

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the November 25, 2008,  
Notice of Hearing and Complaint served upon Respondent  
by Department Staff

ORDER ON  
CONSENT

R3-2008-0130-03  
R4-2008-1007-146  
R7-2008-1007-115  
R8-2008-1007-82

- by -

Millennium Pipeline Company, LLC  
P.O. Box 1565  
Pearl River, NY 10965

Respondent

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WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation ("the Department") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State pursuant to §3-0301 of the Environmental Conservation Law ("ECL"), Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York ("NYCRR") and Orders issued thereunder.

2. The Department has jurisdiction over the abatement and prevention of pollution of waters of the state pursuant to Article 17 of the ECL and Title 6 NYCRR Part 750. This jurisdiction authorizes the Department to regulate the discharge of pollutants into the waters of the State in conformity with the federal Clean Water Act, 33 U.S.C. Section 1251, et seq. The Department also has administrative jurisdiction to abate and prevent the pollution of water of the State pursuant to Article 12 of the Navigation Law.

### Respondent

3. Respondent, Millennium Pipeline Company, LLC, a Delaware limited liability company with registered agent located at CT Corporation System, 111 Eighth Avenue, New York, New York, 10011, is an interstate natural gas pipeline company doing business in New York State.

### Pipeline Project

4. The Respondent has installed approximately 182 miles of 30-inch-diameter buried natural gas transmission pipeline and associated meter station and compressor station facilities across eight counties in southern New York State ("pipeline project"). The pipeline project crosses Department Regions 3, 4, 7 & 8 and involves construction activities along a linear right-of-way and associated areas that affected approximately 2397 acres.

### Notice of Hearing and Complaint and Answer

5. On November 25, 2008, the Department staff served Respondent's counsel with a Notice of Hearing and Complaint ("complaint") alleging eleven causes of action ("causes of action") and seeking civil penalties, and other relief.

6. Respondent requested an extension until January 31, 2009 to answer the complaint and the Department staff consented to allow for an opportunity to focus resources on expediting settlement discussions.

7. Respondent, in lieu of serving an answer on the Department staff, asserts herein that it denies the allegations in the complaint. The Department staff, in consideration of the execution of this Order on Consent by the Respondent, agree to withdraw the complaint with prejudice.

### Waiver of Hearing

8. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order on Consent.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. Civil Penalty

With respect to the withdrawal of the complaint, the Respondent is assessed a civil penalty in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000), which amount Respondent shall pay by check to the Department within thirty (30) days of Respondent's receipt of a fully executed copy of this Order on Consent.

II. Environmental Benefit Project: Stormwater Pollution Control and Stream Protection Funding

In further consideration of the withdrawal of the complaint, Respondent shall fund the hiring of five full-time positions by a third-party entity, for a period of two years, for a total Environmental Benefit Project payment of ONE MILLION DOLLARS (\$1 Million), which shall be due and payable to one or more third-party entities designated by the Department in accordance with the following procedure:

By no later than ten (10) business days of the effective date of this Order on Consent, the Department shall provide the Respondent with the name(s) and address(es) of the third-party entity(ies). Respondent shall provide the third-party entity(ies) with a total of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) apportioned as indicated by the Department toward the first calendar year of employment of those five full-time positions, within two (2) business days of the Department's notification to Respondent of the intended third-party entity(ies). By no later than January 15, 2010 Respondent shall provide the third-party entity(ies) with FIVE HUNDRED THOUSAND DOLLARS (\$500,000) apportioned as indicated by the Department toward the second calendar year of employment of the five full-time staff positions. Respondent shall copy the Department on all communications with the third-party entity(ies) including but not limited to proof of the payments required herein.

Four of the five full-time positions shall be stormwater pollution control specialists and one position shall be a stream protection biologist. The stormwater pollution control specialists shall oversee the final stabilization work to be completed by Millennium for the pipeline project and perform other responsibilities related to the State and Federal stormwater pollution control programs and ECL Articles 15, 17 and 24, as solely determined by the Department. The stream protection specialist shall oversee the final stabilization work to be completed by Millennium for the pipeline project and other regulatory matters pertaining to ECL Articles 15 and 17, as solely determined by the Department. Respondent shall not use the cost of and the funding of the five full time positions to reduce its tax liability.

III. Complaint

Simultaneously with the Department's execution of this Order on Consent, the Department staff shall withdraw the complaint with prejudice and provide Respondent with a

letter indicating such withdrawal.

IV. Summary Abatement

Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

V. Binding Effect

This Order on Consent is binding upon the Department and the Respondent, and their successors.

VI. Settlement and Reservation of Rights

A. The Department releases, discharges and covenants not to sue or otherwise bring a claim against Respondent, its equity holders, its contractors and any of their directors, officers, employees, servants, agents, affiliates, parent corporations, successors and assigns (the "Released Parties") from any and all claims, actions, proceedings, suits, demands or liabilities that it has asserted or might have asserted as of the date of its execution of this Order on Consent with respect to or in any way relating to any actions or omissions by the Released Parties in connection with the Millennium Pipeline project (the "Released Claims"), whether based on the law of New York or any other state or jurisdiction (including federal law and common law) and whether seeking penalties, compensatory damages, economic damages, non-economic damages, punitive damages or any other relief. The Department further agrees that it will not refer for criminal enforcement any of the Released Parties based on the activities constituting the Released Claims, other than with respect to those criminal actions already pending, and of which Respondent has knowledge, as of the date of execution of this Order by Respondent. The Department and Respondent further agree that the Respondent's compliance with the documents referenced in the Department's certification under section 401 of the Clean Water Act constitute compliance with the General Permit issued by the Department under section 402 of the Clean Water Act. Finally, the Department agrees not to refer any legal action to other state and federal agencies with jurisdiction over the pipeline project with respect to the Released Claims; and

B. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative or criminal rights of the Department or of the Commissioner or his designee or other authorities with respect to anyone other than the Released Parties.

VII. Communications

All communications required herein to the Department shall be sent to:

Department of Environmental Conservation  
Office of General Counsel  
Attn: Michelle Crew, Deputy General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233

All communications required herein to the Respondent shall be sent to:

Gary Kruse  
Vice President and General Counsel  
Millennium Pipeline Company, LLC  
One Blue Hill Plaza  
P.O. Box 1565  
Pearl River, New York 10965

VIII. Third Party

The existence of this Order on Consent shall not give rise to any presumption of law or fact or create any rights which shall inure to the benefit of any third party other than the Released Parties. For purposes of this provision the State is not considered a third party.

IX. Effective Date

The effective date of this Order on Consent shall be the date upon which it is signed on behalf of both the Respondent and the Department.

X. Termination of Order on Consent

This Order on Consent shall terminate upon Respondent's compliance with the terms, conditions and provisions of this Order on Consent.

DATED: February 3, 2009  
Albany, New York

BY:



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Alexander B. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order on Consent, waives their right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

Richard H. Leehr  
Millennium Pipeline Company, L.L.C. *CH*

President  
Title

Date: February 2, 2009

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF Rockland )

On the 2 day of February in the year 2009, before me, the undersigned, personally appeared Richard H. Leehr

(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

One Blue Hill Plaza, 7<sup>th</sup> Fl. PO Box 1565 Pearl River, NY 10965  
(Full mailing address)

and that he/she/they is (are) the

President of the

(President or other officer or director or attorney in fact duly appointed)

Millennium Pipeline Company, L.L.C.

(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Jeanne M. Reynolds  
Notary Public, State of New York

JEANNE M. REYNOLDS  
NOTARY PUBLIC, State Of New York  
No. 0166958811  
Qualified in Rockland County  
Commission Expires June 04, 2011