

Report to the State Water Control Board

Additional Public Comments Sufficiency of Nationwide Permit 12

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State Water Control Board Directive

- Interested persons may submit crossing-specific technical information on:
 - Sufficiency of NWP12 permit for MVP and ACP
 - Sufficiency of NWP12 general and regional conditions
 - Sufficiency of §401 water quality certification of NWP12 for specific stream crossings for MVP and ACP
- DEQ will evaluate the comments and submit a summary to the Board

State Water Control Board Directive

- No further action by the Board is required
- After review of the summary, the Board may consider further actions, consistent with its regulatory authority, at its discretion without additional public comment on whether further action is warranted

General Overview

- Public Comment Period: April 30, 2018 to June 15, 2018 at 11:59 pm
- Public Comments Received during comment period – Electronic mail, Letters, Postcards:
 - Atlantic Coast Pipeline (ACP): 10,218
 - Mountain Valley Pipeline (MVP): 2,543
- Comments made available to the Board and posted to DEQ's public web site on July 25, 2018

Comments on Atlantic Coast Pipeline

- NWP12 Inadequate: 2,079
 - Most-mentioned topics:
 - trout / fish / mussels / aquatic species
 - water quality standards / Tier III waters
 - water supply
 - recreational use / business use
 - erosion / sedimentation / land slides / steep slopes
- NWP 12 Sufficient: 8,069
 - Most-mentioned topics:
 - NWP12 is protective
 - Operational safety/leak detection system
 - Jobs/economy
 - need

Comments on Mountain Valley Pipeline

- NWP 12 Inadequate: 2,503
 - Most-mentioned topics:
 - trout / fish / mussels / aquatic species
 - water quality standards / Tier III waters
 - water supply
 - recreational use / business use
 - erosion / sedimentation / land slides / steep slopes
- NWP 12 Sufficient: 17
 - Most-mentioned topic: NWP12 is protective

Comments Within Scope of Board Directive

- Number of comments within scope of Board directive (i.e., crossing specific technical information)
 - ACP: 32
 - MVP: 327 (304 of these from 1 commenter)
- Majority of these comments focused on erosion and sediment control issues

Comments Out of Scope of Board Directive

- Majority of comments reiterated topics from the upland 401 water quality certification process:
 - Private property rights / eminent domain / negative impact to property values
 - Hydraulic fracking vs. other energy generation sources
 - Preference for renewable energy
 - Impacts to rural and forest view sheds
 - No demonstrated need for project and no demonstrated demand for natural gas
 - Threat of explosions once in operation
 - Greenhouse gas emissions
 - Permanent impacts to aquatic species and water quality
 - No consideration of cumulative impacts
 - Increased economic development and job creation
 - Safety of pipeline transportation vs. other methods of transporting natural gas
 - Thoroughness of FERC and Corps evaluations

Example of comments

- Majority of comments made general statements – did not provide technical information for a specific crossing

“open trenching will cause release of sediments to streams”

“using open trench methods will not permanently impact streams”

Example of comments

- Horizontal directional drilling (HDD) under streams lacks geotechnical studies supporting this method as the best choice
- Inadvertent return of water and/or spoils management measures are inadequate

Example of comments

- Questions/comments about federal/state approval processes, roles, and responsibilities regarding regulated project activities

Examples:

- Definition of wetland, delineation of wetlands, how wetland resources are regulated by the Corps and DEQ
- Not all surface water crossings were identified
- State law requirements for minimum design criteria re: erosion & sediment / stormwater controls, and roles of various programs regulating these controls

Example of comments

- Expectations of no impacts to the environment

Examples:

- Measures should prevent all releases of soil/material, withstand all weather events, completely avoid any ground disturbance in specific geographic areas
- Sedimentation is a permanent impact, not temporary

Example of comments

- Comments regarding aquatic species protection

Examples:

- No time-of-year restrictions were applied at certain crossings, (i.e., trout waters)
- Other agencies may have already considered need for restrictions

Example of comments

- Disagreement with federal & state law and regulations regarding regulation of natural gas projects

Examples:

- NWP12 does not adequately consider cumulative impacts
- There are more impacts occurring than should be allowed by the single and complete crossing structure

Example of comments

- Inclusion of topics not regulated by Section 404 or VWP permitting

Examples:

- Social justice (impacts on economically-disadvantaged communities)
- Economic drivers (creation of jobs)
- Legal issues (eminent domain)

Additional Presentations by Staff

Comparison of VWP Permit and NWP12:

- Of 46 regional and general conditions in the Corps' NWP12, only 2 differ from the VWP Permit Program
- Both MVP and ACP voluntarily offered to address these 2 provisions
- The Corps incorporated these 2 provisions as conditions to the NWP12 permits.
- For linear projects (all roads and all types of utility projects), both DEQ and the Corps have substantially identical permitting requirements.
- State Law Section 62.1-44.15:21.D.2 – No Board action on an individual or general permit for facilities and activities of utilities and public service companies regulated by FERC shall alter the siting determination made through FERC approval

Additional Presentations by Staff

- Overview of Erosion & Sediment Control Requirements for Wetland and Stream Crossing
- Construction related crossings
- Pipe installation within streambed

Additional Presentations by Staff

- Examples of existing pipeline rights of way and stream crossing.

Conclusions

- Majority of comments did not provide any specific, technical information on why Nationwide Permit 12 is not sufficiently protective at crossing-specific locations
- No new, crossing-specific information supports conclusion that NWP12 is not protective of any specific wetland and/or stream
- Majority of comments reiterated issues brought up in the upland 401 water quality certification process