



ABRA Update #156 – November 16, 2017

Water Control Board Meeting Details Released

The Virginia Department of Environmental Quality has released this week [an agenda and background materials](#) for the meetings next month of the State Water Control Board to consider approving water quality certificates, under Sec. 401 of the federal Clean Water Act, for the Atlantic Coast Pipeline (ACP) and the Mountain Valley Pipeline (MVP). The Board is scheduled to meet on December 6 and 7 to consider the Mountain Valley Pipeline application, and on December 11 and 12 to consider the Atlantic Coast Pipeline.

The first-day agendas for both pipeline meetings call for a summary presentation by staff of comments made during the public comment period and hearings, followed by an opportunity for those who commented at the public hearings or filed comments during the public comment period to respond to the staff summary. Board consideration of the pending applications are slated to occur on the second day (December 7 for MVP; December 12 for ACP). Three-minute time limits will be imposed on those making comments.

The meetings will be held at the Trinity Family Life Center, 3601 Dill Rd., Richmond, VA. The sessions for each of the 4 days will begin at 9:30 am.

The DEQ summary of comments indicated that there were 8,000 individual comments presented on the MVP and 15,000 on the ACP. In general, the summaries and judgments made on the comments by the DEQ defend the agency's approach. Two examples from the ACP summary:

5. DEQ is inappropriately excluding comments on Erosion and Sediment Control Plans and Stormwater Management Plans, the Corps' NWP 12 and environmental impact statements from the record of the proposed 401 Certification.

DEQ is not excluding comments on the record. DEQ is simply stating that such comments are not relevant to this proposed 401 Certification. DEQ acknowledges that its review and approval of project-specific stormwater management and erosion and sediment control plans is a critical component of assuring protection of water quality. But this is separate and apart from the scope of this proposed 401 Certification. Before any land disturbing activity can occur, DEQ must have reviewed and approved ACP's project-specific plans. As explained in the *Basis for Certification* (Attachment A to the Memorandum), the Virginia Stormwater Management Program law and regulations establish that land disturbance associated with pipeline construction activities must meet Virginia Erosion and Sediment Control (VESC) and Stormwater Management (SWM) requirements to protect surface water quality during and after construction completion. State law further mandates that natural gas pipeline utilities (and certain other utilities) meet the requirements for VESC and SWM under a DEQ approved Annual Standards and Specifications Program. These plans will not be approved unless they meet Virginia's statutory and regulatory requirements for post construction stormwater management and erosion and sediment control during construction.

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13. Impacts from Blasting - Blasting will cause irreparable harm to streams and karst features and increase landslide potential.

The proposed 401 Certification includes incorporation of a *Blasting Plan* approved by FERC in the FEIS which outlines procedures and safety measures to minimize impacts to structures and water resources. The potential for blasting along the proposed pipeline to affect any structures or water resources will be minimized by utilizing controlled blasting techniques and using mechanical methods for rock excavation as much as possible. Controlled blasting techniques are designed to loosen rock, utilize minimal blasting charges and allow for physical removal of the rock once it has been fractured by the charge. Within the construction industry, controlled blasting techniques are regularly employed within 15 feet of active gas lines. The Plan includes specific practices for blasting conducted in karst terrain and waterbody and wetland crossings. Monitoring and pre and post blasting inspections are also required by the Plan. The use of controlled blasting techniques, where small, localized detonations are utilized, will avoid or minimize potential impacts to water resources.

Eminent Domain Law Suits on MVP Hit a Bump

A federal judge has slowed efforts by the Mountain Valley Pipeline (MVP) to fast-track one of the lawsuits against hundreds of landowners to use eminent domain to gain easements necessary for the project to be built. U.S. District Judge John T. Copenhaver Jr. on November 16th indicated that he would not be granting a request from MVP lawyers that all of the landowners in the company's West Virginia lawsuit be forced to respond by Dec. 4 to the company's motions for summary judgment to force unwilling landowners to allow surveys of their property and to "immediate access and possession" of those properties to begin construction of the pipeline. More details [here](#).

Requests Filed for FERC to Rehear Permit Decisions on ACP and MVP

Several requests for rehearing of the decision to approve the Atlantic Coast Pipeline and the Mountain Valley Pipeline were made to the Federal Energy Regulatory Commission (FERC) on Monday, November 13. *ABRA Update* readers were advised of the [ACP filing](#) in a special mailing on Monday. Additional information on the rehearing petitions are available on the websites of the [Southern Environmental Law Center](#) (ACP petition) and [Appalachian Mountain Advocates](#) (MVP petition).

The ACP petition makes the following requests of FERC:

1. Grant Intervenors' request for rehearing;
2. Grant Intervenors' motion for a stay and immediately stay applicants and their contractors from taking any action authorized by the Certificate Order including, but not limited to, construction of the projects (including tree clearing) and any attempt to use the power of eminent domain pending final action on the request for rehearing;
3. Upon completion of the rehearing process, rescind the Certificate Order;
4. Grant Intervenors' request for an evidentiary hearing concerning the market demand for the Atlantic Coast Pipeline;
5. Before making any new certificate ruling, conduct an analysis of whether the projects are required by the public convenience and necessity, as required under the NGA, that complies with the Commission's Certificate Policy Statement;

6. Before making any new certificate ruling, conduct a NEPA analysis that addresses the direct, indirect, and cumulative impacts of the projects; provides a robust analysis of alternatives, including the existing infrastructure alternatives; and addresses the other NEPA-specific issues set forth in this request and Intervenor's previous comments in these dockets.
7. Grant any and all other relief to which Intervenor's are entitled.

Among many other petitions for rehearing filed with FERC were requests from Friends of Nelson and several Nelson County groups and the North Carolina Public Utilities Commission (NCPUC). In the [NCPUC petition](#), the agency cited two errors it found in FERC's decision-making process:

"1. It was error, and not the product of reasoned decision-making, for the Commission to approve ACP's proposed recourse rates, which used an unsupported and overstated 14 percent ROE.

"2. It was error, and not the product of reasoned decision-making, for the Commission to allow ACP to enter into negotiated rate agreements without ensuring at the time those negotiated rates were entered into that the market power of the pipeline was checked via recourse rates that are not overstated."



In the News:

Local/Atlantic Coast Pipeline

Atlantic Coast Pipeline set to seize private property for 600-mile project

- The News Observer -- 11/16/17

<http://www.newsobserver.com/news/business/article184993198.html>

The Atlantic Coast Pipeline can begin legal condemnation proceedings against holdout property owners as soon as it has received all state and federal permits.

Atlantic Coast Pipeline would hurt black residents most, NAACP says

- The News Observer – 11/14/17
<http://www.newsobserver.com/news/business/article184597888.html>

Norfolk council delays vote on gas pipeline that would run under drinking-water reservoirs

- The Virginian-Pilot – 11/14/17
https://pilotonline.com/news/government/local/norfolk-council-delays-vote-on-gas-pipeline-that-would-run/article_f8fo0523-2de3-5af4-9af6-14a0eb1779cf.html

Virginia Approves Carbon Cap and Trade Plan

- NPR – 11/16/17
<http://wvtf.org/post/virginia-approves-carbon-cap-and-trade-plan>

Related:

- http://www.richmond.com/news/virginia/government-politics/virginia-air-board-to-vote-on-draft-of-landmark-state/article_29a25331-be4f-561d-a4e5-c49d9ffbbde4.html
- https://www.huffingtonpost.com/entry/mcauliffes-folly-the-atlantic-trump-pipeline_us_5a08fd31e4b0cc46c52e6bce

Regional/Mountain Valley Pipeline, other

ACP, MVP Challengers Flood FERC with Rehearing Requests

- Natural Gas Intelligence – 11/14/17
<http://www.naturalgasintel.com/articles/112440-ACP-MVP-Challengers-Flood-FERC-with-Rehearing-Requests>
Dozens of groups and individuals filed rehearing requests this week challenging FERC's certificate orders approving the Atlantic Coast (ACP) and Mountain Valley (MVP) pipelines.
- Related:
- http://www.newsadvance.com/nelson_county_times/news/nelson-group-files-request-with-ferc-to-halt-pipeline/article_d2d96fbb-2f4b-536a-b16c-5f79e98c5757.html

W.Va.'s Caperton explains agency's pipeline decision

- Kallanish Energy – 11/15/17
<http://www.kallanishenergy.com/2017/11/15/w-va-s-caperton-explains-agencys-pipeline-decision/>
West Virginia Department of Environmental Protection Secretary Austin Caperton Monday sent a letter to his agency's workers, defending the state's action in the \$3.5 billion Mountain Valley Pipeline case.
- Related:
- <http://dep.wv.gov/news/Pages/Secretary-Caperton%27s-Letter-to-WVDEP-Staff-Regarding-the-Mountain-Valley-Pipeline.aspx>

Salem urges state to set conditions on Mountain Valley Pipeline impact

- The Roanoke Times – 11/14/17
http://www.roanoke.com/news/local/salem/salem-urges-state-to-set-conditions-on-mountain-valley-pipeline/article_9278d4f8-14b9-5505-8af9-4bf929930ba6.html
The resolution said that the pipeline shouldn't be allowed to add to the region's runoff and sedimentation woes, should abide by limits on its open-trench excavation and should come with a construction bond to protect localities and landowners.

Suit seeks to stop FERC from blocking pipeline appeals

- Charleston Gazette-Mail – 11/15/17
https://www.wvgazettemail.com/news/special_reports/marcellus/suit-seeks-to-stop-ferc-from-blocking-pipeline-appeals/article_41685e0a-835b-5737-9cab-69c5e11c8e8f.html
A new legal action against the Federal Energy Regulatory Commission seeks to stop the agency from using a procedural maneuver to keep challenges of its approval of new natural gas pipelines from having their day in court.

Big Picture:

Native American Heritage Month: The decades-long struggle for environmental justice

- The Duke Chronicle – 11/16/17

<http://www.dukechronicle.com/article/2017/11/phv8sowhlnl689w>

Environmental injustice is defined by The Environmental Justice Movement as “the disproportionate exposure to environmental harms in low-income and/or minority communities.”

Protesters Jeer as Trump Team Promotes Coal at U.N. Climate Talks

- The New York Times – 11/13/17

<https://www.nytimes.com/2017/11/13/climate/climate-coal-united-nations-bonn.html>

Throughout...the presentation, audience members shouted down and mocked White House officials who attempted to explain away President Trump’s stated view that global warming is a hoax.

DOJ Vows to Prosecute Protesters Who Damage Pipelines

- Natural Gas intelligence – 11/14/17

<http://www.naturalgasintel.com/articles/112447>

The DOJ added that it is “committed to vigorously prosecuting those who damage this critical energy infrastructure in violation of federal law.”

Author Describes Writing Controversial DOE Grid Reliability Report

- Forbes – 11/12/17

<https://www.forbes.com/sites/jeffmcMahon/2017/11/12/author-describes-writing-doe-grid-reliability-study/#4093f6cb3f93>

The Staff Report Silverstein authored finds that regulation is not among the greatest contributing factors to the closure of coal and nuclear power plants. Neither, it says, are renewables.

New gas pipeline capacity sharply exceeds consumption, report says

- StateImpact Pennsylvania – 11/13/17

<https://stateimpact.npr.org/pennsylvania/2017/11/13/new-gas-pipeline-capacity-sharply-exceeds-consumption-report-says/>

The capacity of lines approved by federal regulators over the last two decades was more than twice the amount of gas actually consumed daily in 2016.

Pipelines and Farmers Battle Over Lifetime Loss

- AgWeb – 11/14/17

<https://www.agweb.com/mobile/article/pipelines-and-farmers-battle-over-lifetime-loss-naa-chris-bennett/>

Damage done to soil structure and productivity by pipeline projects can take generations to recover.

Democrats Are Shockingly Unprepared to Fight Climate Change

- The Atlantic – 11/15/17

<https://www.theatlantic.com/science/archive/2017/11/there-is-no-democratic-plan-to-fight-climate-change/543981/>

There’s no magic bill waiting in the wings—and no quick path to arriving at one.

Scientists made a detailed “roadmap” for meeting the Paris climate goals. It’s eye-opening.

- Vox – 3/24/17

<https://www.vox.com/energy-and-environment/2017/3/23/15028480/roadmap-paris-climate-goals>

This is a bit old but not out-of-date. A sobering read, but helps get our heads around what needs to happen.

Related:

<https://www.vox.com/energy-and-environment/2017/11/16/16654222/iea-sustainable-development-scenario>