



ABRA Update #219 – February 28, 2019

Fourth Circuit Denies Review Hearing for ACP in Forest Service Case

An appeal by Atlantic Coast Pipeline, LLC (ACP, LLC) for a rehearing of the December 13, 2018 decision of the Fourth Circuit Court of Appeals to vacate the U.S. Forest Service permit for the Atlantic Coast Pipeline (ACP) was [rejected on February 25](#). The ACP, LLC's January 28 petition, which was supported by a February 11 filing from the Forest Service, sought an *en banc* hearing, that is a hearing before all 15 sitting judges on the Fourth Circuit. The Fourth Circuit rarely grants such requests, on average only 0.3% of the cases in which such a request is made.

Dominion Energy, the largest owner of the ACP project, [issued a statement the following day](#) that it expects to appeal the decision to the Supreme Court of the United States in the next 90 days. During the most recently completed term of the Supreme Court (October 2, 2017 to September 30, 2018), 6,315 cases were filed with the Court for consideration. Only 69 were accepted for consideration.

Dominion has also indicated it will continue to seek an override of the Fourth Circuit decision through action by Congress. Its efforts to date have not been successful. However, ABRA urged in a special February 11 Action Alert that those concerned about Dominion's attempts should write their Representative in the U.S. Congress. Those who have not yet communicated with their U.S. House of Representative member are urged to do so. The Action Alert is available [here](#). For assistance with talking points in your communication, click [here](#).

Virginia Water Board Urged to Revoke MVP Water Certification

Attorneys representing 10 local, state and regional organizations sent a letter on February 28 to the members of the Virginia State Water Control Board, urging the Board to start promptly a process to revoke the water quality certification issued for the Mountain Valley Pipeline (MVP). At the same time, the attorneys strongly urge the Board to use enforcement tools available to it to stop work on the pipeline while the revocation process goes forward. The [Water Control Board is to meet March 1](#) at 10 am to discuss how to proceed with considering a possible revocation of the MVP certification, a decision the Board made over two months ago. A live streaming of the Water Board meeting will be available at <http://www.facebook.com/vasierraclub>.

The attorneys' letter was written in response to a letter MVP sent to Department of Environmental Quality Director David Paylor on February 12, and subsequently given to Water Board members, claiming that a "cooperative effort [between MVP and DEQ] on the Project has achieved a high level of environmental protection and overall is in very good order." [The attorneys' letter](#) takes issue with that view:

<p>Volunteer for ABRA's Pipeline CSI Program</p> <p><u>Volunteer</u></p>	<p>Submit a report to the Pipeline CSI</p> <p><u>Report</u></p>	<p>Stay informed, like us on Facebook.</p> 	<p>Support ABRA financially</p> <p><u>GiveNow</u></p>
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The State Water Control Board (Board) has the authority to revoke the water quality certification for upland activities that it issued to Mountain Valley Pipeline, LLC (MVP). The violations MVP has committed and the damage it has done easily meet and exceed the thresholds defined in Virginia law upon which revocation may be based.

We strongly urge the Board to order the Department of Environmental Quality (DEQ) to schedule and issue notice for a formal hearing by a specific date not to exceed ten days from the date of your decision. The delay that has followed the Board's order to DEQ to take those steps, issued on December 13, 2018, has already allowed harm to the environment and people to continue unabated for eleven weeks. In addition to proceeding to a revocation hearing for the water quality certification, we ask the Board to take all possible steps to stop work on this project immediately.

Organizations represented by the signers of the letters include six ABRA members: Appalachian Mountain Advocates, Appalachian Voices, Chesapeake Climate Action Network, Southern Environmental Law Center, Sierra Club and Wild Virginia, plus Preserve Floyd, Chesapeake Bay Foundation, Preserve Bent Mountain, Preserve Craig and POWHR Coalition (Protect Our Water, Heritage Rights).

New Presentation Illustrates the Environmental Folly of the ACP

ABRA's Pipeline CSI program has developed a new slide presentation describing the unavoidable impact of the ACP on water resources and the failure of regulatory oversight. The presentation, Pending Construction of the ACP in the Virginia Mountains: Empty Assurances, compares government and company promises with the realities of environmental review and enforcement and the record of ACP construction in West Virginia. The presentation is available for download [here](#), as a PowerPoint or as a PDF with slide notes.

In the News:

Local/Atlantic Coast Pipeline

Court rejects pipeline developers' request to overturn AT decision

- Southern Environmental Law Center – 2/26/19

<https://www.southernenvironment.org/news-and-press/news-feed/court-rejects-pipeline-developers-request-to-overturn-at-decision>

Dominion expects to appeal the decision to the U.S. Supreme Court within 90 days. The Court may or may not decide to hear the case.

Related:

- <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/022619-dominion-eyes-avenues-to-get-acp-natural-gas-pipeline-project-over-court-obstacle>

William Limpert column: Pipelines put health and environment at risk - and we don't need them anyway

- Richmond Times-Dispatch – 2/27/19

https://www.richmond.com/opinion/their-opinion/guest-columnists/william-limpert-column-pipelines-put-health-and-environment-at-risk/article_b3dc7e7d-d210-585d-9fce-8372789e7014.html?fbclid=IwAR29MNdrHa9s9VqCgU9BCbSesD56ffl7mRH79d3BNPYAgI5hvZHMq-2DTw8

ACP pipes have been stored in adverse conditions for years and may be leaching toxic chemicals into the local environment.

Bills to Protect Landowners in Pipeline Cases Fail

- The Roanoke Star – 2/28/19

<http://theroanokestar.com/2019/02/28/bills-to-protect-landowners-in-pipeline-cases-fail/>

Walmart stuck with Dominion, setting up potential fight

- The Washington Post – 2/26/19

https://www.washingtonpost.com/local/walmart-stuck-with-dominion-setting-up-potential-fight/2019/02/26/72bb6526-39e5-11e9-b10b-f05a22e75865_story.html?utm_term=.9743ef6d426d

Related:

- https://www.richmond.com/business/local/scc-won-t-allow-walmart-sam-s-club-stores-in/article_157b31de-c87c-5266-99ad-1cefa6dac179.html

Regional/Mountain Valley Pipeline, other

MVP asks state board to discontinue process aimed at stopping pipeline construction

- The Roanoke Times – 2/28/19

https://www.roanoke.com/news/local/mvp-asks-state-board-to-discontinue-process-aimed-at-stopping/article_6834f973-1ca9-53a4-963e-86f2cd0630ff.html

Project representative says action threatens the business climate of VA. Opponents say project simply threatens Virginia! Not surprisingly, the VA Chamber of Commerce, a business-friendly institution if ever there was one, agrees with MVP (below).

Related:

- https://www.richmond.com/opinion/their-opinion/guest-columnists/barry-duval-column-a-vote-to-revoke-mvp-water-certification/article_bceb73d2-fab2-5922-a307-eeb8f27f7925.html?fbclid=IwAR13zrAogDw6VIIjxSe_q6OA2i9N48HoEPiUyVSaFd747MejMwIBmFrY72E

Water Control Board Must Assess Impact of Variance 006 on Mountain Valley Pipeline Erosion and Sedimentation Plans

- Blue Virginia – 2/27/19

<https://bluevirginia.us/2019/02/water-control-board-must-assess-impact-of-variance-006-on-mountain-valley-pipeline-erosion-and-sedimentation-plans?fbclid=IwAR3MEd-lGMxHxzqDtrD-Y9OOTfD8NaDEKzTAZLgPg24hZctj1Bh2-unbvOo>

Board should assess not only the specific variance, but also the secretive nature of the entire process. Virginia and its regulators are being kept in the dark.

Editorial: How quickly will water board act?

- The Roanoke Times – 2/25/19

https://www.roanoke.com/opinion/editorials/editorial-how-quickly-will-water-board-act/article_9718d8c8-2380-5233-a988-607a6b7108d9.html

Financial analysts calling into question the value and viability of both MVP and ACP.

Letter: Virginians deserve well-funded DEQ

- The Roanoke Times – 2/28/19

https://www.roanoke.com/opinion/letters/letter-virginians-deserve-well-funded-deq/article_30fc78a9-f420-5ed2-a410-095392b84b28.html

Mountain Valley Watch's work can be seen [here](#).

Big Picture:

White House to set up panel to counter climate change consensus, officials say

- The Washington Post – 2/24/19

https://www.washingtonpost.com/national/health-science/white-house-to-select-federal-scientists-to-reassess-government-climate-findings-sources-say/2019/02/24/49cd0a84-37dd-11e9-af5b-b51b7ff322e9_story.html?noredirect=on&utm_term=.405d08daaa64

Former head of the CO₂ Coalition, which describes its mission as informing policymakers and the public of the “important contribution made by carbon dioxide to our lives and the economy,” tapped to head administration's new panel to refute evidence of Climate Change. And nobody is surprised.

FERC Can't Just Check the Climate Box

- Natural Resources Defense Council – 2/26/19

<https://www.nrdc.org/experts/gillian-giannetti/ferc-cant-just-check-climate-box>

“New Approach” seems to sidestep one of the major issues at play in the licensing of LNG export facilities.

Related:

- <https://www.enr.com/articles/46410-ferc-busts-lng-logjam-with-new-approach>

Documents detail multimillion-dollar ties involving EPA official, secretive industry group

- Politico – 2/20/19

<https://www.politico.com/story/2019/02/20/epa-air-pollution-regulations-wehrum-1191258>

The nation’s biggest coal-burning power companies paid a top lobbying firm millions of dollars to fight a wide range of Obama-era environmental rules, documents obtained by POLITICO reveal — shortly before one of the firm’s partners became President Donald Trump’s top air pollution regulator.

Constitution Gets a Lift as FERC Moves to Reconsider New York Authority

- Natural gas Intelligence – 2/26/19

<https://www.naturalgasintel.com/articles/117539-constitution-gets-a-lift-as-ferc-moves-to-reconsider-new-york-authority>

If the FERC gets the Go-Ahead, the *Hoopa Valley Tribe v. FERC et al* case about relicensing of dams in the pacific northwest may be used as a precedent in a revived Constitution Pipeline case. It’s complicated.

100% Clean Energy & Cars In 20 Years Is Viable (But Unlikely)

- CleanTechnica – 2/26/19

<https://cleantechnica.com/2019/02/26/100-clean-energy-cars-in-20-years-is-viable-but-unlikely/>

The technology, money and even investment climate exist...political will is basically all that’s lacking now.