

Blue Ridge Environmental Defense League

Nelson County Office: 8260 Thomas Nelson Highway, Lovingston, VA 22949 434-420-1874

For Immediate Release August 3, 2017

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Blue Ridge Environmental Defense League Recommends Virginia Department of Environmental Quality Postpone 401 Water Certification Process

Lovingston, VA -- By letter, dated July 31, 2017, Sharon Ponton, a Virginia Organizer with the Blue Ridge Environmental Defense League (BREDL) recommended to the State Water Control Board and the Virginia Department of Environmental Quality (DEQ) that the 401 Water Certification Process for both the proposed Atlantic Coast and Mountain Valley Pipelines be postponed "until all soil and erosion and storm water management plans have been made public." The letter further recommends that the third party contract with EEE be revoked and the request by DEQ to the Army Corps of Engineers to permit the wetland and waterbody crossings be rescinded.

Ponton outlines seven observations and concerns in the letter including DEQ's misleading statements to the press in April regarding the Army Corps' Nationwide 12 permit which led the public to believe DEQ would themselves conduct the individual stream and wetland permitting process. She points out the Erosion & Sedimentation and Storm Water Management plans are incomplete and what has been made available was done so weeks after the permitting process began. She also states, "The DEQ review and permitting process have gone awry led by a director who has gone astray." Ponton highlighted an interview by Virginia Business Magazine where Paylor considered himself a "problem solver" rather than a regulator. Regarding Paylor, she concluded, "Working to assist businesses in meeting regulations is an admirable goal, but subverting the regulatory process to allow business to create a "new normal" for water quality in thousands of Virginia's streams and rivers alters him from a problem solver to a problem maker."

Letter to the State Water Control Board below.

#end#

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July 31, 2017

Robert Dunn, Chair
Lou Ann Jessee-Wallace
Thomas M. Branin
Roberta A. Kellam
G. Nissa Dean
Heather Wood
Robert H. Wayland, III
c/o Office of Regulatory Affairs
Department of Environmental Quality
PO Box 1105
Richmond, VA 23218

Dear Members of the State Water Control Board:

On behalf of the Blue Ridge Environmental Defense League and our chapters and members in Virginia, I write to lodge a formal complaint regarding the Virginia Department of Environmental Quality's (DEQ) abdication of its responsibilities to its citizens concerning water quality as it relates to the proposed Mountain Valley (MVP) and Atlantic Coast Pipelines (ACP). We hereby request that the extant process for the 401 Water Certification by the DEQ be halted and resumed only after the flaws we have identified are corrected.

Specifically, the DEQ is not upholding the standards set forth in the Clean Water Act. Our observations and concerns are as follows:

- 1) The DEQ's misleading statements made through the press on April 6, 2017 stated that the Department would hold the pipelines to the highest environmental standards. The next day, April 7, the DEQ wrote a letter abdicating its responsibilities for 401 Water Certification to the Army Corps of Engineers, requesting certification of the proposed MVP and ACP through a blanket NWP 12 permit. Information was withheld from the public for seven weeks until FOIA requests by various members of the Virginia Press Corps showed all the chicanery by the DEQ.
- 2) The DEQ draft 401 Virginia Water Certification Permit is written. The public comment period and public hearings are scheduled with the comment period set to end on August 22, 2017. 40% of the public hearings are being held at venues as far as 100 miles outside of the areas directly affected by the proposed MVP and ACP.
- 3) The DEQ claims it is setting up a more stringent process for Erosion and Sedimentation and Storm Water Management in the upland areas of the proposed pipelines by requiring E&S plans for every foot of dirt turned. However, incomplete plans from the developers for the proposed pipelines were made available to the public on July 19, 2017. The remainder of the plans will not be available until August, the last group of which is due August 25, 2017, three days after the closing of the public comment period on the 401 Virginia Water Permit Certification process.
- 4) We question the DEQ's commitment to water quality when the erosion and sedimentation and storm water management plans aren't available for review by the public before the public

- hearings and comment periods began on the Virginia 401 Water Certification process. Erosion and sedimentation are one of the most crucial and relevant issues regarding potential polluting of our streams and rivers.
- 5) We question the transparency and integrity of a process which includes a DEQ contractual agreement with third-party reviewers who currently do business with Dominion and also have connections to the Southern Company.
 - 6) I attended the July 19th State Water Control Board meeting in Richmond at which Tammy Belinsky clearly stated, “Melanie Davenport never related to you during her power point presentation that you have the power to deny these permits.” We agree with Ms. Belinsky and assert that the DEQ has set up a biased and fast track permitting process for both the ACP and MVP without regard for the people of Virginia who would suffer if the most transparent, stringent and thorough review is not completed.
 - 7) The DEQ review and permitting process have gone awry, led by a director who has gone astray. On March 28, 2012, DEQ Director David Paylor indicated he preferred a “light touch with regulation” in an interview with Virginia Business Magazine. The magazine quoted Paylor: “Both administrations [Kaine and McDonnell] were very focused on the fact that we have been the No. 1 state in which to do business...The limitation of a regulatory construct is that it isn’t able to take into account the unique situation that a facility might find itself in.” Recently, in an interview with NPR’s Sandy Hausman, Paylor’s words support our position DEQ is not taking the process seriously. He said, “We will issue a certification that complies with the law as long as the practices can give us a reasonable assurance that water quality will be protected.” Without the plans being available for review, without the reviews of those plans completed, neither Paylor nor the people can be assured of anything.

Mr. Paylor apparently sees himself as more of a “problem solver” than a regulator. Working to assist businesses in meeting regulations could be construed as an admirable goal, but subverting the regulatory process to allow business to create a “new normal” for water quality in thousands of Virginia’s streams and rivers alters him from a problem solver to a problem maker. The watersheds in the upland areas of the proposed pipeline routes affect the water quality for millions of Virginians; they cannot be neglected or ignored.

We recommend that the process for the 401 Water Certification by the DEQ be restarted. All comment periods and public hearings must be postponed until all soil and erosion and storm water management plans have been made public and can be included as a part of the 401 Water Certification process. The contract extended to EEE must be revoked and a new contract with a company unrelated to any of the parties involved as pipeline owners or construction contractors be hired in its place to assist the DEQ in thoroughly and transparently reviewing the plans of the owners of the proposed pipelines.

All of our waters are connected; harm done to one body of water affects others, often irreparably. Therefore every proposed water crossing must take into account the adjacent waters. According to The Clean Water Act: “The agencies emphasize that the rule has defined as “adjacent waters” those waters that currently available science demonstrates possess the requisite connection to downstream waters and function as a system to protect the chemical, physical, or biological integrity of those waters...The Clean Water Act establishes both national and state roles to ensure that state’s specific circumstances are properly considered to complement and reinforce actions taken at the national level.”

Therefore, DEQ must withdraw its request of the Army Corps of Engineers to issue a blanket Nationwide 12 permit for the proposed ACP and MVP. This review must be done in Virginia by DEQ

staff, not farmed out to a federal regulator who does not have the needs of the Commonwealth of Virginia as its priority.

Sincerely,

Sharon Ponton
BREDL Virginia Organizer

CC:

Terence McAuliffe, Governor
Ralph Northam, Lt. Governor
Molly Ward, Secretary of Natural Resources
David Paylor, Director, VADEQ
Mark Herring, Attorney General of Virginia