



**June 21, 2018**

### **13,000 Comment on Adequacy of the NWP 12 Program for the ACP & MVP**

The request of the Virginia State Water Control Board for input from the public on the sufficiency of the U.S. Army Corps NWP 12 permit program for stream crossings of the Mountain Valley Pipeline (MVP) and the Atlantic Coast Pipeline (ACP) produced an outpouring of comments. The Department of Environmental Protection told ABRA that by the June 15 comment deadline, over 13,000 opinions were provided, as follows: 7,100 emails on the ACP, 2,600 emails on the MVP, and 3,500 letters and cards related to the ACP and/or MVP.

ABRA has received copies of several comments from its members and others, which are available at <https://www.abralliance.org/resources/comments-on-u-s-army-corps-of-engineers-nationwide-permit-12/>. Below are highlights of some of those comments:

Appalachian Mountain Advocates and Southern Environmental Law Center (joint comments filed on behalf of their respective clients)

- The Board should not count on other agencies within Governor Northam's administration to protect Virginia waters. We are not aware that DEQ took enforcement action against MVP for the recent problems with that project, but both the U.S. Forest Service and West Virginia did.
- It is very telling that the Board, having certified Nationwide Permit 12 and acceded to its use for these environmentally damaging projects, in the face of abundant evidence regarding the projects' greater than minimal (indeed, significant) adverse effects on water quality, now asks the public for technical information relating to specific stream and wetland crossings. This is the very kind of information that the Corps failed to require that Atlantic and Mountain Valley provide . . . that, in its absence, should have prevented the Board from certifying (as it asserts that it did) that the permitting of the ACP's and MVP's numerous stream and wetland crossings under Nationwide Permit 12 would not threaten water quality in Virginia. The Board must seize this opportunity to change the harmful direction of these projects.

- The Board should invoke its authority, specifically reserved in its April 2017 Certification of the Corps' nationwide permits, to take the following actions:
  1. Require individual crossing review for the most sensitive Virginia rivers, streams, and wetlands that will be crossed by the Atlantic Coast and Mountain Valley pipelines.
  2. Insist on more complete and accurate information from Atlantic and Mountain Valley about proposed crossing designs for these sensitive waterways, including all mitigation measures that will be used and any variances from existing standards (such as time-of-year restrictions) that have been requested; and
  3. Suspend all pipeline construction activity in Virginia until this review is complete, the Board has evaluated additional mitigation measures to protect water quality, and the Board has determined that it has reasonable assurance that water quality can be protected.

Augusta County Alliance, Nancy Sorrells, Co-Chair

- As I related to the Water Control Board at your last meeting, every agency is relying on the other agency to take the in-depth look at the individual stream crossings that is required by law. The result is that no one is looking, and no one is accountable. Fourteen of those VMRC (Virginia Marine Resources Commission) regulated stream crossings are in Augusta County. VMRC admitted to me that they did not visit a single one of those crossings and yet felt confident that the water quality would not be compromised by the ACP construction or operation. How could they know that without looking at the unique nature of each stream?

Augusta County Board of Supervisors

- One of the most significant problems with coverage under Nationwide Permit 12 is that cumulative harm to watersheds will be left unaddressed. For example, the Atlantic Coast Pipeline will cross the Calfpasture River and its tributaries in Augusta County 71 times according to the final environment impact statement for the project. The concentration of pipeline crossings and other pipeline activities along these streams and rivers presents significant risk to water quality that was not assessed as part of the Corps' Nationwide Permit 12 review or the state's 401-certification.

Susan McSwain, Shipman, VA (Nelson County)

- A 2017 Natural Resources Defense Council report estimated the sedimentation impact expected from ACP crossings in mountainous watersheds in Virginia and West Virginia that were expected to have the highest risk of sedimentation from pipeline construction. During construction, sedimentation in these watersheds was estimated to increase by 9,051 percent in Virginia and 805 percent in West Virginia. Post-construction sedimentation was estimated to increase by 319 percent and 31 percent, respectively.

### Nelson County Board of Supervisors

- Nationwide water quality permits are appropriate only for certain routine projects that have minimal effects on water quality. The Atlantic Coast Pipeline is not an appropriate candidate for coverage under NW 12 because of the fact that the ACP is a major construction project that will cross many waterbodies and wetlands in Nelson County, and over some of the most challenging terrain imaginable.
- Perhaps one of the most significant deficiencies in the U.S. Army Corps of Engineers nationwide permit . . . is that it considers each crossing in isolation . . . rather than taking into consideration both the related circumstances and conditions that may exist upstream and downstream, including the effects of the existence of multiple proposed stream crossings, unique upland conditions and cumulative impacts.

### Gary Robinson, Bolar, Virginia (lives in Little Valley, located in northern Bath County)

- The proposed route descends Little Mountain on ridges of unstable shale whose slopes exceed 60%, and then almost immediately crosses the stream. Regardless of precautions, any significant precipitation will send unacceptable amounts of sediment into Little Valley Run, degrading the stream and putting the trout and invertebrates at risk.
- Degradation of Little Valley Run is inevitable if the ACP is built as planned. The “one-size-fits-all” NWP-12 permit, issued by the Army Corps will not take into account all of the complex factors that would impact this stream. Little Valley Run is a textbook example of why we need evaluation of each stream crossing. I am asking the State Water Quality Control Board to reject approval of the Army Corps of Engineers Nationwide Permit 12 because it does not ensure the protection of Little Valley Run.

### Satchidananda Ashram-Yogaville (Buckingham County)

- We are concerned that the Corps. Permit fails to include consideration of the ACP HDD drilling lubricants potential to pollute our water in the construction of the pipeline crossing under the James River. These chemical lubricants could pollute the upstream sources for Yogaville community water, could pollute the James River (which provides recreational use for our many residents and guests), and could pollute our water supply for our drinking and our organic farm.

### Marilyn Shifflett, Nellysford, VA (Nelson County)

- Following the 1969 Camille flood . . . more than 200 landslides were recorded in Nelson County at the time of this event, many along the route of the ACP, and yet, the agency issuing a nationwide permit for this project has yet to visit the sites of this route. Nearly 90% of the ACP's route through our county is on sloped terrain and the final recommendations from USGS Report 99-0518 (<https://pubs.usgs.gov/of/1999/ofr-99-0518/ofr-99-0518.html>) was that special ordinances to protect Nelson slopes from development be put in place. How can the VA DEQ consider a nationwide permit sufficient when it's clear the USACE has not done site specific reviews in fragile areas?

### State Legislators' comments on NWP 12 (14 Delegates & 2 Senators signed)

- We are deeply troubled that the Commonwealth's government appears to be relying on the Nationwide Permit 12 issued by the U.S. Army Corps of Engineers, rather than the legal authority the Commonwealth has under Section 401 of the Clean Water Act, to protect the water quality in Virginia from the harm that we anticipate will be caused by MVP and ACP.
- We request that the Board and the DEQ place on hold the Section 401 "upland" certifications for both MVP and ACP until time when (1) this underlying public comment period concludes, (2) the Board has completed its review of the adequacy of Nationwide Permit 12, and (3) the Board has determined whether it will take additional actions.
- We request that the Board and DEQ immediately halt all development activities along the pipeline routes in Virginia during the time that petitions for rehearing remain pending before the Federal Energy Regulatory Commission (FERC) and various legal challenges to Virginia's 401 certifications, FERC permits, and other critical permits remain pending before the federal courts.
- We are concerned by recent media reports of mud and other debris running into streams and creeks due to the failure of sediment and erosion control measures undertaken by MVP during its construction activities. . . The Board and DEQ should therefore fully investigate these prior incidents and take MVP and its contractor's prior negligence into account before placing our water resources in further jeopardy of harm.

### Wild Virginia/Dominion Pipeline Monitoring Coalition (joint comments)

- We note that many waterbody crossings for the pipeline right-of-way, access roads, or other pipeline-related activities are not included in the table DEQ provided to guide comments on this public notice. Given those omissions, we question whether any of those impacts can have been adequately assessed, if they were assessed at all.
- We assert that the Board has authority to withdraw coverage for any number of waterbody crossings covered under Corps regulations, as long as it makes the finding described in the reserve clause contained in the general certification for NWPs. . . If the Board takes action now, the additional reviews and any additional water protection requirements those reviews compel can be effective at protecting our waters.

### Wintergreen Property Owners Association

- New evidence reinforces the need for DEQ to provide additional scrutiny of the environmental and public safety impacts of the ACP project near milepost 158.7 (where the ACP would cross the South Fork of the Rockfish River), and for DEQ to not accept the previous insufficient review the Corps deems acceptable as part of NWP 12.
- Certification for issuance of the Nationwide Permit 12 should be granted ONLY AFTER compliance with basic permit conditions is affirmatively demonstrated. As proffered by the pipeline developers, current intention appears to be directly, or at least potentially, in conflict with requirements of the permit.