



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Suite 1400, Richmond, VA 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

STATE WATER CONTROL BOARD MEETING

December 11-12, 2017

Trinity Family Life Center

3601 Dill Road

Richmond, VA 23222

Board Members Present (both days):

Robert L. Dunn, Chair
G. Nissa Dean
Roberta A. Kellam
Robert H. Wayland, III

Heather L. Wood, Vice-Chair
Timothy G. Hayes
Lou Ann Jessee-Wallace

Department of Environmental Quality:

David K. Paylor, Director
Cindy M. Berndt, Office of Regulatory Affairs Director
Debra A. Harris, Policy & Planning Specialist

Attorney General's Office:

David C. Grandis, Assistant Attorney General

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- 1) The attached minutes summarize activities that took place at this Board Meeting.
 - 2) On December 11, 2017, the meeting was convened at 9:31 a.m., recessed at 12:13 p.m., reconvened at 1:12 p.m., recessed at 3:08 p.m., reconvened at 3:25 p.m., recessed at 5:50 p.m., reconvened at 6:52 p.m., and recessed for the day at 8:51 p.m. On December 12, 2017, the meeting was convened at 9:34 a.m., recessed at 11:30 a.m., reconvened at 11:38 a.m. and immediately recessed for lunch, reconvened at 12:30 p.m., recessed at 1:15 p.m., reconvened at 1:30 p.m., and adjourned at 1:45 p.m.

Approved Minute No. 12
Apr. 12, 2018



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 11-12, 2017

MINUTE NO. 1 - 401 Water Quality – Certification No. 17-002 - Atlantic Coast Pipeline, LLC

Ms. Melanie D. Davenport, Director, Division of Water Permitting, presented a proposed Section 401 Water Quality Certification (Certification) for the proposed Atlantic Coast Pipeline, LLC (ACP) to the Board for its consideration. Ms. Davenport explained that the Certification applies to ACP activities in upland areas outside of the U.S. Army Corps of Engineers' jurisdictional areas under 33 U.S.C. § 1344 which may result in an indirect discharge to waters of the United States; water withdrawal activities that are exempt from coverage under the Virginia Water Protection Permit Program Regulation (9 VAC 25-210-10, *et seq.*); and, land disturbing activities not covered under the Stormwater Management Act (Va. Code § 62.1-44.15:24, *et seq.*) and Erosion and Sediment Control Law (Va. Code § 62.1-44.15:51, *et seq.*).

On December 11, 2017, Ms. Davenport reviewed for the Board the summary of the ACP project, the basis for the Certification, the draft Certification, and the public comment process. Ms. Davenport presented a detailed summary of the public comments received on the draft Certification.

The Board then received comment from the public in accordance with the Board's policy which allows those who commented during the previous public comment period to address the summary of comments presented to the Board. The following persons commented to the Board: Senator Frank Wagner, Delegate Roxann Robinson, Delegate Fowler, Irene Leech, Larry Girvin, Laura Cross, Charles Jarvis, Zakaria, Ed Daley, Eleanor Amidon, Dr. Jud White, Jennifer Lewis, Ward Burton, Georgianne Stinnett, Jim Kibler, Jessica Sims, John Watkins, Cabell Smith, Anne Grier, Joseph Jeeva Abbate, Charles K. Tribble, Jeffrey Mark, Poe, Kenneth Moore, Bill Wilson, Denys Grant, Roberta Bondurant, Billy Wooten, Jamshid Bakhtiari, John Arsenault, Tina Smusz, Paul McCormick, Richard Averitt, Bobby Whitescarver, Matt Yorka, Alison Martin, Denis Morris, Curly Fulgham, Connor Woodrich, Nancy Sorrells, Bryan Stephens, Richard Brooks, Gloria Tolbert, Peter Anderson, Stephen Atkinson, Tammy Belinsky, Daniel Watson, Douglass Maber, Malcolm Cameron, Barry Resnick, Sharon Ponton, Miles Morin, Patrick Calvert, Keith Martin, Janice Jackson, Wisteria Johnson, Toby Mack, Kird Bowers, Matthew Koch, Marily Shifflett, David Clarke, Ernie Reed, Brandon Meade, Joe Lovett, Alfred Mistr, Richard Allen, Dan Plume,

Charles D. Pruitt, David Johnson, Mara Robbins, Richard Talerico, Michael James-Deramo, Bridget Kelley-Dearing, Rick Webb, Patricia Sweeney, Monica Doneste, George O'Connell, Diane Korte, Rachel James, Lee Francis, Jim Parmelee, Robert Gabay, Tom Cranmer, David Ball, Ron Wilcox, Ruby Laury, Carlton Ballowe, John W. Laury, David S. Hight, David Sligh, Glen Besa, Dick Averitt, Peggy Sanner, Greg Buppert, Phillip Musegaas, Laura "Laney" Sullivan, Martz Frondorf, David Hirschman, Swami Dayananda, Tyla Matteson, Olive Bias, David Collins, Ann Williams, Vanessa Bolin Clemens, Rev. Paul M. Wilson, Pamela Hill, Tom Burkett, Kathy Chandler, Philip Khnapp, Luca Belate, and Molly Garrett.

Upon completion of the public comment portion of the meeting, the Board adjourned for the day.

On December 12, 2017, the Board reconvened and received brief comments from Mr. Richard B. Gangle representing ACP.

Ms. Davenport then presented the Department's response to the public comments received and answered questions from the Board. The Board also heard, in response to their questions, from Tom Walker (U.S. Norfolk District Corps of Engineers). The Board also discussed the application of the Corps of Engineers Nationwide Permit 12 as reflected in the transcript of the proceedings.

Ms. Davenport reviewed the revised Certification for the Board, which included changes that were made to the draft 401 Certification as a result of public comments received and changes the Board made to the Certification issued to the Mountain Valley Pipeline, LLC at the December 6-7, 2017, meeting.

Ms. Kellam moved, and Ms. Dean seconded the motion, to defer action on the Certification until erosion and sediment control plans, stormwater management plans and U.S. Army Corps of Engineers' action were completed and reported to the Board. Ms. Kellam and Ms. Dean agreed to table the motion pending further discussion.

Ms. Davenport presented the following staff recommendations:

Staff recommends the Board:

1. Find that:

- a. the Department has prepared the proposed 401 Water Quality Certification related to upland activities outside the Corps jurisdictional areas under section 404 of the Clean Water Act and the jurisdictional scope of the Virginia Water Protection Permit Program Regulation in accordance with all statutes, regulations, and agency practices; and
- b. upon consideration of the staff presentation, all public comments received during the public comment period, and all other applicable and preexisting regulatory mechanisms including Annual Standards and Specifications approved by the Department on July 5, 2017, the requirements of the U.S. Army Corps of Engineers Nationwide Permit 12 and Norfolk District Regional Conditions, the environmental conditions imposed by FERC in the certificate of public convenience and necessity issued to ACP, and the additional seventeen (17) conditions imposed by 401 Water Quality Certification No. 17-002, there is reasonable assurance that the activity

authorized by FERC will comply with all applicable effluent limitations and water quality standards and

2. Authorize the Director to issue 401 Water Quality Certification No. 17-002 to Atlantic Coast Pipeline, LLC, as approved by the Board.

Mr. Wayland and Mr. Hayes presented an additional amendment to the Certification. The amendment would replace paragraph 3 in Section III with the following:

This Certification shall be effective only following submission, review and final approval as required by law of the Karst Mitigation Plan, Annual Standards and Specifications, and Erosion and Sediment Control Plans and Stormwater Management Plans, and a report to the Board and the public by DEQ on the adequacy of these materials. The Board may consider further actions on the Certification following the review of the DEQ report.

Mr. Hayes moved and Ms. Wood seconded amending the Certification to replace paragraph 3 in Section III. The motion passed 4 (Dunn, Wood, Wallace and Hayes) to 3 (Kellam, Wayland and Dean). [The adoption of the motion effectively negated the tabled motion made by Ms. Kellam.]

Ms. Wood moved accept the staff recommendation with the additional amendment approved by the Board. Mr. Hayes seconded the motion. The motion passed 4 (Dunn, Wood, Wallace and Hayes) to 3 (Kellam, Wayland and Dean).


Melanie D. Davenport



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MINUTE NO. 2 - Reconsideration Petition - 401 Certification - Mountain Valley Pipeline

Ms. Tammy Belinsky, Counsel for Preserve Craig, submitted a petition for reconsideration on behalf of Preserve Craig and several other signatories. The petition requested that pursuant to § 2.2-4023.1 of the Code of Virginia that the Board revisit its decision on the Section 401 Water Quality Certification for the proposed Mountain Valley Pipeline for activities in upland areas.

The Board considered the petition and decided not to revisit the decision on the Section 401 Water Quality Certification for the proposed Mountain Valley Pipeline.



Cindy M. Berndt