

# The Recorder

*Inclusive, independent, indispensable.*

## State agencies failed to act, groups assert

August 23, 2018

RICHMOND — Pipeline opponents were aghast following Tuesday’s meeting of the State Water Control Board.

The SWCB held a hearing on Dominion’s proposed Atlantic Coast Pipeline, to consider how Virginia’s Department of Environmental Quality will regulate water quality during and after construction of the interstate gas line.

Following hundreds of objections to how DEQ has handled the process so far, the board voted to direct DEQ to “aggressively enforce” violations of water pollution plans for both the Mountain Valley Pipeline and the ACP. The board also directed DEQ to give information to the Army Corps of Engineers. The Corps is in charge of regulating and monitoring where the pipeline would cross streams.

One group of opponents, Appalachian Voices, issued a statement Tuesday afternoon saying, “Today’s meeting was at maximum capacity (300-plus people) and virtually all of those in attendance were dissatisfied with the action, which does little to protect Virginia’s water quality from pipeline construction impacts going forward. Over the summer, the board received some 13,000 comments from the public, yet at the meeting, it allowed pipeline opponents only 30 minutes total to respond to DEQ’s presentation.”

Further, the group explained, a motion that would have initiated a hearing to consider whether to modify, amend, or revoke state permits for the pipelines failed 3-4; board members Robert Wayland, who offered the motion, Roberta Kellum and Nissa Dean voted for the measure.

Appalachian Voices’ Virginia program manager Peter Anderson said, “Thousands of citizens across the commonwealth have raised their voices and concerns about the folly of these two fracked-gas pipelines, experts have testified to the dangers of the projects as evidenced by countless construction violations already, and elected officials have objected to the state’s rushed review process. Despite this, and despite Gov. Northam’s campaign promise to ensure thorough stream-by-stream reviews, his administration has ceded the quality of Virginia’s waters to Trump’s Corps of Engineers.”

Anderson noted three members of the State Water Control Board “stood up for Virginia, recognizing that despite the assurances they received from DEQ, the scale of these projects merit greater scrutiny that could lead to amendments or even revocation of the permits.

“Now more than ever, Virginians need Gov. Northam to take a stand to put Virginia’s water quality above the corporate interests pushing these dangerous, risky fracked-gas pipelines,” he said.

The Southern Environmental Law Center also weighed in after the Virginia State Water Control Board’s decision not to take steps to amend or revoke the water certifications for the Atlantic Coast and Mountain Valley Pipelines.

“The board’s action today squandered a powerful opportunity to protect the waters in communities across Virginia,” said SELC senior attorney Greg Buppert. “We have seen firsthand that pipeline construction in Virginia cannot be done without causing serious and permanent sedimentation problems to rivers and streams. The ACP and MVP will cross Virginia waters more than a thousand times. The people of the commonwealth deserve better than blanket assurances that everything will be OK when the facts on the ground show that they are not.”

The Chesapeake Climate Action Network said the DEQ provided “misleading and incomplete information” to the SWCB during its review of whether the U.S. Army Corps of Engineers’ Nationwide Permit 12 for the ACP and MVP is sufficient to protect Virginia’s water quality.

“The board failed to take its opportunity to revoke this permit, instead calling on the DEQ to aggressively enforce the erosion and stormwater controls for the pipelines and respond to complaints promptly,” CCAN said in a statement Tuesday.

“The Department of Environmental Quality, headed by the controversial David Paylor, continued to strongly recommend that the board allow pipeline construction to proceed, despite mounting evidence that MVP and ACP have already harmed water quality,” CCAN said.

CCAN’s general counsel Anne Havemann said, “The pipeline companies have cut corners and aggressively pushed for approval before complete information about the impacts were understood. Reviewing federal courts have thrown out key permits for both pipelines, finding that agencies failed to adequately protect endangered species, national forests, and treasured places such as the Blue Ridge Parkway. These invalidated permits were so critical that FERC has halted construction on both pipelines.

“David Paylor’s DEQ likewise pushed for approval from the State Water Control Board before the impacts of the pipelines were understood — the agency recommended approval before critical pollution mitigation plans were in place,” she continued. “Today was the board’s opportunity to hit pause on construction and require the agency to fully account for impacts to Virginia’s waters — a desperately needed pause for the landowners whose drinking water, streams, and property are threatened by these pipelines. We’re sorely disappointed that the board passed up this critical opportunity.

“Instead of requiring an individual review, the board instead called on DEQ to conduct aggressive compliance efforts. While we are still reviewing the Board’s decision it appears to have no teeth, and could allow sediment to continue to be dumped into the water with impunity. In the midst of public outcry and ongoing harm to water quality, we cannot applaud a decision that merely requires the DEQ do the job it should have been doing all along. Today is a shameful day for David Paylor’s Department of Environmental Quality, and a sad day for Virginians. But, the fight is not over. We will continue taking these pipelines to court. We are confident that the federal courts will continue to overturn the insufficient permits for these pipelines, and evidence will prove once and for all that these pipelines should never be built.”

The Mountain Valley Pipeline has been issued six notices of violation for failing to prevent erosion and sediment from damaging streams. Five notices were issued by the West Virginia DEQ and one by Virginia’s DEQ, which addressed six separate areas of concern.

The Atlantic Coast Pipeline, which is not yet under construction in Virginia, has been issued one notice of violation for tree-felling in buffer zones meant to protect stream and wetland crossings. Additionally, the citizen monitoring group Mountain Valley Watch has submitted 58 reports of suspected improper erosion controls at Southwest Virginia construction sites to the DEQ.

The majority of comments submitted concerning this permit (9,100 of 17,000) urged the State Water Control Board to reject the Army Corps’ “blanket” permit, and to conduct individual stream crossing reviews instead.

According to an analysis conducted by Wild Virginia and the Dominion Pipeline Monitoring Coalition, 815 of the comments submitted were unique, 695 of which were opposed to the permit or the pipelines in general. The comments in opposition also provided far more detailed information than the comments in support.

“DEQ even misrepresented the public opposition to the projects,” CCAN noted. “An analysis of the comments by Wild Virginia and the Dominion Pipeline Monitoring Coalition found that a majority of commenters questioned whether the Army Corps’ nationwide permit was sufficient, with 9,141 opposing and 8,318 in support. The DEQ presented a much different number: Only 4,582 opposed and 8,086 in support. The discrepancy can be explained by the fact that DEQ disregarded all petitions, though it did not disregard form letters. This decision skewed the result in favor of the NWP 12. This approach is unsupportable. If form documents that express no unique opinions and provide no unique information are to be counted individually, then petition signatures should also have been counted,” the group said.

“This hearing came at an opportune time, as a federal appeals court has revoked key permits for both the Atlantic Coast Pipeline and Mountain Valley Pipeline, leading the Federal Energy Regulatory Commission to order a halt to all new construction activity for both pipelines.”

CCAN is involved in a lawsuit challenging FERC’s certificate of public convenience and necessity for the Atlantic Coast Pipeline and the Mountain Valley Pipeline, and efforts to challenge the Army Corps’ permit for the pipelines.