Report to the State Water Control Board

Updates Requested at April 12, 2018 Meeting

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August 21, 2018

April 12, 2018 Meeting Request

- Guidance for Stop Work Instructions

- Variances
  - Process for evaluating
  - Approved Variances

- Complaint Response and Coordination
  - Coordination with US Corps and FERC
  - Communication with citizens
  - Complaint Procedures
  - (Inspection Framework/Procedures)

Pipeline Stop Work Instructions

- Virginia Code Sections 62.1-44.15:37.1 and 62.1-44.15:58.1
- Emergency Enactment – effective March 10, 2018
- Procedures issued June 18, 2018

Conditions Required for Instruction

- Natural gas transmission pipeline where diameter is greater than 36 inches
- Pipeline covered by approved annual standards and specifications
- Substantial adverse impact to water quality or
- Imminent and substantial adverse to water quality likely to occur as a result of land-disturbing activities

June 18, 2018 Guidance

- Considerations for Stop Work Instruction
- Process for Stop Work Instruction

Consideration – Fact Specific – Made on a case-by-case basis

- Substantial Adverse Impacts
  - Discharges of sedimentation that result in significant damage to aquatic life or otherwise significantly degrade water quality
  - Discharges containing pollutants (i.e. fuel, chemicals, drilling mude, construction waste) that result in significant damage to aquatic life or otherwise significantly degrade water quality

Imminent and Substantial Adverse Impact Likely

- Failure to construct/maintain erosion and sediment control or pollution prevention measures according to approved plans
- Erosion and sediment controls not functioning and corrective action not proposed
- Failure to conduct timely self-inspections
- Failure to timely provide/maintain temporary or permanent stabilization
- Failure to implement requested corrective action within deadlines

Process

Stop Work Instruction identifies:

- The land disturbing activities that must stop
- The geographical scope of the project that must stop
- Nature of the substantial adverse impact to water quality (or imminent/substantial impact likely to occur)
- Corrective actions that must be completed and approved by DEQ before instruction can be lifted

Process – Review of Instruction

- Upon issuance the company may request a review of order by DEQ Director (or designee)
- Review must be conducted within 48 hours of issuance
- Within 10 days of issuance of instruction DEQ must provide an opportunity for an informal fact finding (IFF)
- The IFF covers the instruction and intermediate review by Director (if requested)
- Within 10 days of IFF, DEQ issues a case decision to affirm, modify, amend or cancel instruction

Erosion and Sediment Control (ESC) Variance Requirements & Requests

ESC Variances

- Virginia Erosion and Sediment Control Program (VESCP) regulation requires regulated land disturbing activities to meet 19 Minimum Standards (9VAC 25-40-40)

- 9VAC 25-40-50 allows for Variances from the Minimum Standards to *"waive or modify any of the requirements that are deemed inappropriate or too restrictive for site conditions"*

- Variances may be granted at the time of plan submittal or during construction

ESC Variances

- Variance requests must include in writing:
  - A description of the nature of the request
  - An explanation of the item(s) in the design for which a variance or exception is being requested
  - Reasoning and/or evidence that the variance or exception request meets the regulatory requirements
  - Documentation to support the request
- Regulation directs the VESCP authority to consider requests judiciously and consider:
  - Need of the applicant to maximize cost effectiveness
  - Need protect off-site properties and resources from damage
- Approved variances must be documented on the ESC plan

ESC Variances

- ACP and MVP both have requested variance from Minimum Standard (MS) 16 of the Erosion and Sediment Control regulation
  - *Only variance requested by either company*

- MS16 limits amount of open trench for installation of utility lines to 500 linear feet at any one time

- Historically variances from this requirement for major oil and gas pipeline projects have been approved

ESC Variances

- Staff evaluated the requests considering:
  - Length of the project
  - Diameter of the pipe involved
  - Equipment required
  - Construction techniques
  - Ensuring safe working conditions

- Specific construction techniques considered
  - Multiple spreads under construction at the same time
  - Various crews with independent responsibilities
  - Begin trenching
  - Stringing and bending the pipe
  - Welding (up to 1800 feet per day)

ESC Variances

- Need enough trench open to be able to continue to string, bend and weld pipe without any delays or down time to facilitate implementation of the project in an efficient and safe manner

- The quicker and more efficient work is performed, the quicker stabilization will be implemented, minimizing potential for environmental impacts

- Limit the amount of open trench per spread based on steepness of slope

ESC Variances

Increase in steepness = Decrease in the allowable length of continuous open trench

Tier	Slope Conditions[1]	Contiguous Trench Length Not to Exceed [2,3] (feet)
Tier 1	0 to < 10%	7,000
Tier2	10% to < 33%	5,000
Tier 3	> 33%	2,500

[1] Slope percent is determined based on the pre-existing site conditions.

[2] Any break in continuous trench length will constitute reset of the continuous trench footage.

[3]Continuous trench length may be exceeded where safety concerns are identified following consultation with the onsite DEQ, FERC, and MVP (Environmental and Safety) inspectors.

Under no condition can the total open trench length be greater than 16,000 feet per spread.

ESC Variances

- Activities that will be considered as a break in continuous trench length include:
  - road crossings
  - stream and/or wetland crossings
  - native (undisturbed) soil plug to remain in place until immediately before pipe installation*
  - existing utility line crossings that will utilize specialized construction crew or be conducted separate from the main construction effort
  - winch hill construction (i.e. where equipment is required to be anchored to another stationary object due to steepness of slope)
  - break in slope categories identified
  - transition of trench line across ridgelines breaking the direction of continuous flow

***More on this next slide**

Trench Breaker Spacing

- DEQ requires installation of trench breakers at specified intervals depending on slope

  - **MVP**

    5% - 15% - 500 feet

    15% - 25% - 300 feet

    25% - 35% - 200 feet

    35% -100%- 100 feet

    >100% - 50 feet

Required at all water body crossings

ESC Variances

- Areas of potential construction safety concerns:
  - Areas of winch hill construction
  - Areas that would require pipeline to be anchored during welding of segments on steep slope areas prior to backfilling of the trench. Exceeding the trench length in these conditions would alleviate the need for personnel to be working in the ditch and result in reduced safety concern for workers

ESC Variances

- MVP: Open trench variance approved with plans
- ACP: open trench variance request received with plans, but not yet approved

Complaint Response and Coordination

Coordination with the Federal Energy Regulatory Commission (FERC) and the Army Corps of Engineers (Corps)

- In February 2018, DEQ staff met and exchanged contact information with FERC compliance monitors (CMs) assigned to the Mountain Valley Pipeline project
- Concerns and complaints outside the regulatory authority of DEQ are directly referred to FERC or the Corps via e-mail and/or phone call by DEQ's Office of Water Compliance
- Referral to another regulatory agency is documented by DEQ
- Generally, unless requested, DEQ's investigations and inspections are done independent of FERC's CMs or Army Corps of Engineers.

How DEQ will address citizen issues?

- DEQ established a publically accessible page on the external website, “Protection Requirements for Pipelines” intended to address citizen questions and concerns. https://www.deq.virginia.gov/Programs/Water/ProtectionRequirementsforPipelines.aspx
- Citizens are provided two e-mail addresses to submit questions, concerns, complaints, and photographs
  - mountainvalleypipeline@deq.virginia.gov
  - atlanticcoastpipeline@deq.virginia.gov
- DEQ established an incident hotline to submit questions, concerns & complaints by telephone or mobile device at (804) 698-4003.
- Citizens also have the option to submit their concerns directly to the agency Pollution Response Program (PReP) external database via the external website by clicking on the link for “Report Pollution”.

How complaints will be addressed?

- Citizen complaints are logged and maintained in the DEQ Pollution Response Program (PReP) database.
  - Citizen complaints and concerns are assigned reference and incident report numbers and the information is kept in the agency's PReP database
  - DEQ has a designated person responsible for entering public complaints into the database, notifying DEQ field inspection coordinators, and monitoring each incident until the investigation is completed by DEQ field staff or referred to another regulatory agency.
- Complaints are assigned to DEQ's inspection coordinators to initiate an investigation within 48 hours.

How complaints will be addressed? (Cont.)

- DEQ staff or DEQ contract support staff will investigate the complaint.
- Complaint “Status” remains open until investigated and findings are reported or the complaint is referred to another agency with the appropriate regulatory authority to address the concern.
- Complaints and the result of the investigation are placed on the DEQ external website and updated weekly.
  https://www.deq.virginia.gov/Programs/Water/ProtectionRequirementsforPipelines/Multi-facetedInspectionforOversightofPipelineProjects.aspx

Complaint Statistics as of August 20, 2018

- 128 complaints logged by DEQ
- 91 complaints investigated
- 37 complaints open/under review

Field Inspections Conducted by DEQ

- 40 inspections conducted
- 21 with noted areas for corrective action
- 19 without requested corrective action
- 9 with significant corrective action, included are 3 VWP inspections of stream impacts off the limit of disturbance (LOD)

ESC Compliance Evaluation Process

COMPLAINT INVESTIGATION PROCESS

- DEQ logs then investigates complaints within 48 hours
- DEQ investigates complaint to determine whether approved controls were installed and maintained
- If approved controls were in place and maintained DEQ assesses any impacts and reviews corrective action log or punch list
- DEQ determines if corrective action was taken with 24 hours or whether an extension was granted and approved
- Follow-up investigation is conducted to determine if corrective action was completed as instructed by DEQ

Compliance Evaluation Process for Erosion and Sediment Control (ESC)

ESC Compliance Evaluation Process

TYPES OF COMPLIANCE MONITORING

- Focused Field Inspections
- Comprehensive Field Inspections
- SWPPP Inspections
- Complaint Investigations

ESC Compliance Evaluation Process

ROUTINE INSPECTION PROCESS

- Are controls installed and maintained consistent with the approved plan?
- Are self inspections being conducted at the appropriate frequency?
- Are appropriate corrective actions identified?
- Are appropriate corrective actions completed within required time?
- Are extensions requested where appropriate?
- Are releases of sediment off right of way identified?
- Is all documentation maintained and up-to-date?

Petition for Review – 401 Water Quality Certification No. 17-001 – Mountain Valley Pipeline LLC

- US Court of Appeals for the Fourth Circuit
- Opinion published August 1, 2018
- Court concluded that Virginia's issuance of the 401certification was not arbitrary and capricious
- Denied the petition for review

Conclusions

- DEQ had a sufficient basis to find reasonable assurance that the measures, restrictions and programs in place in Virginia to prevent excess sediment from entering state waters satisfied anti-degradation

- Court reviewed and considered the use of annual standards and specifications, state erosion and sediment control requirements, findings of the US Environmental Protection Agency relative to the construction general permit

- There was nothing unreasonable in DEQ's interpretation of its anti-degradation policy

Conclusions Cont.

- “Certainly it must be anticipated with large construction projects, that unanticipated problems will arise, leading at least to minor, short-term issues. Were Virginia’s policy interpreted as rigidly as Petitioners suggest, no project affecting Tier 2 waters could ever be approved without an economic/social development analysis”

- Although unorthodox it was not arbitrary and capricious for Virginia to analyze the impacts from activities covered by NWP 12 from upland activities related to construction

- Together the conditions in the upland 401 certification, the VWP requirements, the Corps 404 permit, the approval of annual standards and specifications provide reasonable assurance that water quality standards will not be violated.