



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
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March 25, 2021

Mr. Vincent D. Pero
U.S. Army Corps of Engineers
Norfolk District-Western Virginia Regulatory Section
Charlottesville Field Office
920 Gardens Boulevard, Suite 103-B
Charlottesville, Virginia 22901

RE: Section 401 Water Quality Certification Extension Request - Mountain Valley Pipeline (NAO-2015-00898)

Dear Mr. Pero,

We have received your email, dated 18 March 2021, requesting Clean Water Act (CWA) Section 401 Water Quality Certification (hereinafter, WQC) in accordance with 40 CFR 121.5. From your email, we understand that the U.S. Army Corps of Engineers (the Corps) received the WQC request from the applicant on 04 March 2021. Further, we understand that the Corps has determined the applicable "reasonable period of time" to act on the certification request to be 120 days from the date of the Corps' receipt of the request (ending on 02 July 2021). Finally, we understand that if the certifying authority (in this case, DEQ) fails or refuses to act on the certification request on or before 02 July 2021, the Corps will consider that the certifying authority has waived its WQC.

Based upon information provided by the applicant (and received by DEQ on 01 March 2021) and our review of state laws and regulations, DEQ must use the Virginia Water Protection (VWP) permit to process this application. State Water Control Law (62.1-44.15:21(J) Code of Virginia) states:

J. An individual Virginia Water Protection Permit shall be required for impacts to state waters for the construction of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). For purposes of this subsection:

1. Each wetland and stream crossing shall be considered as a single and complete project; however, only one individual Virginia Water Protection Permit addressing all such crossings shall be required for any such pipeline. Notwithstanding the requirement for only one such individual permit addressing all such crossings, individual review of each proposed water body crossing with an upstream drainage area of five square miles or greater shall be performed.
2. All pipelines shall be constructed in a manner that minimizes temporary and permanent impacts to state waters and protects water quality to the maximum extent practicable, including by the use of applicable best management practices that the Board determines to be necessary to protect water quality.

As this project will require an individual VWP permit, other procedural and timeframe requirements apply. These procedural and timeframe requirements begin once DEQ receives a complete application. As mentioned above, we officially received a Joint Permit Application (JPA) for this project on 01 March 2021. During our application completeness review, we determined that additional information from the applicant was necessary before we can deem the application complete. We notified the applicant on 16 March 2021 of the additional information needed, and the applicant has until 15 April 2021 to provide this information. Once received, DEQ has 15 days to determine if the additional submitted information satisfies the complete application requirements of the VWP regulations (9VAC25-210-80). Since we do not know when the applicant will submit the additional information nor if the submitted information will allow us to deem the application complete, we cannot determine at this point when the application review timeframes will begin.

If we assume that regulatory time frames are met and the applicant submits the additional information on 15 April 2021 and DEQ deems the application complete on 30 April 2021, then the application review time clock will begin. From this point, DEQ has 120 days (until 28 August 2021) to review the complete application, prepare and notice a draft VWP permit, and conduct at least a 30-day public comment period. The public comment period would end no earlier than 28 August 2021. We believe that any public hearing(s) will be sometime in the late summer or fall of this year. Projects that involve public hearings are then required to be heard by the State Water Control Board (SWCB) for a final permit decision.

The SWCB holds quarterly meetings, which are scheduled annually in January of a given year. In 2021, the SWCB is scheduled to meet on April 14th, June 29th, September 28th, and December 14th. Given the statutory timeline requirements and assuming we do not have a complete application until 30 April 2021, it is impossible to issue a VWP permit – which constitutes the Section 401 WQC – by 02 July 2021. Based on the complexity of this project and past public controversy, we cannot reasonably issue the VWP permit before December 2021 and we believe it is quite likely that we could not issue this permit until early 2022.

Because of statutory requirements in State Water Control Law and the Commonwealth's administrative procedures requirements, we request an extension of the Corps' "reasonable period of time" to be one (1) year from the Corps' receipt of the WQC request (03 March 2022). Should you have any questions, please contact me directly at 804-698-4038 or melanie.davenport@deq.virginia.gov.

Sincerely,

A handwritten signature in blue ink that reads "Melanie D. Davenport". The signature is written in a cursive style with a light blue shadow effect behind the text.

Melanie D. Davenport
Director, Water Permitting Division

cc: Jennifer Serafin, Chief, Western Regulatory Section
William (Tom) Walker, Chief, Norfolk District Regulatory Branch
Adam Fannin, Regulatory Project Manager, Huntington District Energy Resource Branch

Email FW MVP - Section 401 Water Quality Certification Request - NAO-2015-00898

Subject: FW: MVP - Section 401 Water Quality Certification Request - NAO-2015-00898

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From: Davenport, Melanie <melanie.davenport@deq.virginia.gov>

Date: Fri, Mar 26, 2021 at 7:27 AM

Subject: Fwd: MVP - Section 401 Water Quality Certification Request - NAO-2015-00898

To: Davis David qom72801 <dave.davis@deq.virginia.gov>

This needs to be posted

----- Forwarded message -----

From: Pero, Vincent D CIV USARMY CENAO (USA) <Vincent.D.Pero@usace.army.mil>

Date: Thu, Mar 18, 2021 at 11:18 AM

Subject: MVP - Section 401 Water Quality Certification Request - NAO-2015-00898

To: Davenport, Melanie (DEQ) <Melanie.Davenport@deq.virginia.gov>, Davis David

qom72801 <dave.davis@deq.virginia.gov>, steven.hardwick@deq.virginia.gov

<steven.hardwick@deq.virginia.gov>

CC: Walker, William T Jr CIV USARMY CENAO (USA)

<William.T.Walker@usace.army.mil>, Fannin, Adam E CIV USARMY CELRH (USA)

<Adam.E.Fannin@usace.army.mil>, Pritts, Jared N CIV USARMY CELRP (US)

<Jared.N.Pritts@usace.army.mil>, Pero, Vincent D CIV USARMY CENAO (USA)

<Vincent.D.Pero@usace.army.mil>, Serafin, Jennifer M CIV USARMY CENAO (USA)

<Jennifer.M.Serafin@usace.army.mil>

Good Morning Ms. Davenport

We are in receipt of a Section 401 Water Quality Certification (WQC) request for the Mountain Valley Pipeline project, which is in writing and satisfies the nine requirements of 40 CFR § 121.5(b).

Below is the pertinent information pertaining to the Corps requirement to notify you of our receipt of the Section 401 WQC request in accordance with 40 CFR 121.5:

- a. The date of receipt – March 4, 2021;
- b. The applicable “reasonable period of time” to act on the certification request – 120 days (July 2, 2021);
- c. The date upon which a waiver will occur if the certifying authority fails or refuses to act on the certification request – July 2, 2021

If you find that additional time is required past the timeframe established above, please provide us a written notice of the extension request via email to me and my supervisor (Jennifer Serafin) prior to the established timeframe end date.

The Corps will notify the United States Environmental Protection Agency (USEPA) under 40 CFR 121.12 if the Virginia Department of Environmental Quality issues the required Section 401 WQC. The USEPA will determine if the discharge from a certified project may affect the water

Email FW MVP - Section 401 Water Quality Certification Request - NAO-2015-00898

quality in a neighboring jurisdiction. The Corps will make a final determination on the individual permit application pending the conclusion of the determination of effects on neighboring jurisdiction.

Thank you

Vinny

Vinny Pero
U.S. Army Corps of Engineers
Norfolk District
Western Virginia Regulatory Section
Charlottesville Field Office
920 Gardens Boulevard, Suite 103-B
Charlottesville, Virginia 22901
757-297-0011 (temp while teleworking)

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Melanie Davenport- Virginia DEQ.
Sent from my iPad - Please excuse any autocorrect errors