

# DEQ's Process Meets Dominion's Schedule Instead of Ensuring Water is Protected

The State Water Control Board will vote at the end of October to approve or deny the 401 water quality certification. We are now calling on the State Water Control Board to reject the 401 certification until the DEQ uses their full authority under the Clean Water Act to guarantee our waterways will not be impaired by the development of these pipelines. This means expanding the scope of the 401 certification to include waterways and stream crossings and ensuring that erosion and sediment control and stormwater management measures are assessed as part of the 401 certification, not an afterthought.

## Key Points

1. DEQ created two separate regulatory processes by reviewing Erosion & Sediment Control and Stormwater Management plans separately from the 401 certification. This will ensure that the 401 certification process meets the pipeline developers' schedules, but it does not ensure that water quality will be protected.
2. The purpose of the 401 certification is to ensure that "all proposed upland land-disturbing activities" associated with the pipeline will not violate water quality standards. Erosion and sediment run-off is among the worst threats to water resources from these proposed projects, and assessing the adequacy of erosion and sediment control and stormwater management measures is critically important to determining whether the project will meet water quality standards. But the DEQ has pulled it out of the 401 process. This means that:
  - SWCB members will not have an opportunity to review erosion and sediment control and stormwater management plans and will have to make a decision regarding whether upland activities will meet water quality standards without that crucial information. E&S is DEQ's purview, not Water Board authority;
  - E&S controls are only 60% effective at best. Even if perfectly applied, the controls will be insufficient in this steep rugged terrain. Water Board members need this information to determine whether they have "reasonable assurance" that water quality will be protected;
  - Once Virginia grants its 401 certification, it loses much of its authority and leverage to ensure the project meets water quality standards.
  - **RECOMMENDATION:** include thorough assessment of E&S and Stormwater Management plans as part of the 401 certification—not as separate regulatory process.
3. DEQ has declined to exercise its full authority to review the impacts and proposed controls at waterbody crossings.
  - Virginia's authority over pipeline approval is limited, except with regard to impacts of water resources. The DEQ should use its authority delegated to states by the Clean Water Act to the maximum extent.
  - The Army Corps Nationwide 12 blanket permit is overly broad and not site-specific. Projects of this magnitude, cutting across very steep slopes and across sensitive waterways, need a thorough review by the DEQ. For example, the

Rover pipeline in West Virginia was approved under Nationwide 12. The images and information from the **cease and desist order, including photos**, illustrate the risks very well. The Water Board can help prevent irreparable harm to Virginia waters by doing things right now instead of trying to remediate harm in the future.

- **RECOMMENDATION:** revise DEQ's proposed process so that individual 401 certification includes a review of waterbody crossings instead of relying on NWP 12.
4. Within the limited scope of their review, there are limitations.
- Water Board is being asked to certify that it has "reasonable assurance" that water quality standards will be met, yet they do not and will not have the information needed to make that determination.
  - **RECOMMENDATION:** Ask the Water Board members to decline to consider details until they have the tools and the information to do what they're being asked to do. Instead, please ask DEQ to revise the process to ensure a meaningful transparent review. DEQ should go back to the drawing board and conduct individual 401 certification that includes assessment of stream and wetland crossings AND thorough consideration of erosion and sediment control and stormwater management measures.

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