

**MINUTES  
STATE AIR POLLUTION CONTROL BOARD MEETING**

**FRIDAY, DECEMBER 3, 2021**

**OLDE DOMINION AGRICULTURAL COMPLEX  
EDUCATION AND CONFERENCE CENTER  
19785 U.S. HIGHWAY 29  
CHATHAM, VA 24531**

**Board Members Present:**

Kajal Kapur, Chair	Hope F. Cupit
Staci F. Rijal, Vice Chair	Joshua G. Behr
Lornel G. Tompkins, MD.	Gail Moore
Richard D. Langford	

**Board Members Absent:** None

**Department of Environmental Quality:**

David K. Paylor, Director  
Cindy M. Berndt, Office of Regulatory Affairs Director

**Attorney General's Office:**

Jerald R. Hess, Assistant Attorney General

These minutes summarize activities that took place at this Board meeting. The Chair convened the meeting at 9:33 a.m., convened a closed session at 10:47 a.m., ended the closed session and returned to open session at 11:31 a.m., recessed at 2:10 p.m., reconvened at 3:00 p.m. and adjourned at 3:22 p.m.

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**Minute No. 1 - Mountain Valley Pipeline, LLC Lambert Compressor Station Registration No.: 21652 - Stationary Source Permit to Construct and Operate.** [Note: consideration of the Mountain Valley Pipeline, LLC Lambert Compressor Station began at the meeting on December 2, 2021 - see Minute No. 2 from that meeting.] The Board continued to hear from persons that had commented during the public participation process: Will Pace- Mayor of Chatham, Katie Whitehead- NAACP Environmental Justice Committee, Lou Zeller- Blue Ridge Environmental Defense League, Crystal Cavalier- Occaneechi Band of the Saponi Nation, Jason Keck, Dr. Mary Finley-Brook- University of Richmond, Anita Royston- President of Pittsylvania County Branch of the NAACP, Dr. Lakshmi Fjord, Desiree Shelley- Mothers Up Front, Brenda Poole- NAACP Environmental Justice Committee, Lib Hutchby, Lucas Brown, Isa Letourneau, Diana Woodall, Steven Pulliam, and Freeda Cathcart

Ms. Rijal moved that the Board move into a closed meeting, pursuant to Section 2.2-3711 A (8), consultation with legal counsel regarding specific legal matters requiring provision of legal advice by counsel concerning the Friends of Buckingham decision, the Environmental Justice

Act, other criteria that can be used to make decisions. The motion was seconded by Ms. Moore and passed unanimously.

The Board unanimously voted to end its closed meeting. The Board certified that, to the best of each member's knowledge, the matters heard, discussed, or considered during the closed meeting were matters lawfully exempted from FOIA's open meeting requirements, and were limited to matters identified in the motion for a closed meeting. For the vote, Ms. Kapur called the roll and all members voted aye.

Mr. Dowd then presented the Department's recommendation:

1. based on (i) the Board book material that contains a memorandum to the Board, a clean copy of the draft permit, a track change copy of the permit engineering analysis, a list of commenters and a sampling of all written comments received, and a summary of and response to public comments; (ii) the public comments made available to the Board; (iii) the agency files on the draft permit, including the 2 applications for a permit; (iv) public comments made at the Board meeting (v) the staff presentations; and (vi) Board discussions; and based on consideration of the reasonableness of the activity involved, and the permit proposed to control it, pursuant to Section 10.1-1307(E) of the Virginia Code, the Department recommends the Board consider the following conclusions:
  - a. determine that the community impacted by the facility is an Environmental Justice community;
  - b. conclude after considering the competing evidence received from the Applicant, the Department, and the public comment in resolving any such conflicting evidence that air emissions, including particulate matter emitted from the facility do not have a disproportionate impact on the Environmental Justice community, and any such emissions do not pose an unreasonable risk of harm to the specific community where this facility will be constructed;
  - c. conclude after considering competing evidence received from the Applicant, the Department, and the public comment resolving any such conflicting evidence, that there is no disproportionate share of any negative environmental consequence from the air emissions from this facility on the Environmental Justice community;
  - d. conclude after considering competing evidence received from the Applicant, the Department, and public comment in resolving any such competing evidence that the residents of the community impacted by the facility have been afforded the opportunity for meaningful involvement in the decision making process for this facility;
  - e. conclude in light of the facts presented to the Board, that the provisions of Section 10.113-07(E) of the Code of Virginia have been met and complied with;
  - f. find that (i) the permit has been prepared in conformance with all legal requirements including all applicable statutes, regulations, and Agency practices; (ii) the limits and conditions in the permit have been established to protect public health and the environment; and (iii) all public comments relevant to the permit have been considered.

- g. approve the permit and conditions as presented at the December 3rd, 2021 meeting, and further authorize the Director to issue the permit as approved by the Board.
2. the staff further recommend that the Board incorporate the above-referenced memorandum, permit engineering analysis, and response to comments into the decision to approve the permit.

Dr. Tompkins motioned to discuss whether or not the construction fits under the Environmental Justice Act. The motion was seconded by Mr. Langford and unanimously approved. After discussion, Ms. Rijal motioned to make the finding that this is an EJ community. The motion was seconded by Ms. Moore and unanimously approved.

Ms. Rijal then motioned to discuss as a Board the other criteria of the Virginia Environmental Justice Act, concerning whether there has been meaningful involvement and fair treatment. Dr. Tompkins seconded the motion. The Board discussed whether there had been both meaningful involvement and fair treatment, and if both had been adequately considered. Ms. Rijal then motioned to find that both the criteria of meaningful involvement and fair treatment have not been met with the permit. Ms. Kapur moved to amend the motion to break it up into two motions: one for meaningful involvement and another for fair treatment. Ms. Rijal accepted Ms. Kapur's motion to amend as a friendly amendment to her motion, moving that the Board find that the permit in question has not met the definition of fair treatment as defined in the Virginia Environmental Justice Act. The motion was seconded by Ms. Cupit and passed 4 to 3 with Dr. Behr, Ms. Moore, and Mr. Langford voting no and Ms. Rijal, Ms. Kapur, Ms. Cupit, and Dr. Tompkins voting yes.

Ms. Rijal then moved that the Board make a finding that the criteria for meaningful involvement has been met. The motion was seconded by Ms. Moore and passed 4 to 3 with Ms. Cupit, Dr. Tompkins, and Ms. Kapur voting no and Ms. Rijal, Ms. Moore, Mr. Langford, and Dr. Behr voting yes.

Dr. Behr motioned to discuss DEQ's recommendation that the applicant not be required to utilize electric turbines, as opposed to natural gas turbines. Ms. Cupit seconded the motion and it was unanimously approved. After discussion, Mr. Langford motioned for the Board to find that it has a rational reason in the new policy to not require analysis of electric turbine versus gas turbine. The motion was seconded by Dr. Behr and unanimously approved. [Note the transcript on page 99, line 17 incorrectly attributes the second to Mr. Paylor.]

Ms. Cupit then moved to discuss the specific risks of injury caused by the project. The motion was seconded by Dr. Behr. [Note the transcript on page 106, line 19 incorrectly attributes the second to Mr. Paylor]. After discussion, Mr. Langford moved that DEQ's analysis and the Board's analysis has gone beyond just considering national and State Air Quality standards and has considered the specific risk of injury posed by this project on this particular population. The motion was seconded by Ms. Rijal and passed 6 to 1 with Ms. Cupit voting no.

Mr. Langford motioned for the Board to determination that the site is suitable for the proposed activity. Ms. Rijal seconded the motion. After discussion, the motion failed 4 to 3 with Ms.

Cupit, Dr. Tompkins, Ms. Rijal, and Ms. Kapur voting no and Mr. Langford, Dr. Behr, and Ms. Moore voting yes.

Mr. Langford motioned to grant the permit and then Dr. Behr motioned to go into closed session to discuss the language. Neither motion was seconded. Dr. Behr withdrew his motion to go into closed session.

Mr. Langford modified his motion by moving that the Board approve the permit and conditions as presented at the December 3rd, 2021 meeting and further, to authorize the Director to issue the permit as approved by the Board. The motion failed 5 to 2 with Ms. Cupit, Dr. Tompkins, Ms. Rijal, Ms. Moore and Ms. Kapur voting no and Mr. Langford and Dr. Behr voting yes.

Ms. Rijal moved that based on the previous Board finding that the conditions of the Virginia Environmental Justice Act, were not sufficiently met on fair treatment, that the Board deny the permit. The motion was seconded by Ms. Moore and passed 6 to 1 with Mr. Langford voting no.

Ms. Kapur read the Board's statement (see Attachment 1). Dr. Behr moved to accept the statement as read and it was seconded by Ms. Rijal. The motion passed unanimously.

**Minute No. 2 - Director/Division Director Report/Updates.** Mr. Paylor and Mr. Dowd provided updates on the following items (i) Environmental Justice, (ii) COVID-19 response, (iii) upcoming regulatory actions, and (iv) pending permit applications.

**Minute No. 3 - High Priority Violators Report.** Mr. Paylor asked the Board to refer to the report included in the Board Book and direct any questions to DEQ staff.

**Minute No. 4 – Public Comment Forum.** The Board heard from Freeda Cathcart.

**Minute No. 5 – Recognition of Cindy Berndt.** The Board recognized and thanked Ms. Berndt, DEQ Director of Regulatory Affairs, for her extraordinary service to the Board.



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Rachael Harrell

# Attachment 1



Commonwealth of Virginia

## VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Ann F. Jennings David K. Paylor  
Secretary of Natural and Historic Resources Director  
(804) 698-4000

### STATE AIR POLLUTION CONTROL BOARD

#### DECISION MINOR NEW SOURCE REVIEW PERMIT FOR

#### MOUNTAIN VALLEY PIPELINE, LLC LAMBERT COMPRESSOR STATION (MVP), REGISTRATION NO. 21652

The State Air Pollution Control Board, at its meeting on December 2-3, 2021, took the following action concerning the draft minor new source review permit for Mountain Valley Pipeline, LLC Lambert Compressor Station (MVP), Registration No. 21652:

**The Board, based on:**

- (i) the Board book material that contains a memorandum to the Board, a clean copy of the draft permit, a track change copy of the permit engineering analysis, a list of commenters and a sampling of all written comments received; and a summary of and response to public comments;
- (ii) the public comments made available to the Board;
- (iii) the agency files on the draft permit, including the application for a permit;
- (iv) public comments made at the Board meeting;
- (v) the staff presentations; and,
- (vi) Board discussions; and, further, based on consideration of the reasonableness of the activity involved and the permit proposed to control it pursuant to § 10.1-1307 E;
  - (1) **determined** that the community impacted by the facility is an environmental justice community;
  - (2) **determined** that the fair treatment requirements of the Virginia Environmental Justice Act have not been met; and
  - (3) **determined** that the site is not suitable in light of the requirements of the *Friends of Buckingham* decision, the Virginia Environmental Justice Act, and Virginia Code Section 10.1-1307.E.

Given these reasons, the Board is **varying** from the recommendation of the Department and **denying** the above referenced permit application.

The Board's determination is hereby in compliance with all applicable laws, and regulations, in particular, the authorities cited above.

Certified: Kajal B. Kapur Dec 3 2021  
Kajal B. Kapur, Chair, State Air Pollution Control Board