

January 4, 2019

Virginia Air Board

These comments from Friends of Buckingham, a grassroots organization formed in 2014 of citizens and landowners concerned about the proposed Atlantic Coast Pipeline are arranged around the four points in Virginia law that guide the Air Board. Section § 10.1-1307.E of the Code of Virginia:

E. The Board in making regulations and in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

Note that the law provides direction to the Air Board itself, not the Department of Environmental Quality, which was created by combining the already long existing Air, Water and Waste Boards in 1993. Citizen boards are central to Virginia's government. They are valued for their independence from control of politicians or career civil servants and for transparently conducting all business in public (Thomson, V., 2017, Climate of Capitulation).

At the November meeting of the Air Board, DEQ staff presented PowerPoint that erroneously implied that the Board has never before denied an air permit based on suitability factors that were not directly related to air quality. However, the record

reveals that on December 11, 1979 the Richmond Times Dispatch (p. B1) reported the Board denied the Dano permit because it determined that the location was not suitable. The Richmond Times Dispatch (p. B3) further reported that when DEQ Executive Director William Meyer was asked to define a suitable location, he said “the criteria are very general and could involve zoning or possible environmental hazards. The Chatterton Farm site, for example, is zoned for agriculture.” Thus, it is true that the Air Board has denied an air permit because of suitability and overturned a local zoning decision.

Further, a Richmond Times Dispatch article reported on August 4, 1981 (p. B3) that then Assistant Attorney General Roger Chaffe, “said it was his opinion that the law allows the board to deny a permit, even if the applicant is in compliance with air and zoning regulations, if the board feels that other factors make the activity undesirable.” He also indicated that the Board members should avoid making decisions that could be deemed arbitrary and capricious, and that the matter of what suitability/unsuitability meant had not come before a court, therefore calling into question how it would be decided judicially. Chaffe advised the Board to modify its regulations to clarify what it considers. The Board did not vote to limit its suitability review to issues involving air quality and health until 1987 (Richmond Times Dispatch, April 22, 1987 p. 17).

It appears that the Air Board did not address the suitability issue again until 2008. In a publicly available email (March 17, 2008), Natural Resources Secretary Preston Bryant told other Kaine Administration senior officials that the Air Board was “out of control” because of suggested amendments to the suitability policy. Specifically, Board members Bruce Buckheit and Hullie Moore felt the 1987 policy illegally delegated the Board’s authority to local zoning officials to make suitability determinations that fell under the Air Board’s jurisdiction. Since Virginia is a Dillon Rule state, delegations of state authority to localities must be specific and come from the General Assembly. However, no official action was taken.

In short, state law set up the Air Board and gave it authority long before its staff were assigned to the new Department of Environmental Quality. The Board has

denied an air permit based on the suitability standard and some believe that delegating to local government the authority to make the determination of suitability was illegal.

The remainder of this document will be devoted to addressing the four areas on which the law specifies that the Air Board must make air permit decisions.

1. Character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened to be caused.

Data show that compressor stations produce an array of pollutants that damage human health. Landowners adjacent to property purchased for the Buckingham compressor station are in the greatest danger of experiencing the resulting problems. While ACP, like the industry in general, claims that there would be no negative impacts beyond its property line, there are many examples where damage expanded beyond company property lines.

A baseline health study has been requested multiple times throughout this process. Citizens asked that a requirement for such a study be included as a condition when the Buckingham Board of Supervisors developed the Special Use Permit. At that time, Dominion indicated that it would be done. However, it was not included in the conditions and to date, has not been conducted and is not even officially scheduled. **A defensible in court baseline health study is required if this facility is awarded an air permit so that the Air Board can document the impact of the facility on human health.**

Further, little research exists to document the impact of a compressor station on animal health. In this location, many residents hunt deer and other wildlife, and depend upon it for food. A number of landowners in the area raise animals as human food. There is reason to anticipate that just as human health may be impacted, so may animal health. It has given residents little comfort that local and state officials have repeatedly assured us that we can “afford” the additional

pollution from the pipeline. Residents get no compensation for the reduction in clean air.

During the discussion about this Air Permit, there has been mention of adding a new air quality analysis station since there are no nearby stations. Currently, air monitoring for Buckingham can only be surmised based upon data from stations in Charlottesville, Lynchburg, and Petersburg. A rural station is needed to adequately serve Buckingham.

These and other documented problems indicate that the Air Board should deny the requested permit.

2. The social and economic value of the activity involved

Citizens have raised questions about the need for the pipeline itself and the compressor station throughout the review process. For example, watch Tom Hadwin explain it in this video: <https://youtu.be/fds4cmFa3Vg> Virginia's State Corporation Commission has questioned the need <http://www.scc.virginia.gov/docketsearch/DOCS/4d5g01!.PDF> Federal Energy Regulatory Commissioner Cheryl LaFleur has also questioned the need for this pipeline <http://tinyurl.com/y73yzfnu>

This is especially of concern in Buckingham and specifically Union Hill since the existing Transco lines have been there for over fifty years. No additional economic activity has occurred related to the availability of natural gas during that time. Proponents of the ACP claim that economic development and jobs will follow the pipeline. The one local business that actively seeks to use natural gas, Kyanite, Inc., would not use enough to warrant the \$5 million cost of establishing a gate station plus the cost of the distribution system.

<https://www.farmvilleherald.com/2016/11/what-a-tap-could-mean-for-business-growth/>

<https://www.farmvilleherald.com/2017/08/gas-agreement-near-completion/>

ACP claims to be helping Buckingham's economic development prospects, but it will only provide the gate station if some other entity pays the cost. The Mountain Valley Pipeline, on the other hand, is not charging local government or the local distribution system to develop gate stations as it is under construction in Montgomery and Franklin counties.

Dominion's Community Engagement proposal references some of the meetings held in Buckingham to find a way to give Kyanite, Inc. access to natural gas. If this were to occur, it would not specifically help the Union Hill community, and especially the landowners whose property abuts the compressor station.

The Buckingham Compressor Station is planned to be built on property that Dominion purchased from the direct descendants of the original white plantation owners (Variety Shade). Landowners through whose property the ACP or related access roads cross, receive some one-time compensation in the form of an easement payment (on which they must pay taxes). Those whose property abuts the compressor station will not be compensated for their losses in any way. Although Dominion insists that property values do not decline after a pipeline has been inserted into a community, area landowners have already found that buyers are unwilling to pay current value for their land. Safety and health concerns will constrain use of property abutting the compressor station in the future. Thus, placing this compressor station on the planned site harms the economic positions of people living on neighboring properties. Over 80% of these people are minority. Many are also low income. It is not acceptable to site such infrastructure in this location.

ACP has refused to conduct a baseline health analysis in the community prior to construction. **It makes no provisions for abutting landowners to have air quality monitors in their homes.** While it is providing funding to Buckingham county for extra paid emergency staff in the Union Hill area, it will only do so for four years. The county will receive tax income from the ACP, but as the infrastructure ages, that income will decline. Thus even if the county earmarked

the ACP tax income for emergency staff, it will not be sustainable for the life of the infrastructure.

These and additional issues documented in the record mean that the Air Board should deny the request for this permit.

3. The suitability of the activity to the area in which it is located

Location of the Buckingham compressor station in Union Hill required that the county defy and suspend its own land use plan. The area had been zoned for agricultural and residential use. Not industrial use. During the review process before the Special Use Permit was approved, county officials told the public that if they did not approve the permit that the state would over-ride them. Area landowners wish to live in an agricultural zone and do not approve of the industrial facility being hoisted upon them.

Dominion included a long list of signors to a letter of support for the pipeline that is dated October 15, 2017. We believe that it could not have been signed before 2018 as meetings in homes occurred in 2018 and the community partnership agreement was not created until 2018. Some of the signors used their family home address, not the out of state addresses where they actually live. It appears that several people signed the petition twice. Only one of these individuals has attended more than one Friends of Buckingham meeting of the more than 200 public meetings held over four years. Few of the signors lives within one mile of the compressor station. The list of community members is lacking signatures of the African Americans living closest to the proposed compressor station: Ella Rose, William and Mary Rose, Berkeley Laury, Marie Gillespie, and the Harpers.

The record is full of landowner and citizen comments about the value held for quiet country life with good water, air, and clear views of night skies. Many moved to the area for these things or have held on to property for generations because of them. Too often people in Buckingham have to leave the county to

obtain sustainable employment. Many of the affected residents retired to their home community to regain these things. Heidi Dhivya Berthoud provides videos of the extended Harper family living in the Union Hill neighborhood and aerial photos clearly showing the density of the population to the proposed BCS.

Community residents have spoken against the suitability of the Union Hill area for this industrial land use. They have pointed out that the one mile radius around the compressor station site is over 50% more densely populated than the county. Further, the Fjord study has documented that the majority of residents are minorities. Several sources document that it is a low income area. There are many less populated areas in Buckingham county. **NEPA laws designed to prevent anyone from taking advantage of low income or minority people should make it necessary for the Air Board to deny this permit.**

Dominion presented the Air Board with a flawed report of its community engagement activities and a plan to provide \$5.1 million dollars to Buckingham county for short term emergency services and to the Greater Union Hill Community Development Corporation it created to receive the money and oversee its use in the community. Submissions from Chad Oba and Irene Leech address these concerns.

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

Friends of Buckingham will not address this final legal mandate for the Air Board to consider. It is concerned that the gas industry has a long track record of not upgrading infrastructure after initial installation. The clear attitude that rural people, especially minority rural people, have little value and thus get little consideration when decisions are made concerning health, safety, and economic potential, gives us concern for the viability of the Union Hill community and the entire county in the future. There are many other places where people can more safely live and work.

Finally, Friends of Buckingham questions the legality of this decision making process. When this new public comment period is closed, the Air Board must make a final decision within 90 days or later if agreed upon by the parties. However, you are being forced to make a decision less than four full days after the closure of the public comment period on a Friday night.

Friends of Buckingham appreciates the hard work of our independent Air Board. As a Dillon Rule state, only the General Assembly can delegate its authority to localities. Buckingham County's inappropriate decision to ignore its Land Use Plan and approve a Special Use Permit for the compressor station does not require the Air Board to accept its decision. Based upon the four criteria set out in law for Air Board decisions, this request for an air permit must be denied.

Respectfully,

Friends of Buckingham

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