

The Recorder

IN THE COMMUNITY, ABOUT THE COMMUNITY, SINCE 1877.

2016-09-15 / Top News

Coalition pressures state to deny Dominion permit

BY ANNE ADAMS • STAFF WRITER

MONTEREY — In a last minute effort, pipeline opponents pushed Virginia to take action on a permit request from Dominion Resources.

Dominion, which proposes to build a gas transmission line through the commonwealth, needs a state approval under the federal Clean Water Act, one of several permits required to pursue construction.

The Dominion Pipeline Monitoring Coalition, which opposed the project, has tried for a year to pressure Virginia to deny Dominion's Water Quality Certification until the application contains more complete information.

Virginia has the authority to act on that permit application, the coalition said, to protect residents along the pipeline's path. Until this week, coalition members say, the state has failed to do that.

Last Friday, the DPMC wrote to Gov. Terry McAuliffe, asking him to take action immediately, and outlining the legal responsibilities for Virginia.

“Despite promising that the ACP would be environmentally responsible, the governor has repeatedly and wrongly claimed that the pipeline is a federal issue and the state has no authority when, in fact, Virginia has the power to veto the project if water quality protection is not ensured,” said DPMC coordinator Rick Webb, in an email to coalition members and others. “It now seems that the governor's declared lack of authority may become true if the Department of Environmental Quality ignores a pending deadline for state certification of the project, an inexcusable breach of the trust we have placed in our public servants. Our Sept. 9 letter to the governor warns that the state must ensure that it has taken the legally required steps in response to Dominion's request for a Clean Water Act Section 401 Water Quality Certification, or the state will have waived its authority by default.”

The CWA assigns two important obligations to states in regulating pipelines and other projects that require federal approval, Webb explained. “First, the state must certify that federal and state water quality requirements will be met. Second, the state must provide for public involvement in the process. We have seen no evidence that either of these obligations have been met.”

Dominion had submitted an application to for a Water Quality Certification in September 2015, when it applied for a permit through the U.S. Army Corps of Engineers.

Under the Clean Water Act, a state has one year from receiving a complete application to rule on a Water Quality Certification request, or the requirement is waived.

Although the Army Corps had told Dominion its application was incomplete, it wasn't clear where the state stood on the matter, Webb said. "The DPMC has repeatedly asked McAuliffe administration officials to tell us whether Dominion's WQC request has been deemed complete, but we have not received adequate response to our questions. After months of waiting for an answer we received a vague and incomplete response from the Secretary of Natural Resources in late August."

With Friday's deadline for state action looming, The Recorder contacted Angela Navarro, Deputy Secretary of Natural Resources. She explained there might have been a misconception about the issue.

"We would never waive our duties under the Clean Water Act," she stressed.

She told The Recorder that Virginia was working on a response to the coalition, and provided the newspaper with a copy of the Army Corps' response to Dominion, indicating its application was incomplete, along with a letter from Dominion, dated Tuesday, acknowledging that fact.

The letter from the Corps to Dominion, dated Oct. 14, 2015, noted that under the conditions of the Nationwide Permit, mitigation is required. Further, it noted there were still some sections of the pipeline route that had not been delineated or verified, and the Corps could not deem the application complete without the whole route.

The route did, in fact, change over the course of the year.

"USACE needs to verify the delineation for the entire, final route of the pipeline in order to determine not only the extent of the jurisdictional impacts, but also the appropriate compensatory mitigation requirements," the Corps stated.

The Army Corps also requested a digital format for inventory and processing "since there are substantial wetland and stream impacts." In addition, the Corps asked Dominion for an explanation as to why some water body crossings are proposed to be "open cut" rather than drilled under them horizontally.

A seven-year monitoring plan must also be provided, to address potential mowing activities within the pipeline's corridor. "In addition, please include the proposed protective language into the landowner easement agreements on parcels which contain waters of the U.S. that are being negotiated for the pipeline project," the Corps told Dominion.

The Corps said it must also await the final Environmental Impact Statement on the project from the Federal Energy Regulatory Commission before a permit can be issued.

Dominion was asked to submit the information the Corps requested within 30 days of receipt of the letter “or we will consider your application withdrawn and close the file.”

Navarro provided The Recorder with a copy of Dominion’s letter to the Department of Environmental Quality about the permit request, written Tuesday — only four days before the one-year deadline could have rendered a waiver of Virginia’s authority on the matter.

In the letter, Dominion told the DEQ that its joint permit application, originally filed Sept. 15 last year with the Corps, was deemed incomplete. The company noted DEQ had been copied on that notice, as it is the responsible agency to issue a Clean Water Act Section 401 Certification.

“We continue to work with the Corps to provide the information required to complete the application,” Dominion wrote. “When we are notified by the Corps that the application is complete, we will notify you. We acknowledge that the time period for DEQ to conduct any necessary reviews will not start until the application is deemed complete by the Corps.”

It was that acknowledgment the Dominion Pipeline Monitoring Coalition sought, and did not get until this week.

“Information DPMC received yesterday shows the McAuliffe administration’s continued passive approach to its responsibilities to protect Virginians and their environment from the harm that would result from proposed natural gas pipeline construction,” said David Sligh, senior regulatory systems investigator for the coalition. “DPMC sent its letter to the governor last Friday, Sept. 9, because we had seen no clear, official action by the state on the request for a Water Quality Certification that Dominion submitted for the ACP on Sept. 16, 2015. If Dominion’s application had been complete and ready for Virginia to process when that application was submitted last September, Virginia could lose the chance to exercise its proper authority under the Clean Water Act at the one-year mark, just through inaction,” he explained. “That’s why we deemed the issue worthy of urgent attention by the governor. We knew that the Corps of Engineers had declared the application for its CWA Section 404 permit, which Dominion submitted in a joint application with the request for the Virginia WQC, to be incomplete on Oct. 14, 2015. But Virginia can’t rely on the Corps to decide these issues for the state, though they’ve seemed willing to do so up to this time. Even if the Corps decides an application is complete for its purposes, Virginia still has a separate and independent responsibility to judge the application based on its analysis and its unique duties. Also, the state is under no obligation to wait on a Corps answer at all. The request for a WQC Dominion submitted is deficient for many reasons and Virginia could and should have rejected it long ago. “By April of this year, it was obvious to us that Dominion’s submittals to Virginia continued to be grossly deficient to allow the DEQ to make the kind of assessment it must make on the WQC,” Sligh continued. “We wrote top state officials to say so, and to ask about the status of the WQC request and their review. We finally got an answer yesterday afternoon when Deputy Secretary of Natural Resources Angela Navarro called DPMC coordinator Rick Webb and told him they considered the WQC request from Dominion to be incomplete and that the one-year time clock for the state to act on a request had not started.

“You (The Recorder) provided us with a copy of a letter Dominion apparently sent to the Virginia DEQ yesterday. In that letter, a company official acknowledges that its joint application is still incomplete and that the time period for DEQ to conduct its WQC review has not started. Dominion’s written statement that it doesn’t have a complete application before the state for review must be sufficient to prevent any finding that Virginia has waived its authority under the Clean Water Act. For that we are grateful and relieved.”

However, Sligh said, “Important questions remain though and we will continue to ask them. Among others: Why did we get the first written judgment on the sufficiency of Dominion’s application to the state from the company, not from the state officials with the responsibility to make these decisions? Why did it take 362 days and much effort by DPMC to get the verbal answer from the McAuliffe administration and the written answer from Dominion?”

Dominion could not have supplied all the information the Corps requested within its 30-day time period, especially the Environmental Impact Statement for the project, which is far from complete.

“They (Dominion) definitely haven’t supplied all of those things and, as you note, they could not until much later in the process with FERC,” Sligh said. “Therefore, the Corps should have closed the file, according to the notice they sent to Dominion, but I don’t know whether they’ll say they’ve done that or not. As a practical matter, I guess it doesn’t make a difference whether you call whatever they submit a re-application or just additional information to complete the original application.”