

DOMINION PIPELINE MONITORING COALITION

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June 26, 2017

Honorable Terry McAuliffe
Governor of Virginia
c/o Paul Reagan, Chief of Staff
paul.reagan@governor.virginia.gov
c/o Carlos Hopkins, Counsel to the Governor
carlos.hopkins@governor.virginia.gov

Sent Via Email

David Paylor, Director
Department of Environmental Quality
david.paylor@deq.virginia.gov

Re: Freedom of Information Act Request - Records Related to ACP and MVP Proposals

Dear Governor McAuliffe and Director Paylor:

On behalf of the Dominion Pipeline Monitoring Coalition (DPMC), I request that the Office of the Governor and the Department of Environmental Quality (DEQ) provide the public records described below.

- Records described in a Roanoke Times article of June 24, 2017 as follows: “[t]he governor’s office withheld about 20 records described as ‘working papers’ and otherwise protected by executive privilege.” The basis for the claimed exemptions was provided in a note to Duncan Adams of the Roanoke Times by Noah Sullivan, Deputy Counsel, Office of the Governor.
- Records described in the same article as follows: “DEQ withheld nine ‘email chains’ it said were exempted either by attorney-client privilege or as governor’s working papers.” The basis for this claimed exemption was provided in a note to Duncan Adams of the Roanoke Times from Diana Adams, VFOIA Coordinator, DEQ.

The news article quoted above is: Duncan Adams, Roanoke Times, *State official advises Dominion: Integrity of permitting process for Atlantic Coast Pipeline is non-negotiable*, June 24, 2017, http://www.roanoke.com/business/news/state-official-advises-dominion-integrity-of-permitting-process-for-atlantic/article_536ade43-7dae-5f32-9f0b-5553f9b8cf3e.html.

While DPMC recognizes that public bodies may withhold certain records that belong to the people of Virginia, under closely prescribed conditions, we also note that our public servants have the latitude to disclose those records in almost all situations. Unless the law specifically *requires* that any of the records described above be kept from public view, we request that you make all of the cited documents available as soon as possible.

As you must know, Virginia’s Freedom of Information Act (FOIA) provides that “[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.” Code of Virginia § 2.2-3700.B. We regret that many members of the public have been forced to question

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whether all of the actions taken by the McAuliffe administration in relation to the proposals for the Atlantic Coast Pipeline (ACP) and the Mountain Valley Pipeline (MVP) have truly been designed to benefit the wider public interest rather than the narrow interests of profit-making corporations. Only through total transparency and complete honesty can this administration restore confidence in the regulatory processes for these pipelines.

Neither the Office of the Governor nor the DEQ should automatically avail themselves of these tools of secrecy and should honor the principles which the FOIA is intended to serve. The Governor and other administration officials have long maintained that they would ensure that the regulatory processes for considering the fate of these pipelines would involve the public fully. However, the State's record has often not reflected such a commitment.

When the Governor ordered state agencies to "filter all public statements about the pipelines through his office (Roanoke Times, *Governor will review pipelines comment*, November 3, 2015) many citizens feared this move may be used to deprive the public of information from state agencies that might be uncomfortable for the Governor, given his statements of support for each project, which were provided before any of the regulatory reviews had even begun.

When citizens called on the Governor to create a citizen's advisory committee to allow members of the public to play active roles in consideration of each huge project, the administration answered that such a committee was not needed. The Governor's spokesperson stated:

[a]ll decisions resulting from [the regulatory review] process will be subject to citizen review. The Governor is committed to making sure that all views about the project receive a fair hearing, and the existing process ensures that all those who wish to share their opinions will have a chance to be heard."

(Statement to Roanoke Times from Deputy Communications Secretary, Christina Nuckols, June 15, 2017). The promise that all decisions by the State would be made after ensuring that all views receive a fair hearing will be broken if DEQ covers waterbody crossings for the projects under blanket approvals, as the Department currently says it will do. Those blanket approvals explicitly exclude citizens from any opportunity to review and provide effective comments on the potential damages these operations in our waters would entail.

When DEQ officials released false information about its plans for pipeline reviews in April of this year and then failed to correct what an official termed a "failure of communication" for more than seven weeks (Duncan Adams, Roanoke Times, *DEQ acknowledges error, clarifies approach to review of pipelines*, May 24, 2017), your administration betrayed its promises to be straight and transparent with the people of Virginia. And questions about the reasons for DEQ's failure to correct the public record until confronted directly remain unanswered. (See Robert Zullo and Graham Moomaw, Richmond Times Dispatch, *'A very confused, inaccurate picture is being spread': Why did Virginia DEQ wait seven weeks to correct inaccurate pipeline statement?*, June 21, 2017.)

Again, we entreat the Governor's Office and DEQ to provide all of the information requested. Our government should not seek shelter from public view based merely on convenient exemptions in the law. As the FOIA commands, its provisions "shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government." Code of Virginia § 2.2-3700.B.

Many thousands of Virginians are counting on our public servants to conduct the thorough transparent governmental processes that are necessary ensure our communities and our precious waters will be protected against impairments from these destructive pipeline proposals. Citizens have been actively involved for many months, attempting to play the roles guaranteed by law and

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the principles of our democratic government and we've been continually faced with barriers to that involvement. Please remove this barrier to our understanding of our government's actions.

Thank you for your prompt attention to this matter.

Sincerely,

_____/s/_____
David Sligh
Senior Regulatory Systems Investigator

cc: Molly Ward - Secretary of Natural Resources
Rick Webb - DPMC