

# The Recorder

*Inclusive, independent, indispensable.*

## More hurdles block pipeline plan

Virginia sues MVP for violations; ACP work suspended

*December 13, 2018*

BY JOHN BRUCE • STAFF WRITER

MONTEREY — Following a court order Friday, Dec. 7, Dominion filed notice with the Federal Energy Regulatory Commission that it is suspending construction along the entirety of the 600-mile route of the proposed Atlantic Coast Pipeline, except as needed for safety and to prevent environmental damage.

The Fourth Circuit Court of Appeals stayed U.S. Fish and Wildlife Service approvals for the Atlantic Coast Pipeline, which must be in place before Dominion can harm threatened and endangered species.

The court threw out the original permit in May.

In a written statement, Atlantic Coast Pipeline spokesman Aaron Ruby of Dominion said the company has “temporarily stopped work on the project until we receive clarification from the court on the scope of the stay.

“We strongly disagree with the court’s decision. We believe the court’s stay is unwarranted and overly broad, so we have filed a motion for emergency clarification on the scope of the court’s decision.

“We do not believe there is any basis for the court to stay the entire Biological Opinion, which authorizes all 600 miles of the project. The issues in this case involve a much narrower scope of the project – only four species and roughly 100 miles in West Virginia and Virginia. We will have more clarity on the scope of the court’s stay and its impact on the project when the court responds to our motion.

“We believe the Fish and Wildlife Service thoroughly addressed the issues raised by the court and the petitioners in this case when it re-authorized the project’s Biological Opinion and Incidental Take Statement in September,” Ruby continued.

“In developing this project over the last four years, we have taken extraordinary care to protect the sensitive species at issue in this case. We will vigorously defend the agency’s re-authorizations and the measures we’ve taken to protect the species in oral arguments before the court early next year.

“The Atlantic Coast Pipeline is vitally important to the economic and environmental future of our region. Public utilities are depending on this infrastructure to generate cleaner electricity and provide more affordable, reliable energy to consumers and businesses. Delaying the project will only force consumers and businesses to pay higher energy costs and slow down the transition to cleaner energy. Consumers are already paying higher energy costs than they should and major industries are having their natural gas service shut off during the winter months. We cannot solve these challenges without new infrastructure,” Ruby said.

The same day, the Virginia State Corporation Commission issued a final order on Dominion Energy’s Integrated Resource Plan, the blueprint for its long-term plans for meeting energy needs.

“While an IRP is a planning document and does not approve any specific expenditure, legally-mandated costs are likely to be borne by customers in one form or another, so it is essential that an IRP provide the public and policymakers with projected costs for such mandates that are as accurate as possible,” the order issued last Friday states.

Said attorney Will Cleveland of the Southern Environmental Law Center, “The commission’s strong statement in outright rejecting Dominion’s IRP shows a level of scrutiny that is crucial for Virginia as it moves forward with energy plans that truly serve the public interest, both economically and environmentally.

“In rejecting the company’s inflated forecast of electricity demand, in particular, the order reaffirms what SELC has argued for years about Dominion’s flawed planning process and calls into question the need for proposed projects like the Atlantic Coast Pipeline,” Cleveland said.

### **Documents withheld**

Meanwhile, Wild Virginia had requested documents about meetings and deliberations that might be related to the ACP, and the governor’s office supplied some, but withheld crucial information, according to Wild Virginia’s David Sligh.

“When faced with a choice between open government and concealment, Gov. Northam made the wrong choice, relying on state law provisions that allow but do not require him to shield certain public information from the people of Virginia,” a press release explained today. “We are disappointed that the governor has refused to release all the records we requested. The result is

that, while we have acquired some information, those documents do not answer vital questions that many Virginians are asking:

- Did Gov. Northam manipulate the process for air board appointments to influence the upcoming decision on Dominion’s proposed Buckingham compressor station for the ACP?
- Did Gov. Northam discuss the ACP and Air Board appointments in a private meeting with Dominion officials on Nov. 19, when a public furor over the changes in Air Board membership was raging?

“As we stated in our requests, while we anticipated that the administration may claim exemptions provided in the statute, we hoped they would choose to let the public see the records. Statements from the Northam administration about the Air Board personnel changes have been met with widespread public skepticism ... If assertions provided by administration spokespersons are true, the governor could only benefit from a full public airing of the records. His hesitancy to do so can only contribute to Virginian’s doubts and taint the regulatory process for the ACP,” the organization said.

“Wild Virginia’s blog post ([wildvirginia.org/governor-uses-loophole](http://wildvirginia.org/governor-uses-loophole) hide-documents-responses-foiasair-water-boards-meeting-dominion/) describes the records that we did acquire from the governor and provides links so all can read and judge the sufficiency of the governor’s responses for themselves. We believe the circumstances surrounding the Air Pollution Control Board appointments continue to create a question whether principles of due process have been breached for the Buckingham compressor station permit. We hoped the governor would remove this cloud of doubt. Wild Virginia calls on the governor to correct this problem and we call on our members across Virginia and our allies to continue to call for Rubin and Bleicher to be allowed to vote at next week’s Air Board hearing. The people of Union Hill and all Virginian’s are depending on a fair process and this action can help ensure it.”

### **Mountain Valley Pipeline sued**

Meanwhile, the Mountain Valley Pipeline LLC was also dealt a blow today, when Virginia filed a lawsuit against the company.

Attorney General Mark Herring and the Virginia Department of Environmental Quality sued for repeated environmental violations in Craig, Franklin, Giles, Montgomery, and Roanoke counties, particularly violations that occurred during significant rain events over the last year, according to a release issued by Herring.

The suit alleges that MVP violated Virginia’s environmental laws and regulations as well as MVP’s Clean Water Act Section 401 Water Quality Certification by failing to control sediment and stormwater runoff resulting in impacts to waterways and roads. “The suit seeks the maximum allowable civil penalties and a court order to force MVP to comply with environmental laws and regulations. The matter was referred to the Office of Attorney General by the Director of the Department of Environmental Quality after numerous inspections identified violations at multiple construction sites,” the AG said.

“This suit alleges serious and numerous violations of environmental laws that caused unpermitted impacts to waterways and roads in multiple counties in Southwest Virginia,” said Herring. “We’re asking the court for an enforceable order that will help us ensure compliance going forward, and for penalties for MVP’s violations.”

DEQ director David Paylor added, “The Northam administration has empowered DEQ to pursue the full course of action necessary to enforce Virginia’s environmental standards and to protect our natural resources. In this case, we determined referral to the Office of the Attorney General was prudent in order to seek faster resolution to these violations. We appreciate the Attorney General’s coordination to ensure necessary compliance.”

The complaint against MVP alleges that DEQ inspectors identified violations of environmental laws, regulations, and permits in May, June, July, August, September, and October while investigating complaints it had received. In addition, an inspection company contracted by DEQ to monitor MVP’s compliance identified more than 300 violations between June and mid-November, mostly related to improper erosion control and stormwater management. Among the laws that MVP is alleged to have violated are:

- The State Water Control Law,
- The Virginia Stormwater Management Act,
- The Erosion and Sediment Control Law,
- The Virginia Stormwater Management Program Regulation,
- The Erosion and Sediment Control Regulations,
- The Virginia Water Protection Permit Program Regulations,
- Section 401 Water Quality Certification 17-001 issued to MVP.
- MVP’s Annual Standards and Specifications,
- MVP’s Site Specific Erosion and Sediment Control Plan and
- MVP’s Site Specific Stormwater Management Plans.

The suit alleges 10 counts of illegal actions by MVP:

- Unpermitted discharge,
- Failure to maintain and repair erosion and sediment control structures,
- Failure to repair erosion and sediment controls within required timeframe,

- Failure to apply temporary or permanent stabilization,
- Sediment off of right of way,
- Failure to install clean water diversions,
- Failure to keep a daily log of activity documenting project activities related to environmental permit compliance and corrective measures implemented,
- Failure to install adequate channel, flume, or slope drain structure,
- Failure to construct vehicular stream crossing, and
- Failure to maintain access roads.

The case has been filed in Henrico County Circuit Court.