively Complete” while missing important components. Additionally, such important portions of their Application should be easily accessible to the public, not discovered through a complicated and cumbersome search process on the Ohio EPA’s website. Any new files submitted by the Applicant should be placed in the same folder as the original Application.

In any Mitigation Plan that Shell develops for its Application, that Plan must include the reasons required under OAC 3745-1-54 for deviating from the established mitigation hierarchy. Additionally, Shell should implement in its Mitigation Plan what activities it will perform in the event the Pipeline spills or ruptures, either during construction or operation. While the risk of such catastrophe is quite low, such events do occur, and any company that claims to be a good steward of environmental resources will ensure that if its project causes unforeseen harm, it will account for that harm.¹⁸ Ohio EPA must ensure that applicants for pipeline projects preemptively prepare for the worst case scenarios, rather than respond retroactively to disasters like the dozens of spills caused by the construction of the Rover Pipeline.

III. If the Ohio EPA approves the Application, it should impose significant conditions on the construction and operation of the project because this Application is the only significant moment of government oversight during the development of the Pipeline.

The Director has the principal authority in allowing this sort of project to move forward. OAC 3745-1-05(C)(8) provides the Director’s ability to allow an applicant’s preferred alternative, deny the preferred alternative, or require a “cost beneficial, technically feasible or available non-degradation, minimal degradation or mitigative technique alternative that

7: *Proposed Mitigation Plan*, Rover Pipeline, (November 2015), http://web.epa.state.oh.us/dsw/401Applications/Rover/Rover_Item%207%20-%20Proposed%20Mitigation%20Plan.pdf.

¹⁸ On its website, the parent company of the Shell Pipeline Company, Shell Global, represents: “We carefully consider the potential environmental impact of our activities and how local communities might be affected during the lifetime of a project.” *Environment*, Shell Global, <https://www.shell.com/sustainability/environment.html>.

would result in no or a lesser lowering of water quality.”¹⁹ In acting under OAC 3745-1-05(C)(8) regarding 401 water quality certifications, the Director must also take his action under the authority of OAC 3745-32.

OAC 3745-32-03(D) outlines the approval criteria for a water quality certification, allowing the director to deny an application if it does any of the following:

- (1) Violates antidegradation rules in OAC 3745-1-05 or OAC 3745-1-54;
- (2) Prevents or interferes with water quality standards;
- (3) Result in a violation of the Clean Water Act.²⁰

More importantly, the Director’s approval of this Application *is the only meaningful moment of government approval for this Pipeline*, in addition to the authority of Pennsylvania’s corresponding agency. Congress has only elected to exercise jurisdiction over interstate pipelines when they transport natural gas, giving the Federal Energy Regulatory Commission the authority to issue Certificates of Convenience and Necessity for those immense projects. Though this Pipeline is an interstate pipeline, because it transports ethane instead of natural gas, it does not require federal approval.

Therefore, the Ohio EPA and the Pennsylvania Department of Environmental Protection have essentially exclusive jurisdiction over the Pipeline.²¹ Even though this type of pipeline will play a significant role in future interstate commerce as the industry pushes for an “Appalachian Petrochemical Hub,” Congress has not pursued exclusive authority like it has for natural gas pipelines.

The Director of the Ohio EPA must take this authority seriously. If the agency approves every single pipeline similar to the project proposed in this Application, it must consider the future economic, environmental, and societal implications of those decisions. It must especially consider what will happen if it continuously approves Applications that contain insufficient Mitigation Plans and Antidegradation Analyses. It must consider the consequences of approving dozens of projects that could explode, as pipelines sometimes do, or encourage further oil and gas development, making it more likely that an event like the XTO Well Pad Explosion will occur. In isolation, none of these events have a high chance of

¹⁹ OAC 3745-1-05(C)(8)(iii).

²⁰ OAC 3745-32-03(D).

²¹ The Army Corps of Engineers has limited jurisdiction over certain portions of the 401/404 certification process when the Pipeline crosses the Ohio River. Additionally, once this sort of Pipeline commences operation, federal agencies such as the Pipeline and Hazardous Materials Safety Administration (PHMSA) will have jurisdiction.

occurring, but when hundreds of dangerous projects inundate a geographic region, dangerous events inevitably occur.

Thus, if the Director of the Ohio EPA decides to approve the Application, he should ensure that contingencies for accidents are accounted for in the Permit's conditions. He should condition the approval on a more comprehensive Mitigation Plan and Antidegradation Analysis. He should provide conditions that require the Applicant to mitigate all unforeseen damages to wetlands and water bodies that occur during construction and operation of the Pipeline. The Director of the Ohio EPA "may impose such terms and conditions as part of a 401 certification as are appropriate or necessary to ensure compliance with applicable laws *and to ensure adequate protection of water quality and human health.*" The Ohio EPA should use this power assertively as a potential "Appalachian Petrochemical Hub" develops across the region.^{22, 23}

IV. The Ohio EPA should emphasize cumulative impacts in its decision to approve or deny the Application.

Finally, the Ohio EPA must emphasize cumulative impacts in its decision to approve or deny the Application. In certain portions of the agency's analysis of the Application, it is permitted to account for the cumulative impacts of a project.²⁴ If this project were an interstate natural gas pipeline, FERC would perform an Environmental Assessment or Environmental Impact Statement that would closely consider the cumulative impacts of the proposed project. Because this project does not have a significant federal agency action, it is not subject to the National Environmental Policy Act and the Ohio EPA must instead engage in that important work.

When considering whether to allow or deny an Applicant's preferred alternative, the Director assesses each "proposed activity...on a case-by-case basis."²⁵ Additionally, the Director must "weigh the information acquired relative to the proposal...that was submitted by the applicant or otherwise obtained by the director, [and] all comments presented during the public review period, including intergovernmental comments."²⁶

²² OAC 3745-32-03(K).

²³ After reviewing the Ohio EPA's Technical Comments, the OEC notes that the Agency has preemptively informed the Applicant of certain conditions that will exist within any future permit for the Pipeline.

²⁴ "The Director...may consider cumulative impacts as defined in paragraph (I) of rule 3745-1-50 of the Administrative Code, and shall consider whether the wetland is scarce regionally or statewide and the feasibility of replacing that wetland type, in making a decision whether to allow the lowering of water quality." OAC 3745-1-05(C)(5).

²⁵ OAC 3745-1-05(C)(8)(a).

²⁶ Id.

The Ohio EPA must consider cumulative impacts of the Pipeline when considering whether to approve or deny the 401 water quality certification or allow or deny its Preferred Alternative, Minimum Degradation Alternative, and No Degradation Alternative. OAC 3745-1-50 defines “cumulative impacts” as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonable foreseeable future actions.”²⁷ Cumulative impacts...result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts shall be considered on a watershed basis.”²⁸

Shell provides a brief discussion of cumulative impacts in its Antidegradation Analysis, stating:

Careful consideration for cumulative impacts for the Project was taken into account during the route selection phase. One of the primary components for the route selection was colocation with existing utility ROWs. After coordination with landowners and subsequent ecological and environmental field studies, approximately 7.5 miles are paralleled. This reduces the number of new impacts to stream and wetland features along the pipeline route.²⁹

7.5 miles of ROW colocation does not necessarily reduce “new impacts” to stream and wetland features, because construction of the pipeline will result in temporary impacts along the already existing ROWs. Furthermore, Shell misstates what a cumulative impact analysis requires. Cumulative impacts include all reasonably foreseeable future actions. Thus, just because this Pipeline does not significantly impact the watershed, that does not mean other future projects induced by the development of this pipeline will not significantly impact the watershed.

As the Ohio EPA certainly knows, government leaders and businesses are rapidly pushing for the development of an “Appalachian Petrochemical Hub” that will span Ohio, West Virginia, and Pennsylvania and straddle the Ohio River. This will not only include gas storage hubs, but it will also include new factories that create petrochemical products and pipelines like the Falcon to transport the necessary raw material.³⁰ The region will receive billions of dollars in

²⁷ Furthermore, whenever the director makes determinations regarding proposed activities that lower water quality, he is permitted to consider “any other information regarding the proposed activities that [he] deems appropriate.” OAC 3745-1-05(C)(5)(m).

²⁸ OAC 3745-1-50(K).

²⁹ *Supra* FN 1.

³⁰ See *The Potential Economic Benefits of an Appalachian Petrochemical Industry*, American Chemistry Council, (May 2017), <https://www.americanchemistry.com/Appalachian-Petrochem-Study/>. See also Alan Neuhauser, *Appalachia markets itself as global energy hub*, CNBC, (April 23, 2018), <https://www.cnbc.com/2018/04/23/appalachia-markets-itself-as-global-energy-hub.html>.

investment over the next few decades; for instance, the Chinese corporation China Energy Investment Corp. has committed \$83.7 billion.³¹

The development of this massive industrial undertaking could bring untold economic benefits to the region, but it will also result in massive cumulative impacts to regional watersheds like the Ohio River, affect important natural resources like the Wayne National Forest, and continue to lock-in decades worth of greenhouse gas emissions. The Ohio EPA has a legal obligation to consider the cumulative impact on the watersheds affected by this Pipeline; but to do its due diligence, the agency should also consider the larger implications of this proposed Appalachian Petrochemical Hub. It should not make these decisions in isolation from one another.³²

Conclusion

The OEC once again thanks the Ohio EPA for holding this hearing after the OEC, Sierra Club, and other public organizations and individuals requested further public scrutiny of the Falcon Pipeline. To properly protect Ohio's environment, the Ohio EPA must require Shell to provide a more thorough Antidegradation Analysis. It must require a Mitigation Plan that satisfies the new requirements under OAC 3745-1-54. If it approves the Pipeline, it must provide conditions in the permit that account for any unforeseen impacts. Finally, it must consider the cumulative impacts of the Pipeline and the proposed Appalachian Petrochemical Hub in its overarching consideration of the project.

Additionally, the OEC urges the Ohio EPA to develop a more transparent mechanism through which the public can view and consider 401 Water Quality Certification Applications. While the initial postings within the Certification Application Index provide valuable information, that index does not give the public an accessible look at subsequent correspondence between the Agency and an Applicant. While the Ohio EPA provides the eDoc search function, it is not obvious to the public that additional files regarding a 401 Certification Application might reside within that system, and the system frequently crashes

³¹ *China Energy and West Virginia announce framework to invest \$83 billion in shale gas and chemical manufacturing projects*, West Virginia Department of Commerce, (November 9, 2017), <http://news.westvirginia.gov/china-energy-and-west-virginia-announce-framework-to-invest-83-billion-in-shale-gas-and-chemical-manufacturing-projects>.

³² A few years ago, the Ohio EPA approved a 401 Water Quality Certification for a petrochemical facility proposed along the Ohio River in Shadyside, Ohio (the PTTGC America Ethane Cracker Plant). The Ohio EPA will also soon consider the 401 Water Quality Certification for the Buckeye XPress Pipeline which will cross the Wayne National Forest. As oil and gas development expands throughout the region, each proposed project will implicate potential cumulative impacts to watersheds and other important resources beyond just the potential impact of one individual project.

when used. With its non intuitive interface, all of these factors discourage the public from using the system.

When the public does not have access to up-to-date information regarding an Application, it can not provide substantive comments on said Application. The Agency thus may receive comments that replicate questions that the Agency has already asked of the Applicant, increasing the Agency's work as it responds to redundant public comments. To facilitate better public inquiry into a project, the Agency should either make its eDoc search function more transparent and communicate that additional files for a Certification most likely exist within that database, or it should update the Index to include additional documentation provided through Agency correspondence with the Applicant.

If the Ohio EPA has any questions regarding the OEC's comments, please do not hesitate to contact us.

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