

RESOLUTION R2015-61
NELSON COUNTY BOARD OF SUPERVISORS
RESOLUTION PETITIONING GOVERNOR TERRY MCAULIFFE AND SECRETARY
OF NATURAL RESOURCES MOLLY WARD TO PROVIDE PUBLIC ACCESS TO
EROSION AND SEDIMENT CONTROL PLANS FOR THE CONSTRUCTION OF THE
ATLANTIC COAST PIPELINE

WHEREAS, Dominion Resources, Inc., Duke Energy Corporation, Piedmont Natural Gas Co., and AGL Resources, Inc. have formed Atlantic Coast Pipeline, LLC, which has contracted with Dominion Transmission, Inc. to permit, build, and operate a natural gas pipeline which transects portions of three states, including eleven counties and two cities in the Commonwealth of Virginia; and

WHEREAS, the proposed Atlantic Coast Pipeline will require excavation of over twenty-one and six tenths (21.6) miles of highly erodible soils with slopes greater than 8% in Nelson County; and

WHEREAS, the required excavation is unprecedented and will cause severe erosion in vertically steep and inhospitable mountainous terrain, and the amount of runoff from seasonal downpours would cause major soil loss and slides; and

WHEREAS, all private water systems and most business systems in Nelson County rely on groundwater from wells or springs for their water supplies; and

WHEREAS we are deeply concerned that construction of the proposed Atlantic Coast Pipeline will impact the quality and quantity of water supplies due to erosion, sedimentation and impacts on hydrology; and

WHEREAS, Nelson County's agricultural-tourism based economy is highly reliant on abundant, clean water; and

WHEREAS, erosion caused stream sedimentation is a significant contributor to pollution of the surface waters of Virginia and the Chesapeake Bay; and

WHEREAS, the Virginia Department of Environmental Quality has the authority to request site-specific erosion and sediment control and storm water management plans from Dominion Transmission, Inc., as prescribed by the Erosion and Sediment Control Regulations 9VAC25-840-30-B: "The submission of annual standards and specifications to the department does not

eliminate the need where applicable for a project specific Erosion and Sediment Control Plan”; and

WHEREAS, Nelson County’s unique mountainous terrain with shallow soils and granitic bedrock that are prone to landslides qualifies this project for DEQ authorization under VA Code to require submittal of a “*project specific Erosion and Sediment Control Plan*”; and

WHEREAS, current Erosion and Sediment Control and Stormwater Management regulations include critical post construction runoff requirements; and

WHEREAS, the Freedom of Information Act can be used to obtain public and local government access to such plans, but only if the Virginia DEQ requires the submission of the plans to the agency by the pipeline developer.

NOW, THEREFORE, BE IT RESOLVED by the Nelson County Board of Supervisors that in consideration of the points made above, the Nelson County Board of Supervisors respectfully requests that:

1. DEQ will require project-specific Erosion and Sediment Control and Stormwater Management Plans for the proposed Atlantic Coast Pipeline project that meet all Virginia standards, and that these plans will be made available to the public prior to project approval and construction; and
2. Localities will have the right to review plans, conduct inspections and enforce their local Erosion and Sediment Control Ordinances; and
3. Prior to project approval and construction, Dominion Transmission, Inc. officials and third-party inspectors will be required to meet with local officials to discuss the implementation of the project-specific Erosion and Sediment Control and Stormwater Management Plans and adaptive management plans.

AND BE IT FURTHER RESOLVED that the Nelson County Board of Supervisors directs the Clerk of the Nelson County Board of Supervisors to send a copy of this resolution to: Governor of Virginia Terry McAuliffe, Virginia Secretary of Natural Resources Molly Ward, Virginia Senator Creigh Deeds, Virginia Delegate Richard Bell, Virginia Delegate Matthew Farris, US Senator Mark Warner, US Senator Tim Kaine, US Congressman Robert Hurt, Atlantic Coast Pipeline, LLC, Dominion Transmission, Inc., and the Federal Energy Regulatory Commission (FERC).

Adopted: _____, 2015

Attest: _____, Clerk
Nelson County Board of Supervisors

Mega Pipelines and Erosion and Sediment Control

Regulatory Dysfunction and What We Can Do About It

We face proposals for construction of at least three 42-inch pipelines for moving shale gas across the mountains from West Virginia to Virginia and the southeast. These pipelines will be the largest ever built in this region.

Pipeline construction on this scale, across this type of landscape, will result in the degradation of downstream water resources, including brook trout streams, water-supply recharge areas, and hydrologically sensitive karst systems.

These mega pipelines require:

- Excavation of 125-foot-wide corridors over steep forested mountains.
- Heavy-duty transport roads and staging areas for large earth-moving equipment and pipe delivery.
- Extensive forest clearing, soil compaction, bedrock blasting, and excavation through streams, riparian areas, and wetlands.

In recent years, Virginia has made real progress in protecting water resources from careless development. New regulations serve to minimize erosion and sedimentation and the alteration of stream channels and aquatic habitat due to uncontrolled runoff.

Pipeline construction, however, is effectively exempt from the regulatory oversight that applies to most other large construction projects.

Pipeline construction companies are largely self-regulating with respect to erosion and sediment control (E&SC) and stormwater management (SWM).

Whereas most construction projects are under the jurisdiction of local E&SC authorities, pipeline construction companies are instead subject to Annual Standards and Specifications, which allow the companies to perform their own compliance review and conduct their own inspection programs —using company-hired plan reviewers and inspectors.



A relatively small 2014 pipeline project in the National Forest on Peters Mountain in Giles County

The Virginia DEQ did not review Erosion and Sediment Control Plans for the project and conducted no inspections during construction. This project was apparently non-compliant with a number of important Virginia E&SC requirements. See: <http://pipelineupdate.org/case-study-no-1/>. A Forest Service employee described having “never seen that much sediment move off site before.”

The Virginia DEQ has a responsibility to regulate pipeline construction to prevent water resource degradation, but the DEQ does not have a program in place to meet this responsibility.

- The DEQ is supposed to review and approve Annual Standards and Specifications submitted by pipeline construction companies. The DEQ, however, has not allocated staff resources for this task, and has simply extended approvals for out-of-date 2013 submissions —which do not require control of post-construction runoff. This is a critical issue for pipeline construction in mountainous terrain.

- Pipeline construction companies are required to prepare site-specific E&SC plans. The DEQ has the authority to require submission of those plans, but the DEQ has not allocated staff resources for plan review and has therefore not required plan submission. As a result, no one other than company-hired plan reviewers are able to access and review the E&SC plans for compliance with state requirements.

- The DEQ has the authority to inspect pipeline construction projects, but does not do so unless there is a water-quality complaint from the public.

- Although pipeline construction companies are required to conduct their own inspection programs, inspection reports are typically kept in onsite construction trailers, where they are not available for review by the public or local government representatives.

So What Can We Do About It?

Although the pipeline construction companies promote the perspective that water resources will be protected by a well-tested, transparent, and effective regulatory system, this is not the case.

We cannot count on state government to provide the necessary oversight and accountability.

It is therefore up to the concerned public and local government officials to engage directly in the process. If we want to protect our water resources, we cannot rely on the DEQ, and we certainly cannot leave it to the pipeline companies.

A critical first step is to obtain and review the all-important site-specific E&SC plans for regulatory compliance. The laws and regulations are in place; we must make them work.

Many localities have the expertise and resources to review E&SC plans, even if the DEQ does not. And the Dominion Pipeline Monitoring Coalition is undertaking a project to support citizen review of these plans.

We will post the E&SC plans on our website. We will provide the information needed to effectively review the plans. And we will assemble a team of experts to support and assist with plan review.

First, though, the E&SC plans must be made available for timely public review and inspection.

The Dominion Pipeline Monitoring Coalition encourages citizens, conservation groups, and local government officials to petition Virginia's DEQ, Secretary of Natural Resources, and Governor to ensure timely public access to E&SC plans for pipeline construction projects.

The Dominion Pipeline Monitoring Coalition is an organization of citizen volunteers, conservation groups, and environmental scientists convened in response to Dominion's proposed Atlantic Coast Pipeline.

For more information: see www.pipelineupdate.org



Thomas Jefferson Soil and Water Conservation District

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December 5, 2014

Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First St., N.E.
Washington D.C. 20426

Re: Dominion Power - Atlantic Coast Pipeline

Dear Ms. Bose and Members of the Commission:

The Thomas Jefferson Soil and Water Conservation District (TJSWCD) has been providing technical assistance related to land management and conservation of soil and water resources for over 75 years. In that capacity, we are all too familiar with the vulnerability of the land in Nelson County to erosion, landslides and debris flows. While the land is extremely vulnerable in its natural, forested state, land disturbance exacerbates these problems significantly. The Atlantic Coast Pipeline (ACP), as proposed, will result in the clearing of wide swaths of forests on steep, geologically unstable slopes. Based on our local knowledge of the critical environmental concerns associated with clearing and grading in this terrain and geology, the TJSWCD respectfully requests that an alternative route for Dominion Power's Atlantic Coast Pipeline be chosen.

Nelson County's mountainous terrain is characterized by shallow soils above granite bedrock. The bedrock contains fractures that convey water underground near the surface. This in itself creates unstable conditions, as the soil is very susceptible to sliding along the smooth bedrock. This was catastrophically demonstrated in 1969 when the remnants of Hurricane Camille came through the area, causing landslides and debris flows, killing hundreds of people, and leaving terrain scars still visible today. While Hurricane Camille was an extreme event, "(s)ignificant rain events that trigger landslides occur in Virginia every 10-15 years" (<http://www.dmme.virginia.gov/DGMR/landslides.shtml>).

When the protective roots and canopy of forest trees are disturbed, similar impacts occur with even *less* significant rainfalls. For example, in 2003, Wintergreen Resort installed a "snow tube park", which involved clearing and grading on the steep slopes in Nelson County. Soon after grass stabilization was achieved, mountain storms resulted in severe erosion and landslides on these vulnerable slopes. The shallow roots of grass, and the lack of tree canopy, provided inadequate protection for the soils. It took several engineered attempts to finally create a stable environment. (See photos of landslides below)

"To exercise leadership in promoting natural resource protection"



Photos – Wintergreen 2003, mudslides after clearing & grading

In addition to the soil stability impacts along the pipeline route, the clearing of forests will significantly increase the volume and velocity of runoff into the valleys and stream channels below, creating secondary erosion and sediment impacts in those channels. Additional environmental concerns include the well-known problems of forest fragmentation with associated losses of habitat, and the spreading of invasive species.

The TJSWCD urges the Federal Energy Regulatory Commission to require Dominion to satisfactorily show why they think the proposed route is the best route and how they will address the following issues and concerns:

- Management of post construction stormwater runoff to ensure that the volume and velocity of runoff will not increase along the entire pipeline route
- Documentation of risk analyses on similar terrain and geology to predict the landslide potential with clearing and pipeline installation
- Stabilization criteria to guarantee stability on shallow, slide-prone soils (types of vegetation and establishment methods to be used; maintenance criteria to ensure long-term stability)
- Impact of blasting on the surrounding land that is vulnerable to landslides
- Impact of blasting on the water-filled fractures in the bedrock. These rock fractures contain the water that ultimately recharges the wells and springs which supply domestic water to Nelson County residents.
- Protection of public safety in the event the pipeline is exposed through erosion and landslides
- Protection of the pipeline at stream crossings, through streams which are known to constantly move and change shape due to the large amounts of flow from the mountains during storms.

In light of the concerns outlined above, the TJSWCD requests that an alternative route be chosen for the Atlantic Coast Pipeline. The alternative should avoid the sensitive landscapes, geology and terrain that are characteristic of the proposed route.

Respectfully,

Alyson Sappington
District Manager

Cc. U.S Congressman Dave Brat, 7th District
U.S. Congressman Robert Hurt, 5th District

“To exercise leadership in promoting natural resource protection”



Thomas Jefferson Soil and Water Conservation District

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June 24, 2015

Mr. Evan Feinman
Virginia Deputy Secretary of Natural Resources
PO Box 1475
Richmond, VA 23219

Mr. Russ Baxter
Virginia Deputy Secretary of Natural Resources for the Chesapeake Bay
PO Box 1475
Richmond, VA 23219

Dear Mr. Feinman and Mr. Baxter:

I am writing to you on behalf of the Thomas Jefferson Soil and Water Conservation District (TJSWCD) Board of Directors. As previously noted in the enclosed correspondence to FERC (Dec. 5, 2014), the proposed Atlantic Coast Pipeline (ACP) project presents significant and critical concerns with respect to potential erosion, sedimentation, and stormwater management due to the unique geology, topography, and sensitive landscape in Nelson County. The TJSWCD has not yet received a reply from the Federal Energy Regulatory Commission (FERC) as to how the seven issues and concerns raised in our Dec. 5 letter will be addressed.

The TJSWCD has provided support for Nelson County's Erosion and Sediment Control Ordinance and Stormwater Management Guidelines since their inception. The TJSWCD is aware of the provisions in the Virginia Erosion and Sediment Control Law and Regulations and the Virginia Stormwater Management Law and Regulations, allowing natural gas pipeline and utility companies to submit "annual standards and specifications" in lieu of site specific plans. However, as stated in the Erosion and Sediment Control Regulations 9VAC25-840-30-B, **"The submission of annual standards and specifications to the department does not eliminate the need where applicable for a project specific Erosion and Sediment Control Plan"**.

The TJSWCD strongly believes that the ACP project epitomizes the type of project that should be held to this standard for submitting a *"project specific Erosion and Sediment Control Plan"*. It is our understanding that every 400 feet of pipeline will disturb over one acre of land. Our previous letter described Nelson County's unique mountainous terrain with shallow soils and granite bedrock that is prone to landslides. The landslides in turn have, in the past, led to extreme debris flows, extensive flooding, and the loss of human life. Minimizing the chance of this happening again in the areas of land disturbance for pipeline construction will likely entail practices that go beyond those called for in the company's annual standards and specifications. In addition, the establishment of permanent vegetation to re-stabilize disturbed areas on the shallow soils and steep slopes will likely entail alternative methods.

"To exercise leadership in promoting natural resource protection"

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OFFICE

It is our understanding that the Virginia Department of Environmental Quality (DEQ) lacks the resources to adequately implement the Erosion and Sediment Control and Stormwater Management Programs to ensure compliance with all standards on all projects, especially with respect to entities that submit annual standards and specifications. However, the Virginia Stormwater Management Law provides for the assessment of fees to enable adequate program implementation: **§62.1-44.15:31.D: “The Department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section.”**

In consideration of the points made above, the TJSWCD respectfully requests that:

1. FERC and Dominion Resources will satisfactorily explain, prior to the issuance of permits, how the issues and concerns raised on page 2 of our letter of Dec. 5, 2014 will be addressed (copy enclosed).
2. DEQ will require project-specific Erosion and Sediment Control and Stormwater Management Plans for the ACP project that meet all Virginia standards, and that these plans will be made available to the public.
3. Localities will have the right to review plans, conduct inspections and enforce their local Erosion and Sediment Control Ordinances.
4. DEQ will “assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to (the Virginia Stormwater Management Law)”, to enable them to fully comply with Virginia laws and regulations.
5. Prior to construction, Dominion Resources officials and third-party inspectors will be required to meet with local officials to discuss the implementation of the project-specific Erosion and Sediment Control and Stormwater Management Plans and adaptive management plans.

Thank you for your attention to our requests, and we look forward to your response.

Sincerely,



Brian D. Wagner
Chair, Thomas Jefferson Soil and Water Conservation District

Cc: Governor Terry McAuliffe
Secretary Molly Ward, Virginia Secretary of Natural Resources
Kimberly Bose, Secretary FERC
Delegates Steven R. Landes, David Toscano, Robert B. Bell, Matthew C. Fariss
VA Senators Bryce E. Reeves, R. Creigh Deeds
US Senators Mark Warner, Tim Kaine
Nelson Board of Supervisors
Kendall Tyree, VASWCD