



Major Arguments to the Virginia State Water Control Board

(Based on the [October 25 letter](#) from the Southern Environmental Law Center, Appalachian Mountain Advocates and the Chesapeake Bay Foundation to the Virginia State Water Control Board)

I. The Board has well-established legal authority to deny water certification for the Atlantic Coast and Mountain Valley Pipelines to protect water quality.

DEQ Response: The staff did not address this issue in its response to comments.

Reply to the Board: The staff has not acknowledged that the Board has the authority to deny water certification where there is no reasonable assurance that water quality standards will be maintained.

II. DEQ has not provided the Board the information it needs to conclude that it has “reasonable assurance” that state water quality standards will be protected.

A. DEQ improperly relies on a presumed authorization under the Army Corps of Engineers (Corps) Nationwide Permit 12 program (NWP 12), which does not consider the cumulative impacts from crossings and upland activities. The Corps will not issue the permit before 2018.

DEQ Response: The staff addressed this concern by stating that because the law allows reliance on the NWP 12 that it is acceptable for the agency and the Board to do so.

Reply to the Board: The fact that the law allows the Board to rely on NWP 12 does not mean it should do so. There is no evidence that NWP 12 protects Virginia’s water quality standards.

The staff also admits in its response to comments that the Board could require an individual Virginia Water Protection permit. The Virginia Water Protection permit regulation, not NWP 12, is drafted to assure the protection of water quality standards. The Board should require an individual Water Protection permit rather than relying on the NWP 12.

B. DEQ has not conducted analyses sufficient to determine whether construction of the proposed pipelines would violate Virginia water quality standards.

1. DEQ’s draft 401 Certification did not identify and assess whether the proposed pipelines will meet narrative and numeric water quality criteria as required by the Clean Water Act.

Staff Response: The staff did not address specific water quality standards and where they apply, such as sediment flowing from the hillsides of the pipeline corridor, which would violate the narrative water quality standard.

Reply to the Board: The Board’s sole task is to determine for itself whether quality standards will be met or violated by the construction and operation of the ACP. The DEQ cannot effectively tell the Board not to worry because *other*

regulatory processes outside of the 401-review will ensure the project meets water quality standards. The Board must make that decision for itself.

2. DEQ has not conducted an anti-degradation analysis as required by the Clean Water Act.

Staff Response: The staff relies on an unrelated EPA standards document to say that there is no need to perform an anti-degradation analysis.

Reply to the Board: The EPA standards are more stringent than what the DEQ proposes. And even if the standards were the same, the EPA construction permit was not issued for construction in steep slope, high hazard mountain terrain. The EPA standards, instead, recommend limiting steep slope disturbances.

III. DEQ excluded from consideration other critical information that would allow the Board to determine whether water quality standards will be protected.

A. DEQ will not consider highly relevant information such as erosion and sediment control and stormwater management plans as part of its 401-certification review.

Staff Response: The staff does not deny that the regulatory reviews are being performed in isolation.

Reply to the Board: Compliance with the sediment & erosion control and stormwater laws are conditions of the 401-certification. As such, those permitting processes should not be isolated from the 401-certification process. The staff has informed the public that the reviews for the erosion & sediment control plans may not be completed until 2018. It is not reasonable to rely on plans in this certification process that have not been reviewed and approved. The State of North Carolina has asked four times for more information from the ACP four times. The Virginia 401- certification should not be considered until other necessary information is provided.

B. DEQ did not consider other information critical to the Board's decisions.

Reply to the Board: Each person who will address the State Water Control Board is encouraged to review the staff response to the public comments to see first whether the staff responded to your comment. If the staff did not respond to your comment, the Board should be made aware that there was no response and you should make your comment to the Board. If the staff addressed your comment, you should advise the Board of insufficiencies in the response.

CONCLUSION

The Atlantic Coast Pipeline and Mountain Valley Pipeline are controversial, high profile projects, and state and federal decision makers are subject to an enormous degree of pressure to approve them. But these proposed pipelines must proceed through the same regulatory processes as any other project, and the Board must adhere to the high standards set by the Clean Water Act and Virginia state law in reviewing the proposed 401-certifications. The developers' desire to begin construction on these projects as soon as possible must be irrelevant to the Board's decisions. Therefore, the Board must deny certification of these pipeline project because it does not have sufficient information to justify any other decision.