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January 4, 2019

Sent via electronic mail airdivision1@deq.virginia.gov;
Virginia Department of Environmental Quality
1111 East Main Street
Richmond, VA 23219

Re: Proposed New Source Review Permit for Atlantic Coast Pipeline, LLC to Construct and Operate a Natural Gas Compressor Station (Registration Number: 21599) located at 5297 S James River Hwy, Wingina, Buckingham County, VA 24599

Dear Chairman Langford, Members of the Board, and Director Paylor:

On behalf of Chesapeake Bay Foundation (CBF), please accept the following comments on the proposed permit. These comments are in addition to the written comments CBF submitted to the Air Board on September 21, 2018 and December 1, 2018 and those made orally during the public hearing on November 8, 2018. There, we identified several technical and procedural infirmities in the permit and the permitting process. As discussed below and in the comments of others identified here, several of those deficiencies persist. Thus, we ask the Board to deny the permit.

Summary of Deficiencies in the Permitting Process

1. The decision to approve new terms in the proposed permit without public comment violated the state Administrative Process Act (APA).
2. The Department of Environmental Quality (DEQ) has not provided sufficient information to the Board for it to comply with state law.
3. DEQ did not conduct a proper evaluation of existing data to determine that an Environmental Justice community exists adjacent to the proposed station site.
4. DEQ did not perform a review of Environmental Justice concerns consistent with state or federal law and policy and incorrectly told local residents that such information was irrelevant to the permitting process thereby violating the APA.

5. DEQ failed to adequately consider the health impacts to residents of an Environmental Justice community from operation of the station.

The Board Has Failed to Comply with the Administrative Process Act

On December 19, 2018, the Board held a hearing on this permit; however, the public was not allowed to address the Board. There, DEQ staff identified several changes to the proposed permit developed after the close of the public comment period. Transcript of December 19, 2018, pg. 71-89. Those changes were approved by the Board without the public being able to review the text of those changes. Further, the Board advised the public that it would not permit or accept comments on those changes during this comment period. *Id.* at pg. 91-98. That decision violated the state Administrative Process Act, Code of VA § 2.2-4000, *et seq.*, and can only be remedied by providing the public with access to the new permit terms and with the ability to comment on them prior to a final decision.

DEQ Has Not Provided the Board With Sufficient Information to Comply With State Law

Section 10.1-1307(E) of the Virginia Code provides that the Board must consider facts and circumstances relevant to the reasonableness of operation of a 54,000 hp gas compressor station in a rural, low economic, and minority community 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; and
3. The suitability of the activity to the area in which it is located....

Id.

DEQ has not addressed each of these requirements in its presentations to the Board and the public.

While there has been some information provided on the character and degree of injury possible should there be an explosion or other catastrophic event at the station, no information has been provided with respect to how operation of the station will interfere with the reasonable use of neighboring properties and their diminution in value. See Comments of Mary Finley-Brook. The adjacent property owners have inquired about these issues but their concerns, which must be considered by the Board, have not been addressed.

Moreover, DEQ has provided no information about the increased risk of operating two major pipeline systems (Atlantic Coast and Transco) and a large compressor station within yards of people's homes. No one has discussed whether it is suitable to saddle a minority community living at or below the poverty level with two pipeline systems and a mega compressor station. Nor has DEQ provided any information about the compound

environmental and habitat degradation caused by these three mega natural gas facilities that now crisscross the county in Union Hill.

Because this information has not been provided, the Board cannot comply with its statutory and Constitutional obligations. Virginia Constitution, Article XI, Section 1; VA. Code Ann. §§ 10.1-1307(E); 67-102 (A)(11).¹

DEQ Failed to Identify the Community Surrounding the Compressor Station as an Environmental Justice Community

As noted above, the Board must consider the suitability of operating the compressor station in Union Hill. Part of that analysis is determining whether siting the station there will affect an Environmental Justice community. As explained in the prior oral and written comments of Dr. Lakshmi Fjord and the letter to the Board from the Southern Environmental Law Center on December 7, 2018, there is undoubtedly an Environmental Justice community of people living within close proximity of the proposed compressor station site. Despite that evidence, and the fact that FERC had identified the community as impoverished, DEQ persisted in representing to the Board that the surrounding community was not an Environmental Justice community. The January 4, 2019 comment letters of Stephen Metts of the New School, Thomas Burkett of VCU, Mary Finley-Brook of the University of Richmond, and Dr. Lakshmi Fjord confirm that DEQ's representation is erroneous and that the Union Hill community is an Environmental Justice community both because most of the people living there are minorities, but they are also living at or below the poverty line.

As explained in his January 4, 2019 report, Mr. Metts of the New School took Dr. Fjord's detailed door-to-door household information and located the residences she and her staff visited on a map. Attachment A. He then determined the spatial distance of those residences from the proposed compressor station. See the concentric rings of 1, 2 and 3 miles. Further visual representations of those homes have been performed by Mr. Burkett. Attachment B, pages 1-4.

Mr. Metts thoroughly explains why DEQ's reliance on EPA's EJSCREEN and FERC's EJ analysis is flawed. Dr. Fjord's explanation of the data she has collected confirms the location of homes near the proposed compressor station, the race and economic level of the people living in those homes. Combined, those analyses establish there is significant residential density within .5 mile and 1 mile from the facility and the residents living there are mostly minorities, both ethnic and economic.

Neither Dominion nor DEQ have undertaken such a thorough analysis. Thus, DEQ's representation to the Board that there is no Environmental Justice community near

¹ With respect to the Air Board's ability to require a site suitability analysis *see, Mirant Potomac River, LLC v State Air Pollution Control Bd.*, 75 Va. Cir. 117, 2008 Va. Cir. LEXIS 220 (Richmond Cir. Ct. March 13, 2008); Virginia State Air Pollution Control Board proceedings on the Virginia Hybrid Energy Center permitting, January 25, 2008.

the proposed station must be ignored. The Board must now consider whether DEQ has complied with state and federal Environmental Justice laws and policies in the permitting process.

The Permitting Process Has Not Complied With State Environmental Justice Policies

During these proceedings, much has been said and written by DEQ about what the phrase “environmental justice” means. Unfortunately, much of it is incorrect.²

An executive order issued by Governor McAuliffe in 2017 follows the environmental justice policy developed by the United States Environmental Protection Agency in response to a Presidential Executive Order issued in 1994. That policy provides for “the **fair treatment** and meaningful involvement of all people regardless of race, color, faith, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”

Governor Northam has recognized the validity of those concerns. In Executive Order Six (2018), he acknowledged the critical role the Department of Environmental Quality (DEQ), and hence this Board, play in protecting Virginia’s air, water, and public health. He specifically noted that “many Virginians, particularly those in ... **rural low income or minority communities**, do not enjoy clean air and water for outdoor recreation and daily activities.” Governor Northam acknowledged that “many Virginian’s suffer from asthma attacks and other respiratory ailments that are directly attributable to poor air quality.” He directed DEQ to undertake a review of its programs to ensure “that DEQ’s permitting programs are **as protective** of public health and the environment as authorized **under state and/or federal law**...” DEQ was also directed to assess “the enforceability of permitting activity and determining if changes are needed in the methods DEQ uses in crafting such permits.”

Moreover, the Commonwealth Energy Policy, VA. Code Ann. § 67-102 (A)(11), provides that state agencies such as the Board must “[e]nsure that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate impact on economically disadvantaged or minority communities.” As explained in the comments of Mary Finley-Brook, Dr. Lakshmi Fjord and Stephen Metts, January 4, 2019, citing the compressor station in Union Hill will have a disproportionate impact on an economically disadvantaged and minority community.

Environmental justice policies have been enacted by the federal government and states because oftentimes decisions about pollution permits and where industrial facilities should be located were based upon who lived nearby; often minority, economic and ethnic, communities. In fact, the genesis of the movement is identified with a decision to

² CBF incorporates by reference its comments made to the Air Board in CBF’s comment letter of September 21, 2018.

site a hazardous waste landfill in a majority African American county in North Carolina; a place where the residents were not highly educated and lacked economic, legal and political resources necessary to protect their rights.³

Here, DEQ has argued that because the air pollution permit meets national air pollution standards and is as stringent as other similar permits then it satisfies environmental justice concerns. Those arguments miss the mark. They do not consider the essential question of whether issuance of the permit fairly treats people affected by the facility.

“Fair treatment” means that no matter who you are, the government cannot approve a permit without considering whether that decision treats **everyone** fairly. Merriam-Webster defines “fair” as “marked by impartiality and honesty: free from self-interest, prejudice or favoritism.” While what is “fair” treatment can be subjective, at its bare minimum, it means being treated as you would treat others; that is, the Golden Rule. It is in this context that the Board must review the air pollution permit.

The Board must consider the fairness of decreasing the value of local properties compared to others in the county when it decides whether to allow an industrial facility next to homes. It must consider whether it is fair to expose neighboring residents to the risk of death when it reviews a permit to allow the release of highly flammable gas 35 times a year. It must consider the fairness of harming the lungs of neighbors to a gas burning plant when those across the state will not be exposed to the same level of pollution. *See* Declarations of Dr. George Thurston and comments of Suzanne Keller.

In sum, would the members of the Air Board accept the safety risks and financial loss associated with the compressor station especially after the State Corporation Commission has found that there might not be an objective demonstration of need for the Atlantic Coast Pipeline project? If the answer to either of these questions is no, then the decision should be to deny the permit. That is fair treatment. That is environmental justice.

In addition, the Board must also determine whether DEQ has followed state and federal Environmental Justice policies concerning an EJ community’s ability to engage in the permitting process. All of these policies are geared toward early identification of and engagement with members of such communities in the permitting process. Here, members of the Union Hill community, an established Environmental Justice community, have been repeatedly told by DEQ staff that their cultural heritage concerns are not relevant in this proceeding. Despite years of asking for DEQ engagement, agency staff did not meet with any members of the community until August 2018, three years after the initial air permit application by Dominion. During that meeting, DEQ staff repeatedly told attendees that information concerning cultural resources or historical sites relative to the minority population such as slave burial sites, see January 4, 2019 comments of

³ <https://www.energy.gov/lm/services/environmental-justice/environmental-justice-history>

Richard Walker, were not relevant to the permitting process.⁴ See Comments of Mary Finley-Brook, January 4, 2019. This is in direct contravention of state law and policy.

Thus, as explained in our prior comments and the comments of Mary Finley-Brook and Dr. Lakshmi Fjord referenced here, permitting the compressor station in Union Hill will violate both Executive Orders, the Commonwealth Energy Policy, and accepted precepts of Environmental Justice.⁵

DEQ Failed to Adequately Consider the Increased Health Impacts Local Residents Will Suffer From Operation of the Compressor Station

CBF noted in its earlier comments that air pollution from the compressor station will have an adverse impact on the environment and human health. Based upon the data accumulated by Dr. Fjord and state population statistics, people living near the compressor station will be disproportionately harmed by the station's emissions.

As explained in Dr. George Thurston's expert report, Exhibit E to our September 21, 2018 comments, fine particulate matter (PM2.5) generated by fossil fuel combustion will have an adverse impact on human health in the Union Hill community, Buckingham County, Virginia, and the region. Dr. Thurston stated that any increase in air pollution will increase the risk of adverse effects, even when the National Ambient Air Quality Standards are not violated. *Id.* at 13-17. Dr. Thurston noted that neither Dominion nor DEQ have evaluated the increased risk of harm associated with fine particles in conjunction with acidic gases like those that will be emitted by the station. *Id.* at 18-21. Dr. Thurston specifically disagrees with DEQ's conclusion that "in no case, will ... emissions cause air quality to exceed regulatory standards, which are protective of human health and the environment." *Id.* at 21-22.

In addition, based on the door-to-door investigation of Dr. Fjord, see her comment letter of January 4, 2019, approximately 39% of the people living next to the proposed station already suffer health related ailments. Attachment C. Dr. Thurston has evaluated that data and determined that because the residents of Union Hill are economically disadvantaged and so many individuals suffer pre-existing ailments, they can be expected to suffer disproportionately from air pollution emitted by the compressor station. Thurston Supplemental Declaration. Attachment D. Because those residents of Union Hill are members of an Environmental Justice community, state and federal law protect them from such disproportionate treatment by governmental permitting decisions. Thus, based on this fact alone, the Board should deny the air permit.

⁴ It is noteworthy that Justin Sarafin of Preservation Virginia has submitted a comment letter noting the potential cultural and historic significance of the proposed compressor station site and asking the Board to defer action on the permit until those concerns can be thoroughly evaluated. Letter of January 4, 2019.

⁵ See DEQ's definition of Environmental Justice.

<https://www.deq.virginia.gov/Resources/Glossary/GlossaryE.aspx>

Conclusion

DEQ has not complied with state law concerning an appropriate site suitability analysis. Moreover, DEQ failed to properly identify the Union Hill community as an Environmental Justice community and, hence, has failed to properly engage that community in the permitting process, discounted their concerns and proposed to expose them to disproportionate health risks. For all these reasons, the Air Board must deny the proposed permit.

Sincerely,



Jon A. Mueller
Vice President for Litigation

Cc: Rebecca Tomazin, CBF
Margaret Sanner, CBF