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April 21, 2023

Pennsylvania Department of Environmental Protection
Attn: Southwest Regional Office
400 Waterfront Drive
Pittsburgh, PA 15222

Re: Comment on Hyperion Midstream LLC; Delmont North Pipeline Individual Erosion and Sedimentation Control Permit (Authorization ID 1428742 & Permit #ESP076522004-00)

To the Erosion and Sediment Control Permit Reviewer:

The approval of the erosion and sedimentation control general permit (Auth ID 1428742) requested by Hyperion Midstream LLC ("Hyperion") for the Delmont North Pipeline in Washington Township and Upper Burrell Township of Pennsylvania **threatens the health of residents living in proximity to the pipeline project and Westmoreland County's drinking water. We encourage the PA Department of Environmental Protection (DEP) to deny the issuance of this Erosion and Sedimentation Control General Permit proposed in February 2023.**

Protect PT is committed to ensuring our community members are safe, secure, and protected from the adverse effects of unconventional gas development in the Westmoreland and Allegheny County region. Below is our expert assessment of and concerns with the permit application, followed by research-based community concerns.

Regarding the proposed new oil and gas infrastructure from Hyperion, we must draw attention to the inadequate response by Hyperion to questions posed by the DEP in the submitted PA Natural Diversity Inventory (PNDI) search file. As a review of the PNDI concerns, Question 1 states: *"The proposed project is in the range of the Indiana bat. Describe how the project will affect bat habitat (forests, woodlots and trees) and indicate what measures will be taken in consideration of this. Round acreages up to the nearest acre (e.g., 0.2 acres = 1 acre)."* Hyperion responded with an approximate range of affected forests, woodlots, and trees. There was no definite acreage of impact reported. In addition, Hyperion provided language describing methods to be taken in consideration of the conservation of habitat for the Indiana bat population, as prescribed by U.S. Fish & Wildlife Service. This includes an avoidance measure between October 1 to March 31 whereby Hyperion has agreed to not conduct tree cutting, disturbance, inundation (flooding), and prescribed burning. According to the PA Game Commission Indiana Bat Species Profile¹, 17 out

¹ <https://www.pgc.pa.gov/Wildlife/EndangeredandThreatened/Pages/IndianaBat.aspx>

of the 18 documented hibernation sites for the Indiana Bat are within well-developed limestone caverns and abandoned mines. Hibernation typically occurs between October and April. Furthermore, during the non-hibernation periods of April through September, the Indiana Bat populations typically build their maternity sites in trees. The agreed upon avoidance measure does not address the potential impact from tree cutting, disturbance, inundation (flooding), prescribed burning, and other construction activities conducted by Hyperion during the months of April to September when the Indiana Bat populations typically build their maternity sites in trees. **The response to PNDI question 1 is inadequate as it assumes Indiana Bat populations will be unaffected by this pipeline construction during the months of April through September.** Due to this incongruity between the agreed upon avoidance measure and the PA Game Commission Species Profile for the Indiana Bat, PA DEP should mandate Hyperion to conduct a study within the areas of the proposed permanent and temporary right-of-ways (ROW) within the limit of disturbance (LOD) to determine potential Indiana Bat population and impact from construction activities proposed by Hyperion, prior to issuance this Erosion & Sedimentation Control Permit (Authorization ID 1428742).

As part of Hyperion Midstream, LLC's (Hyperion) 3800-PM-BCW0019b Application, the applicant checked "Yes" when asked, "Was/Is the facility owner or operator in violation of any DEP regulation, permit, order, or schedule of compliance at this or any other facility or project site within the past 5 years?" **Hyperion also marked their "Current Compliance Status" as "In Compliance."** An attachment to the application was included which contained a table showing 302 violations. Dates for the table of violations ranged from 2/4/2019 to 1/4/2023, just under a four year period (excluding a relevant 13 month period) and listing violations for only five permits. This equates to a **self-reported average of over 60 instances of non-compliance per each of the reported sites.** A review of Hyperion's self-reported compliance history reveals multiple instances of non-compliance being reported as resolved weeks before the inspection date reporting the non-compliance calling the applicant's credibility into question. Also concerning is that multiple non-compliances have required 500 or more days to resolve

It must be noted that the Operator Name associated with all violations listed in the application attachment is Olympus Energy, LLC (Olympus). It is believed that Hyperion listed violations associated with Olympus in good faith because Hyperion and Olympus either were or still are effectively the same operator. This is evidenced in the 0210-PM-PIO0001 Application where the Client Information indicates Hyperion and Olympus (see <https://olympusenergy.com/contact/>) share the same office space, phone number, and Regulatory Advisor. Further, the email address for the applicant's contact is an Olympus employee (bdillemath@olympusenergy.com). It is for this reason Hyperion's compliance history must also include Olympus's compliance history beyond the five permits included in the Delmont North Pipeline E & S permit application compliance history attachment.

An Oil and Gas Compliance Report for both Hyperion and Olympus was obtained from the Pennsylvania Department of Environmental Protection (DEP) for the five-year period preceding the application date, 2/23/2018 to 2/23/2023. This report revealed a combined total of 773 violations (767 for Olympus and 6 for Hyperion) reported for 18 DEP permitted sites (17 for Olympus and 1 for Hyperion). This equates to **an average of 43 instances of non-compliance per each of the sites**. Of the 773 non-compliances, 413 are specifically for non-compliance with seven permits associated with pipelines.

As of April 19, 2023, the DEP compliance docket indicates Hyperion and Olympus continue to have unresolved instances of non-compliance at multiple DEP permitted sites as indicating **Hyperion has misrepresented their current compliance status**. It is unreasonable for an applicant who misrepresents factual, publicly accessible data, with a compliance history such as Hyperion/Olympus's, with still unresolved violations, to be granted a new permit when they have demonstrated an unwillingness or inability to comply with the terms of permits they have been granted. We ask the DEP to use its discretion to deny this application.

Additionally, the construction and operation of the proposed Hyperion gas and water pipelines will increase the risk of contamination to private water supplies utilized by residents. Using the PADEP eMapPA online tool (<https://gis.dep.pa.gov/emappa/>), it is estimated that there at least (30) shallow water wells as identified by the PA Groundwater Information System (PAGWIS), within approximately 0.5 miles from the proposed ROW and pipelines. (See Figure 1) Many of those water wells identified in this search are within hundreds of feet from the proposed ROW and pipelines. Should a water well become contaminated as a result of Hyperion construction activities or pipeline operations post-construction (i.e.; leak/spill), owners of those water wells would lose a water source. This loss could be permanent and require costly water replacement options for those residents. It is also likely to have a negative impact on property values of those impacted.² Furthermore, Hyperion proposes to use Horizontal Directional Drilling (HDD) for two road crossings at stations 102+25 to 108+00 and stations 354+00 to 356+25. The first HDD pit will bore under N. Washington Road and State Route 380, in very close proximity to Pine Run Church Road. HDD is known to be a dirty process that can cause inadvertent returns during drilling which can contaminate groundwater and surface waters³. The first HDD borehole proposed is approximately 250 feet southeast and upgradient from Pine Run, a designated warm water fishery (WWF), as well as delineated wetlands 24(A-D). In addition, using eMapPA it should be noted that there are (4) water wells identified by PAGWIS within approximately 450 feet horizontally from the proposed pipeline and area where HDD will be deployed at Station

² Rooke, J., Faeth, P., Krop, R., Epstein, A., Sklenar, K., Tuccillo, M.E., Taylor, A., and Hanson, L. (2019). Environmental and Social Costs of Natural Gas Pipeline Development in the Delaware River Basin. Prepared by The Cadmus Group LLC for The New Jersey Conservation Foundation.

³Impacts of HDD to groundwater and surface water.

<https://stateimpact.npr.org/pennsylvania/2017/05/15/sunocos-pipeline-construction-releases-drilling-mud-into-delco-creek/>

<https://stateimpact.npr.org/pennsylvania/2017/07/14/sunoco-halts-drilling-in-chester-county-where-pipeline-construction-damaged-drinking-water-wells/>

102+25. DEP document 310-2100-003 Trenchless Technology Guidance⁴ (which includes HDD) states that for “*Private groundwater wells, including a consideration of the zone of influence. If the zone of influence isn’t known or able to be determined, DEP recommends using the distances listed in Table 3.1.*” Table 3.1 states that any private water supplies within 450 feet should be identified. It does not appear that Hyperion has identified private groundwater wells as is recommended by DEP with regard to water supplies. The issuance of this permit should be denied until a thorough survey of water supplies within 450 feet of the centerline of the pipeline are identified and addressed with regard to potential impacts from HDD and other earth disturbance activities.

In addition to the risk to groundwater, there is a risk to surface water as a result of pipeline construction and operation. The Beaver Run Reservoir is a source of drinking water for approximately 130,000 people, including the municipalities of Murrysville, Export, and Delmont (<https://www.mawc.org/beaver-run-reservoir>). Removal of over 40 acres of trees, as proposed for this pipeline, would likely result in increased erosion to streams and unnamed tributaries that flow directly into the Beaver Run Reservoir source of drinking water. **Increases in erosion following the removal of vegetation increases sediment runoff to surface waters, which increases the turbidity and total suspended solids (TSS) in the surface water. This in turn has a negative impact on all aquatic species in the receiving watershed.**⁵ Moreover, increases in turbidity in this watershed has the potential to impact drinking water intakes within Beaver Run Reservoir, which may cause a temporary or permanent increase in the cost of water treatment to meet drinking water standards.⁶ Poke Run, Thorn Run, and several associated tributaries that flow into the Beaver Run Reservoir are categorized as high-quality cold water fisheries (HQ-CWF) and have special protection status, per 25 Pa. Code § 93.3. There are also over (30) wetlands identified within the project area, with many holding the special regulatory protection status of exceptional value (EV) wetlands. There will be permanent changes to the land surface as a result of this proposed pipeline construction, and it can be expected that the characteristic (flow direction, velocity, turbidity, TSS, chemistry) of stormwater runoff will result in permanent and net negative changes to HQ streams and EV wetlands receiving water chemistry and characteristics. The issuance of this permit would pose a significant risk to the quality of HQ and EV waters during construction and subsequent operation, which is directly counter to the stated purpose of the PA Clean Streams Law P.L. 1987, Act 394 of 1937, as amended at 35 P.S. § 691.1 et seq., with the stated purpose of “*to preserve and improve the*

⁴<https://www.depgreenport.state.pa.us/elibrary/PDFProvider.ashx?action=PDFStream&docID=4240411&chksum=&revision=0&docName=TRENCHLESS+TECHNOLOGY+GUIDANCE&nativeExt=pdf&PromptToSave=False&Size=677028&ViewerMode=2&overlay=0>

⁵ EPA 841F21007D | July 2021 - EPA Factsheet on Water Turbidity

https://www.epa.gov/system/files/documents/2021-07/parameter-factsheet_turbidity.pdf

⁶ André Felipe Danelon, Fernanda Gaudio Augusto, Humberto Francisco Silva Spolador, Water resource quality effects on water treatment costs: An analysis for the Brazilian case, Ecological Economics, Volume 188, 2021, 107134, ISSN 0921-8009, <https://doi.org/10.1016/j.ecolecon.2021.107134>.

purity of the waters of the Commonwealth for the protection of public health, animal and aquatic life, and for industrial consumption, and recreation.”

Hyperion has presented an antidegradation analysis required for protection of HQ waters per 25 Pa. Code § 93.4c(b)(i), contained in Module 3 of the referenced application. The antidegradation analysis submitted by Hyperion includes both non-discharge alternatives and Antidegradation Best Available Combination of Technologies (ABACT) Best Management Practices (BMPs). These measures include a limiting of the extent, duration, and overall area of disturbance to *“eliminate the net change in stormwater volume rate, and quality for storm events up to and including a 2-year/24-hour storm event”*, as well as erosion control blankets, compost filter socks, sediment traps, and immediate stabilization to *“manage the net change in stormwater volume rate, and quality for storm events up to and including a 2-year/24-hour storm event”*. The suggested erosion and sedimentation control measures mentioned above may mitigate erosion when implemented precisely and consistently, however, **Hyperion/Olympus sites have a track record of failing to properly implement and maintain the same types of erosion and sedimentation control measures proposed in this application.**⁷

Hyperion is also seeking a waiver from the requirements of 25 Pa. Code 102.14(a)(1), which prohibits earth disturbance activity within 150 feet of a HQ watershed, by claiming the exception at 102.14(d)(vii) that states *“existing riparian buffer is undisturbed to the extent practicable.”* As a component of their application for this waiver, Hyperion submitted an *“alternatives analysis”* addressing Riparian Forest Buffer Impacts that they claim could not be practicably avoided. There are a total of (12) areas of varying length along the proposed pipeline where Hyperion describes justifications for their planned impacts to riparian buffers. Hyperion cannot comply with the riparian buffer setback requirements for HQ and EV waters due to constraints such as *“existing gas lines, property boundaries, existing roads, steep slopes, overhead electric line ROWs, or similar riparian buffer impacts”*, as contained in their application. Hyperion should not be granted this waiver simply based on the surrounding land use being unsuitable for the construction of this pipeline to meet regulatory requirements specific to HQ and EV watersheds. Furthermore, although Hyperion states that riparian buffer impacts will be minimized to the extent practicable, there remains significant impact to riparian buffer areas regardless of being granted the waiver. Therefore, it should be the duty of the DEP to deny this waiver as it would reward Hyperion at the expense of the properties and residents living along the proposed LOD by allowing for construction of these pipelines through areas that cannot be fully protected by necessary regulation.

The application goes on to state that no Post Construction Stormwater Management/Site Restoration BMPs⁸ are proposed because *“ROW is restored to existing condition or*

⁷ <https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/CACP-2021-05-25-Olympus-394700.pdf>

⁸ Pennsylvania Stormwater Best Management Practices Manual

<http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=7925&DocName=01%20PENNSYLVANIA%20ST>

*‘meadow-good’ condition” via site restoration (SR). The specific SR narrative states that following construction, Hyperion will “place topsoil, seed, lime, and fertilizer to establish 70 percent uniform, vegetative cover on the SR areas” followed by “after 70 percent uniform, vegetative cover has been achieved...removal of all E&S BMPs will occur”. **Given the high-quality and exceptional-value waters which will experience a direct impact from this proposed pipeline construction and operation, it would be illogical and irresponsible to allow Hyperion a minimum of effort in the protection of these watersheds, as is proposed in their application.** In fact, there are several alternative E&S and PCSM BMPs⁹ which could be utilized by Hyperion which would enhance the protection of HQ and EV waters, such as silt curtains to reduce turbidity from surface runoff, public street sweeping (particularly near road crossings where HDD will be utilized and stockpiles of bore pit spoils are to be staged), use of rice hull filter socks to further reduce TSS from surface runoff, etc. Hyperion should be required to conduct a PCSM stormwater analysis due to the HQ and EV waters in close proximity to and directly impacted by this proposed pipeline construction. Allowing Hyperion to construct this pipeline through HQ and EV waters, as well as in proximity to a source of drinking water, while requiring only the minimum E&S BMPs (70% vegetative cover and removal of temporary BMPs) would be negligent in that it fails to provide protection to sensitive watersheds.*

All of the above evidence suggests an increased risk to the public and environment from the construction and operation of this proposed 30-inch natural gas pipeline and 16-inch water pipeline. Knowing of these harms, the PA DEP has a duty to fulfill its mission *“to protect Pennsylvania’s air, land and water from pollution and to provide for the health and safety of its citizens through a cleaner environment”* and not permit this pipeline to be constructed. Furthermore, the Pennsylvania Constitution, Article 1 Section 27 states *“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.”* **By approving this permit, the Department is knowingly putting children and families at risk of adverse health impacts and violating our constitutional rights.**


It is the PA DEP’s mission to provide for the health and safety of PA residents by protecting the air, land, and water we need for survival. With that mission in mind, we ask the DEP to adhere to its own baselines by denying the issuance of the Delmont North Pipeline Erosion and Sedimentation Control Permit (Authorization ID 1428742 & Permit #ESP076522004-00) to Hyperion Midstream, LLC.

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⁹ PA DEP Alternative E&S and PCSM BMPs, revised Sept. 14, 2022, Version 2.4

https://files.dep.state.pa.us/water/bpnpsm/StormwaterManagement/ConstructionStormwater/Reviewed_Alternative_BMPs.pdf

Regards,



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Figure 1.: A map created using PA eMap online tool which depicts a survey conducted within approximately 0.5 miles of the proposed pipelines. The survey includes PAGWIS identified water wells within the approximate area

