

Clean Water Act Section 401 Certification Reviews in Virginia

Sample Comments and Talking Points

Through this review process, DEQ will develop a recommendation to the Virginia State Water Control Board (Board), which has the authority to make the final decision under the State's authority from Section 401 of the Clean Water Act (CWA). Federal permit approvals cannot be finalized unless the state grants a Water Quality Certification (Certification) stating there's a reasonable assurance that all Virginia water quality standards (WQS) will be met if the projects are built in accordance with the conditions in the Certification.

Your comments should be aimed as specifically as possible at ways the pipelines can or will cause or contribute to violations of the WQS. That is the legal question that will determine whether a Certification is legally supportable or not.

In your comments, describe ways you use rivers and streams that would be directly affected by pipeline work or are downstream of those areas. If you use a stream for fishing, boating, swimming, or just for aesthetic enjoyment those are valid recreational use that DEQ must protect. Describe waters you know to have valuable and sensitive species (brook trout, mussels, endangered species, etc.).

Sample Comments and Talking Points:

- The time period for the public participation process is too short and must be extended. The current schedule does not give the public enough time to review relevant documents.
- DEQ has not analyzed cumulative impacts on major watersheds from all pollution sources to waters that would be affected by these projects. Such cumulative impacts analyses are conducted by DEQ for all other project reviews.
- The burden of proof to assure that all water quality standards will be met is on the applicants and DEQ. The Applicant has not met the standards required to provide proof that there will be no illicit discharge to State waters.
- DEQ released the erosion control construction plans two weeks after the start of the Section 401 public comment period was announced. The erosion control plans are a critical component of the 401 Certification. The public comment period should be extended to account for the late submittal of information. DEQ jumped the gun in starting the comment period without the plans available for public review.
- DEQ is considering approval of variances for open trench sections to exceed the standard open trench length of 500 feet. Construction variances allow for less stringent water quality protection measures. The Certification Conditions do not include requirements for analysis of construction impacts resulting from allowing the variances.
- DEQ has not analyzed impacts to recreational uses, such as fishing, that would result from construction or maintenance of the pipelines. Recreation and support of native aquatic life communities are designated uses in all state waters. The activities

proposed will impair existing or designated uses that must be fully protected in state waters.

- DEQ has failed to analyze whether erosion control measures to maintain high water quality in streams can be met. The erosion control plans will take months to review for compliance with erosion and stormwater management standards and regulations. The amount of time required for a complete review of the construction plans is substantial. The time schedule set by DEQ for approval of the 401 Certification does not provide adequate length of time for review of the erosion control plans. The plans provide the basis for assuring the water quality requirements are met. DEQ cannot provide assurance the clean water requirements are met without completing the erosion control plan reviews.
- Average times for construction plan reviews are 8 months to a year for an average site. The size of the pipelines projects is much larger than an average site, yet the schedule for plan review is much shorter at 4 months. DEQ is taking shortcuts to expedite the project review, instead of performing a careful and thorough review.
- DEQ will not consider the results of reviews of erosion and sediment control plans, and other detailed plans, such as characterizations of karst areas, after the public Section 401 comment period ends.
- Dye trace studies proposed in the approved Karst Dye Tracing Plan should be completed during the Certification review process and not prior to initiation of land disturbing activities in karst terrain.
- Discharges from upland activities will result in sediment discharges and the pollution control measures proposed will not prevent stream impairments in cases where there are steep slopes, highly erodible soils, and fine soils that cannot be filtered out by silt fences and other methods. Such discharges will impair habitats and fish populations for months or years and will prevent people from using those stream sections. Even temporary impairments of uses are prohibited in Virginia Water Quality Standards.
- Disturbance and removal of riparian buffers from construction activities will be allowed beyond 50 feet of any perennial, intermittent, or ephemeral surface waters. Fifty feet is not adequate to provide protection from land disturbing activities. The minimum buffer should be 100 feet.
- The conditions stated in the Draft 401 Certification are meant to provide the Commonwealth with an increased degree of assurance that construction activities which may result in a discharge to surface waters, will be conducted in a manner that is protective of water quality. The draft conditions fail to provide that assurance. Until a complete review of the erosion control construction plans is complete, there is no assurance that the conditions meet the stated requirements.

In addition, the Atlantic Coast Pipeline should be rejected because:

1. **The Final Environmental Impact Statement is incomplete and fails to meet commonsense safety guidelines and the minimum legal requirements of National Environmental Policy Act (NEPA).**
2. **The ACP is not needed to assure needed future energy supplies.** [Numerous studies](#) have concluded there is sufficient capacity in existing pipelines. Furthermore, building new pipelines are unnecessary in the longer term because

renewables (wind and solar) are the predominate source of new generating capacity being built in the nation.

3. **The ACP would not bring jobs and economic benefits to affected communities.** The people hired to construct the pipeline would not be local to VA, WV or NC, but would be contracted skilled workers from outside the area. The permanent positions created would be miniscule compared to the jobs permanently lost due to businesses that would be disrupted, particularly in the tourism industry. Further, depressed property value and reduced demand for affected real estate would adversely affect localities.
4. **The ACP would devastate the environment of one of the nation's important ecosystems. It would:**
 - Threaten the integrity and safety of water supplies in the immediately affected communities and other communities that are dependent upon water originating in the Allegheny-Blue Ridge region;
 - Endanger the structural character and seriously increase the possibility of long-term erosion in the steep mountain terrain through which the routes would pass;
 - Present serious safety risks because of the proven instability of the karst topography that these proposed routes would traverse, as well as the danger of pipeline failures;
 - Harm the habitat of many protected and unique species of plants and animals;
 - Compromise the intended uses of public lands, particularly the Monongahela and George Washington National Forests; and
 - Degrade the usefulness of affected agriculture and forest resources.
5. **The ACP will deprive people of their property rights by using eminent domain for private gain.**
6. **The ACP will cause lasting damage in the George Washington and Monongahela National Forests.**
 - Large scale excavation on high-hazard areas without detailed plans for prevention of erosion, alteration of runoff, and landslides;
 - Damage to water supplies and high-quality headwater streams, including native brook trout streams;
 - Fragmentation of high-integrity core forests that are home to many rare and sensitive species, causing loss of habitat that cannot be mitigated;
 - Crossing the Appalachian Trail corridor using a high-risk and environmentally damaging plan;
 - Degradation of scenic and recreational values in our national forests.