

## **Federal appeals court rules in favor of National Fuel's proposed pipeline**

### **Pennsylvania granted permit a year ago**

By T.J. Pignataro

NEWS STAFF REPORTER

National Fuel Gas Co. won a federal appeals court ruling on Tuesday for a natural gas pipeline it wants to build through Western New York from Pennsylvania.

The state Department of Environmental Conservation did not assert a sufficient basis to deny a water quality certificate the company needs to build the pipeline, a trio of appellate judges in New York City ruled.

The state agency did not provide enough information about why it denied the permit for the judges to decide if the rejection was legal or not.

The court, however, left an opening for the DEC to explain the basis for its denial.

Instead of the judges making a final decision, they gave “the department an opportunity to explain more clearly – should it choose to do so – the basis for its decision.”

The proposed 97-mile Northern Access Pipeline, a nearly halfbillion dollar project, would carry natural gas from shale gas country in Pennsylvania through Allegany, Cattaraugus and Erie counties. It would cross more than 190 creeks and streams.

In its April 2017 denial, the DEC said National Fuel failed to demonstrate it could build the pipeline and protect water quality.

The appeals court found the DEC's reasoning flimsy.

“Although this is a close case, the denial letter here insufficiently explains any rational connection between facts found and choices made,” according to the ruling.

A National Fuel spokeswoman lauded the decision.

“Today's court decision continues the momentum for this project,” said Karen L. Merkel, a spokeswoman for National Fuel. “We remain firmly committed to the Northern Access Project that will provide access to a lowcost source of energy for residential and commercial customers throughout the North American pipeline grid.”

DEC officials were still reviewing the decision Wednesday so offered only a short statement.

“DEC is considering all options to defend our decision and our authority to protect New York State's water quality resources,” according to a DEC statement.

Opponents of the pipeline expressed disappointment at the ruling but remained hopeful.

See **Pipeline** on Page **C2**

---

**Federal appeals court rules in favor of National Fuel's proposed pipeline**

## **Pennsylvania granted permit a year ago**

**PIPELINE** • from C1 “It’s definitely a disappointment,” said Diana Strablow of Sierra Club’s Niagara Group, which has fought the project. “But it’s also leaving the window open for the DEC to come back with more evidence. It’s actually telling them to do it.”

She added: “We’re certainly not giving up.” The Federal Energy Regulatory Commission, the U.S. agency that regulates the transmission of electricity and natural gas, has approved the pipeline project. National Fuel was also required to obtain state water quality certifications from Pennsylvania and New York before beginning construction. Pennsylvania granted its permit a year ago. New York State denied the company a permit in April 2017.

“Because the [DEC] did not sufficiently articulate the basis for its conclusion, on appeal we cannot evaluate the department’s conclusions and decide whether they are arbitrary and capricious,” the judges wrote. “We are not permitted to provide a reasoned basis for the agency’s action that the agency itself has not given. We express no opinion as to whether there is substantial evidence in the record to support the department’s denial.”

The federal lawsuit is one of several court cases pending, and its outcome will likely have implications for the other cases.

If the DEC cannot deny the water quality certification, that would undercut the cases filed by landowners. They’re relying on the denial to argue against National Fuel’s right to their property using eminent domain laws. Landowners have contended National Fuel cannot use eminent domain because the company doesn’t have a viable project without the certification.