

## **Suggested comments to FERC regarding National Fuel's request for another 3-year extension to complete the Northern Access Pipeline**

**FIRST**, we must object to the short comment period and request a longer 45 day comment period. FERC set a 15 calendar day comment period that ends at 5:00 pm on February 16. There has been no public notice and this is far too short a time to prepare and submit comments. Next, request that FERC deny an extension of time for National Fuel's construction of the Northern Access Pipeline.

**SECOND**, state clearly that you are requesting that FERC deny an extension of time for National Fuel's construction of the Northern Access Pipeline.

**THIRD**, state your reasons for denial of the extension. There are lots of ideas here. Please pick one, a couple, or ideas of your own. Please do your best to change the wording and make it your own. Remember to focus on why National Fuel should not be given more time. National Fuel began this process in 2014 and they now are asking for a second three-year extension through 2024. Ten years is far too long. Enough is enough.

### **Ideas for Comments:**

#### **Protection of NY Waterways - what has National Fuel done to address NYSDEC's concerns?**

- New York State has twice denied the 401 Water Quality Certification for the Northern Access Project. New York's rights to protect our waterways as designated under the Clean Water Act must be upheld. FERC's Issuing Order was conditioned on a WQC or a waiver. Rather than focusing on the intent of this condition, to follow NYS water quality standards, NFG has spent years in litigation with the apparent intent to ignore NYSDEC measures to protect NYS waterways.
- When NYSDEC denied the 401 Water Quality Certification in April of 2017, they outlined the reasons for denial and left the door open for National Fuel to reapply. If NFG chose that option and complied with NYSDEC stream crossing requirements, this pipeline would likely be built and in service. Instead NFG spent years in litigation to obtain a WQC waiver with the intent of ignoring required protection of Western NY waterways. This shows a blatant disregard of environmental protection and a case of NFG causing their own delays.
- National Fuel claims in their request for another three-year extension, that neither significant new circumstances or information relevant to environmental concerns exists. What is their basis for this statement? Environmental studies that FERC's Environmental Assessment is based on, will be nearly ten years old before completion of this project. Determining whether new environmental concerns exist requires new studies, not just National Fuel stating that they don't exist.
- FERC's Environmental Assessment was conditioned on a 401 Water Quality Certification as is required under the Clean Water Act. Since National Fuel and FERC have claimed that they can move forward without the 401 WQC, new studies and measures need to be taken to address the concerns raised by NYSDEC in their denial of the 401 WQC. This project cannot be allowed to move forward without addressing the significant harm NY State determined would be done to the streams and wetlands by this project.

- Cattaraugus Creek is one of the streams of special concern that NYSDEC's WQC denial was based on. Since this project was approved by FERC, demolition of West Valley Nuclear Demonstration Project has begun just downstream from the proposed pipeline crossing. What studies have been done to determine the cumulative impact of this nuclear waste disturbance and turbidity caused by the pipeline crossing? What are potential impacts on the downstream Seneca Nation of Indians Territory and our Great Lakes water supply?
- Since original environmental assessments were completed for this project, climate change has accelerated. Impacts are being felt in Western NY including heavier rainfall events and increased flooding. What new studies have been done to determine the impact of these and future events on erosion of stream banks that would be disturbed and clear cut for the construction of this project?
- NYSDEC's denial of this project sited eight priority streams that support trout and other species of concern. NFG proposes to cross all of these streams with dry crossings that will permanently impair aquatic habitat and generate turbidity that will impair these waterbodies. What further studies have been done and what measures will NFG be required to take to protect these streams and the life they support? Years of litigation to have the WQC waived does not constitute a good faith effort to comply with regulations and protect our waterways.
- New York State has twice denied the 401 Water Quality Certification. New York's rights to protect our waterways as designated under the Clean Water Act must be upheld. FERC's claim that NYSDEC ruled 36 days late, despite a written agreement between National Fuel and NYSDEC is wrong. The letter of agreement between National Fuel and NYSDEC to extend the decision time by 36 days sat on the FERC docket for 18 months from January 2017 to August 2018 before FERC arbitrarily and capriciously declared it invalid and overturned NY State's carefully considered decision to protect our waterways. New York in August 2019 again issued a denial of the 401 Water Quality Certification and FERC and National Fuel would be in violation of the Clean Water Act to ignore this denial. What measures has National Fuel taken to insure that Western NY's waterways will be protected?

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### **Landowners**

- Even the landowners, those most impacted by another 3 long years, have not been notified and given the right to voice their opinions and let FERC and National Fuel know of any changes that have occurred on their land over this nearly decade long process. This is a violation of their rights.
- The landowners along the route of this project have been put through enough. From the time National Fuel began sending land agents to knock on their doors in 2014, telling them to sign contracts or be taken to court, to the time now requested to finish construction will be 10 long years. Far too long for the stress of not knowing whether they truly have rights to their own land or whether it will be slashed through with a high pressure fracked gas pipeline. Enough is enough.

### **Climate Change and NY's new climate law must be taken into account:**

- In 2019 New York State passed the Climate Leadership and Community Protection Act (CLCPA) This law is designed to drastically cut greenhouse gas emissions and rapidly transition off of fossil fuels. This law calls for 70% Renewable Energy in New York by 2030 and an 85% Reduction in GHG Emissions by 2050. This project runs counter to NY State law. We cannot achieve our goals to avert a global climate crisis if this major fracked gas pipeline is allowed to go forward.

- This project is purely for National Fuel's profit. NY State has denied it to protect our waterways, landowners have been taken to court multiple times, and it runs counter to our new climate law. National Fuel has cost our state, the Town of Pendleton and landowners in dollars, time and stress as we fight to protect our waters, air and property. Exporting gas to Canada for a company's profit, against the will of NY State and its residents is a misguided and egregious use of eminent domain.
- Climate change was never properly assessed by FERC and the climate crisis has escalated since FERC's approval of this project. The increase in greenhouse gas emissions this project would create and the impact of those emissions needs to be evaluated. In Western NY we have experienced more frequent and intense weather events. In particular these include heavy rainfall events that have caused flooding and erosion. This would impact the very streams that NYSDEC sought to protect with their denial. This pipeline would cross 192 water bodies including 25 trout streams and cold-water fisheries. Project construction would require clearing a 75-foot wide swath along the entire route, including 75 acres of State and Federal wetlands. In many areas the pipeline route is through steep hilly terrain. National Fuel's plans would trench through delicate shale beds of streams destabilizing stream banks and causing erosion and turbidity. For these reasons, NYSDEC denied the 401 Water Quality Certification. In light of more extreme weather events due to climate change, erosion, stream turbidity, the possibility of pipeline rupture all need to be reevaluated.

**Make the point that National Fuel has caused their own delays and therefore should not be granted more time**

- National Fuel claims they need this extension of time due to regulatory hold ups while they have publicly stated that they were delaying construction due to lack of demand for gas and low prices. National Fuel cannot be allowed to hold landowners rights while they wait for a better profit margin
- National Fuel claims to need extension of time due to court delays. There have been no court delays during the past year. What good faith effort has National Fuel made to meet the conditions set forth in FERC's issuing order?
- What good faith effort has National Fuel made to meet the conditions set forth in the Army Corps of engineer's permit that is set to expire on March 18, 2022?
- National Fuel claims court delays as a cause for needing an extension of time. It has been NF that chose litigation over compliance and compromise. They have taken landowners, the Town of Pendleton and NYSDEC to court.
- NYSDEC worked diligently with National Fuel to develop plans that would mitigate damage to Western NY waterways. Rather than comply with NYSDEC protection requirements, National Fuel chose years of litigation over a 36 day technicality. National Fuel caused their own delays.