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State takes pipeline comments until June 15

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BY JOHN BRUCE • STAFF WRITER

MONTEREY — The Virginia Department of Environmental Quality has extended a pipeline water quality permit comment period deadline to Friday, June 15 after temporarily shutting down its website May 22 as a cybersecurity precaution.

Spokeswoman Ann Regn said no data was compromised. The site was restored June 3.

In April, the Virginia State Water Control Board asked the DEQ to order the comment period on whether the permit approvals for the proposed Atlantic Coast Pipeline and Mountain Valley Pipeline are adequate to protect waterways. Written comments may be emailed to NWP12InfoOnACP@deq.virginia.gov for the proposed ACP or NWP12InfoOnMVP@deq.virginia.gov for the proposed MVP; sent by mail to DEQ, P.O. Box 1105, Richmond, Va. 23218; or delivered to DEQ, 1111 East Main Street, Richmond, Va. 23219.

According to a DEQ public notice, the purpose of the comment period is for interested persons to submit technical comments or information for the proposed ACP and MVP relevant to sufficiency of:

- The Corps NWP 12 permit's general and regional conditions as they relate to specific, wetland or stream crossings;
- The Corps NWP 12 permit authorization for each project, as related to specific, wetland or stream crossings; and
- The commonwealth's 401 water quality certification of NWP 12, as related to specific, wetland or stream crossings.

Wild Virginia's advice

“Do not be deterred by the fact that DEQ’s notice specifies that the comments are to be technical in nature,” advised David Sligh, conservation director of Wild Virginia, in a guide to making comments.

“Also, don’t think that the interests and threats you can address must be exactly at the crossing point. These activities will affect downstream areas, and though DEQ tries to deny or minimize their importance, downstream water quality must also be protected. This is especially important where multiple crossings of tributaries or a single stream will have cumulative impacts on downstream waters. In some cases, you may want to cite a group of crossings and discuss both the individual impacts and the combined impacts.”

Comments about water quality need not refer to health hazards, he said. “They (conditions) may simply make use of the area unpleasant or cause users to abandon these areas in favor of other more acceptable waters,” Sligh said.

He gave examples of recreational uses people can demand Virginia protect, including things such as:

- You, your kids, or your dogs like to jump in the stream;
- You hike, camp, or picnic along a stream;
- The waterbody is an amenity for your local community, the people who visit and enjoy your inn, bed and breakfast;
- You use public recreational areas, including the National Forest, state or national parks, local parks, etc., in and around the affected waterbody; and
- You fish, take photos of natural environments, bird, hunt, etc., on any part of the waterbody that may be affected.

Sediment pollution

Sligh also gave examples of impacts that may affect recreational uses, such as:

- Sediments that will be released during crossing construction activities and after, will affect the appearance and viability of using the stream. The Corps permit assumes that as long as the sediment in the waters only persists for a short time in the area directly in and around the construction site and that any discharges are minimized, this pollution need not be counted as an impairment of uses. Sediments in the water also interfere with fishing, because they lessen the ability of the fish to see lures and of the fisherman to fish by sight. This directly conflicts with WQS, which require that uses be protected at all times.
- Sediment deposition on the stream bottom that, in some cases, will stay in place for extended periods before they are swept away by high flow events. These occurrences will interfere with the aesthetic value of the stream, with the habitat that supports fish and the insects, etc., that they feed on. Sediments may also flow into reservoirs or impounded sections of streams and will not

disperse. Sediment input to such waters are one of the major sources of impairments and may also carry other pollutants into the reservoirs, such as nutrients which contribute to algae blooms.

- Elimination of streamside trees, which will drastically change the appearance of the stream and its surroundings and allow more light to reach the stream when leaves are off and the temperatures are highest. This also eliminates habitat for wildlife that lives near but not in the waterbody.
- Changes to the banks and the bed of the stream will change the appearance of these waters and affect uses. Elimination of vegetation from banks will increase the likelihood of erosion in those areas. Replacement of that vegetation by riprap, which the Corps discourages but will allow in some circumstances, eliminates the biological values provided by native plants, such as hiding places for fish and habitat that is necessary for other organisms.
- Changes to the physical structure of the stream bottom. The Corps requires that the ditch through the stream be filled after construction so that the “original contours” are restored. However, if the ditch is refilled with loose materials, that soil and rock mixture may wash away in storms, resulting in a depression and even exposing the pipeline. Where construction requires ripping or blasting through solid rock stream bottoms, the materials put in to replace that bottom may be much less durable than the bedrock and may degrade. In some cases, the companies propose to fill bedrock cuts with concrete,” Sligh said.

For the full version of Wild Virginia’s comment guide, access www.abralliance.org/wp-content/uploads/2018/05/Comments-in-Response-to-DEQ-Public-Notice-corrected.pdf.

The Corps Norfolk District has published a list of streams potentially affected by the proposed ACP available at www.abralliance.org/wp-content/uploads/2018/05/VA-waters-impacted-by-ACP-U.S.-Corps-of-Engineers-11-30-17.pdf.

On Dec. 12, 2017, the State Water Control Board approved a Section 401 water quality certification for the proposed ACP, issued Dec. 20 with a delayed effective date based on submission and approval of a karst mitigation plan, annual standards and specifications, and erosion and sediment control plans and stormwater management plans, and a report to the board and the public by DEQ on their adequacy.

Advocates blast water board

In a letter last week to Gov. Ralph Northam, Toby Mack, president of Energy Equipment and Infrastructure Alliance, added to pipeline advocate criticisms of the board for excess redundancy in requesting a public comment period.

Speaking for member labor unions and trade associations, Mack said the water permits “were already duly researched, engineered and granted,” and called the board decision “bad policy.”

The letter followed a federal appeals court ruling pulling authorization to build the pipeline due to inadequate protection of threatened and endangered species, coupled with the extension of the water public comment period.

“We are writing to express our concern with recent action by the Virginia State Water Control Board which directed the Virginia Department of Environmental Quality to open a new public comment period challenging whether Nationwide 12 federal water quality permits, previously issued by the U.S. Army Corps of Engineers for all of the ACP’s nearly 900 Virginia water crossings, were adequate to protect the state’s water quality,” Mack said in the letter.

“The federal permits were issued after the project’s developers spent more than three years devising the safest and most environmentally responsible route for the pipeline, studying more than 6,000 miles of potential routes before choosing the best 600-mile route with the least impact.

“More than 300 route adjustments were made to avoid environmentally sensitive areas such as wetlands, wildlife habitats, drinking water sources and sensitive geologic features.

“Construction methods have been designed and mandated to minimize impacts on water bodies and sensitive aquatic species habitats, and to control erosion and sedimentation. Nevertheless, ACP’s opponents argue that the USACE Nationwide 12 permits should be rescinded in favor of requiring state agencies to approve individual permits for each of the pipeline’s water crossings, a process that would significantly delay and add unnecessary cost to the project without benefit. The board’s action opens the door to that possibility,” Mack said.

Wild Virginia’s Sligh pointed out the water control board is doing its job as prescribed by law. The Corps does not measure state water quality standards. That duty is reserved for the states.

On Monday, June 4, pipeline managing partner Dominion Energy requested the Federal Energy Regulatory Commission issue a notice to proceed with construction in North Carolina, effective June 14.

In repeated statements, Dominion said construction would be limited to areas unaffected by the court decision on listed species.

Following that strategy implies FERC would violate its own order to authorize construction, according to the Southern Environmental Law Center and Appalachian Mountain Advocates, which filed a protest last week to the pipeline company’s sealed submission defining pipeline sections affected by the court order.

Suspend construction, feds told

“Take of even a single individual of a listed species without authorization from (the U.S. Fish and Wildlife Service) carries potential civil and criminal penalties. The only responsible path forward is for FERC to enforce the terms of its own order by stopping pipeline construction until Atlantic demonstrates it can construct the pipeline along the proposed route in compliance with the Endangered Species Act, pursuant to a valid Incidental Take Statement issued by the Fish and Wildlife Service after completing Section 7 consultation,” said SELC attorneys Patrick Hunter and Gregory Buppert, and Benjamin Lockett of Appalachian Mountain Advocates.

“Atlantic’s public statements about the contents of its non-public filing suggest Atlantic is departing from the existing environmental review on the project that found greater predicted impacts to endangered species and their habitat. Even if it was FERC’s role to decide which parts

of the project can proceed without impacting endangered species (which it is not), FERC would need significantly more information before it to assess whether construction on 2018 spreads will harm, harass, or kill endangered species,” the attorneys said.

SELC filed the statement on behalf of Cowpasture River Preservation Association, Defenders of Wildlife, Friends of Buckingham, Chesapeake Bay Foundation, Highlanders for Responsible Development, Jackson River Preservation Association, Potomac Riverkeeper, Shenandoah Riverkeeper, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, Sierra Club, Virginia Wilderness Committee, Sound Rivers, and Winyah Rivers Foundation. Appalachian Mountain Advocates filled on behalf of Appalachian Voices, Chesapeake Climate Action Network, Sierra Club, and Wild Virginia.

In a separate FERC filing dated May 18, SELC pointed to impracticality of moving forward with construction.

“A piecemeal approach to constructing a 600-mile pipeline makes even less sense because of the substantial but ultimately unnecessary costs Atlantic could incur if consultation with FWS requires a significant route change. If FWS requires a pipeline reroute to avoid or minimize take, Atlantic and its contracted shippers, primarily regulated power-generation utilities in Virginia and North Carolina, would be on the hook for constructing a pipeline in its original path, then excavating that pipeline and rehabilitating the land, and later constructing the pipeline anew in a different location. The utility shippers may then seek to pass these costs through to their customers in Virginia and North Carolina, putting the burden on ratepayers to pay for unnecessary and unreasonably incurred expenses. Setting legal concerns aside, the far more prudent approach is to wait and determine if this pipeline route is still viable,” SELC said.

“There is no apparent reason to rush this project forward with one key approval invalidated and challenges to several others pending. Undoubtedly, Atlantic wants to move forward with construction because the fundamental problem with the pipeline — that it is not a public necessity — is becoming more obvious with time. The demand for new electric power generation in Virginia and North Carolina is not growing and existing pipelines and other existing gas infrastructure can meet the demand that does exist much more cost effectively than anew, greenfield project. FERC should not be concerned that a stay of pipeline construction will harm utility customers in Virginia and North Carolina. That alarmist message from Atlantic is unfounded,” SELC said.