

DOMINION PIPELINE MONITORING COALITION

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April 23, 2018

Honorable Ralph Northam
Governor of Virginia
c/o Clark Mercer, Chief of Staff
Clark.Mercer@governor.virginia.gov

Sent via Email

Re: Additional Processes for Pipeline Reviews

Dear Governor Northam:

Eleven days ago, the Virginia State Water Control Board (Board) ordered the Department of Environmental Quality (DEQ) to issue a public notice and invite public comments, to help the Board determine whether evidence requires the State to conduct individual waterbody crossing analyses for the proposed Mountain Valley and Atlantic Coast pipeline projects. As of the time of this letter, DEQ has failed to act. Therefore, we must ask: “what’s the holdup?”

Time is of the essence, if the State of Virginia is to exercise the authority it rightly reserved to reject the rubber-stamp approvals the U.S. Army Corps of Engineers issued for these activities in our most sensitive and valuable waters. With every day it delays, DEQ heightens the risk that one or both of the pipeline companies will begin ripping and blasting through our precious streams and wetlands with no proper analyses to ensure state water quality standards will not be violated.

The Board members, citizens appointed to look out for the interests of all Virginians, clearly continue to have serious concerns about DEQ’s failures to properly disclose and assess damages the pipelines may cause at waterbody crossings; concerns those members first expressed at the Board’s December 2017 meetings. DEQ’s foot dragging seems to represent a show of disrespect for the Board’s authority. This is unacceptable, and we call on you to stand with the Board and the general public and order DEQ to act NOW. During your campaign for Governor, you stated that individual crossing reviews were needed. And, in a recent speech, you assured the public that site-by-site analyses would be made.

Governor Northam: are we to rely on your assurances or will they prove to be mere empty promises?

There is no excuse for DEQ's delay. State officials have told citizens that they are working to transcribe notes to describe the Board's order and proceed as ordered. The motion the Board adopted on April 12th was neither complicated nor unclear - DEQ had all of the information it needed to draft a notice that reflected that motion and begin the 30-day period in which comments are to be accepted within hours, not weeks.

DEQ officials have claimed that the Department has already assessed the need for the site-by-site analyses and, yet, has provided no detailed description of the facts it has relied upon to resist further reviews. If DEQ has indeed looked at the data and issues pertinent to its decisions on these matters, where is the proof of its work? Any grade school student will be familiar with the command to "show your work," not to simply offer answers without a proper explanation for the results given.

DEQ is obligated to now present that information and give the public the proper basis to make fully-informed comments. If sufficient information and analysis formed the basis for its positions, DEQ must have it readily available and must disclose it to the Board and the public immediately. DEQ's general statements and assurances given the Board fall far short of a standard of proof DEQ routinely provides when regulatory decisions are made.

This is not the only instance where the administration has resisted the action and intent of the Board. In commanding that the water quality certification for ACP would not become effective in December, the Board insisted that it have a chance to "consider further actions on the Certification following the review of the DEQ report." The Board's wording in the certification was and remains crystal clear. In contradiction of that Board action, and the discussion that supported it, DEQ now opines that the Board lacks the authority to enforce this portion of the certification. Does DEQ believe it is empowered to ignore the legal mandate of the certification? The administration must not violate that mandate - a power DEQ certainly does not hold.

At the April 12, 2018 meeting, Director Paylor explained his view that, because regulations provide that only certified reviewers can give technical approvals of erosion and sediment control and stormwater management plans, the Board has no further role. However, this opinion ignores important points. First, the Board's duty is to ensure that the pipeline project, as-a-whole, will uphold our standards and that water quality will be fully protected. The Board has every right and duty to look at the combined effects from all aspects of the project, not to take a narrow view of individual plans.

Second, Mr. Paylor conveniently failed to mention that no regulation assigns final approval of other plans required under the certification, namely the karst protection plans which are so vital to protect public and private water supply wells and springs, to any party other than the Board.

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Finally, Mr. Paylor surely understands that the Board will be foreclosed from taking further actions on the so-called “upland” certifications once the ACP certification becomes effective. After that time, the Board could only take effective action by withdrawing the certification. The Director’s selective and narrow interpretation of the legal authorities the Board holds is untenable under sound legal analysis.

DEQ’s actions, or failures to act, in each of these matters usurps the authority of the Board. This must not stand. On both issues, DEQ must respect and enforce the wishes of those citizen-members of the Board. Otherwise, the legal structure embodied in state law will be irreparably weakened and Virginians will be betrayed by yet another regulatory body. Where the Federal Energy Regulatory Commission and the Corps have failed us, our state regulators must step into the breach.

We ask that the public notice ordered by the Board be issued immediately and be accompanied by all records DEQ has relied upon. Also, we trust that you will order DEQ to abide by the Board’s order that further process be conducted for the upland certification for ACP.

Sincerely,

/s/ David Sligh

David Sligh
Regulatory Systems Investigator

cc: Honorable Matt Strickler, Virginia Secretary of Natural Resources
Director David Paylor, DEQ
Rick Webb, DPMC