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2015-12-17 Top News

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Pipeline monitoring group to petition EPA

BY ANNE ADAMS • STAFF WRITER

MONTEREY — Things might be OK, until someone calls the EPA.

And that is what's about to happen.

Those frustrated with Virginia's apparent lack of oversight on big, linear construction projects — such as the Atlantic Coast Pipeline — are about to step things up. Virginia can't seem to properly handle Clean Water Act laws when it comes to gas pipelines, they say; so, it's time to go over the state's head and get some help from the Environmental Protection Agency.

For months, the boards of supervisors for six Virginia counties, plus numerous individuals and environmental organizations, have pleaded for the Department of Environmental Quality to provide sufficient oversight and monitoring for the ACP and Mountain Valley Pipeline projects. So far, they've gotten little response.

The Dominion Pipeline Monitoring Coalition and perhaps other groups will soon petition the EPA to strip Virginia of its authority to police the construction permitting process, and stormwater and erosion and sediment control plans.

The state simply isn't doing its job, says DPMC coordinator Rick Webb, of Mustoe.

Since Dec. 8, the DPMC has issued Freedom of Information Act requests almost daily to the DEQ, copied to The Recorder — nine so far, and heading toward one for each of 11 projects the coalition identified where the DEQ granted variances from the state's 500-foot open-trench regulation so that companies can have much longer open trenches during construction, including for projects on steep, rugged mountainsides.

Of the 11 projects the DPMC identified, nine had open trenches more than 1,000 feet, and six had open trenches longer than a mile — in some cases three, seven, and even 15 miles.

“All of these variances were granted for projects under construction since the DEQ took over the E&S and stormwater management program,” Webb said Tuesday.

Virginia moved that program from the Department of Conservation and Recreation to DEQ in July 2013.

DEQ consistently grants variances; in fact, the coalition has not yet found an instance where a variance was refused, Webb said. But DEQ never requests a company’s E&S plans or inspects the projects during construction. The coalition is asking DEQ for inspection reports, erosion and sediment control plans, stormwater runoff plans, and communication related to the projects where variances, sometimes more than one, were granted.

The coalition doesn’t expect DEQ to provide much, if anything, from its document requests, Webb said, “because DEQ isn’t asking for these plans, isn’t reviewing them, and isn’t inspecting the projects unless a complaint is filed.”

And that indicates Virginia is not living up to its responsibilities under the federal Clean Water Act when it comes to pipeline projects, he contends.

“We intend to challenge the way DEQ runs the program,” he said. “The state is not doing its duty.”

Tammy Belinsky, a consulting attorney for the coalition, agrees. “The DPMC believes that the DEQ does not have the capacity, for whatever reasons, to protect water resources from the impacts of gas pipeline construction. Despite the lack of capacity, the DEQ grants variances from regulatory requirements as a matter of course and may only investigate site conditions if a complaint is lodged,” she said this week.

“The DPMC has conducted an in-depth investigation of the Columbia gas pipeline that serves the Celanese plant in Giles County, including the regulatory record,” Belinsky said. “We are expanding the investigation to all pipeline projects that have been constructed under grants of variances from the regulatory requirements.”

Since its inception, the coalition has looked at pipeline projects on the ground, and from the air, using its Pipeline Air Force; it gathers inspection reports and other records.

“The more we learn about all this, the more distressing it becomes; it’s always worse than we expected,” Webb added. “This is a dire situation.”

Companies building pipelines “get away with a lot,” he said. “There’s just no oversight.”

When notices of violation are filed, as they were on a project in West Virginia, the fines aren't enough to bother the companies involved, he said.

Other localities affected by the ACP and Mountain Valley Pipeline proposals have been weighing in on the issue of DEQ's lack of oversight. So has the Virginia Association of Counties, as reported last week, which included this topic on its legislative agenda for January's General Assembly session; it said, "VACo supports the provision of adequate direction and resources for the DEQ to monitor and enforce compliance with Erosion and Sediment Control and Stormwater requirements by businesses constructing large-scale utility projects (such as gas pipelines) that cross jurisdictional borders."

Last week, the Augusta County Alliance applauded its county supervisors for a resolution urging better oversight from the state "to protect residents' drinking water, schools, property, and flood control dams from adverse impacts of pipeline construction and operation."

Augusta supervisors had unanimously approved a letter to the Federal Energy Regulatory Commission about recent proposed reroutes of the ACP. "The detailed letter to FERC, the federal agency charged with permitting interstate gas transmission lines, asked the agency to require Dominion to conduct extensive testing and monitoring of local groundwater sources," the Alliance stated. "The letter seeks processes and information to answer a question that has worried public officials since the pipeline project was announced more than a year ago: 'What safeguards will be put in place to guarantee the safety of the private water supplies of our residents?' asked the board in its letter."

Frustrated by a lack of answers to that question, the board requested FERC require the ACP to:

- Survey and evaluate all private and commercial wells within 500 feet of the proposed pipeline before construction, estimated to be 110-120 wells;
- Assess the water quality and yield of the wells and provide results to each landowner;
- Monitor water levels before, during, and after pipeline construction;
- Conduct a post-construction assessment of all wells;
- Report on the final results, including a statement of the adverse impacts caused by pipeline construction and required actions to mitigate the damage; and
- Establish a contingency fund to provide for compensation for damages to private wells.

Alliance co-chair Nancy Sorrells said, "I'm grateful that the county is asking FERC to require these common sense precautions. The board of supervisors should be applauded for looking out for the citizens of the county who will be affected in so many ways by this proposed project. The least Dominion can do is assess the pipeline's impacts on local water supplies, considering the inevitable damage that will come to our county's farms, forests, neighborhoods, private, and public lands."

Craig, Franklin, Giles, Montgomery, Nelson and Roanoke counties have adopted resolutions addressed straight to Gov. Terry McAuliffe or Virginia's General Assembly, urging them to

insist the DEQ exercise its authority in requiring ACP and/or MVP to submit detailed erosion and sediment control plans — plans open to public inspection before construction begins.

So far, they've not heard back from the governor, who early on more than a year ago touted the ACP project and assured Virginians it would be the most environmentally sound pipeline projects ever built.

Why petition the EPA?

The Environmental Protection Agency delegates Clean Water Act enforcement to U.S. states. Attorney David Sligh, one of DPMC's senior regulatory system investigators, explains.

"The EPA has delegated part of its authority to issue permits for a broad range of pollutant discharges to the state of Virginia, in accordance with a provision of the Clean Water Act that encourages federal/state sharing of responsibilities," he told The Recorder Tuesday.

One category of permits for which Virginia has been granted covers runoff of pollution from construction sites. The DPMC is asking the EPA to take back that authority in one area, he said, "because Virginia is not doing its job ... the target is the construction stormwater permit for linear projects, such as pipelines and roads."

If the EPA agrees Virginia is failing to live up to its responsibilities under this part of the Clean Water Act, it could "de-delegate" the commonwealth's authority — "take away the delegation EPA had given the state," Sligh explained.

"It's important to note that Virginia sought the authority to do this permitting and, in doing so, they committed to have both the authority and the resources to do it right," Sligh said. "Now, DEQ management apparently hasn't provided the resources to keep up with the demands of these particular permits, so maybe they should give the authority back to EPA."

Webb noted that much smaller, normal construction projects, such as malls or parking lots, are going to great trouble and expense to meet regulations on water quality and run-off. "Companies all over Virginia are complying with stormwater regulations because local jurisdictions have oversight. Even in Highland, the county still has E&S responsibility. Just not for pipeline projects," he said.

Because transmission pipelines cross multiple jurisdictions, oversight falls to the DEQ. "The ACP is the largest proposed project in Virginia in the last half-century ... and here, ordinary construction projects comply. In general, they do their best to be good citizens. We have all these regulations to save the Bay and improve water quality, but these pipelines are just self-regulating. And self-regulation doesn't work. No one ever thought it did," he said.

Construction companies have grounds to complain about having to comply when big companies like Dominion do not, he added.

“These are complicated matters,” Webb continued. “We have a convoluted regulatory system the public can’t access or deal with effectively ... we are asserting our rights as citizens, and we have the right to expect the state to implement protection.”

However, he said, environmental laws are not being implemented, and “we just might not have any other option but to take away that state authority.”

Belinsky agrees. “The ultimate goal is to assure that mega gas pipeline construction does not cause harm to water resources,” she said. “We want to hold the DEQ accountable for either doing its job or not. We believe that the documents (requested through FOIA requests) will help us determine whether the DEQ is doing its job, and if not, whether there is a course of action we can take before our most pristine water resources are changed forever.”

DPMC has consulted numerous attorneys, including those with Appalachian Mountain Advocates.

Webb said the DPMC and perhaps other groups will file a petition with EPA sooner rather than later, perhaps in 2-3 weeks. While he doesn’t know of any precedent in the U.S. for the EPA taking over regulations related to water, he did note something similar happened in Tennessee — the Department of the Interior took over surface mining regulation when the state wasn’t providing sufficient oversight to meet legal requirements.

In Virginia’s case, “DEQ’s failure to engage is well established,” Webb said.

After EPA reviews the petition, it could revoke state primacy over pipeline projects and implement federal oversight, Webb said, but it’s more likely EPA will first discuss the issues with Virginia officials and try to come to an agreement for improvement.

Sligh said if the EPA is convinced by the DPMC’s petition, “They’ll come to Virginia and say, ‘What’s going on?’ and ask the state to fix problems before they take away authority.”

However, he stressed, the EPA “has a serious responsibility” to review the coalition’s petition. “They have to answer the petition,” he said.

Webb noted in previous discussions between some of DPMC’s representatives and those from other concerned groups, DEQ officials have been frank that the agency simply doesn’t have the money and personnel to review E&SC plans, or inspect projects of this magnitude.

DEQ said as much to The Recorder last year, when asked whether the agency would personally review an E&SC plan for the ACP. DEQ said the plan would be reviewed and approved by a DEQ-certified plan reviewer, noting, “the review and approval of these plans is performed by the Standards and Specifications holder (ACP/ Dominion) — not DEQ staff.”

This “self-regulation,” where the “holder” reviews and approves its own plans, is exactly what concerns the coalition members, and many others.

“Some of these projects are like the Wild West,” Webb said. “The subcontractors bring construction crews from out of state; they put them in these temporary encampments; they have no ties to the area, then they leave. And these subcontractors are always cutting corners to meet deadlines and save money — that’s what (DPMC) has been seeing. We’ve even seen deliberate, intentional violations ... we all know there’s a pipeline race under way — the one who gets the gas to the limited market for it wins the race.”

DEQ has admitted resources (money, personnel) is an issue, “and I don’t doubt it,” Sligh said. Companies building linear projects have to file annual Standards and Specifications for review and approval.

“They’re required to file those documents and have them approved ... but DEQ has almost no personnel to deal with that ... they have allowed companies to continue operating under Standards and Specification submitted in 2012 or 2013, even though the documents are supposed to be updated every year,” Sligh said. “That means that changes to the law and regulations since that time aren’t accounted for. When companies file the annual S&S, I think they pay a fee of \$1,000, under state statute. That certainly can’t pay for the staff to review S&S, or especially to go into the field to inspect — you’d use up \$1,000 pretty quickly, if you’re checking on a hundreds-mile-long project, as you can imagine,” Sligh said.

“We are asserting that (the process) is inappropriate for a project of this magnitude, this size, this complexity. Even the fees a company would pay for processing an individual permit (with DEQ), wouldn’t cover all the duties required to analyze a proposal. If we’re going to get any changes, it will be through the legislature or a change in regulations,” Sligh added.

Virginia DEQ, he said, has the legal authority to oversee these projects, and it must commit the resources to do it right, “but they are admitting to us, and to (The Recorder), that they don’t have the resources. “I worked for DEQ for years, and I can tell you,” Sligh said, “this is a monster issue and they have to be struggling to try to figure out how they’re going to handle it.”