**Comments on Draft Water Quality Certification for**

**the Mountain Valley Pipeline**

August 22, 2017

These comments are being submitted on behalf of Wild Virginia, the Dominion Pipeline Monitoring Coalition (“DPMC”), David Sligh, Ernest Q. Reed, Jr., Rick Webb, Misty Boos, Tammy L. Belinsky, Harold McCall, Preserve Bent Mountain/Preserve Roanoke, and Preserve Craig, Inc. (Collectively “Commenters”). The mailing addresses and phone numbers for each party are included below. Based on the substantive and procedural issues discussed below, the Virginia Department of Environmental Quality (“DEQ” or “Department”) must suspend processing of the individual Clean Water Act (CWA) section 401 review for the Atlantic Coast Pipeline (“ACP”).

If DEQ makes a recommendation to the State Water Control Board (“SWCB” or “Board”) under the current process, the Department must recommend denial of the Water Quality Certification (“WQC”) because DEQ cannot provide the necessary assurance that Virginia Water Quality Standards will be met. If DEQ proceeds with a recommended finding to Board that the draft Water Quality Certification (WQC) should be granted, the Board must reject that recommendation and deny Certification for the project.

**Parties**

All of the organizations and individuals listed above have direct and ongoing interests in waters that are affected by the proposed regulatory action. All use various waters that would be impacted for one or more activities, including recreation, aesthetic enjoyment, and/or scientific and educational purposes. Addresses, phone numbers, and further detailed interest statements are included in the email transmitting these comments.

**Failure to Assess Cumulative Impacts**

The most glaring failure in DEQ’s processing of this proposed project is the failure to assess the potential cumulative impacts of all project-related activities and to consider them in the context of present conditions and other polluting impacts in the same waterbodies and watersheds. Commenters have submitted by separate transmittal a report prepared by a group of experts in many disciplines related to water quality assessments, aquatic ecosystems, impacts of development projects, and water pollution control methods and reviews. Angermeier et al., Evidence of Water Quality Threats from the Atlantic Coast Pipeline, Failure to Assure Compliance with Virginia Water Quality Standards, August 22, 2017 (referred to herein as “Expert Report”).

The overall conclusion of the Expert Report was that:

DEQ’s draft WQC, which asserts that there is a “reasonable assurance” that Water Quality Standards (WQS) will be met with the conditions contained in that draft, cannot be supported by the evidence in the record and pertinent scientific authorities and knowledge. Such a finding in the Department’s recommendation to the State Water Control Board (SWCB) would be professionally incompetent and would fail to meet minimum standards of scientific proof.

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The overall conclusion of the Expert Report was that a finding of “reasonable assurance” by DEQ and the SWCB could not be supported by the record, “would be professionally incompetent and would fail to meet minimum standards of scientific proof.” That conclusion was based, in large part, on the fact that DEQ has improperly and arbitrarily chosen to segregate the analyses of various potentially-polluting activities related to pipeline construction from one another and refused to look at the total picture pertinent to water quality in each waterbody and watershed that could be affected.

It is notable that, in considering whether conformance with WQS can be assured, this project and the other major pipeline project now under review are being treated differently from every other case where individual regulatory action is taken by DEQ to protect water quality. When setting limitations in all individual discharge permits it issues, DEQ looks at existing conditions in the streams and at all other sources of pollution in the area whose impacts will contribute to the overall health of the stream and compliance with WQS. If a permit for a wastewater plant discharging phosphorus, for example, is being considered, it would be scientifically invalid to claim the stream would meet WQS if one refused to consider other direct discharges, known sources of nutrient runoff from agricultural or residential lands, etc.

**Individual Water Quality Threats**

Impairment of Recreational Uses Not Analyzed or Protected

DEQ has included no conditions in the draft Certification that are designed to protect recreational uses in waterbodies to be affected by the project. Virginia WQS include designated uses of all state waters for recreation and recreational uses are defined in law broadly, to include swimming, fishing boating and other activities but also aesthetic enjoyment and the values waterbodies contribute to those hiking, camping, or otherwise recreating around them. Digging and blasting through stream bottoms, removing riparian trees and native plants from the streamside, replacing natural bank materials with rip-rap or other materials will all impair recreation in those specific areas and this result violates state WQS, which prohibit creation of conditions that “interfere with” uses directly or indirectly.

Commenters have submitted testimony from a number of citizens, by separate email transmittal, that describe how individuals and families value high quality waterbodies near their homes or in areas they visit and how physical disruptions from construction, changes in habitat, and production of sediment discharges in streams will damage their uses. DEQ has an obligation to analyze ways the pipeline activities may impair water uses of all kinds, both designated and existing and has failed to do so. Commenters have also submitted a letter with comments DPMC submitted in regard to the general Certification Virginia was considering for the Corps of Engineers’ Nationwide 12 permit. That DPMC letter recounts the fact that the Corps admitted in its Decisions Document meant to support the NWP, that recreational uses in areas of pipeline crossing would sometimes be degraded and even eliminated. DEQ ignored that evidence in that process but may not continue to do so.

Inadequate Riparian Buffer Requirements

DEQ’s proposed conditions require 50-foot buffer zones around surface waters “where possible” and requires buffer to be “minimized to the maximum extent practicable if 50 feet is not possible.” The effectiveness of riparian buffers depends on a range of factors, include slope (both in the buffer zone itself and up-slope), soil and land-surface characteristics, rainfall amounts and intensities, types of vegetation, and many other factors. A uniform requirement for buffer widths across this huge project and without any consideration of the great range of conditions that will be encountered is extraordinarily reckless and irresponsible. The scientific literature contains many studies that would be useful in helping set buffer requirements but DEQ has apparently availed itself of none of these resources.

By separate transmittal, Commenters have submitted several authoritative sources that, in each case show the inadequacy of DEQ’s conditions for riparian buffers. The sources are: Wenger and Fowler, *Protecting Streams and River Corridors*, Carl Vinson Institute, Univ. of Georgia; Sweeney and Newbold, *Streamside Forest Buffer Width Needed to Protect Stream Water Quality, Habitat, and Organisms: A Literature Review*, Journal of Am. Water Res. Assoc., Vol. 50, No. 3, June 2014. And additional source is Lee et al., *Quantitative review of riparian buffer width guidelines from Canada and the United States*, Journal of Environmental Management, 70 (2004) 165–180.

Based on these sources and many others in the scientific literature, negative impacts to streams are nearly certain to occur in streams near pipeline activities due to the inadequate buffer requirements contained in the draft Certification. Many of the sources reviewed provide some level of assurance of protection with buffers greater than or equal to 30 meters but, of course, recognize that even these buffer sizes (which are much greater that DEQ proposes here) will not work under all conditions.

Contaminants on Soils

DEQ has in no way addressed the fact that numerous contaminants are present in soils that will be disturbed during pipeline and associate road construction. Arsenic and lead are of special concern in areas formerly uses as orchards and farm land where sewage sludge and chicken litter, which the pipeline will cross in the valleys, have high nutrient levels, especially phosphorus, but also heavy metals and a variety of complex and potentially toxic organics.

**Procedural Deficiencies**

CWA section 401 requires that a state “shall establish procedures for public notice in the case of all applications for certification. . . .” 33 USC 1341(a)(1). [CWA §401(a)(1).].

The sufficiency of such public notice and opportunity to comment is judged in relation to the states’ own procedural requirements but is also governed by applicable federal law and constitutional principles

The Virginia DEQ’s recently-issued guidance on processing the individual section 401 requests addressed public comment briefly, stating that “[p]ublic notice of the draft certification conditions will be published once in one or more newspapers of general circulation in the areas in which the proposed pipeline activity is to take place” and listing information that “public notice will include.” Melanie D. Davenport, *Guidance Memo No. GM17- 2003, Interstate Natiral Gas Infrastructure Projects Procedures for Evaluating and Developing Additional Conditions for Section 401*, May 19, 2017. The public notice is to include, among other items,

The location of such activity and the state waters that may be affected. The location should include a listing of all counties and cities in which the pipeline construction will occur and include either maps of the project area or directions on how to access such maps. Where possible, location information should reference route numbers, road intersections, map coordinates or similar information or how to obtain detailed information on the activity . . .

Id. at 4.

The public notice issued by DEQ lists Virginia counties and cities through which the proposed pipeline would cross but includes no information about the “state waters that may be affected.” The notice provides a link to the DEQ web page where various documents related to the project may be accessed (For project information and location, please see:

http://www.deq.virginia.gov/Programs/Water/ProtectionRequirementsforPipelines.aspx.). Members of the public will search in vain in the documents listed on the referenced web page to find the names of state waters that may be affected. Rather, detailed lists of those waters can only be obtained by searching documents on the applicant’s web page or in documents submitted to other agencies. Thus, DEQ’s public notice fails to meet the specification listed in the Guidance Memo in this regard.

DEQ’s failure to make all necessary information available to the public in the prescribed comment periods for this action have deprived parties of the right to make fully-informed and effective comments. In addition to any specific state requirements for public notice, the federal courts have explained that public notice must meet certain minimum standards to provide parties with adequate information to fully understand proposed activities and make effective comments on them. We assert that the process conducted by DEQ fails to meet the