

Despite Trump approval, Keystone XL pipeline still has hurdles to cross

Last Thursday, the Trump administration issued a presidential permit to TransCanada to operate and construct the Keystone XL pipeline. Although the granting of the presidential permit is a big step forward, many regulatory and legal steps remain before crude oil can begin to flow south over the Keystone XL pipeline.

Keystone XL is a 36-inch crude oil pipeline that will originate in Hardisty, Alberta and stretch southward for over 1,200 miles through Alberta, Saskatchewan, Montana, South Dakota and Nebraska. The pipeline will terminate in Steele City, Nebraska, where it will interconnect with other TransCanada pipelines already in operation.

The presidential permit grants permission to construct, connect, operate and maintain the pipeline facilities at the international border between the United States and Canada near Morgan, Montana. However, the presidential permit only applies to approximately 1.2 miles of pipeline.

The remaining 1,200 miles have to be approved by various regulatory bodies in the United States and Canada. Although President Trump promised swift action to allow TransCanada to begin construction soon, the extent of his influence may be limited.

The president's ability to expedite the Keystone XL project may be strongest within the federal executive branch. A presidential memorandum issued in January requires the Army Corps of Engineers to expedite Clean Water Act permits to cross "waters of the United States" and requires the Interior Department to expedite approval of requests for use of federal lands and other related federal permits.

While there are some similarities between the Keystone XL pipeline and the Dakota Access pipeline, those similarities are limited to permitting at the federal level. Construction of the Dakota Access pipeline was held up for several months under the Obama administration while the Army Corps of Engineers evaluated the Clean Water Act permit applications for a segment of that pipeline.

Related Capabilities

- Environmental
- Energy & Natural Resources
- Mining

As with Keystone XL, the incoming Trump administration directed an expedited permit review process for the Dakota Access pipeline, resulting in final approval of the contested permits in February. The Trump administration was able to take direct action to get the Dakota Access pipeline project completed because the only outstanding permit was federal.

TransCanada, on the other hand, has to obtain approvals from state regulatory bodies in Montana, South Dakota and Nebraska before proceeding with construction of Keystone XL. While Montana and South Dakota have issued approvals for construction of their respective segments of the pipeline, consideration of the Nebraska permit by the Nebraska Public Service Commission has just begun.

Along with these state permits, there may be additional local regulatory hurdles for TransCanada, including compliance with local zoning regulations, building permits and permits for use of local roads by construction equipment. In addition, TransCanada may still need to reach deals with a significant number of potentially affected landowners.

Of course, the spectre of litigation haunts each of these regulatory decisions, at both the federal and state level. A number of groups have already announced their plans to launch legal challenges to several federal and state actions related to the Keystone XL pipeline, each potentially delaying the construction date further into the future.

There is a large amount of work ahead for TransCanada before it can start putting pipe into the ground. Although the Trump administration has given the Keystone XL project an important boost, federal and state regulatory authorities and the courts may ultimately determine whether or when the project will reach the finish line.