

March 1, 2018

Patrick Greuter, Sierra Club (patrick.greuter@sierraclub.org by email)

RE: Request for Determination
 Shell Pipeline Company, L.P.
 Falcon Ethane Pipeline Project
 Houston Custody Transfer Meter Station – Chartiers Township, Washington
 County
 Junction Custody Transfer Meter Station – Center Township, Beaver County
 Monaca Line Integrity Meter Station – Potter Township, Beaver County

Dear Commenters:

Thank you for your comments concerning the air quality permit exemptions requested by Shell Pipeline Company, L.P. (“Shell Pipeline”) for the following locations: Houston Custody Transfer Meter Station, Junction Custody Transfer Meter Station, and Monaca Line Integrity Meter Station. The locations are associated with the Falcon Ethane Pipeline project. The exemptions were requested through three Request for Determination (RFD) submittals received by the Department on June 26, 2018. Copies of the Department’s RFD determination letters are attached.

The following is the Department’s response to the comment letter (“Letter”) received by the Department on September 10, 2018 via email. The signatories of the letter include: Patrick Greuter and Diana Csank of the Sierra Club, Alex Bomstein of the Clean Air Council, George Jugovic,,Jr. of PennFuture, Leann Leiter of Earthworks, Lisa Graves Marcucci of the Environmental Integrity Project, Brook Lenker of FracTracker Alliance, and Matthew Mehalik of Breathe Project/Breath Collaborative.

1. **Comment:** “*Shell failed to account for the Project’s cumulative environmental effects*”. (Refer to the full text of the comment in the attached copy of the Letter”)

Response:

The merits of each RFD were evaluated on a case-by-case basis, considering the project as-proposed for each facility, which may include an existing source or other nearby sources, as appropriate. The proposed Houston Custody Transfer Meter Station is proposed to be located 27.8 miles from the Shell Chemical Appalachia LLC Petrochemicals Complex (“Shell Petrochemicals Complex”) in Potter Township, Beaver County permitted under Air Quality Plan Approval 04-00740A. The Junction Custody Transfer Meter Station is proposed to be located 2.9 miles from the Shell Petrochemicals Complex. The Monaca Line Integrity Meter Station is proposed to be located at the Shell Petrochemicals Complex. The Monaca Line Integrity Meter Station, Houston Custody Transfer Meter Station, and Junction Custody Transfer Meter Station will be operated by the Shell Pipeline Company, L.P. and not by Shell Chemical Appalachia LLC.

After conducting a thorough and comprehensive review of Shell’s RFDs, the Department has determined that Shell has satisfied the applicable Commonwealth statutory and regulatory requirements for exemption from air quality plan approval and operating permit requirements. The Department’s thorough and comprehensive review of the RFDs provides reasonable protection for public health and safety and the environment.

2. **Comment:** “*Shell failed to show that Exemptions 31 and 35 apply to the Project*”. (Refer to the full text of the comment in the attached copy of the Letter”)

Response: Shell Pipeline’s cover letter that accompanied the RFDs requested exemption from plan approval in accordance with 25 Pa. Code § 127.14 (a)(8) Exemptions #31 and #35. The Department exempted the proposed projects from air quality permitting based on 25 Pa. Code §127.14 (a)(8), which provides for exemption of sources determined to be of minor significance and employing Exemption #44, contained in Department policy, TGD Number 275-2101-003 (“Air Quality Permit Exemptions “AQ Exemption List”). Exemption #44 states “Any source granted an exemption by the Department through the execution of an RFD form”. The Department granted the exemption because of the low magnitude of potential emissions from all the sources at each facility. The Department verified that the potential emissions from these sources would be of minor significance.

3. **Comment:** “*Special consideration is due to the cumulative problem of climate change*”. (Refer to the full text of the comment in the attached copy of the Letter”)

Response: Annual emission rates of carbon dioxide equivalents (“CO_{2e}”) from fugitives and pigging operations are estimated to be less than 3 tons per year at each facility and below 5 tpy for all three projects combined.

Please feel free to contact me at 412.442.4150 if you have any questions or require additional information.

Sincerely,



Mark R. Gorog, P.E.
Regional Manager
Air Quality Program

CC: Operations – thru T. Kuntz/E. Speicher
Hbg. - Permits
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OCC – thru M. Heilman
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September 10, 2018

By Email

Mr. Mark Gorog
Pennsylvania Department of Environmental Protection
Bureau of Air Quality, Southwestern Regional Office
400 Waterfront Drive
Pittsburgh, PA 15222

Re: Air permit exemptions requested by Shell Pipeline Company, L.P., for the Falcon Ethane Pipeline Project, Monaca Line Integrity, Junction Custody Transfer, and Houston Custody Transfer meter stations

Dear Mr. Gorog:

The undersigned organizations urge you and other responsible officials in the Department of Environmental Protection (the “Department” or “DEP”) to deny any air permit exemptions to the Falcon Ethane Pipeline Project (the “Project”) proposed by Shell Pipeline Company, LP (“Shell”).

In particular, we are responding to Shell’s three exemption requests dated June 20, 2018 (the “Requests”), which are enclosed as Exhibit 1 (“Ex.”). The Requests concern eleven sources of air contaminants (“sources”) that Shell proposes to include in the Project without *any* limits on the air contaminants emitted by those sources. See Ex. 1 at 1, 23, and 49. But as Shell itself admits, the sources, if built, will emit dangerous volatile organic compounds (“VOC”), greenhouse gases (“GHG”), and inert gases—among other air contaminants—in Allegheny, Beaver, and Washington counties, exacerbating the ongoing failures of those counties to meet air quality standards. Shell has not attempted to reconcile its Project with the pollution problems in the area. Nor has Shell explained why it submitted the sources piecemeal, under three separate covers.¹ These are stunning omissions by a company that purports to be a good neighbor.

The Department should deny the Requests as a matter of law. As explained further below, the Project will lead to many other sources of air contaminants besides the eleven in the Requests, including sources upstream and downstream of the Project. All of these sources, combined with other, existing and reasonably foreseeable sources, must factor into the Department’s decision. Indeed, the Department has an overriding constitutional duty to prevent Shell from worsening pollution problems in Pennsylvania. The Department should deny the Requests, and must at least defer its decision until Shell accounts for the Project’s cumulative environmental effects, and the public has a meaningful opportunity to comment on the same.

¹ Shell submitted three sources under the heading “Monaca Line Integrity Meter Station,” Ex. 1 at 1; another five under “Junction Custody Transfer Meter Station,” id. at 23; and three more under “Houston Custody Transfer Meter Station,” id. at 49.

Commenting Organizations

Sierra Club is the nation's oldest and largest grassroots environmental nonprofit. Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environment. In Pennsylvania, Sierra Club has over 32,000 members, including many who live, work, and recreate near the proposed site of the Project. On behalf of its members, Sierra Club advocates a just transition to a clean energy economy, locally, in Allegheny, Beaver, and Washington counties, and all across the Commonwealth.

Clean Air Council is a non-profit environmental organization headquartered at 135 South 19th Street, Suite 300, Philadelphia, Pennsylvania 19103, with more than 7,000 members in Pennsylvania. For more than 50 years, Clean Air Council has fought to improve the air quality across Pennsylvania. Clean Air Council works to protect everyone's right to a healthy environment.

Citizens for Pennsylvania's Future ("PennFuture") is a membership-based, public interest, environmental organization whose activities include advocating and advancing legislative action on a state and federal level; providing education for the public; and assisting citizens in public advocacy. PennFuture is concerned with the protection of Pennsylvania's waters and the conservation of its resources for future generations.

FracTracker Alliance studies, maps, and communicates the risks of oil and gas development to protect our planet and support the renewable energy transformation. In 2012, it became a 501(c)3 nonprofit and a supporting organization to the Community Foundation for the Alleghenies. Cumulatively, FracTracker Alliance's website, www.FracTracker.org, has been visited by more than 500,000 users since December, 2011.

Earthworks is a nonprofit organization dedicated to protecting communities and the environment from the impacts of mineral and energy development while seeking sustainable solutions. For more than 25 years, Earthworks has worked to advance policy reforms, safeguard land and public health, and improve corporate practices. Its Oil & Gas Accountability Project works with local communities, partner organizations, public agencies, and elected officials to advance these goals nationwide, including in Pennsylvania.

The Environmental Integrity Project ("EIP") is a national nonprofit organization headquartered at 1000 Vermont Avenue NW, Suite 1100, Washington, D.C. 20005, and with staff in Pittsburgh and Philadelphia. EIP is dedicated to advocating for more effective environmental laws and better enforcement. EIP has three goals: (1) to provide objective analyses of how the failure to enforce or implement environmental laws increases pollution and affects public health; (2) to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) to help local communities obtain the protection of environmental laws.

The Breathe Project / Collaborative is a coalition of citizens, environmental advocates,

public health professionals and academics working to improve air quality, eliminate climate pollution and make our region a healthy and prosperous place to live. The Collaborative powers the Breathe Project through science-based work and a community outreach platform. We have 26 organizational members representing thousands of regional citizens.

Legal Background

Any proposal by Shell to emit air contaminants in Allegheny, Beaver, and Washington counties is controlled by the Air Pollution Control Act (the “Act”), 35 P.S. 4001 *et seq.*, **and** Article I, Section 27 of the Pennsylvania Constitution (“Article I, Section 27”);² both limit air contaminants in Pennsylvania.

Air Pollution Control Act

The Act’s objectives are “to protect the air resources of the Commonwealth to the degree necessary for the (i) protection of public health, safety and well-being of its citizens; (ii) prevention of injury to plant and animal life and to property; [and] (iii) protection of the comfort and convenience of the public and the protection of the recreational resources of the Commonwealth” 35 P.S. § 4002(a).

A. The Department’s power and duty under the Act

To meet the Act’s objectives, the Department has the “power” and the “duty” to take actions that it “deem[s] necessary or proper for the effective enforcement of th[e A]ct.” 35 P.S. § 4004(27). As relevant here, such actions include:

- “[c]onduct[ing] or caus[ing] to be conducted studies and research with respect to air contaminants, their nature, causes and effects, and with respect to the control, prevention, abatement and reduction of air pollution and air contamination,”³ 35 P.S. § 4004(15);

² Pennsylvania has the prerogative to maintain greater protections against air pollution than the minimum protections established under federal law. *See* 42 U.S.C. § 7416 (limiting states’ power to adopt or enforce standards that are “less stringent” than federal standards for air pollutants); *see also Her Majesty The Queen In Right of the Province of Ontario v. City of Detroit*, 874 F.2d 332, 342 (6th Cir. 1989) (federal law “displaces state law only to the extent that state law is not as strict as emission limitations established in the federal statute. . . . Congress did not wish to abolish state control.”); *Connecticut v. EPA*, 656 F.2d 902, 909 (2d Cir. 1981) (affirming that “the states shall be free to adopt air quality standards more stringent than required by . . . federal law provisions”).

³ The Act defines “air contaminant” as “[s]moke, dust, fume, gas, odor, mist, radioactive substance, vapor, pollen or any combination thereof;” “air contamination” as “[t]he presence in the outdoor atmosphere of an air contaminant which contributes to any condition of air pollution;” and “air pollution” in relevant part as “any form of contaminant . . . which is or may be injurious to human, plant or animal life or to property.” 35 P.S. § 4003.

- deciding whether a source causes impermissible “air pollution,” 35 P.S. § 4006.1(b)(2); see also *Rushton Min. Co. v. Com.*, 328 A.2d 185, 187 (1974) (upholding Department’s determination that a source caused impermissible air pollution);
- deciding the “terms and conditions” on which sources operate, if they can operate at all, 35 P.S. § 4006.1(b)(1) (barring operation of sources absent Department approval); and
- issuing regulations “specifically authoriz[ing]” certain sources to be built and operated “without written approval,” 35 P.S. § 4006.1(a)(construction); 35 P.S. § 4006.1(b)(1) (operation).

Clearly, these actions involve some—not plenary—discretion to achieve the Act’s objectives.

B. The Department’s regulation and guidance on air permit exemptions

Regarding the written approval requirements in Section 4006.1 of the Act, the Department has issued a regulation exempting sources “determined to be of minor significance by the Department.”⁴ 25 Pa. Code § 127.14(a)(8). This regulation does not define “minor significance” or authorize any source to proceed with construction or operation. Instead, the regulation plainly defers such authorization to a subsequent determination by the Department. See also 25 Pa. Code § 127.14(d) (“The Department may establish a list of sources and physical changes meeting the requirements of subsections (a)(8) . . .”).

Shell’s Requests rest exclusively on the Department’s minor source exemption policy and, specifically, two exemption criteria, set out in a “guidance document” as follows:

31. Sources of uncontrolled VOC emissions not addressed elsewhere in this exemption listing modified or newly added, such that emission increases are less than 2.7 tpy. Facilities’ claiming this exemption must provide a 15-day prior written notification to the Department and limit VOC emission increases to less than 2.7 tpy.

35. Sources emitting inert gases only, such as argon (Ar), helium (He), krypton (Kr), neon (Ne), and xenon (Xe); pure constituents of air such as nitrogen (N₂), oxygen (O₂), or carbon dioxide (CO₂), or ethane (C₂H₆).

See DEP, Air Quality Permit Exemptions, Document No. 275-2101-003, at 1, 4, 6 (Aug. 2018) (“Guidance”).

⁴ This exemption is limited to plan approval requirements under 35 P.S. § 4006.1. See Guidance at 1 (“Sources exempted from plan approvals are not automatically exempted from operating permit requirements.”); see also *id.* 12-13 (“Although a source may be exempt from the plan approval and operating permit requirements of Chapter 127, the source is subject to all other applicable air quality regulations.”).

But these exemption criteria are neither binding nor applicable to facilities involving multiple sources like the Project. See Guidance at 1 (“DEP reserves the discretion to deviate from [Guidance] if circumstances warrant.”); compare id. at 12 (Guidance “shall not be construed to exempt facilities that include multiple sources of air contaminants, unless specifically stated in the source category”) with Ex. 1 (Shell’s sources all fall in the “other miscellaneous sources” category, no. 99.999)) and with DEP, Instructions for Request for Determination of Changes of Minor Significance and Exemption from Plan Approval/ Operating Permit Under Pa Code § 127.14 or § 127.449 (June 2007) (“Instructions”) (not specifically stating that the “other miscellaneous sources” category includes multiple-source facilities); see also id. at 13 (“Requests for exemptions . . . for multiple[-]source facilities **must** be considered on a case-by-case basis) (emphasis added).

Article I, Section 27

Even more fundamentally, Shell ignores the Department’s obligation to limit air contaminants in accordance with Article I, Section 27 of the Pennsylvania Constitution, which provides as follows:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

As the Pennsylvania Supreme Court has affirmed, the plain constitutional language imposes an overriding duty on Commonwealth agencies such as the Department to conserve and maintain public natural resources including clean air.⁵ Pa. Env’tl. Defense Found. v. Commonwealth, 161 A.3d 911, 916 (Pa. 2017) (4-2 decision) (Saylor, J., dissenting) (“PEDF”) (holding “that the Commonwealth, as trustee, must manage [public natural resources] according to the plain language of Section 27, which imposes fiduciary duties consistent with Pennsylvania trust law.”); see also id. at 940 (Baer, J., concurring and dissenting on other grounds) (in “full agreement” that the “public trust provisions of [Article I, Section 27] are self-executing,” and that “all branches of the Commonwealth are trustees of Pennsylvania’s natural resources”).

In the permitting context, where the Department applies the Air Pollution Control Act and exercises discretion thereunder, the Department must abide by its overriding constitutional duty. Cf. PEDF, 161 A.3d at 935 (“Only within those parameters, clearly set forth in the text of Section 27, does . . . **any other Commonwealth entity**] have discretion to determine the public benefit to which trust proceeds—generated from the sale of trust assets—are directed.”) (emphasis added); Robinson Twp., 83 A.3d at 967, n. 53 (discussing caselaw overruled by PEDF that had “seemingly relieved executive agencies of the obligation to apply statutes and exercise

⁵ Such resources include “state-owned lands, waterways, and mineral reserves,” and “surface and ground water, wild flora, and fauna (including fish) that are outside the scope of purely private property.” Robinson Twp., 83 A.3d at 955.

their statutory discretion in a manner consonant with the Constitution”).

Specifically, the Department must prevent sources of air contaminants from degrading, diminishing, or depleting constitutionally-protected resources. PEDF, 161 A.3d at 933 (citing Robinson Twp.). That is, the Department must not only prohibit sources from causing “immediate severe impact[s]” to these resources. Robinson Twp., 83 A.3d at 924. It must also prohibit sources from causing “minimal or insignificant present consequences that are actually or likely to have significant or irreversible effects in the short or long term.” Id. Indeed, this constitutional obligation to prevent the full sweep of environmental harms from human activities, including new sources of air contaminants, is entirely consistent with the Department’s power and duty under statute to protect the air resources of the Commonwealth.⁶

Discussion

I. Shell failed to account for the Project’s cumulative environmental effects.

The Project is part of a plan to “develop and use Appalachian shale gas and natural gas liquids.”⁷ In fact, the Project is a linchpin of this plan. It would pipe ethane—a byproduct of oil and gas drilling—for use in petrochemical manufacturing. Every step along the way, from drilling to manufacturing, emits dangerous VOCs, GHGs, and inert gases that pollute the air and other natural resources. See, e.g., Ex. 1 (identifying VOCs, GHGs, and inert gas emissions from midstream ethane transportation); EIP, “Greenhouse Gases from a Growing Petrochemical Industry” (Feb. 2016), available at <https://goo.gl/pM9tML>, enclosed as Ex. 2 (identifying scale of GHG emissions from downstream petrochemical manufacturing); Alvarez et al., Science, “Assessment of methane emissions from the U.S. oil and gas supply chain” (July 2018) (identifying scale of GHG emissions from upstream and midstream oil and gas supply chain), enclosed as Ex. 3. In fact, ethane is a potent GHG that exacerbates climate change.⁸

As noted, Shell seeks air permitting exemptions for eleven sources of air contaminants within the Project, piecemeal, under separate covers, as if to obscure the Project’s cumulative

⁶ For further discussion of the requisite analysis of cumulative environmental effects and corresponding limits on cumulative effects, see Sierra Club et al., Comments on Governor’s Pipeline Infrastructure Task Force Draft Report (Dec. 29, 2015), available at <https://goo.gl/wYAULU>.

⁷ This plan is set out in the Tri-State Regional Cooperation Agreement, dated Oct. 13, 2015, amended March 15, 2018, available at <https://goo.gl/VwXxMM>. Studies that tout this plan have ignored the potential catastrophic environmental losses of proceeding under a business-as-usual, fossil-fuel-intensive scenario. See, e.g., IHS Markit, Prospects to Enhance Pennsylvania’s Opportunities in Petrochemical Manufacturing (Mar. 2017), available at <https://goo.gl/Sa4cN4>.

⁸ A recent study of oil and gas drilling in a shale formation, like the Marcellus and Utica formation underlying Pennsylvania, showed that the drilling caused a dramatic spike in ethane emissions. See E.A. Kort et al., “Fugitive emissions from the Bakken shale illustrate role of shale production in global ethane shift” (May 2016), attached as Ex. 4, also available at <https://goo.gl/ZiAqS7>.

environmental harms. But the Project actually includes eighteen valves and five metering stations, not just the three metering stations referenced in Shell's Requests. Fracktrucker Alliance, *The Falcon: Route, Facilities, and Easements*, available at <https://goo.gl/4G9D7w>. Shell failed to account for the fourth and fifth metering stations, the eighteen valves, and many other sources, including:

- upstream oil and gas drilling operations (whereby ethane is extracted from the ground);
- upstream fractionator operations (whereby ethane is split from other hydrocarbons);
- downstream ethane cracker operations (whereby ethane is converted to ethylene);
- downstream petrochemical manufacturing facilities (which use ethylene as an input); and
- other existing and reasonably foreseeable sources of air contaminants in the area.

Shell cannot hide a single, large polluting project by seeking permits for bits and pieces of it here and there. There is one functional project—the pipeline—and it should be treated as such from a regulatory perspective. This is precisely what the Pennsylvania Constitution and statute require, which is why the Department has both the power and the duty to deny the Project as a whole.

To be sure, this is not the first time that Shell has failed to fully account for the Project's environmental effects. See Clean Air Council et al., Comments on Shell's applications for Chapter 102 and Chapter 105 permits for the Project (Apr. 17, 2018), enclosed as Ex. 5. But the Department has an overriding constitutional obligation to remedy Shell's past failures, and, specifically, to prevent Shell from further degrading, diminishing, or depleting protected natural resources. "The failure to obtain information regarding environmental effects does not excuse the constitutional obligation because the obligation exists *a priori* to any statute purporting to create a cause of action." Robinson Twp., 83 A.3d at 952. So the answer here cannot be to turn a blind eye to the many sources that Shell omitted from its Requests.

Rather, if the Department's decision is to pass constitutional muster, then it "must, on balance, reasonably account for the environmental features of the affected locale." Id. at 954. Here, the key features are the airsheds of Allegheny, Beaver, and Washington counties. If Shell had its way, it would connect and spur even more air-polluting activities in these airsheds. But these airsheds are already failing to meet air quality standards, as discussed further below. Shell would only exacerbate pollution problems in both the short-term and the long-term, over the Project's multi-decadal operational life, in violation of Pennsylvania law.

Accordingly, the Department should deny the Project, and it must at least defer its decision and obtain information on the Project's cumulative environmental effects, first from Shell and then from the public. See 35 P.S. § 4004(15) (establishing the Department's power and duty to develop environmental information).

II. Shell failed to show that Exemptions 31 and 35 apply to the Project.

A. Exemption 31

Shell errs by attempting to apply Exemption 31 piecemeal and only to eleven sources. As

noted, the minor source exemption policy that includes Exemption 31 is not binding or applicable to multiple-source facilities such as the Project. Shell never explains why Exemption 31 should nonetheless apply. Shell does not even attempt to show that all of the VOC emissions from the Project would meet the 2.7 tpy limit in Exemption 31. Such obfuscation should be rejected.⁹

The Department must instead apply the Air Pollution Control Act and exercise discretion thereunder consistent with the plain language of Article I, Section 27. The relevant inquiry is thus whether cumulative VOC emissions in Allegheny, Beaver, and Washington counties will degrade, diminish, or deplete the clean air and other protected resources in these counties—counties with pollution problems that are exacerbated by VOCs. See U.S. Environmental Protection Agency, Pennsylvania Nonattainment/Maintenance Status for Each County by Year for all Criteria Pollutants, available at <https://goo.gl/8tFnRd> (showing ongoing failure by Allegheny, Beaver, and Washington counties to meet air quality standards). But Shell failed to account for all of the VOC emissions from the Project and, specifically, from the many sources listed above. Accordingly, the Department has no basis to conclude that those emissions would meet the 2.7 tpy limit in Exemption 31, or that the cumulative VOC emissions would meet the constitutional limit to conserve and maintain public natural resources.¹⁰

In fact, contrary to Shell’s attempt to claim that the Project’s sources are of “minor significance,” peer-reviewed science establishes that harm to human health increases from cumulative exposure to ozone pollution (commonly known as smog). See, e.g., American Lung Association et al., Comments on EPA’s Proposed Revisions to the National Ambient Air Quality Standards for Ozone, Mar. 17, 2015, enclosed as Ex. 6 (discussing science supporting more protective standards against ozone pollution, and identifying harms from cumulative ozone exposures). The harm is serious, including ozone-induced hospital admissions and even death. Id. To make matters even worse, the harm falls disproportionately on children, the elderly, communities of color, and low-income communities. Id. For these reasons, Shell’s Requests must be rejected because they are contrary to law and the record, which reveals significant harm from cumulative exposure to precisely the types of air contaminants emitted by the Project.

B. Exemption 35

Similarly, Shell errs by attempting to apply Exemption 35 piecemeal and only to eleven

⁹ Federal courts have held that the review of a fossil-fuel pipeline must consider the environmental effects of the end uses of the piped fuel. See, e.g., Sierra Club v. Federal Energy Regulatory Comm’n, 867 F.3d 1357, 1371-75 (D.C. Cir. 2017). That holding should guide the Department as its environmental reviews must be at least as broad and thorough under state law.

¹⁰ Here, the 2.7 tpy limit may not be sufficiently protective in light of the pollution problems in the area and the overriding constitutional limit on pollution. Cf. Dep’t of Environmental Resources v. Rushton Mining Co., 591 A.2d 1168, 1173 (Pa. Cmwlth. 1991) (DEP had the discretion to impose conditions in permits, but it could not impose “standard conditions” in every permit without individualized, case-by-case consideration of what conditions were justified by the facts.).

sources. Like Exemption 31, Exemption 35 is not binding or applicable because the Project is a multi-source facility and this exemption only applies to single-source facilities. Shell's attempt to extend Exemption 35 to the Project is improper because Shell failed to account for all of the sources listed above and, specifically, whether they will only emit inert gases. In fact, Shell itself admits that some sources will emit VOCs (which are not inert gases), and the temporary flaring proposed by Shell will also emit a broad array of pollutants besides inert gases.

The inapplicability of Exemption 35 aside, in the Requests, Shell only discusses flaring during startups. Shell inexplicably ignores flaring during shutdowns and malfunctions. The Department should limit air contaminants that are emitted across **all** flaring, including flaring during startups, shutdowns, and malfunctions.

III. Special consideration is due to the cumulative problem of climate change.

Climate change poses an existential threat to the Commonwealth and the rest of the world. Climate change is also a cumulative problem; as we increase the amount of GHGs in the atmosphere—largely by developing and using fossil fuels—we increase the likelihood of catastrophic climate losses.¹¹ Yet Shell ignores this dire problem. Instead, Shell seeks *carte blanche* to build the Project without **any** limits on GHGs. This is contrary to the law and common sense. The Department must give special consideration to the Project's contribution to climate losses, precisely because the Project would spur the development and use of fossil fuels and because their consequences are so dire.

According to our nation's lead scientists, if we continue on a business-as-usual, fossil-fuel-intensive path, global mean temperatures may rise to fatally-high levels by the end of the century. NOAA, *Global & Regional Sea Level Rise Scenarios for the U.S.*, 11 (2017), attached as Ex. 7. Here in the Commonwealth, "excessive heat event days" are projected to increase 10 fold in Pittsburgh and Philadelphia, "and the number of heat-related deaths is projected to nearly double." Pennsylvania Climate Impacts Assessment Update, 131 (2015), attached as Ex. 8. But even by mid-century, thousands of Pennsylvanians may suffer heat-related hospitalizations and even deaths. See Risky Business Project, Risky Business Climate Assessment, 4-5 (2014), enclosed as Ex. 9.

Climate losses also include but are not limited to losses from more frequent and extreme precipitation, flooding, wildfires, and sea level rise. The Commonwealth has already suffered such losses. Hurricane Sandy—a historic, climate-change-fueled storm—is a poignant example. It caused billions of dollars of property damage and 159 deaths in Pennsylvania and its sister states. See National Oceanic and Atmospheric Agency, *Billion-Dollar Weather and Climate Disasters: Table of Events*, available at <https://goo.gl/BYQQN7> (last visited Sept. 5, 2018).

Deep GHG reductions are needed to stem climate losses. See, e.g., Risky Business Project, Risky Business Climate Assessment 3 (2014) ("[I]f we act aggressively to both adapt to the changing climate and to mitigate future impacts by reducing carbon emissions—we can

¹¹ "Climate losses" refers to the wide-ranging losses or harms from climate change to human health, the natural and built environments, and the economy.

significantly reduce our exposure to the worst economic risks from climate change”); see also Pennsylvania Climate Change Act, 71 P.S. §§ 1361.1–1361.8 (charging the Department with identifying GHG reduction strategies).

Regarding new sources of GHGs, such as the Project, the Department has the power and the duty to determine whether, and on what conditions, they can operate, consistent with the need for deep GHG reductions. Shell is simply wrong that the Department can somehow exempt the Project from any limits on GHGs whatsoever. As noted, the Project is the linchpin of a plan to expand fossil fuel use and its very purpose is to transport ethane—a potent GHG. Therefore, the Department should deny the Project, and must at least defer its decision until it obtains a full account of the climate losses from the Project and other, existing and foreseeable GHG sources in the Commonwealth. Only with that account can the Department render an informed judgment as to whether, and on what conditions, the Project could possibly operate without causing significant environmental harm.

Conclusion

For the reasons set forth above, the Department cannot allow the Project to move forward, and certainly not without the crucial information that Shell has failed to produce. Shell’s attempt to hide the Project’s true impact is flatly wrong. The Department has an overriding constitutional duty to prevent the degradation of protected natural resources. That duty is not satisfied by looking at bits and pieces of the Project here and there, while ignoring the fact that the Project is designed to connect and spur air-polluting activities in an area rife with air pollution problems. To the contrary, the existing problems *and* the full sweep of additional problems posed by the Project must factor into the Department’s decision.

Furthermore, Shell’s attempt to rely on the Department’s exemption policy is wrong, because the policy is for small, one-off sources. Shell has cited no basis in law or the record to extend the policy to its large project that consists of many sources. To the contrary, even Shell admits that some of these sources will emit air contaminants that lead to significant, cumulative harm such as ozone-induced hospital visits and death.

Shell is also wrong to ignore climate losses. Shell’s express purpose is to connect and spur fossil-fuel use and development, without regard to the climate losses caused by the same. But climate losses have already been dire and the Department has the power and the duty to prevent Shell from worsening those losses. Therefore, Shell’s position that it should be allowed to proceed without any account of, or limit on climate losses must be rejected.

Ultimately, the Department is responsible for applying the correct legal standard to its review of the Project. We urge the Department to deny Shell any air permit exemptions, and to at least defer any decision until Shell accounts for the Project’s cumulative environmental effects, and the public has an opportunity to comment on the same.

Respectfully submitted,

/s/ Patrick Grenter

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