



ABRA Update #213 – January 17, 2019

Challenge to ACP Water Certification Is Rejected by Fourth Circuit

The Fourth Circuit Court of Appeals on January 14 denied an appeal for review of the water quality certificate issued for the Atlantic Coast Pipeline (ACP) by the Virginia State Water Pollution Control Board under Section 401 of the federal Clean Water Act.

The case was filed with the Court in January 2018 and argued on September 28. The petitioners, most of whom are ABRA members, were represented by the Southern Environmental Law Center, Appalachian Mountain Advocates and the Chesapeake Bay Foundation. The principal contentions in the case were that approval of the 401-certificate for the ACP was arbitrary and capricious ACP because the Board:

- Invalidated its own findings that the Army Corps of Engineers Nationwide Permit 12 was adequate when it reopened a comment period for the Corps permit;
- Failed to assess the combined impacts on water quality resulting from multiple areas of construction within individual watershed areas;
- Failed to conduct an adequate antidegradation review; and
- Failed to ensure that the water quality in karst geology regions would be protected.

[The Court's opinion](#) rejected all four of these arguments.

The Water Board at its December 13 [meeting to initiate a formal hearing process to consider revoking the 401 Certification of the Mountain Valley Pipeline \(MVP\)](#) due to the numerous problems and violations that have occurred with that project. While one of the Board members suggested a similar action be considered for the ACP, it was deemed to be premature since earth moving construction has not yet begun in Virginia.

West Virginia Opens Comment Period for Changes to Stream Crossing Rules

Modifications to the West Virginia regulations covering stream crossings for pipelines and similar projects have been proposed by the state's Department of Environmental Protection. The modifications address the issue of the state's existing requirement governing the timeframe within which stream crossing must be completed within 72 hours. Public comments on the proposal must be submitted by March 4, 2019. For further details on the proposal, click [here](#).

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FERC Approves ACP Stabilization Measures

A plan for stabilization measures on the Atlantic Coast Pipeline route during cessation of construction activity on the project was [approved January 10](#) by the Federal Energy Regulatory Commission. The plan had been submitted to the agency in the wake of the [Fourth Circuit Court of Appeals December 7 decision](#) to stay the U.S. Fish and Wildlife's Biological Opinion and Incidental Take Statement for the project. The Southern Environmental Law Center, Appalachian Mountain Advocates and Chesapeake Bay Foundation had [written FERC on December 21](#) asking that the agency to require the company to remove strung pipe from the right-of-way rather than allow it to continue to install pipe along a route that is not authorized by law, but the request was ignored.

In the News:

Local/Atlantic Coast Pipeline

Timing of federal case could add \$1B to Atlantic Coast Pipeline costs

- Charlotte Business Journal – 1/15/19
<https://www.bizjournals.com/charlotte/news/2019/01/15/timing-of-federal-case-could-add-1b-to-atlantic.html>
Costs could rise by \$1 Billion, in-service date as late as 2021...*if* ACP succeeds in having all of its permits reinstated.

Virginia Air Board Member Who Approved a Controversial Atlantic Coast Pipeline Permit Has Links to a Dominion Gas Partner

- DeSmog – 1/16/19
<https://www.desmogblog.com/2019/01/16/virginia-air-board-william-ferguson-atlantic-coast-pipeline-union-hill-dominion>
But then, nearly everybody in Virginia seems to...these days. That's the problem.

ACP pipeline delay having negative economic impact

- The Inter-Mountain – 1/17/19
<http://www.theintermountain.com/news/local-news/2019/01/acp-pipeline-delay-having-negative-economic-impact/>

Gazette editorial: Who are the real rogues?

- Charleston Gazette-Mail – 1/10/19
https://www.wvgazettemail.com/opinion/gazette_opinion/editorial/gazette-editorial-who-are-the-real-rogues/article_e535fd93-26f6-583b-8988-02d6aa589d3f.html
Federal agencies, tasked with protecting our rivers and forests are the ones who went “rogue”, not environmental advocates pressing for those same agencies to fulfill their obligations to protect us under the law.

Straight answers needed on pipeline

- The Sampson Independent – 1/17/19
<https://www.clintonnc.com/opinion/op-ed/36533/straight-answers-needed-on-pipeline>

Regional/Mountain Valley Pipeline, other

Mountain Valley Pipeline files response to state's lawsuit

- The Roanoke Times – 1/11/19
https://www.roanoke.com/business/news/mountain-valley-pipeline-files-response-to-state-s-lawsuit/article_96dbofec-5350-5822-b027-83b535423217.html
In its first detailed reply to a legal enforcement action brought by the Virginia Department of Environmental Quality and the State Water Control Board, the company asked a judge to dismiss some of the claims.

Mountain Valley Pipeline starts the new year with new complications

- The Roanoke Times – 1/16/19

https://www.roanoke.com/business/news/mountain-valley-pipeline-starts-the-new-year-with-new-complications/article_8ebe74a6-9528-5bad-aae8-77d986d29d8f.html

West Virginia has reopened a public comment period for modifications to a combined state and federal permitting process that Mountain Valley must complete before it can dig trenches through streams and wetlands.

Franklin County supervisors approve permit for natural gas gate station

- The Roanoke Times – 1/15/19

https://www.roanoke.com/news/local/franklin_county/franklin-county-supervisors-approve-permit-for-natural-gas-gate-station/article_9a8fae67-ee9d-55d5-a47a-7ac42ceb07e.html

Pipeline wars arrive at Supreme Court. What's next?

- E&E News – 1/16/19

<https://www.eenews.net/stories/1060114999>

Related:

- <https://www.naturalgasintel.com/articles/117083-supreme-court-may-consider-challenge-to-mvp-natural-gas-act>

Big Picture

Are We Living Through Climate Change's Worst-Case Scenario?

- The Atlantic – 1/15/19

<https://www.theatlantic.com/science/archive/2019/01/rcp-85-the-climate-change-disaster-scenario/579700/>

"We're a lot closer than we should be," one Stanford scientist warned.

McNamee, FERC to Consider Recusals 'On a Case-by-Case Basis'

- Natural Gas Intelligence – 1/10/19

<https://www.naturalgasintel.com/articles/117030-mcnamee-ferc-to-consider-recusals-on-a-case-by-case-basis>

Commissioner Bernard McNamee has already recused himself from the docket of the Department of Energy's (DOE) controversial 2017 notice of proposed rulemaking (NOPR) and is apparently considering taking similar action regarding FERC's ongoing examination of the resilience of the nation's power grid.

Immediate fossil fuel phaseout could arrest climate change – study

- The Guardian – 1/15/19

<https://www.theguardian.com/environment/2019/jan/15/immediate-fossil-fuel-phaseout-could-arrest-climate-change-study>

Scientists say it may still technically be possible to limit warming to 1.5C if drastic action is taken now.

The Myth of 'Clean' Natural Gas

- Environmental Working Group – 1/15/19

<https://www.ewg.org/news-and-analysis/2019/01/myth-clean-natural-gas>

2019 US renewable generation additions expected to far outpace gas: EIA

- Utility Dive – 1/11/19

<https://www.utilitydive.com/news/2019-us-renewable-generation-additions-expected-to-far-outpace-gas-eia/545836/>

Renewable additions are projected to more than double gas in 2019.

Climate and energy news in 2018 actually wasn't all bad

- Vox – 1/1/19

<https://www.vox.com/2018/12/28/18136795/climate-change-2018-100-percent-renewable-energy-green-new-deal>