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DEQ, Corps under pressure from pipeline opponents

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MONTEREY — Frustration is mounting among those concerned about how the proposed Atlantic Coast Pipeline might affect the environment.

This week, coalitions opposed to the project are reviewing a letter from Virginia's Department of Environmental Quality to Dominion, which will construct the ACP.

DEQ told Dominion the department is reviewing Dominion's annual Standards and Specifications for Erosion and Sediment Control and Stormwater Management. The ACP will be covered under these specifications, but DEQ has additional requirements. They include that:

- An individual project-specific plan be submitted for DEQ to review and approve;
- The plan must be posted on Dominion's website for public view;
- Dominion's inspection reports, complaint logs, and complaint responses be submitted to DEQ; and
- Dominion must pay DEQ to cover the costs of hiring additional technical expertise to assist the department in plan review and compliance, as authorized under the state's erosion and sediment control law.

A year ago, DEQ officials told The Recorder it would review the ACP as one project, but it did not have the staff to specifically inspect multiple points along the pipeline's path. At that time, it had not received Dominion's Annual Standards and Specifications.

Dominion said it planned to develop a specific Erosion and Sediment Control plan for the ACP, addressing every foot along the route, although Dominion spokesman Jim Norvelle had confirmed DEQ would not require a specific E&S plan.

"The DEQ has informed Dominion that it intends to exempt the company from filing an E&S plan with the state under the oil and gas exemption in the U.S. Natural Gas Act for transmission pipelines and their associated facilities, as a matter of consistency," Norvelle explained.

Has anything changed? It's not clear, said Rick Webb of the Dominion Pipeline Monitoring Coalition this week. "Will there be site-specific Erosion and Sediment Control and Stormwater Management Plans for every piece of disturbed ground, hillside, stream crossing, access road, and staging area, just as is required of other construction projects?" he wondered.

“DEQ has said it doesn’t have the resources to review plans for all the miles involved, but now DEQ has acknowledged that it can assess the companies for the cost. They can contract out the work if needed, and more importantly, citizens and localities can also review or arrange for review of the plans themselves,” Webb said.

DEQ’s letter to Dominion does not say when the plans must be posted or submitted. “Will they be posted in time to inform the National Environmental Policy Act review and Federal Energy Regulatory Commission, forest service, Army Corps, and state 401 decision making? Or will the plans only be provided after decisions are made and permits are issued? I’ve seen that FERC routinely makes decisions contingent upon later submission of plans and reports, which means uninformed decision-making,” Webb said.

DEQ spokesman Bill Hayden said the point of the agency’s letter to Dominion “is to lay out the standards and specifications for controlling erosion and sediment to cover the project as a whole,” not for site-specific places along the pipeline route. Further, he said, whether citizens will be offered a way to comment on Dominion’s plan has not been determined. “That is still being worked out,” he said, adding that when DEQ will require Dominion to post its plan is also unknown. “We’re still in the early stages of getting this together,” he said.

Hayden did confirm inspection reports submitted to DEQ would be public documents available for citizens to review.

“What we’ve heard from Dominion is that they’ve got no problem with the requirements and they’ll meet them,” Hayden said.

What is Virginia’s responsibility?

DEQ works closely with the U.S. Army Corps of Engineers and the Virginia Marine Resources Commission to protect water quality. There is a Water Protection Permit program that serves as the state’s “401 certification” program for federal Section 404 permits issued under the Clean Water Act.

State law requires companies to get a Virginia Water Permit before disturbing wetlands or streams, and companies apply for the permit through a joint permit application process to get covered for state and federal review.

For linear projects like railroad lines and gas transmission pipelines, there is an exception to erosion and sediment control plan requirements. Under the law, utility companies that build such projects can submit Annual Standards and Specifications to the state. This document describes general erosion and sediment control measures for all of a company’s projects, and is to be submitted annually. Generally, the Annual S&S plan helps utilities avoid creating site-specific ESC plans for every locality or project segment along a route, as these projects can cross multiple localities and types of terrain.

Dominion submitted its most recent Annual S&S to DEQ on Feb. 29 this year; DEQ is to review them within 60 days, which would have been by April 27. Hayden said the agency is still reviewing them, however.

As for requiring more specific ESC plans, as Hayden explained last year, “We are not able to break a linear project into smaller pieces; we simply couldn’t permit every few hundred feet, or even every mile” of such projects.

The Dominion Pipeline Monitoring Coalition asserts the Annual Standards and Specifications do not explain how Dominion will handle construction at specific places, such as steep mountainsides and over karst terrain, where the effects could be serious.

Under state law, S&S documents serve as the ESC plans for projects like pipelines, and in this case, Dominion would serve as its own ESC “authority,” with its own reviewers and inspectors.

DEQ can require specific ESC plans, however. The law states, “The submission of annual standards and specifications to the department does not eliminate the need where applicable for a project specific Erosion and Sediment Control Plan.”

DPMC and a host of other groups have been putting pressure on DEQ to require specific ESC plans for the ACP, and the Mountain Valley Project, which got the same letter from DEQ about the additional requirements.

“I have to believe that DEQ’s action was certainly influenced by the public scrutiny we’ve brought to the issue,” said DPMC’s David Sligh Tuesday.

However, Webb said, “Site-specific plans are key, given the terrain and the extreme site-specific conditions. I’m sure Dominion and EQT (Dominion’s subcontractor) hope to avoid public scrutiny of site-specific plans. There may not be a formal opportunity for public comment. That could prove critical.” And, he added, “It’s not yet clear that DEQ will apply the same stormwater management requirements that apply to other earth disturbing projects. This could have profound implications for receiving streams and karst groundwater systems. It’s also critical to recognize that standard best management practices will not be protective in the extreme conditions these projects will face. The performance limits of available control technology will be compounded if, in the interest of expediting these projects, DEQ grants variances to minimum standards such as the open trench length limits. Required BMPs will not — cannot — be installed, if that is the case.”

Coalition frustrated with Corps

The pressure DPMC has brought to bear goes back months. On Oct. 8, 2015, the coalition wrote to Col. Jason Kelly, district commander of the Army Corps of Engineers, Norfolk District, about Dominion’s request for coverage under a nationwide Permit No. 12. It, too, is a general permit utilities need to comply with the Clean Water Act.

Coalition members requested a meeting with the Corps to express their concerns about the permit. “We assert that coverage of the Atlantic Coast Pipeline under the Nationwide Permit would be contrary to law and inappropriate,” they said.

Dominion had notified the Corps of its intent to be covered under the No. 12 permit in September 2015.

The coalition told the Corps that:

- The ACP cannot meet the basic requirement for coverage under the permit – that there be no more than minimal adverse impacts to the nation’s waters from the proposed activities. Dominion’s application for the No. 12 permit lists more than 500 water crossings in Virginia alone. “Any contention that severe impacts

can be wholly avoided is simply not credible,” the group said. “In many cases, cold water streams holding especially sensitive species will be excavated and possibly blasted and, while the effects of such actions may be lessened with proper procedures or mitigated for, they would inevitably cause significant changes to in-stream habitat and endanger the health of these organisms.”

- Even if stream crossings met the threshold for coverage under the permit, “there are 141 water bodies ... for which the company has failed to list the construction method proposed for making the crossing. We believe it is impossible for Dominion or the Corps to conclude that these actions will not cause significant impacts, without first knowing what would be done in and around these waters. The need to have specific details about these crossings alone provides a basis for rejecting” permit coverage, the DPMC said.
- Two requirements under Environmental Protection Agency regulations should require individual analyses for many of the water body crossings proposed.
- Under the Clean Water Act, public participation in permitting is to be provided for, encouraged, and assisted by the administrator and the states, according to code, but when the No. 12 permit was issued in 2012, “commenters at that time would certainly have envisioned much smaller, less complex projects when providing information and opinions, because most projects covered by (the permit) are in no way similar to this proposed action by Dominion,” the coalition said. “Indeed, the Corps’ decision document for (the permit) predicted the Nationwide Permit would authorize ‘impacts to approximately 400 acres of waters of the United States, including jurisdictional wetlands’ per year. The ACP’s notification estimates that the project would impact 306 acres of wetlands in Virginia alone. This clearly establishes that (the permit) was not meant to authorize such large-scale projects with significant and widespread impacts to waters of the U.S.,” it said.

That October letter was signed by Sligh, Webb, and Ernie Reed on behalf of Wild Virginia, the DPMC, and Friends of Nelson.

Project should not get ‘rubber stamp’

Last month, on April 14, the coalition sent a letter to Angela Navarro, Virginia Deputy Secretary of Natural Resources, and David Paylor, DEQ director. The DPMC asserted the state must analyze the pipeline projects through individual Water Quality Certification reviews — again insisting more detailed, specific plans are needed.

“We are alarmed that the state apparently plans to forego its responsibilities in these areas and we object to the notion that these pipeline projects qualify for what would essentially be ‘rubber stamp’ approvals of projects that pose enormous risks to Virginia’s waters,” the letter states. “We hope our fears are unfounded but feel compelled to explain the basis of our objections to any shortcuts that either the pipeline companies or the state may consider, which would avoid thorough, project-specific, and legally-necessary reviews.”

Sligh told DEQ he had been informed by Steve Hardwick, Office of Wetlands and Stream Protection in Richmond that DEQ believes the ACP can be covered under Virginia’s blanket Section 401 Water Quality Certification, which was issued for the Corps of Engineers No. 12 permit in 2012.

DEQ representatives, he said, predicted DEQ would not perform individual analyses of either pipeline project. The application for the ACP filed with the Corps and DEQ is “woefully inadequate,” the coalition said, asking DEQ insist on further details. “Until such complete information is received by DEQ, the state should officially inform the companies and FERC that the applications are incomplete and that the one-year time clock

for Virginia's 401 action, as provided in FERC regulations, may not begin. In the alternative, DEQ should deny the PCN/application without prejudice until such notice or application is complete."

The coalition noted the Corps had notified the Federal Energy Regulatory Commission on Oct. 14, 2015, that the pipeline application was not ready for processing because numerous surveys needed to be completed. "We have seen no evidence that the deficiencies cited ... have been remedied for the pipeline sections addressed in the initial joint application and new data requirements and uncertainties have now been introduced with the proposal for a major new section of ACP in Virginia," the group said.

DPMC pointed out the recent alternate route change through northern Bath and southern Highland, saying that area has very limited information addressing waters and terrain there. "In fact, Dominion had previously rejected parts of the terrain they now propose to cross due to construction difficulties in those areas and an increase in overall environmental impacts from the added miles of pipeline. We believe all regulatory bodies must require Dominion to demonstrate how factors upon which the company rejected these areas will be satisfactorily addressed," the group said.

The coalition added, "We are aware from review of other FERC proceedings that FERC has allowed pipeline companies to delay completion of vital site-specific planning and analyses until after the federal approvals were issued. Such detailed plans must be reviewed by the state much sooner, regardless of FERC's lax approach."

For the ACP, MVP, and other major interstate pipelines, the coalition asserted, applicants must obtain both a Corps CWA Section 404 permit and FERC certificate. "DEQ must address the major pipeline proposals under individual 401 analyses before either of these federal approvals may be granted," the group argued.

"The company seeks approval for withdrawals from either surface waters or groundwater and, without doubt, Dominion plans to use surface water for hydrostatic testing in at least some circumstances. Whether the pipes transmit water from a stream or wetland to a nearby testing site or to another site some distance away, these operations will violate the conditions under which the Virginia 401 certification was granted and make coverage under that blanket 401 unacceptable. This violation of the conditions in the blanket 401 then prevents coverage under NWP 12," DPMC said.

The Code of Virginia states that issuing a Virginia Water Protection Permit constitutes certification as required under the Clean Water Act, the group noted, but the state's responsibilities are not limited by federal regulations.

"Virginia officials must act responsibly and use the regulatory authorities provided to require individual permit processes for these major pipelines," the coalition argued. "Even if the state judges that it is not legally compelled to follow such a course, officials have full authority and an obligation to require individual VWPPs in these cases. Only by that course can the State of Virginia live up to Governor McAuliffe's pledge to see that these pipelines not be 'intrusive to our beautiful environment.'"

No word from the Corps

By this week, the coalition had still heard nothing from the Army Corps of Engineers, and wrote again, on Tuesday, May 24. The coalition reminded the Corps it had requested a meeting, and said, "... our groups

joined with 26 other organizations in a press release to publicly address what we see as Dominion's attempt to improperly bypass a detailed individual review of ACP."

The coalition said, "We are very disappointed by the failure of the Norfolk District to reply to our letter. Should we read this failure as a sign of disrespect for the thousands of citizens who are represented by our groups and those groups that joined in the press release?"

The coalition called the Corps "dismissive" of its views. "Several weeks after we sent the October 2015 letter, David Sligh of DPMC called Steve Gibson of the Norfolk Office. Mr. Gibson verified that our letter had been received and said that a meeting with a larger group of parties who had asked to discuss the proposals was under consideration. Unfortunately, we have received no subsequent word on such a meeting and no representative of the (Corps) has reached out to us in any way," this week's letter said.

"Mr. Gibson also stated that, in accordance with instructions from the national leadership of the (Corps) that the ACP would be covered under the Nationwide Permit. Mr. Gibson expressed his opinion that no individual dredge and fill discharge would involve significant impacts to any of the hundreds of water bodies to be affected in Virginia that would justify denial of coverage under NWP-12 and warned that any specific concerns citizens wished to raise about water quality impacts from the ACP must be explained to him very soon or those concerns would not be addressed by your organization."

The coalition said that based on documents it obtained, it appeared Gibson had "improperly decided" the ACP was qualified for the nationwide permit almost a year before Dominion filed its application with the Corps.

"We find Mr. Gibson's approach to be inexcusable and believe he is unable to proceed on behalf of the (Corps) in consideration of this project in a way that the public can trust. Therefore, we call on you to remove him from any position of responsibility for this permitting process and replace him with a person who has not pre-judged the outcome of the (Corps') review," the group said.

Contacted by The Recorder Wednesday, Gibson said the Corps has made no decision on Dominion's permit application.

"We have been in touch with those folks (DPMC)," he said. "I can assure you they have been informed of our stance. All the details needed for this are not in hand, and we are awaiting more data ... nothing will be decided until all the data is in hand," he said.

"We are going to meet with those folks, but I'm not sure if a date has been decided yet. That's all I can comment on at this time," he said.

Webb said, "We are dealing with the problem that the Corps seemingly intends to approve the ACP and MVP under the general Nationwide Permit issued in 2012 ... The state seemingly intends to treat Corps approval as sufficient to satisfy state obligations concerning the Virginia Water Pollution Protection Permit, which incorporates the Clean Water Act Section 401 Certification required by states for federal projects like the ACP and MVP.

“My own sense is that the latest DEQ move with the letters to ACP and MVP is to cover itself concerning some of these problems, but it’s not going to work without real site specific analysis and meaningful opportunity for public oversight,” Webb said.

Sligh agreed. “The move to require project specific E&S plans, while seeming to be an improvement, is really a smokescreen that obscures a continued failure by DEQ to regulate the pipelines properly and legally. Rather than project-specific plans, the DEQ must require submittal of site-specific plans at each site where discharges may damage water bodies and, most importantly, DEQ must review those plans before approving the projects,” he said.

“Without knowing details of construction methods, specific resources needing protection, and pollution control measures proposed for each circumstance — water body crossing, discharge from other construction activities, roads — the DEQ cannot possibly fulfill its responsibility to ensure that all water quality standards will be met on all waters,” he said. “No single waterbody can be ‘written-off.’

“A comparison of current conditions in the environment and those that can be achieved after the proposed actions is vital,” Sligh said. “Just one example of the assurances that have to be provided if approval is to be given is that runoff and groundwater flows must be restored to pre-construction states after work is completed. The companies don’t want to address this issue, honestly, because it’s a standard they cannot meet on steep slopes and where forests are mowed down and replaced with grass or other substitute ground covers. The ‘standard’ pollution control and hydrologic control measures simply will not work in many situations the companies will encounter. This is especially true when anti-degradation requirements must be met on some of our highest quality streams.

“This component of the water quality standards is routinely ignored when DEQ allows projects to be addressed through general versus individual regulatory approaches,” Sligh continued. “High-quality waters are sacrificed in the name of bureaucratic efficiency. The standards and specifications are merely a cookbook with the range of options that might be used.

“General, vague ideas on what might happen at each of the hundreds of water bodies threatened across the state are not acceptable because water bodies aren’t interchangeable. The standards and specifications are, in our opinion, an illegal case of the state allowing the companies to self-regulate.”

Sligh said this general approach “deprives the public of its rightful role in protecting our resources. We and other parties are prepared to challenge bad practices and regulatory decisions in every administrative and judicial forum available to us.

“We prefer to work with DEQ to get this right and hope officials will finally see the wisdom of doing so,” he added. “DPMC will continue to insist that every action by DEQ follow the law and apply sound technical principles.”