

# SOUTHERN ENVIRONMENTAL LAW CENTER

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December 1, 2018

*Via email to:*

Richard Langford, Chair  
Virginia Air Pollution Control Board  
Members of the Air Pollution Control Board  
[citizenboards@deq.virginia.gov](mailto:citizenboards@deq.virginia.gov)

David Paylor, Director  
Virginia Department of Environmental Quality  
P.O. Box 1105  
Richmond, VA 23219  
[dpaylor@gov.state.va.us](mailto:dpaylor@gov.state.va.us)

**Re: Virginia Air Pollution Control Board's review of the air quality permit for Dominion's proposed Buckingham compressor station (No. 21599)**

Dear Chairman Langford, Members of the Board, and Director Paylor:

We are writing to express our serious concerns with Dominion's attempt to propose new conditions and submit new information to the Air Pollution Control Board after the close of the record for the Buckingham compressor station permit. Some of this new information is incomplete and contains inaccuracies that could improperly influence the Board's decision. At a minimum, the Board and DEQ must give the public an opportunity to respond and correct the record at the December 10, 2018 Board meeting prior to a vote on this permit.

First, the Board and DEQ should reject Dominion's eleventh-hour attempt to "insert" new conditions and provisions into the air quality permit without input from the public. Several of the proposed amendments purport to satisfy the Board's obligation under Va. Code Ann. § 10.1-1307(E) to consider the project's environmental justice implications for the Union Hill community. Apparently concerned about its ability to meet the requirements of that statute, Dominion proposed on November 9 that the Board condition the permit on a memorandum of understanding between Dominion and the Dominion-backed Union Hill Community Development Corporation regarding a \$5.1 million investment. But whether such a condition would satisfy the requirements of § 10.1-1307(E) is a question the public must be permitted to weigh in on. Indeed, we

believe it would not. The governing statute does not permit site-suitability concerns—like the risk here of disproportionate harm to the historic, African-American community of Union Hill—to be swept away with the promise of money to unrelated community development projects. Further, to allow Dominion to unilaterally amend a proposed permit after the close of the comment period would invite abuse of the process and frustrate meaningful public participation.

Second, DEQ and the Board should reject Dominion’s last-minute submission of additional supporting materials, including a community engagement report summarizing the proposed \$5.1 million investment in Buckingham County. Attached to that report were several letters from members of the public dated well after the close of the comment period. Yet when SELC submitted a letter to the Board on October 22, 2018, DEQ replied that the public comment period was closed. Another letter in Dominion’s materials is dated October 2017, but the company does not explain why it wasn’t provided during the comment period even though it was available. It cannot be the case that public comments favorable to Dominion’s application may be considered after the comment deadline, while those in opposition may not. Further, the community engagement report contains incomplete information and inaccuracies about how Dominion has engaged the Union Hill community. These statements and information have not been subject to public review and scrutiny, a necessary part of informed Board decision-making.

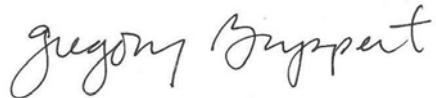
Beyond fundamental principles of fairness, the Board’s regulations do not allow it to consider additional information submitted by the applicant after the close of the public comment period. Rather, the applicable regulation establishes a limited universe of materials the Board must consider: (1) public comments received *during the public comment period* made part of the record; (2) any explanation of those comments made at the board meeting; (3) the comments and recommendation of DEQ; and (4) the agency files. 9 Va. Admin. Code § 5-80-25(I). If Dominion believed these materials were relevant to the Board’s decision, it should have submitted them prior to the release of the draft permit for public comment—as it did with other supplemental application materials.

Many concerned members of the public have taken the time to engage in a good-faith review of the draft permit and supporting documents. Understandably, they are struggling to make sense of a process that would allow Dominion to change the terms of that draft permit and to continue to add to the record many weeks after the close of the comment period. At a minimum, basic fairness and compliance with the Board’s regulations require that the public be afforded time to address these issues at the December 10 meeting. Finally, the Board itself has requested accurate demographic

information for the Union Hill community, further underscoring the important need for public involvement at this next stage of the process.

Please provide a formal, public announcement addressing these issues as soon as possible. Thank you for your prompt attention to these important matters.

Sincerely,

A handwritten signature in cursive script that reads "Gregory Buppert".

Gregory Buppert  
Southern Environmental Law Center

*On behalf of Friends of Buckingham*

A handwritten signature in cursive script that reads "Margaret L. Sanner".

Margaret L. Sanner  
Chesapeake Bay Foundation

CC: Matthew Gooch, Assistant Attorney General