Presentation to State Water Control Board

on DEQ Response to Comments on ACP

December 11, 2017

David Sligh

Deficiencies in Evidence in the Record
Compare: VPDES Permit vs. Current 401 Process

VPDES Individual Discharge Permit

o Fact Sheet available to public for comments and to Board

o Fact Sheet includes:

- Detailed characterization of discharges – concentrations and loadings of pollutants
- Detailed characterization of waterbodies to be affected
- Calculations to prove that WQS will not be violated
- Incorporates multiple discharges and pollutant allocations from other point and non-point sources

This CWA Section 401 Process

No detailed responses to detailed, often expert submittals. Both the public and the Board have been provided with general statements and assertions in the response to comments.

"Staff captured any unique information presented in the comments or summarized topics not otherwise represented by the broader topics, separately. Finally, staff noted any comments that included technical documents or unique issues not otherwise covered in other comments and these were routed to the appropriate technical staff for further review." (Response at 77 of 179).

Deficiencies in Evidence in the Record
Partial List of Expert Reports/Comments Not Answered on Record

Angermeier, et al., *Evidence of Water Quality Threats from the Atlantic Coast Pipeline, Failure to Assure Compliance with Virginia Water Quality Standards*, August 22, 2017.

Blackburn Consulting Services, LLC, *Report Analysis and Field Verification of Soil and Geologic Concerns with the Atlantic Coast Pipeline (ACP) in Nelson County, VA.*

Cameron, Malcolm G., *The Proposed Atlantic Coast Pipeline Route through Little Valley in Bath County, Virginia: An Assessment of Landslide Risk and Slope Stability Factors*, Prepared on Behalf of the Dominion Pipeline Monitoring Coalition.

Dodds, Pamela C., *Hydrogeological Assessment of the Proposed 401 Water Quality Certification to be Issued for the Atlantic Coast Pipeline Project, Virginia, by the Virginia State Water Control Board*, Prepared for the Dominion Pipeline Monitoring Coaltion, August 17, 2017.

Groves, Chris, *Comments on Karst-Related Environmental Issues in the Atlantic Coast Pipeline (ACP) Response (5/31/17) and Second Response (6/23/17) and (6/27/17) to the Virginia Department of Environmental Quality Request for Information for Developing and Evaluating Additional Conditions for Section 401Water Quality Certification for Interstate Natural Gas Infrastructure Project*, August 16, 2017.

Hilderbrand, Robert H., *Assessment of Potential Threats to Streams Occurring in Proximity to the Proposed Atlantic Coast Pipeline*, August 2017.

Hirschman, David J., *Comments on the Virginia Department of Environmental Quality's proposed 401 Certification for the Atlantic Coast Pipeline*, Prepared for Southern Environmental Law Center and Chesapeake Bay Foundation, August 22, 2017.

Lambert, Richard A., *Assessments of Four Karst Systems In Highland-Bath Counties, Virginia Along the GWNF-6 Route Of the Proposed Atlantic Coast Pipeline*, Highland County Cave Survey, June 2, 2016.

Webb, Rick, *Little Valley: High-Hazard Pipeline Construction*, Dominion Pipeline Monitoring Coalition, June 3, 2017.

Respect for State Agency Technical Staff

In my letter to Director Paylor, May 15, 2017:

"In keeping with its role in the . . . NEPA process, DEQ offered in its comments on each DEIS numerous recommendations and suggestions for analyses the companies must complete to fully and accurately describe potential water quality impacts."

"We believe those comments by Virginia agencies provide excellent descriptions of data and studies necessary to prevent water quality damages from the activities that would be allowed by the federal authorizations."

"It is now time for DEQ to incorporate its information requests and requests for information cited by other parties into the State's regulatory process and deem them requirements that must be met before WQC applications can be declared complete."

Comments – Cumulative Impacts and Segmentation

- Review Process Improperly Segmented
- DEQ Failed to Assess Water Quality Impacts Cumulatively

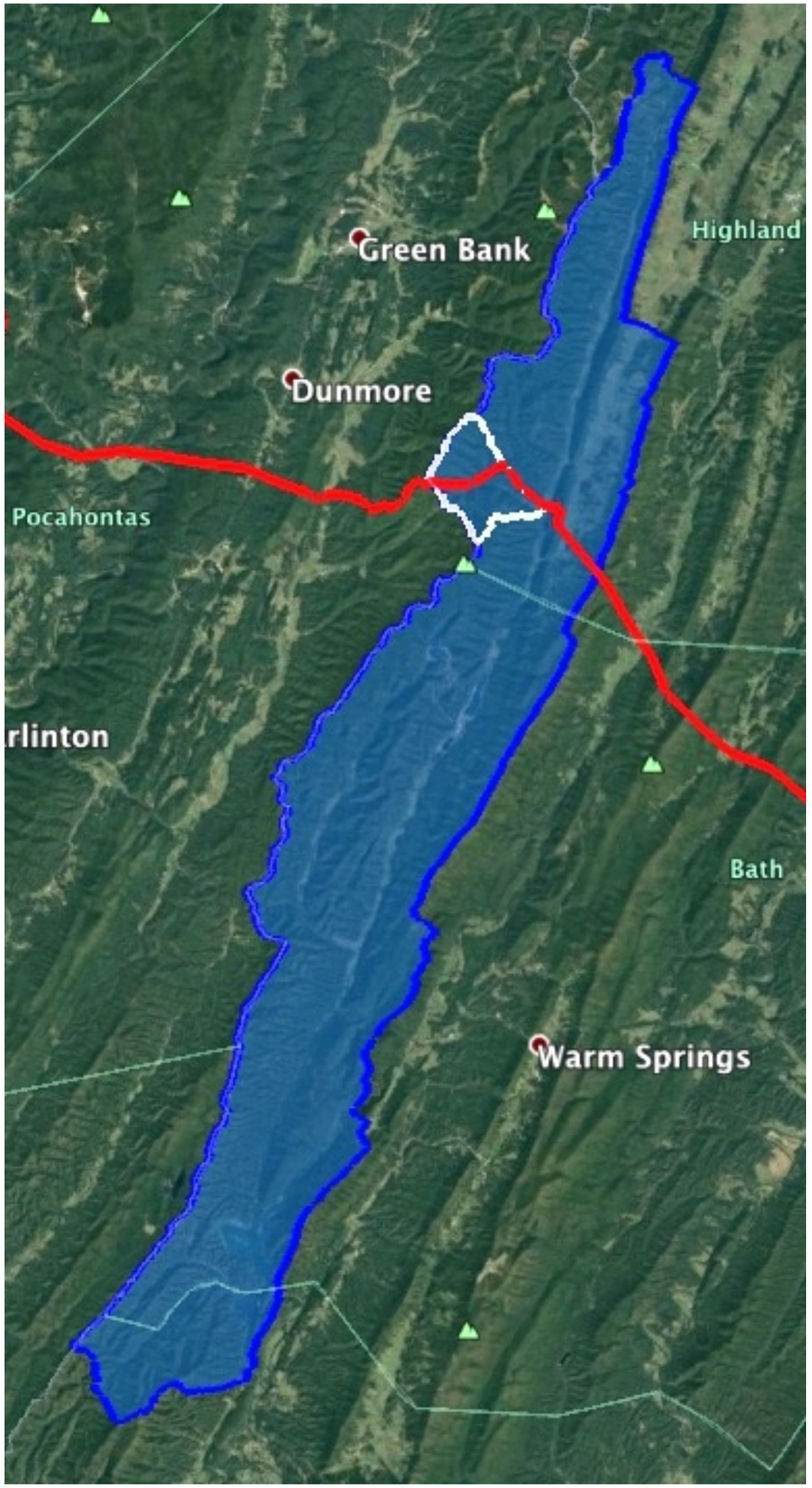
DEQ Response

- FERC conducted a cumulative impact assessment on HUC-10 level drainage areas. (90 of 179)
- "While federal NEPA regulations direct FERC to analyze cumulative impacts, there is no Virginia regulatory framework for DEQ to conduct such an analysis." (91 of 179)
- The Corps looked at cumulative impacts of activities covered under NWP 12. (92 of 179)

FERC Cumulative Impacts Grossly Deficient

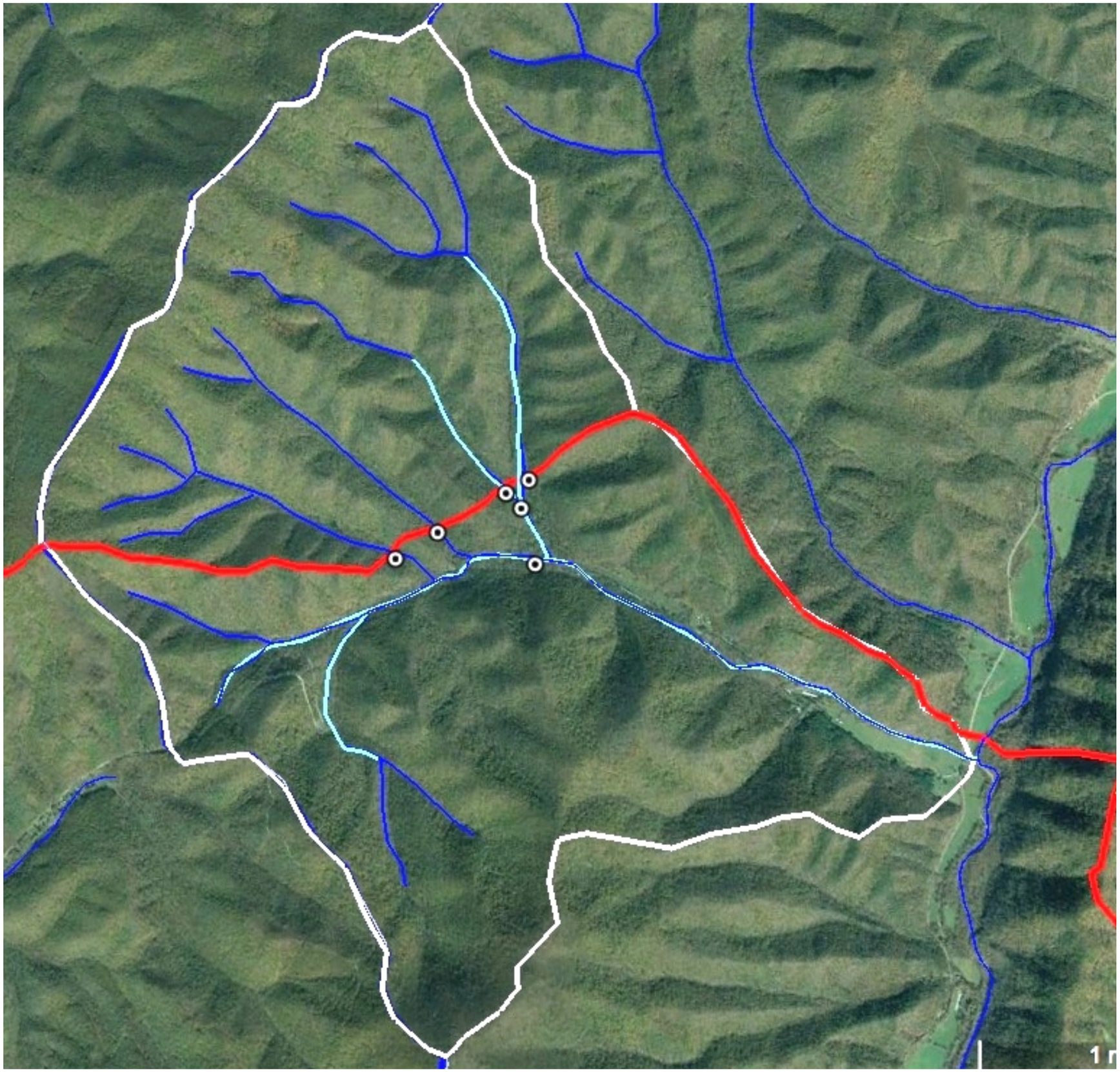
- The size of drainage area used by FERC is much too large – hides any cumulative effects on particular Virginia waters, especially sensitive headwater streams.

- Extensive and detailed analysis on this issue in record at: *Dodds, Pamela C., Hydrogeological Assessment of the Proposed 401 Water Quality Certification to be Issued for the Atlantic Coast Pipeline Project, Virginia, by the Virginia State Water Control Board*, Prepared for the Dominion Pipeline Monitoring Coaltion, August 17, 2017.



Area in blue, 10-digit HUC drainage, as used by FERC for cumulative impacts analysis
(Back Creek-Middle Jackson River drainage)
123 square miles in size.

Area in white, Townsend Draft watershed (see next page) 6.8 square miles (5.5 % of the HUC-10 drainage)



<u>Townsend Draft Watershed</u>

- Size = 6.8 square miles
- 96% forested
- Approximately 4 miles of pipeline passes through (approx. ½ directly across, ½ runs along high ridge bordering)
- Pipeline and access roads cross wild brook trout streams or upstream tribs. 6 times.
- Will require blasting through bedrock.
- Forest Service designated 3 sections of ROW as ”high hazard” areas, due to steep slopes, shallow bedrock, very narrow ridgelines creating limited work areas and requiring cutting down of ridge tops, evidence of “surficial creep” in the watershed.
- ACP claims it will address these factors in its ”Best in Class”

Potential Sources of WQ Impacts in Townsend Draft Watershed

- Erosion, sediment discharges in upland areas
- Erosion discharges from stream crossings
- Debris flows/landslides
- Groundwater/base flow depletion due to trench de-watering
- Impairment of stream habitats from digging & blasting
- Reduction in rain infiltration/base flow due to forest loss
- Temperature impacts from removal of riparian vegetation on numerous small, cold streams in close proximity
- Increased frequency and severity of high runoff flows due to deforestation
- Contribution of sediments/other pollutants to groundwater through loss from losing streams to karst downstream
- Combined constribution of all sources of sediment to Back Creek and reservoir downstream
- Impairment or elimination of recreational/aesthetic uses of relatively pristine streams in National Forest

DEQ Contention - No State Mechanism for Cumulative Review

- This CWA section 401 review is the regulatory framework that allows for and requires a cumulative impact assessment – is to cover all activities that would be authorized by the federal approvals.
- The finding the Board is to make – conformance with WQS in waterbodies requires a combined review of impacts.
- Notable that DEQ's proposed monitoring system does not focus on just one or another class of impacting activities but will assess overall waterbody quality.

Corps of Engineers Cumulative Impacts Analysis Under NWP 12

- Corps' analysis was based on potential cumulative impacts on a *national scale.*

- Corps refuses to look at multiple crossings, even a small drainage, in a unified fashion (deeming them "separate and distant" unless on same stream.

- Corps explicitly excludes any consideration of upland activities in its reviews.

Conclusion – Cumulative Impacts

Incorporation of future DEQ approvals for erosion/sediment control and stormwater management or future determinations on waterbody crossings cannot substitute for a cumulative impacts analysis NOW.

The Board cannot assume the predicted protections that would be enforced under those reviews will result in WQS conformance – would be ceding part of its authority to DEQ staff because DEQ has excessive flexibility in making those decisions, especially in granting variances and waivers to general requirements

One example - open trench length requirement. DEQ has granted extensions from 500 feet to many miles (10 or more). In no case where granted have we seen any analysis of environmental justification/cost of doing so.

Improper Reliance on Corps NWP 12 Permit

Issue

The Board may not rely on NWP 12 as evidence of a reasonable assurance that WQS will be met.

DEQ Responses

The Corps develops conditions for each NWP that ensure compliance with the Clean Water Act while protecting endangered species and cultural resources. (81 of 179)

DEQ has determined that the NWP 12 as currently certified and conditioned in Virginia is protective of the Commonwealth's water quality standards for the physical crossings of wetlands and streams. (83 of 179)

Improper Reliance on Corps NWP 12 Permit13

- The Corps reviews are designed to enforce CWA Section 404 and specificly EPA-promulgated regulations called the 404(b)(1) guidelines. These standards of review are not the same as those that apply to VA WQS.

- The Corps has not decided to cover ACP under the NW permit. NWP 12 is not suitable for this project and a Corps decision to apply it will be open to legal challenge.

Improper Reliance on Corps NWP 12 Permit (continued)

- The Corps allows what it deems “temporary” or “no more than minimal” impacts, including potential habitat alterations and changes to aquatic communities that may last for months or even multiple years. (in the record, DPMC submittal, 8/22/17)
- DEQ has offered no discussion or analysis to compare the two standards.

Improper Reliance on Corps NWP 12 Permit (continued)

- The Corps has acknowledged that “[a]ctivities authorized by this NWP may change the recreational uses of the area. Certain recreational activities, such as bird watching, hunting, and fishing may no longer be available in the area. Some utility line activities may eliminate certain recreational uses of the area.” Corps NEPA Decision Document for NWP 12, quote in DPMC submittal, 8/22/17)

- Note: while DEQ listed ”recreation” as one of the 16 broad areas of concern raised by the public, the response includes no mention of the possible impairments admitted by the Corps.

Improper Reliance on Corps NWP 12 Permit (continued)

- In comments on the DEIS, staff stated that “DEQ is concerned that the proposed temporary impacts [from crossing activities] could result in a permanent alteration of the impacted systems post construction.”
- In light of this concern, DEQ staff recommended that FERC require “[p]re-impact characterizations [to] include subsurface investigations at temporary stream and wetland impact areas to establish the feasibility of restoring the systems post construction and hydrologic assessments, including piezometers, to establish pre-impact hydrologic conditions at temporary wetland impact areas.”
- FERC did not require these measures and they are not reflect in DEQ’s proposed certification.

Improper Reliance on Corps NWP 12 Permit (continued)

Citizens asked for the following information from DEQ through FOIA, in relation to its assessment of NWP 12:

"The specific bases for a finding that there is a reasonable assurance that any activity covered by NWP 12 will meet all Virginia water quality standards."

"Any data or efforts made by the DEQ to assess whether activities covered by and in compliance with NWP 12 in the past have achieved compliance with Virginia water quality standards."

DEQ did not supply documents that met either one of these requests. There is no documentation in the record that specific analysis was done to compare the conditions allowed under NWP 12 to Virginia WQS nor any evidence to support contentions that past compliance with NWP 12 has not caused or contributed to WQS violations.

Suggested Findings

There is insufficient evidence in the record to provide a reasonable assurance that Virginia Water Quality Standards will not be violated if the Atlantic Coast Pipeline (ACP) is build, operated, and maintained in accordance with the approval granted by the Federal Energy Regulatory Commission (FERC). Deficiencies in the record include:

- Absence of a cumulative assessment of the full range of activities covered by FERC that may affect water quality in combination.
- Absence of vital information about erosion and sediment control and stormwater management plans and the impacts of upland activities on water quality in state waters.
- Absence of evidence and analyses to determine the impacts of waterbody crossings on water quality in state waters.