



## ABRA Update #258 – January 8, 2020

### ACP Compressor Station Air Permit Vacated by 4<sup>th</sup> Circuit Court of Appeals

The Fourth Circuit Court of Appeals has vacated the Atlantic Coast Pipeline's Buckingham compressor station air permit that was granted in January 2019 by the Virginia Air Pollution Control Board. The [47-page opinion](#) was released on January 7. The suit challenging the permit had been brought by Friends of Buckingham (represented by the Southern Environmental Law Center) and the Chesapeake Bay Foundation and was [argued before the court on October 29](#). In the 3-0 opinion written by Judge Thacker, the Court remanded the permit to the Air Board for further deliberation on two grounds, as noted in these excerpts from the opinion:

1. "The Board's decision was arbitrary and capricious and unsupported by substantial evidence. As Petitioners point out, ACP's and Respondents' arguments on appeal read as 'convenient litigation position[s].' Nothing more. We vacate and remand for further explanation of reliance on the redefining the source doctrine, and/or why electric turbines are not required to be considered in Virginia's BACT (Best Available Control Technology) analysis of the Compressor Station."
2. "We conclude that the Board failed in its statutory duty to determine the character and degree of injury to the health of the Union Hill residents, and the suitability of the activity to the area. We vacate and remand for the Board to make findings with regard to conflicting evidence in the record, the particular stud(ies) it relied on, and the corresponding local character and degree of injury from particulate matter and toxic substances threatened by construction and operation of the Compressor Station.

"To be clear, if true, it is admirable that the Compressor Station 'has more stringent requirements than any similar compressor station anywhere in the United States,' and that residents of Union Hill 'will be breathing cleaner air than the vast majority of Virginia residents even after the Compressor Station goes into operation,' But these mantras do not carry the day. What matters is whether the Board has performed its statutory duty to determine whether this facility is suitable for this site, in light of EJ and potential health risks for the people of Union Hill. It has not."

The Air Pollution Control Board, which last met on December 6, is not scheduled to meet until sometime in the Spring (no date has yet been announced). Until the Board addresses the issues associated with the Fourth Circuit decision, there is no valid air permit for the proposed ACP Buckingham compressor station.

<p>Volunteer for ABRA's Pipeline CSI Program</p> <p><b><u>Volunteer</u></b></p>	<p>Submit a report to the Pipeline CSI</p> <p><b><u>Report</u></b></p>	<p>Stay informed, like us on Facebook.</p> 	<p>Support ABRA financially</p> <p><b><u>GiveNow</u></b></p>
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## Weakened Environmental Reviews of Pipelines, Other Projects Are Proposed

The White House announced on January 9 a sweeping change in the requirements for reviewing certain infrastructure projects under the National Environmental Policy Act (NEPA). Heralded as a “modernization” of NEPA, which was enacted in 1970, the proposal would make significant revisions in the process by which projects such as the Atlantic Coast Pipeline (ACP) are reviewed regarding their impact on the environment. The [194-page pre-publication version of the Notice of Proposed Rulemaking](#) (NPR), released by the Council for Environmental Quality (CEQ), states:

“Courts also have issued numerous decisions addressing appropriate implementation and interpretation of NEPA and the CEQ regulations, resulting in a large body of case law. Additionally, Presidential directives have been issued and legislation has been enacted to reduce delays and expedite the implementation of NEPA and the CEQ regulations, including for certain types of infrastructure projects. Notwithstanding the issuance of guidance, Presidential directives, and legislation, implementation of NEPA and the CEQ regulations can be challenging, and the process can be lengthy, costly, and complex. In some cases, the NEPA process and related litigation has slowed or prevented the development of new infrastructure and other projects that required Federal permits or approvals.”

Among the changes being proposed are:

1. Establish presumptive time limits for Environmental Assessments (EIS) of 1 year and for Environmental Impact Statements (such as that conducted for the ACP) of 2 years. Senior agency officials would be authorized to approve in writing a longer time period of review when deemed appropriate.
2. Page limits: “CEQ proposes to reinforce the page limits for EISs . . . allowing a senior agency official to approve a statement exceeding 300 pages when it is useful to the decision-making process.”
3. Limit the range of alternatives to a project that must be considered by the permitting agency.

“It is CEQ’s view that NEPA’s policy goals are satisfied when an agency analyzes reasonable alternatives, and that an EIS need not include every available alternative where the consideration of a spectrum of alternatives allows for the selection of any alternative within that spectrum. The reasonableness of the analysis of alternatives in a final EIS is resolved not by any particular number of alternatives considered, but by the nature of the underlying agency action. The discussion of environmental effects of alternatives need not be exhaustive, but must provide information sufficient to permit a reasoned choice of alternatives for the agency to evaluate available reasonable alternatives.”

The official Notice of Proposed Rule Making is to be published in the Federal Register. CEQ has announced that public comments may be submitted on the proposal within 60 days of its publication in Federal Register. In addition, public hearings will be held in Denver, CO on February 11 and Washington, DC on February 25.

More information and analysis of the proposed NEPA changes will be published in future issues of *ABRA Update*.

## ***In the News:***

### **Local/Atlantic Coast Pipeline**

#### **4th Circuit nixes key permit for Dominion's Atlantic Coast Pipeline, citing environmental justice concerns**

- Utility Dive – 1/8/20

<https://www.utilitydive.com/news/4th-circuit-nixes-key-permit-for-dominions-atlantic-coast-pipeline-citing/570005/>

The Fourth Circuit concluded Virginia regulators relied too heavily on air quality standards, leading it to dismiss issues of environmental justice and the impact on nearby communities.

Related:

- <https://www.southernenvironment.org/news-and-press/press-releases/union-hill-citizens-overpower-unfair-atlantic-coast-pipeline>

#### **Wilderness bill to protect 5,600 acres in Bath passes**

- The Recorder – 1/9/20

[https://www.abralliance.org/wp-content/uploads/2020/01/Wilderness-bill-to-protect-5600-acres-in-Bath-passes-Recorder\\_20200109.pdf](https://www.abralliance.org/wp-content/uploads/2020/01/Wilderness-bill-to-protect-5600-acres-in-Bath-passes-Recorder_20200109.pdf)

The legislation would add the Rough Mountain Wilderness Area and the Rich Hole Wilderness Area to areas designated as wilderness. A wilderness designation is the highest level of protection for public land under federal law.

#### **Opinion/Commentary: Legal details could have big effect on pipeline's fate**

- The Daily Progress – 1/5/20

[https://www.dailyprogress.com/opinion/opinion-commentary-legal-details-could-have-big-effect-on-pipeline/article\\_a7c8455d-62ac-5486-9e5b-8f37ca58f49a.html](https://www.dailyprogress.com/opinion/opinion-commentary-legal-details-could-have-big-effect-on-pipeline/article_a7c8455d-62ac-5486-9e5b-8f37ca58f49a.html)

#### **2020: A Year of Pipeline Court Fights, with One Lawsuit Headed to the Supreme Court**

- Inside Climate News – 1/3/20

<https://insideclimatenews.org/news/03012020/pipeline-lawsuits-2020-supreme-court-appalachian-trail-eminent-domain-natural-gas>

I think it's three now, actually!

#### **North Carolina Governor Accused Of 'Pay-For-Permit' Scheme**

- The Heartland Institute – 1/6/19

<https://www.heartland.org/news-opinion/news/north-carolina-governor-accused-of-pay-for-permit-scheme>

I know, I know...the *source!*" But the news comes from all sides.

#### **With new Democratic leadership, General Assembly faces flood of energy proposals**

- Virginia Mercury – 1/6/20

<https://www.virginiamercury.com/2020/01/06/with-new-democratic-leadership-general-assembly-faces-flood-of-energy-proposals>

#### **More natural gas infrastructure proposed for second Charles City plant**

- Virginia Mercury – 12/20/19

<https://www.virginiamercury.com/2019/12/20/more-natural-gas-infrastructure-proposed-for-second-charles-city-plant/>

Remember, it's not just Dominion and MVP playing this game...

## Regional/Mountain Valley Pipeline, other

### Landowners file new federal lawsuit challenging Mountain Valley Pipeline

- WHSV News – 1/6/19

<https://www.wHSV.com/content/news/Landowners-file-new-federal-lawsuit-challenging-Mountain-Valley-Pipeline-566752081.html>

The case challenges the constitutionality of the federal approval process and the use of eminent domain to take land for the project.

Related:

- [https://www.roanoke.com/business/latest-lawsuit-against-mountain-valley-pipeline-contests-the-taking-of/article\\_6e12ccf4-93d6-5a31-87d3-e6332ef02892.html](https://www.roanoke.com/business/latest-lawsuit-against-mountain-valley-pipeline-contests-the-taking-of/article_6e12ccf4-93d6-5a31-87d3-e6332ef02892.html)

### Natural gas development is speeding up in Virginia. Legislators will have to square that with state climate goals.

- Virginia Mercury – 12/30/19

<https://www.virginiamercury.com/2019/12/30/natural-gas-development-is-speeding-up-in-virginia-legislators-will-have-to-square-that-with-state-climate-goals>

When it comes to new natural gas plants, said Will Cleveland (SELC), either “you are knowingly and deliberately saddling customers with a stranded cost, or you’re not serious about meeting the governor’s objectives. It’s one or the other.”

### Market, investor pressures to weigh on Appalachian natural gas production growth next year

- S&P Global – 12/30/19

<https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/123019-market-investor-pressures-to-weigh-on-appalachian-natural-gas-production-growth-next-year>

While obstacles to growth are nothing new in Appalachia, the recent confluence of challenges has raised doubts about producers’ capacity to keep output growing in the Marcellus and Utica shale plays during 2020.

### Through Snow and Rain, Tree Sitters Continue to Fight a Gas Pipeline

- The American Prospect – 12/23/19

<https://prospect.org/environment/through-snow-rain-tree-sitters-fight-gas-pipeline>

The protests, intended to slow down the Mountain Valley Pipeline in Virginia and West Virginia, are now in their second year.

## Big Picture:

### House Democrats tee up sweeping climate bill as alternative to Green New Deal

- The Washington Post – 1/9/20

<https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2020/01/09/the-energy-202-house-democrats-tee-up-sweeping-climate-bill-as-alternative-to-green-new-deal/5e160ef388e0fa32a5149994/>

It’s establishment Democrats’ highest profile countermeasure to the Green New Deal, which calls for a more radical reduction in emissions over the next decade and captured the attention of the party’s left wing.

### FERC Sides With Fossil Fuels In Forcing Renewables To Match Prices

- Clean Technica – 12/27/19

<https://cleantechnica.com/2019/12/27/ferc-sides-with-fossil-fuels-in-forcing-renewables-to-match-prices/>

In a move clearly intended to slide under the radar, the United States’ Federal Energy Regulatory Commission (FERC) announced a directive just a few days before Christmas which will require PJM Interconnection to raise prices of wind and solar power to be in line with the cost of fossil fuels.

Related:

- <https://www.spglobal.com/platts/en/market-insights/latest-news/electric-power/122719-commodities-2020-renewables-face-2020-challenges-that-could-end-eastern-capacity-markets>
- <https://www.utilitydive.com/news/fercs-clean-energy-boycott-distorts-pjm-prices-discards-history/569918/>
- <https://www.oilandgas360.com/the-energy-agency-that-could-thwart-democrats-climate-plans/>

### **NEPA rewrite divides the left**

- E&E News – 1/9/20

[https://www.abralliance.org/wp-content/uploads/2020/01/NEPA-rewrite-divides-the-left-EE-News\\_20200109.pdf](https://www.abralliance.org/wp-content/uploads/2020/01/NEPA-rewrite-divides-the-left-EE-News_20200109.pdf)

President Trump's move to rewrite National Environmental Policy Act rules is resurfacing tensions between unions and hard-line progressives.

### **Federal agencies are required to consult with tribes about pipelines. They often don't.**

- Grist – 1/2/20

<https://grist.org/energy/federal-agencies-are-required-to-consult-with-tribes-about-pipelines-they-often-dont/>

The Government Accountability Office contacted officials from 57 tribes about their experience working with the federal government and laid out a range of problems in a report last year.

### **Revolution pipeline owners fined \$30 million in historic settlement; permit hold lifted**

- The Times – 1/4/20

<https://www.timesonline.com/news/20200104/revolution-pipeline-owners-fined-30-million-in-historic-settlement-permit-hold-lifted>

It's among the largest one-time civil penalties the state has collected and comes more than a year after a landslide caused part of the Revolution pipeline to burst into flames in a quiet Beaver County neighborhood.

### **As pipeline battle heads toward Supreme Court, PennEast asks for more construction time**

- Lehigh Valley Live – 1/7/20

<https://www.lehighvalleylive.com/news/2020/01/as-pipeline-battle-heads-to-supreme-court-penneast-asks-for-more-time-on-construction.html>

PennEast Pipeline Co. LLC's federal approval expires Jan. 19, with the start of construction still on hold as a fight over state permits appears headed for the U.S. Supreme Court.

### **Morgan Stanley: 'Second wave of renewables' to drive 70 GW of coal retirements**

- S&P Global – 12/20/19

[https://www.spglobal.com/marketintelligence/en/news-insights/trending/n2V18rq\\_af4OBgqaW6CmkQ2](https://www.spglobal.com/marketintelligence/en/news-insights/trending/n2V18rq_af4OBgqaW6CmkQ2)

"Driven by the surprisingly low cost of renewables, we believe that carbon-heavy utilities that have not historically led the pack in clean energy deployment will accelerate their earnings growth by pursuing a 'virtuous cycle': shutting down expensive coal plants and investing in cheap renewables," Morgan Stanley analysts wrote in the Dec. 10 research report. We'll see if Dominion gets the memo.

### **Trump admin plans 2020 approvals for major projects**

- E&E News – 1/2/20

<https://www.eenews.net/stories/1061975241>

Renewable energy projects. Yes, of course there oil and gas projects, too, but it's a start!