

## MINUTES

## Commission Meeting

March 16, 2018

The meeting of the Marine Resources Commission was held in the Newport News City Council Chambers at 2400 Washington Avenue, Newport News, Virginia with the following present:

John Bull	Commissioner
Chad Ballard	
Christina Everett	
Wayne France	
Heather Lusk	Associate Members
James Minor	
Ken Neill, III	
John Tankard	
Kelci Block	Assistant Attorney General
Matthew Hull	Policy Manager
Jamie Hogge	Recording Secretary
Dave Lego	Bs. Systems Specialist
Randy Owen	Deputy Chief, Habitat Management.
Jay Woodward	Environmental Engineer, Sr.
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Stephan Bennis	Lieutenant, Marine Police Officer
Rob Berryman	Captain Marine Police Officer
Jeff Copperthite	First Sergeant, Marine Police Officer
Patrick West	Marine Police Officer
Austin Brown	Marine Police Officer
Taylor Ovide	Marine Police Officer
Kenneth Freeman	Marine Police Officer
John Collomore	Marine Police Officer
Thomas Wilkins	Marine Police Officer
Clayton Dameron	Marine Police Officer
Michael Nicholson	Marine Police Officer
Thomas Straughan	Marine Police Officer
Jay Mitchell	Marine Police Officer
Matt Dize	Marine Police Officer
Bryant Stephens	Marine Police Officer
John Poch	Marine Police Officer
David Drummond	Marine Police Officer

**Commission Meeting**

Ken Davenport	Marine Police Officer
Barry Mizelle	Marine Police Officer
Zach Widgeon	Marine Police Officer
T. K. Fitchett	Marine Police Officer
Gerald Pitt	Marine Police Officer
Andy Dunton	Marine Police Officer

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein
--------------	------------

Others present:

George Hudgins	Andrea Nortzen	Rick Linker
Rick Weaks	Spencer Trichell	Greg Supey
Richard Dangle	David Seals	Colin Olness
Maria Legrad	Susan King	Barry Hayes
Jen Kostyniuk	Audrey Jackson	Jim Kibler
Dr. Jud White	Bob Peyer	Kim Williams
Tess Amomso	Sandy Greene	Nancy Sorrells
Joan LaRock	Sonny Barsdorf	Dave Williams
Rob Leavel	Daniel Horne	Alexis Jones
Chelsea Taylor	William Potlog	Alison Wrynn
S. W. Berg	Peggy Sanner	Victoria Vacher
Christopher Vacher	Vera Silver	Walton Shephard
Miles Morin	Chris Moone	Henry Howell
and others.		

\* \* \* \* \*

Commissioner Bull swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

\* \* \* \* \*

**1. WELCOME.**

Commissioner Bull called the meeting to order at approximately 9:37 a.m. Associate Member Zydron was absent.

\* \* \* \* \*

**2. INVOCATION.**

At the request of Commissioner Bull, Associate Member Tankard said the invocation.

\*\*\*\*\*

**3. PLEDGE OF ALLEGIANCE**

John Bull, Commissioner, led the pledge.

\*\*\*\*\*

**4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** The Commission held a closed session to discuss legal matters involving the Atlantic Coast Pipeline.

**Associate Member Ballard made a motion to recess for legal advice from Kelci Block. Associate Member Minor seconded the motion. The motion carried, 8-0. Chair voted yes. Meeting was closed at 9:45 a.m.**

**Meeting reconvened at 10:08 a.m..**

**Associate Member Ballard made a motion which certified only public business matters were heard during the closed meeting. Associate Member France seconded the motion. Each Associate Member voted individually, beginning with Associate Member Everett. The motion carried, 8-0. Chair voted yes.**

\*\*\*\*\*

Commissioner Bull swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

Associate Member Everett stated that she would not vote on Item #5 due to a conflict of interest with her employer.

\*\*\*\*\*

**Commission Meeting**

5. **ATLANTIC COAST PIPELINE, LLC, #15-1353**, requests authorization to install a natural gas pipeline (Atlantic Coast Pipeline Project) beneath the bed of 51 non-tidal streams and/or rivers with drainage areas greater than 5 square miles, which are considered to be State-owned subaqueous bottomlands of the Commonwealth, 3 tidal streams and approximately 1.6 acres of tidal wetlands along the designated pipeline corridor in Highland, Bath, Augusta, Nelson, Buckingham, Prince Edward, Cumberland, Nottoway, Dinwiddie, Brunswick, Greensville and Southampton Counties and the Cities of Chesapeake and Suffolk. The pipeline is protested by numerous citizens along its route.

Randy Owen, Environmental Engineer, Sr. Deputy Chief, Habitat Management, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. Owen's comments are a part of the verbatim record.

Atlantic Coast Pipeline, LLC has requested authorization and received approval from the Federal Energy Regulatory Commission (FERC) to construct, operate and maintain approximately 605 miles of an interstate natural gas transmission pipeline, known as the Atlantic Coast Pipeline (ACP) in West Virginia, Virginia and North Carolina. The purpose of ACP is to deliver up to 1.5 billion cubic feet per day of natural gas to customers in Virginia and North Carolina. In Virginia, the ACP will be constructed within a right-of-way originating in Highland County and will pass through multiple Counties and beneath multiple waterways, exiting the Commonwealth in Greensville County.

VMRC's jurisdictional authority over this project is limited. Proposed activities within the waterways identified in the FEIS with less than a five square mile drainage basin or in adjacent non-tidal wetlands or uplands do not require authorization from this agency.

Spencer Trichell, Richard Dangle, Greg Supey and Colin Olness, representatives for the applicant, were sworn and their comments are a part of the verbatim record. The representatives answered question from Associate Members concerning the horizontal directional drill method used, whether the drill method chosen is a cost-saving method and the intended use for the Natural Gas.

Eight (8) people were present, sworn in and spoke in favor of the project. All of their comments are part of the verbatim record. Those in favor felt the pipeline was a critical project that would provide an essential service, a reliable energy supply that would improve water quality and requested the approval of the project.

Staff has received more than 60 individual letters, emails and/or petitions expressing opposition to the project. In a petition hand-delivered by the Bold Alliance on December 21, 2017, with 263 signatures, the Alliance argues that the pipeline will contaminate and pollute Virginia's waterways, the local aquifers and the private wells of citizens who have no alternative water sources. They add that sediment from the pipeline construction will degrade the water quality of many pristine streams, threatening the aquatic habitats that

support both non-threatened and imperiled organisms that are listed as state or federally threatened and/or endangered species. They conclude that the project represents an unconstitutional taking of private land for private gain and that renewable energy must be pursued to avoid the environmental damage resulting from the use of fossil fuels.

Other letters and emails in opposition focus on the lack of need for the pipeline, and argue that the practice of “fracking,” the process involved with the extraction of the natural gas from deep underground deposits, threatens land, surface and ground waters and public health. The protestants maintain that the proposed pipeline will negatively impact existing farms, forests, wetlands, streams and rivers throughout Virginia.

Eleven (11) people were present, sworn in and spoke in opposition of the project. All of their comments are part of the verbatim record.

Many of the protestants spoke with concerns that the pipeline will contaminate and pollute Virginia’s waterways, the local aquifers and the private wells of citizens who have no alternative water sources. Other concerns were erosion from tree removal, “fracking”, the lack of data and the pollution from methane gas.

VMRC staff advised accordingly, after evaluation of the merits of the project and the conditions imposed by FERC against the concerns expressed by those in opposition and after considering all of the factors contained in §28.2-1205 and §28.2-1302 of the Code of Virginia, they recommended the permit required for this project include the following permit conditions:

1. With the exception of the 19 jurisdictional stream crossings proposed to be crossed by the horizontal directional drill method and the proposed wet crossings of Quaker Swamp and Cohoon Creek, all instream construction activities shall be accomplished during low flow periods utilizing dam and pump, flume around or cofferdams constructed of non-erodible materials in such a manner that no more than half the width of the waterway is obstructed at any point in time;
2. All areas of State-owned bottom and adjacent lands disturbed by this activity shall be restored to their original contours and natural conditions within thirty (30) days from the date of completion of the authorized work. All excess materials shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters;
3. Erosion and sediment control measures shall be in conformance with the 1992 Third Edition of the Virginia Erosion and Sediment Control Handbook and shall be employed throughout construction;

4. If it is determined that blasting is necessary at any of the crossings, DGIF shall be notified a minimum of 48 hours in advance of the blasting;
5. The Department of Conservation and Recreation shall be contacted for any stream crossings where karst landscape features are encountered during installation for inspection, mitigation and documentation;
6. DGIF shall be contacted for any work in trout waters to avoid conflicts with trout stocking activities;
7. The Permittee agrees to conduct mollusk and fish surveys and relocation efforts in the VMRC jurisdictional waterways, as recommended by DGIF in their collective comments to date, unless specifically waived in writing. All surveys should be performed by a qualified, permitted biologist, no more than six months prior to the start of construction. Any relocations should be coordinated with VDGIF and no federally listed species should be relocated without first coordinating with the USFWS;
8. Permittee agrees to adhere to the instream work time-of-year restrictions for the 48 non-tidal jurisdictional stream crossings, with the exception of Stuart Run and Back Creek, as recommended by DGIF to protect state and federally listed mussel and fish species, unless specifically waived in writing;
9. Permittee agrees to adhere to the Spill Prevention, Control, and Countermeasure (SPCC) Plan updated in the FEIS in October 2017;
10. A “frac-out” contingency plan must be provided for any crossings utilizing the directional drill method to address potential frac-outs or related spills associated with any directional drilling activities of streams or tidal wetlands. The use of any additives to the drilling fluid by the HDD contractor must comply with the Department of Environmental Quality’s approval and 401 Certificate for this project;
11. The Permittee shall revegetate any tidal wetland areas damaged by unintentional returns of drilling fluid, resulting from frac-outs, and all open-cut crossings of tidal wetlands with the appropriate native tidal wetlands species. Areas above mean high water may be seeded, areas below mean high water shall be sprigged on eighteen inch centers. These sites shall be monitored for 5 years to ensure a minimum of 80% vegetative cover is established;
12. Permittee shall, for the proposed open cut crossings of Quaker Swamp and Cohoon Creek, comply with the erosion and sediment control measures outlined in the April 13, 2017, memorandum, from Environmental Resources Management (ERP) to Dominion, as well as to the FERC Wetland and

Waterbody Construction and Mitigation Procedures. Any trench excavation for the subject waterways may be initiated only after verifying that no significant rainfall events are forecasted for the time necessary to complete the open cut trench, pipe installation and backfilling operations.

Lastly, staff recommends a one-time royalty assessment in the amount of \$28,932.00 for the encroachment of the proposed pipeline beneath 9,644 linear feet of State-owned subaqueous land at a rate of \$3.00 per linear foot.

Royalty Fees (encroach 9,644 linear feet @ \$3.00/linear foot)	\$28,932.00
Permit Fee	\$ 100.00
Total Fees	\$29,032.00

**Associate Member Ballard moved to approve staff recommendation as stated. Associate Member Neill seconded the motion. The motion carried, 7-0-1. Chair voted yes. Associate member Everett abstained.**

\* \* \* \* \*

There being no further business, the meeting was adjourned at approximately 1:02 p.m. The next Commission meeting will be Tuesday, March 27, 2018.

\_\_\_\_\_  
Steven G. Bowman, Commissioner

\_\_\_\_\_  
Jamie Hogge, Recording Secretary