Blue Ridge Environmental Defense League

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Via Email & Mail

June 18, 2018

US Environmental Protection Agency
Office of General Counsel
External Civil Rights Compliance Office (ECRCO)
Mail Code 1201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Title_VI_Complaints@epa.gov

Re: Title VI Environmental Justice Complaint against the Virginia Department of Environmental Quality

To Whom It May Concern:

The External Civil Rights Compliance Office (ECRCO), within the Office of General Counsel is responsible for enforcing several civil rights laws which, together, prohibit discrimination on the basis of:

- race, color, or national origin (including on the basis of limited-English proficiency)
- sex
- disability
- age

by applicants for and recipients of federal financial assistance from EPA. (Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, respectively.)

It is the duty of ECRCO to ensure that any entity that receives EPA funds comply with federal non-discrimination laws. ECRCO is the EPA program office designed

to ensure that recipients of EPA financial assistance and others comply with the relevant non-discrimination requirements under federal law. If a complaint of discrimination is filed with ECRCO against a program receiving EPA funding, ECRCO processes it.

Based on the above stated responsibilities of ECRCO and pursuant to Title VI of the Civil Rights Act of 1964, 42 USC, Part 2000d, now comes Blue Ridge Environmental Defense League (BREDL) and its chapters, Protect Our Water, Concern for the New Generation, No ACP, collectively the "Environmental Justice Groups", with a complaint against the Virginia Department of Environmental Quality (VADEQ) for discriminatory actions the agency has taken in issuing permits for the proposed Atlantic Coast Pipeline (ACP).

The Environmental Justice Groups allege the VADEQ discriminated on the basis of race in issuing permits and certifications to the ACP as part of the permitting process, and by deferring its permitting obligations to other federal agencies, i.e., the Army Corps of Engineers. The failure of the VADEQ to conduct an environmental justice analysis and assess those environmental justice impacts of the proposed ACP on communities of color along the route led to the improper actions taken by its Water Compliance and Permitting Division, Air Compliance and Permitting Division, and its citizen advisory board, the State Water Control Board (collectively the "State Agencies"). We are filing this complaint within the 180-day requirement based on the issuance of a *conditional* 401 Water Certification which as of today has not yet met all the conditions imposed by the State Water Control Board.

As part of this complaint, the Environmental Justice Groups request a prompt and complete investigation of their allegations by the General Counsel and the External Civil Rights Compliance Office (ECRCO) pursuant to 40 CFR, Pt. 7.120, including a public hearing on the matter in Virginia.

BACKGROUND

On September 18, 2015, the ACP, LLC, a Delaware limited liability corporation, filed an application under section 7(c) of the Natural Gas Act, requesting authorization to construct, own and operate the ACP, including three compressor

stations and at least 564 miles of pipeline across West Virginia, Virginia and North Carolina. The purpose of the proposed ACP is to deliver up to 1.5 billion cubic feet per day of fracked natural gas to customers in Virginia and North Carolina. Those "customers" are subsidiaries of the companies which are partners in the proposed ACP, LLC.

The Federal Energy Regulatory Commission (FERC) has the authority under Section 7 of the Interstate Natural Gas Pipelines and Storage Facilities Act (NGA) to issue a certificate to construct a natural gas pipeline. As described in the Commission guidance manuals, environmental documents are required to describe the purpose and commercial need for the project, the transportation rate to be charged to customers, proposed project facilities and how the company will comply with all applicable regulatory requirements.

As part of its review process, FERC prepares environmental documents, and in this case Draft and Final Environmental Impact Statements (EIS) were prepared and released. The draft EIS (DEIS) was released December 30, 2016. The final EIS (FEIS) was released July 21, 2017. On October 13, 2017, FERC granted a conditional certificate for the ACP, with the most significant conditions based on subsequent actions by State agencies.[1]

The certificate issued by FERC is not final, in that FERC has not ruled on pending motions for rehearing—a necessary step to judicial review—by several parties.

While FERC was conducting its certificate process, the State agencies received and began their reviews of applications from the ACP for various certifications and permits.[2] The review and permitting process has extended through two Virginia Gubernatorial administrations. In 2014, Virginia's previous Governor Terrence McAuliffe stood beside Dominion CEO Tom Farrell as he announced the proposed Atlantic Coast Pipeline. McAuliffe called it a "game changer" and an "energy superhighway" which would transform the manufacturing industry in Virginia. The current Governor Ralph Northam was McAuliffe's Lt. Governor. During his campaign for Governor, Northam repeatedly referenced a letter he sent to the VADEQ asking for site-specific analysis to be completed by the VADEQ on both

[1] FERC Order Issuing Certificates, October 13, 2017. Available at: www.documentcloud.org/documents/4108369-FERC-ACP-Order.html

[2] The applications and permits are available at: http://deq.state.va.us/Portals/0/DEQ/Water/Pipelines/ACPCertificate122017.pdf

proposed pipelines in Virginia.[3] The letter also asked that the project be held to the highest scientific, and environmental regulations during the permitting process.

VADEQ spokesman, Bill Hayden, made comments on April 6, 2017 to the press and thereby to the public, stating the VADEQ would do its own stream-by-stream analysis of all water and wetland crossings in Virginia.[4] Unknown to the public, on April 7, 2017, the VADEQ issued a request to the US Army Corp of Engineers (ACE) to permit the ACP through its Nationwide Permit 12. The VADEQ allowed the original statements made by Haden on April 6, 2017, and articles published based on those statements to stand for six weeks until the press then published articles correcting VADEQ's earlier "misstatements."[5]

The public was made aware through those articles that VADEQ would segment its approval processes for 401 water certification by instituting a 401 water certification of its own for the "upland areas" of the ACP… "upland" meaning the mountainous regions. The ACE was asked to permit all waterbody and wetland crossings for the proposed ACP through its NWP12 permit. The VADEQ would further segment the review process by separating the Erosion & Control and Storm Water Management planning processes from the 401 certification. The public hearings on the VADEQ's 401 upland water certification were announced in July 2017 before the Storm Water and Erosion and Sediment Control Plans were even submitted to the VADEQ. Those hearings held by the State Water Control Board were held in August, 2017…still without opportunity for the public to review the E&S and Storm Water Management Plans.

The Army Corps of Engineers issued the NWP 12 permit for the ACP on February 9, 2018. With approval of the State Water Control Board, the VADEQ issued a conditional 401 water certification for upland areas on December 20, 2017. However, the SWCB, at its April 12, 2018 meeting, directed the VADEQ to open a 30-day comment period seeking public input regarding the appropriateness of the ACE Nationwide Permit 12's as the best permitting process for the ACP in Virginia.

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[3] May also be found here: http://appvoices.org/images/uploads/2018/04/Northam_to-DEQ-letter_02.14.17-1.pdf

[4] http://www.richmond.com/business/virginia-department-of-environmental-quality-denies-backpedaling-on-pipeline-water/article_a3ea4db1-8c62-5c6a-ab2e-e076605f5c63.html

[5] https://www.washingtonpost.com/local/virginia-politics/as-gas-pipelines-roil-virginia-governors-race-regulators-backtrack-on-their-role/2017/05/25/4bdb03e6-4160-11e7-8c25-44d09ff5a4a8_story.html?noredirect=on&utm_term=.77acba6b60ce

The VADEQ Air Compliance and Permitting Division has yet to issue a draft air quality permit for the ACP's Virginia compressor station sited for the historic Union Hill/Woods Corner community of Buckingham County, VA. Union Hill is a community which was settled by freedmen and whose population today is mostly African American. Additionally, 30 percent of its residents are descendants of those freedmen who settled the community.

1. The VADEQ Water Compliance and Permitting Division issued a 401 Water Quality Certification for "upland areas" of Virginia on December 20, 2017. As a part of the Virginia's 401 certification, and at the request of VADEQ, The Army Corps of Engineers issued a NWP 12 permit on February 9, 2018.
2. The VADEQ has not yet approved Erosion and Sediment Control Plans, nor Storm Water Management Plans for the proposed ACP.
3. The VADEQ's Air Compliance and Permitting Division has not yet issued an Air Permit for the proposed ACP's Buckingham compressor station.
4. The SWCB directed the VADEQ to open an additional 30-day comment period on the feasibility of the NWP12 permitting to be the best permitting process available on April 12, 2018. That comment period has now been extended to June 15, 2018 because the VADEQ website was down for an extended period in May 2018.
5. The State Agencies have not conducted an Environmental Justice analysis of the proposed Atlantic Coast Pipeline as required under Title VI of the Civil Rights Act, or under Virginia's own statutes.[6]

It should be noted that a Memorandum of Understanding (MOU) between the proposed ACP and prior Virginia Governor Terence McAuliffe for $57.85 million was negotiated in secret and not released to the public until after a similar agreement was made public in North Carolina in January 2018.[7] The MOU pays for mitigation for damages to Virginia's forests and waters. The payments are slated to go to entities outside of the path of the proposed ACP, not directly affected communities. The MOU was signed December 28, 2017…eight days after the VADEQ issued its conditional 401 water certification.

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[6] Email from VADEQ spokesperson, Ann Regn, dated June 14, 2018.

[7] The Mitigation Agreement between the ACP and Governor Terry McAuliffe, https://s3.amazonaws.com/carolinajournal.com/app/uploads/2018/01/30154905/VA-ACP-Mitigation-Agreement-Dec-28-2017.pdf

THE PUBLIC INTEREST GROUPS

The Environmental Justice Groups are not-for-profit corporations acting in the public interest and community groups organized to protect the families and property of their members. The Environmental Justice Groups have members adjacent to or in close proximity to the proposed ACP corridor and blast zone. Many of the members of the Environmental Justice Groups are African-American and/or disadvantaged communities who will face disproportionate impacts of the proposed ACP.

Blue Ridge Environmental Defense League (BREDL) is a regional environmental and social justice organization with at least two chapters with members on the path or adjacent to the compressor station of the proposed ACP. The chapters are: Concern for the New Generation, a mostly African American community group which surrounds the compressor station site for the proposed ACP in Buckingham County, VA; Protect Our Water, a community group in Nelson County, VA; and No ACP, a community group in Richmond, VA.

The Environmental Justice Groups and their members will be significantly affected and aggrieved by the proposed ACP. Many of the economic concerns and environmental impacts affecting the Environmental Justice Groups and their members, and especially those in communities of color, have not been taken into consideration by FERC in its conditional issuance of the Certificate or by the State agencies which failed to complete any environmental justice analysis at all.

The Environmental Justice Groups allege, among other issues, that FERC and the State agencies failed to assess the impacts on families and communities along the route of the environmental and health impacts from the construction and operation of the pipeline, and its cumulative impacts, including the worsening of the climate crisis. The increased usage of fracked gas has aggravated the effects of climate change and the most vulnerable communities along the proposed ACP route are in many cases the same communities being most harmfully impacted by climate change. A study, published in The Journal of Environmental Health and Science, states, “The emissions that occur within several miles of residences (sometimes less than 500 feet) pose challenges for health care providers seeing patients from these areas. Health care providers as well as themselves have very

little information on the contents of unconventional natural gas development (UNGD) emissions and the concentration of toxics that could be reaching people where they live or work. Currently patients go to physicians with health concerns but are unable to identify chemical or particulate exposures, if they exist. Physicians unfortunately often find themselves with similarly imprecise exposure conceptualizations. Guidance provided by public agencies is often insufficient to protect the health of individuals, yet, there is an increasing amount of data collected on UNGD emissions; and there is existing research on the toxicological and clinical effects of some substances emitted by UNGD activities."[8] An article in Scientific American states, "The generally accepted climate benefit of natural gas is that it emits about half as much CO2 as coal per kilowatt-hour generated. But this measure of climate impact applies only to combustion, it does not include methane leaks, which can dramatically alter the equation. Methane is a potent greenhouse gas that forces about 80 times more global warming than carbon dioxide in its first 20 years in the atmosphere. Methane's warming power declines to roughly 30 times CO2 after about 100 years."[9] A peer-reviewed study released by the Environmental Defense Fund measuring leaking methane from both conventional and fracked natural gas wells in Pennsylvania indicates the EPA's estimates are woefully inaccurate. The study shows that older conventional wells leak at rate of 23%, and even though there are many more conventional wells, they produce less gas. While the leak rate for the fracked gas wells is considerably smaller at 0.3 percent, their output is so much larger than conventional wells, the fracked gas wells leak nearly as much as the old conventional wells. The study "calculated that fracked wells spewed about 253,500 tons of methane in 2015, and conventional wells, 268,900 tons."[10]

We also know that the gas transmission and delivery systems leak. The EPA estimates the pipeline systems in the US leak at a rate of 1.3 percent, though recent studies believe the figure to be between 3 to 4 percent. All this leaking methane causes additional health concerns for those unfortunate enough to live along the routes of pipelines and compressor stations and in communities where drilling occurs.

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[8] David R. Brown, Celia Lewis & Beth I. Weinberger (2015) Human exposure to unconventional natural gas development: A public health demonstration of periodic high exposure to chemical mixtures in ambient air, Journal of Environmental Science and Health, Part A, 50:5, 460-472, DOI: 10.1080/10934529.2015.992663

[9] https://www.scientificamerican.com/article/methane-leak-rate-proves-key-to-climate-change-goals/

[10] https://insideclimatenews.org/news/16022018/methane-leaks-oil-natural-gas-data-global-warming-pennsylvania-edf-study

Segmentation of the leaks from natural gas energy infrastructure suits no purpose other than to allow industry to ignore the part they play in global warming. It also offers the industry cover for the detrimental health affects to the environmental justice communities forced to host these toxic, polluting facilities in their communities against their will.

Several of the Environmental Justice Groups brought concerns about the impacts on communities of color to FERC in its hearing process and additionally submitted comments and testimony to the State agencies on the permits. The Environmental Justice Groups and their members attended numerous hearings and public meetings on issues related to the ACP and submitted comments on the proposed permits to the agencies. In addition, some of the Environmental Justice Groups held their own public hearings, paying for court reporters, and submitting those comments to the State Agencies because no public hearings were held in their communities. For example, neither the FERC, VADEQ, nor the State Water Control Board ever held a public hearing or meeting in Buckingham County, the site for the 57,000 horsepower compressor station for the proposed ACP in Virginia.

Three public hearings were held by the SWCB and VADEQfor its "Upland" 401 water certification which required most citizens to travel more than one (1) hour. The hearings were held in: 1) Harrisonburg, VA (30-plus miles outside of the closest directly-affected community along the proposed ACP route); 2) Farmville, VA (while in Prince Edward County, Farmville is not along the route) and 3) Alberta, VA. Additionally, specific time periods were set for these public hearings and there were many people signed up to speak who were turned away because the State Agencies had not rented the venues for a period long enough to hear all those wishing to make comments.

The State Water Control Board held two days of hearings in Richmond, VA regarding the 401 certification for the proposed ACP in December 2017. The first day was for presentations by the VADEQ and public comment. Public comment went well into the night with many speakers leaving before their names were called. A remark of particular interest to members of the community occurred when the Director of the VADEQ Water Compliance and Permitting Division, Melanie Davenport, said she and the VADEQ had been working with the industry

to approve the permits for over 2 years, clearly indicating a bias toward industry. At this point in the process, the VADEQ had failed to complete many of the studies, analysis and reports needed for approval of the proposed ACP to include: an environmental justice analysis; the karst dye test studies ; the E&S and Storm Water Management Plans . It was estimated they would not be ready for approval until March 2018. To our knowledge, those plans have not been approved as of this time. Anti-degradation studies, nor sediment load studies were ever completed to our knowledge. Finally, the VADEQ did not complete an environmental justice analysis ever.

Through a series of FOIA requests from the Dominion Pipeline Monitoring Coalition and responses by the VADEQ to those requests, the Dominion Pipeline Monitoring Coalition (DPMC) released a report, "The agency has no records…DEQ's Failure to Use Sound Science to Protect Virginians from Pipeline Threats" on June 5, 2018.[11] The questions asked by DPMC concerned the scientific processes the VADEQ used in its review and recommendation to the SWCB to approve the 401 water certifications for both the ACP and MVP. The answers to the questions were consistently: "The DEQ has no records….".

Therefore, in addition to the environmental justice concerns, the Environmental Justice Groups allege the procedures for the issuance of the permits sub judice were not fair and impartial, but instead were biased in favor of industry.

Many of the members of the Environmental Justice Groups live in rural communities which depend on wells and/or springs as their water sources. The construction and operation of the proposed ACP could adversely affect the members of the Environmental Justice Groups water sources through sedimentation, or redirection of ground water sources by the blasting necessary to construct the proposed ACP and/or by the damming effect a 42" pipe buried in the ground could cause. These damages to private wells, cisterns and springs may not be immediately recognized. For example, a reduction in the refill rate of a well, or into a year-round spring could cause it to operate normally during the fall, winter and spring, but become dry in the summer. The Virginia Department of Health advised FERC and VADEQ that a study mapping every well, spring and cistern within 1,000 feet of the centerline of the proposed ACP be completed

[11] May be found here: http://pipelineupdate.org/wp-content/uploads/2018/06/The-Agency-has-no-records.pdf

prior to construction.[12] (Attached) This was not done. Instead the VADEQ added a condition to its upland 401 water certification that wells, springs and cisterns within 1,000 feet of the pipeline should be mapped in areas with karst terrain. This result leaves families without protection…most of whom live in the counties with environmental justice communities. Further, it is our assertion that the MOU negotiated by previous Governor McAuliffe releases the proposed ACP LLC from damages caused by construction of the proposed ACP to the wells of families along and/or adjoining the path of the ACP and/or its compressor stations. If these wells and/or springs are contaminated, most rural localities do not have municipal water systems for the communities to fall back on, and even if they were available, most of the community members of the Environmental Justice Groups do not have the wherewithal to pay connection fees and monthly water bills.

For those families who have access to municipal water systems, those systems are also being threatened by drilling under water reservoirs and river crossings in source water assessment areas used for municipal water supplies**.** A study completed by Downstream Strategies, "Threats to Water Quality from the Mountain Valley and Atlantic Coast Pipeline Water Crossings in Virginia,"[13] outlines environmental justice threats to several water crossings in Virginia. We include three of those communities here: 1) In Suffolk County, VA, the proposed ACP will use horizontal directional drilling to construct the ACP under two reservoirs. These reservoirs, while located in Suffolk, are owned by the city of Norfolk and are used to provide clean drinking water to its residents. Additionally, the ACP would make 11 crossings of streams and tributaries in the source water assessment area for these reservoirs. Norfolk is a majority minority community with 50.9 percent of the city being other than white.

2) The City of Emporia, located in Greensville County, gets its municipal water from a 220-acre reservoir supplied by the Meherrin River. The reservoir has been categorized by the VDH to be highly susceptible to contamination. The proposed ACP will cross streams and tributaries of the source water for the Meherrin River 16 times. The crossing of the Meherrin River, itself, is upstream from the

[12] Memo, Virginia Department of Health Office of Environmental Services Dwayne Roadcap

[13] "Threats to Water Quality from the Mountain Valley Pipeline and Atlantic Coast Pipeline Water Crossings in Virginia," Downstream Strategies, February 2018, by Evan Hansen, Jason Clingerman & Meghan Betcher

reservoir and exacerbates contamination concerns. Emporia is an environmental justice community with approximately 5,300 residents, 70.9 percent of whom are African American. The poverty rate for Emporia is 43 percent. Greensville County has an African American population of 59.5 percent and a poverty level of 25.4 percent.

3) The city of Franklin and surrounding communities in Southampton and Suffolk Counties get their drinking water from the Potomac Aquifer. Studies show that the Potomac Aquifer cannot meet the need for current and future users for drinking water in these communities. VADEQ has concerns of salt water intrusion into the aquifer.[14] It has limited the amount large users can withdraw from the Potomac Aquifer and all those users have new permits with the exception of the city of Franklin, which has appealed.[15] The ACP would cross 33 streams within two miles of the city of Franklin. Twenty-three (23) of which are in areas dominated by African Americans with a population above 70 percent who get their water from private wells. There is also a planned horizontal direction drilling crossing planned for the Blackwater River which could also affect ground water resources in the area. We assert further jeopardizing the water resources of these communities by construction of the ACP is foolhardy at best. Southampton County has a 35.4 percent African American population, while Suffolk County's is 42.6%. We agree clean water is a necessity for all, but we believe the evidence presented herein indicates vulnerable environmental justice communities will be disproportionately affected.

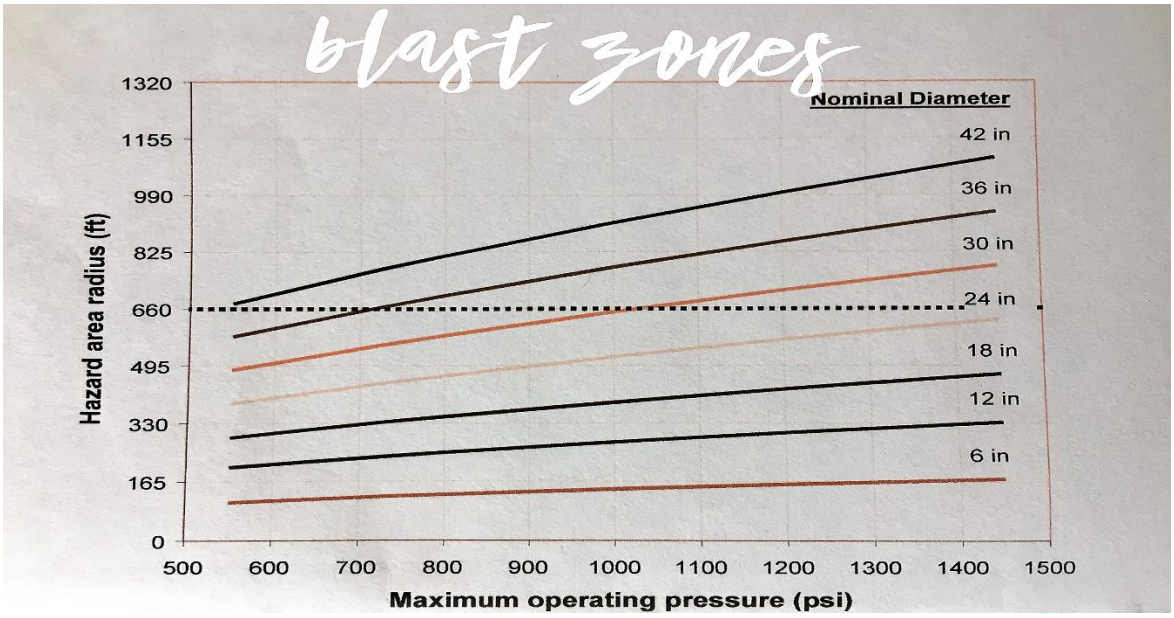
The members of the Environmental Justice Groups allege that the permit decisions would have a significant and adverse impact on the health and well-being of the members of their communities. The siting of the compressor station in the center of historic Union Hill, Buckingham County, VA, a community settled by freedmen with descendants of those freed slaves still living there today, puts a mostly poor, African-American community at a disproportionate risk for increased health issues from the toxic emissions from the compressor station as well as the noise emissions which cause many health concerns. This community will be

[14]http://www.deq.virginia.gov/Portals/0/DEQ/Water/WaterSupplyPlanning/EVGWAC/GW%20Issue%20Presentation_08%2018%202015.pdf

[15] http://www.fredericksburg.com/news/environment/virginia-tightens-spigot-on-big-water-users-to-stem-potomac/article_46dcc766-36f9-5687-a60f-651f97bd6596.html

directly affected by the emissions caused by the planned or unplanned releases and blow-downs. The noise and pollutants emitted from these blow-downs will affect the enjoyment of their property, the value of their property and other economic interests.

Many of the families along the route of the proposed ACP are having their property taken through eminent domain. Though FERC's permit is conditional, it is approving incremental construction of the proposed ACP where permits have been received and landowners have signed easements. For those fighting these easements in the courts , the courts have been, in most cases, allowing immediate access to properties without compensation. Some of the Environmental Justice Groups' members are part of what is commonly referred to as "heired" property. "Heired" property are properties which were at one time owned by an ancestor with no will, and now the descendants of that ancestor own the property together with other heirs who may live all over the country. This puts those landowners at a disproportionate disadvantage in presenting their cases before the courts for receiving just and fair compensation for their interests in these "heired" properties. Additionally, families who live well within blast and evacuation zones, and in the vicinity of compressor stations receive no



compensation or even notification because they do not own land needed by the company to construct the pipeline or compressor station. We have included two charts—a blast zone chart[16] and evacuation zone chart.[17]

Recommended Minimum Evacuation Distances For Natural Gas Pipeline Leaks and Ruptures

(Not applicable for Butane, Propane, or other Hazardous Liquids)

Pressure (psig) \ Pipeline Size (Inches)	4	6	8	10	12	16	20	22	24	30	36	42
100	91	137	182	228	274	365	456	502	547	684	821	958
200	129	193	258	322	387	516	645	709	774	967	1161	1354
300	158	237	316	395	474	632	790	869	948	1185	1422	1659
400	182	274	365	456	547	730	912	1003	1094	1368	1642	1915
500	204	306	408	510	612	816	1020	1122	1224	1529	1835	2141
600	223	335	447	558	670	894	1117	1229	1340	1675	2011	2346
700	241	362	483	603	724	965	1206	1327	1448	1810	2172	2534
800	258	387	516	645	774	1032	1290	1419	1548	1935	2322	2709
900	274	410	547	684	821	1094	1368	1505	1642	2052	2462	2873
1000	288	433	577	721	865	1154	1442	1586	1730	2163	2596	3028
1100	302	454	605	756	907	1210	1512	1664	1815	2269	2722	3176
1200	316	474	632	790	948	1264	1580	1738	1896	2369	2843	3317
1300	329	493	658	822	986	1315	1644	1809	1973	2466	2959	3453
1400	341	512	682	853	1024	1365	1706	1877	2047	2559	3071	3583
1500	353	530	706	883	1060	1413	1766	1943	2119	2649	3179	3709
1600	365	547	730	912	1094	1459	1824	2006	2189	2736	3283	3830
1700	376	564	752	940	1128	1504	1880	2068	2256	2820	3384	3948
1800	387	580	774	967	1161	1548	1935	2128	2322	2902	3482	4063
1900	398	596	795	994	1193	1590	1988	2186	2385	2981	3578	4174
2000	408	612	816	1020	1224	1631	2039	2243	2447	3059	3671	4283
2100	418	627	836	1045	1254	1672	2090	2299	2508	3134	3761	4388
2200	428	642	856	1069	1283	1711	2139	2353	2567	3208	3850	4492

Table 1 – Evacuation Distance in Feet

The applicable leak or rupture condition is that of a sustained trench fire fueled by non-toxic natural gas escaping from two full bore pipe ends. Blast overpressure is not addressed. The distances shown in Table 1 are intended to provide protection from burn injury and correspond to a thermal heat flux exposure level of 450 Btu/hr ft2. This is the accepted limit of heat exposure for unprotected outdoor areas where people congregate; as established by the US Department of Housing & Urban Development Code 24CFR51, Subpart C, Siting of HUD Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature. The formula used to calculate distance was taken from the Gas Research Institute Report GRI-00/0189, A Model for Sizing High Consequence Areas Associated with Natural Gas Pipelines, 2001, prepared by C-FER Technologies. The formula is: square root of pressure x nominal pipe size x 2.28. That model does not take into account wind or other factors which may greatly influence specific conditions. Users are advised that the distances shown in Table 1 are considered to be "general information" only and are not intended to replace a site specific risk analysis. The Pipeline Association for Public Awareness makes no warranty with respect to the usefulness of this information and assumes no liability for any and all damages resulting from its use. Anyone using this information does so at their own risk.

[16] A MODEL FOR SIZING HIGH CONSEQUENCE AREAS ASSOCIATED WITH NATURAL GAS PIPELINES Mark J. Stephens, C-FER Technologies, Edmonton, Alberta T6N 1H

[17] https://pipelineawareness.org/media/1092/2017-pipeline-emergency-response-guidelines.pdf

Finally, the Environmental Justice Groups living in rural communities are faced with unequal protection because construction standards are lowered by the class system instituted by the Pipeline & Hazardous Materials Safety Administration's (PHMSA) construction rules.[18] (Attached) These rules incentivize industry to build in disadvantaged communities of poverty and color because land is cheaper, and construction costs are less expensive. For example, in Class 1, the wall thickness of the pipe can be 75 percent less than in suburban and urban areas. Instead of shut off valves being required every 5 miles, rural communities must deal with valves being 20 miles apart. Even after construction is completed, maintenance and pipeline inspections are less frequent. The pipeline companies work hard to site these toxic, polluting industrial facilities in rural, agricultural communities which have less than 10 homes per mile to take advantage of rules which ultimately discriminate against people of color and disadvantaged communities. Lastly, though not an enforceable regulation, PHMSA strongly suggests to localities which are forced to host pipelines, that they should create a 660 foot zone on either side of the pipeline which cannot be developed for safety reasons. We must ask then, why are there no construction set back requirements forcing pipeline developers from encroaching on existing homes and businesses?

BASIS FOR COMPLAINT

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color or national origin in their programs or activities. In this matter, the Environmental Justice Groups allege the State agencies discriminated on the basis of race and color because they failed to assess the disproportionate impacts of the proposed ACP on communities of color.

The State Agencies receive financial assistance from the US Environmental Protection Agency (EPA). The Governor of Virginia's recently approved budget, indicates the State Agencies received approximately $51,509,235.00 from the EPA.

[18] Also available here: http://www.bredl.org/pdf5/Unequal_Protection_Fact_Sheet.pdf

The State Agencies have received similar financial assistance from EPA over the past several years.

Because of the financial assistance from EPA, the State Agencies are required to comply with relevant civil rights law, including Title VI. In her letter of January 18, 2017, to the State Agencies, Lilian S. Dorka, ECRCO Director, presented the US EPA's External Civil Rights Compliance Office Toolkit, which is a clarification of existing law and policy intended to provide guidance to promote and support EPA recipients' compliance with federal civil rights laws.[19]

ALLEGATIONS OF DISCRIMINATION

In issuing their permits, The State agencies admit they did not address sociological, cultural, historical and demographic issues in order to assess discrimination based on race and color pursuant to Title VI. The Environmental Justice Groups herein use the term "environmental justice" as a shorthand for this discrimination., i.e., a determination of whether the actions would have a disproportionate impact on African American, Native American and other people of color along the proposed route of the ACP.

The ACP conducted a flawed environmental justice analysis in its application process. FERC also failed to conduct a sufficient analysis of its own before issuing its order. These failures are especially troublesome in that the State Agencies have their own Environmental Equity laws. The Virginia General Assembly's intent in passing the underlying statute clearly states its purpose as, *inter alia*, protecting family life and public health in residential areas. VAC 15.2 §2200.

People from Union Hill, Union Grove and many other communities spoke at public hearings and public comment sessions, providing the County, and thereby the Commonwealth, detailed justification for rejecting the application by Atlantic Coast Pipeline, LLC for a Special Use Permit for its proposed compressor station in Buckingham County, VA.[20]

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[19] www.epa.gov/sites/production/files/2017-01

[20] For example, detailed comments from Sharon Ponton during the public hearing stated, "The Planning Commission must deny the Special Use Permit application for the compressor station because the Atlantic Coast Pipeline, LLC is not a utility. Therefore, it does not qualify for the public utility exception in the County's A-1 Zone."

Virginia law governing energy development articulates support for environmental justice and equitable development. One of the stated objectives in Commonwealth Energy Policy is "developing energy resources and facilities in a manner that does not impose a disproportionate adverse impact on economically disadvantaged or minority communities." VAC § 67-101 (12). Further, it states that "To achieve the objectives enumerated in § 67-101, it shall be the policy of the Commonwealth to [e]nsure that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on economically disadvantaged or minority communities." VAC § 67-102 (A)(11).

During proceedings leading to the approval of a Special Use Permit for the compressor station sited by the proposed ACP in the Union Hill community, Buckingham County heard evidence of environmental injustice from local residents and regional organizations during hearings on the Special Use Permit, and ignored their responsibility to protect communities of color and vulnerable populations. Ruby Laury, a resident of Buckingham County's 6th District, stated:

> Many studies have shown that hazardous solid waste facilities, power stations and industrial plants like the proposed ACP compressor station are sited disproportionately in communities of color and low income neighborhoods. Most importantly these plants emit toxic air and noise pollution which would have a negative effect on the health and wellbeing of us living in the Union Hill and Wood [Corner] area....[T]he proposed ACP [site] was owned by descendants of a plantation owner and property sold for $37,000 + per acre. The community...was created by freedmen, freed slaves in about 90% of the adjoining land.... So please deny the special use permit. Please say yes to the citizens you represent. Say yes to protect us from the environmental racism that appears is being thrusted upon us.

John W. Laury, also a resident of Buckingham County's 6th District, stated in opposition to the Permit, before the Board cut off his statement:

> We maintain the compressor station is inconsistent with local ordinances. It is being cited [sic] for an agricultural zone not an industrial zone and it's surrounded by an African American Community. The local residents and regional organization gave evidence of environmental injustice regarding

> Union Hill Community during the Planning Commission Public Hearing process. The Planning Commission failed with respect to its legal obligation to ensure the ACP compressor station...(time's up tone sounded) [21]

A review of environmental justice and equity law by the American Bar Association and the Hastings College of Law revealed the following:

> Poor communities of color breathe some of the least healthy air in the nation. For example, the nation's worst air quality is in the South Coast Air Basin in Southern California, where studies have shown that Latinos are twice as likely as Whites to live within one mile of an EPA Toxic Release Inventory listed facility, and Latinos, African Americans, and Asian populations in the region face 50% higher cancer risks than Anglo-Americans in the region. Advocates nationwide argue that because poor people of color bear a disproportionate burden of air pollution, their communities should receive a disproportionate share of money and technology to reduce toxic emissions, and that laws like the Clean Air Act should close loopholes that allow older, polluting facilities to escape pollution control upgrades.[22]

Walter Fauntroy, District of Columbia Congressional Delegate to Congress, prompted the General Accounting Office to investigate environmental justice issues. The GAO released its findings that three-quarters of the hazardous waste landfill sites in eight southeastern states were located in primarily poor, African-American and Latino communities. United Church of Christ's Commission for Racial Justice published *Toxic Wastes and Race in the United States*, which revealed that race was the single most important factor in determining where toxic facilities were located, and that it was the intentional result of local, state and federal land-use policies. Dr. Robert Bullard published *Dumping in Dixie:*

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[21] Buckingham Board of Supervisors January 5, 2017 Public Hearing Transcript at 27.

[22] Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases (fourth ed.), Steven Bonorris, Editor , Copyright © 2010 American Bar Association and Hastings College of the Law. With citation, any portion of this document may be copied and distributed for non-commercial purposes without prior permission. All other rights are reserved. http://www.abanet.org/environ/resources html or www.uchastings.edu/cslgl

Race, Class, and Environmental Quality, in which he showed the importance of race as a factor in the siting of polluting industrial facilities.[23] We assert that the siting of the ACP in Buckingham, Cumberland, Prince Edward, Nottoway, Dinwiddie, Greensville, Brunswick, Southampton, Sussex, and Chesapeake are blatant attempts by the ACP to continue this historical abuse of communities of color, especially when you consider each of the counties has higher than average minority populations. Many of these communities have large minority populations because during colonial times their ancestors were enslaved by white plantation owners. After Emancipation, if fortunate, the plantation owners gave their slaves land and those freedmen settled in communities near the plantations they had worked. Others took up share cropping on their prior "master's" land. Buckingham County, VA is a prime example of this occurrence. Dr. Lakshmi Fjord completed a study of the area surrounding the compressor station site, which indicated 85% of the 99 homes she surveyed within 1 mile of the compressor station were African American. Over 30% of those surveyed were descendants of the freed slaves that settled in the Union Hill community.[24] Additionally, over 70 percent of adjoining landowners to the compressor station site are African-American.

The action of the Board of Supervisors in granting the special use permit in an A-1 (Agriculture 1) District was an unreasonable and arbitrary use of its authority which bore no substantial relationship to the public health, public convenience, or good zoning practice. Rather, it was a discriminatory act for the financial benefit of a private entity and detrimental to residents of the Union Hill community. Therefore, it is unlawful and should be deemed *ab initio* invalid and void. *Wilhelm v. Morgan*, 208 Va. 398, 157 S.E.2d 920 (1967).

We submit that the VADEQ Air Compliance and Permitting Division should weigh the unlawful act of approval of the Special Use Permit by the Buckingham County Board of Supervisors in its air permitting process to ensure both EPA regulations and Virginia law regarding environmental justice is enforced.

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[23] Natural Resources Defense Council, https://www.nrdc.org/stories/environmental-justice-movement

[24] Dr. Lakshmi Fjord, anthropologist, comments submitted to FERC regarding the history and demographic makeup of Union Hill.

The FERC analysis produced flawed conclusions that systematically discount the disproportionate impacts on communities of color and disadvantaged communities. The State Agencies did not complete an environmental justice analysis at all.

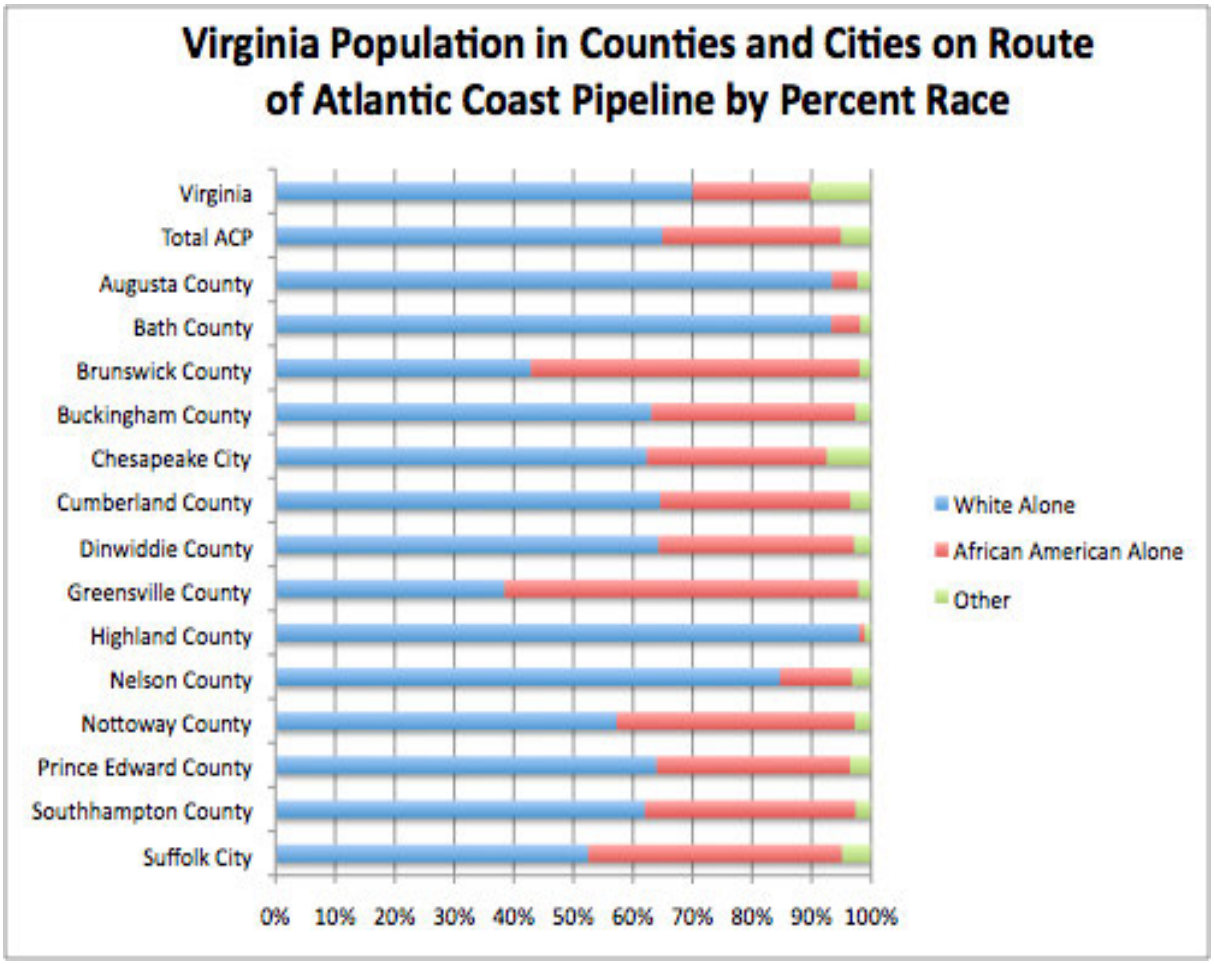
In its Order granting its conditional certificate for the ACP, FERC states it is not required to comply with Executive Order 12898 which mandates that specified federal agencies make achieving environmental justice part of its missions by identifying and addressing, as appropriate, disproportionately high and adverse human or environmental health effects of their programs, policies and activities on minorities and low-income populations. FERC's unsupported position is one of the issues raised by the request for rehearing of FERC's decision by some of the Environmental Justice Groups. FERC's position that it is not required to meet Executive Order 12898 is unacceptable.

Regardless of FERC's flawed position, the State Agencies are required to review the impacts of their decisions on low-income communities and communities of color pursuant to both the EPA directives and Virginia's own environmental justice statutes. The State Agencies certainly cannot simply rely on the ACP/FERC analysis of the Environmental Justice impacts.

Even FERC recognizes the ACP would have an impact on low-income families, yet fails to further assess those impacts on these low-income communities and communities of color. Seventeen (17) of the 22 counties through which the ACP would traverse in Virginia and North Carolina have some combination of below median income, with higher than average concentrations of African American or Native American families. The compressor stations in both Virginia and North Carolina are sited in counties with above average minority populations and below average median income. Northampton County, NC is 58 percent African American while the state is 22 percent. Buckingham County, VA is 34.3 percent African American compared to Virginia's 19.6 percent. Governor Northam's Advisory Council on Environmental Justice in Virginia calls the siting of the ACP compressor

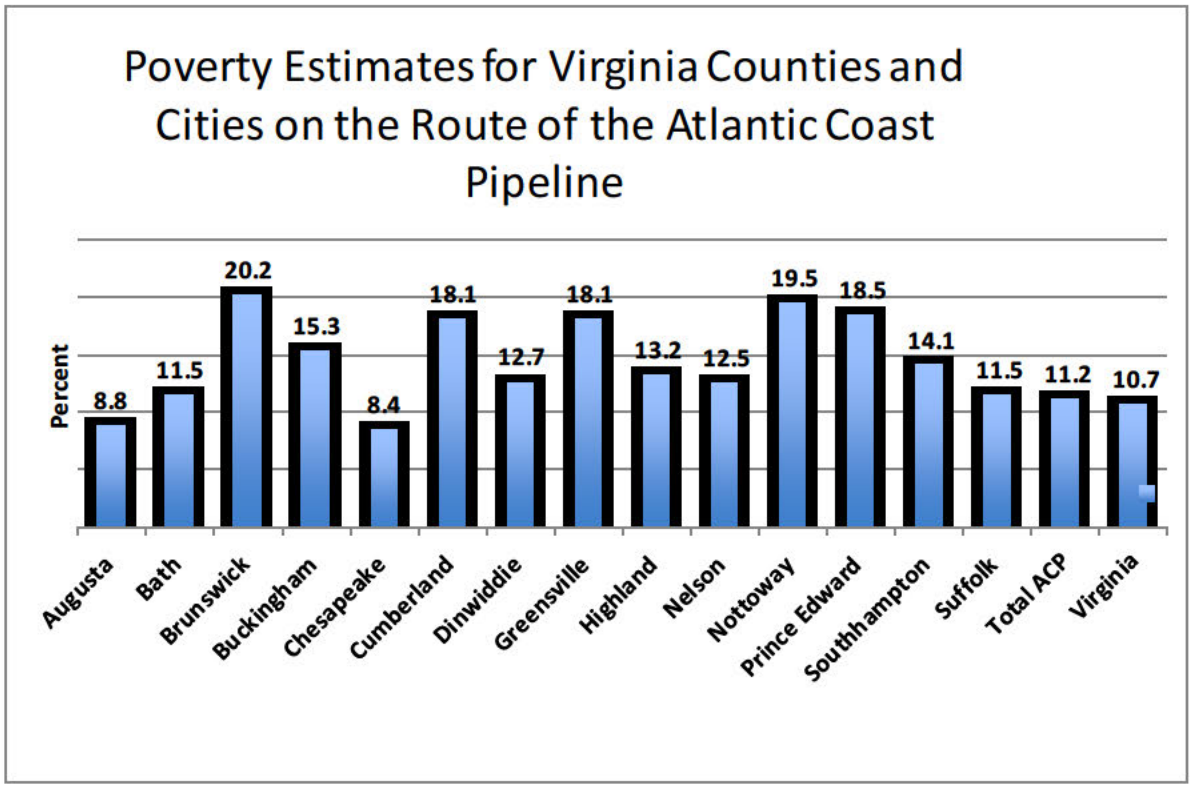
station in the Union Hill community racist in its recommendations to him regarding the proposed Atlantic Coat pipeline.[25]

Of the 14 Virginia counties on the route of the ACP, ten (10) have higher than average populations of African Americans—the lowest is 30.2 percent and the highest is 59.5%. (See chart.) Thirteen (13) of the 14 Virginia counties have higher



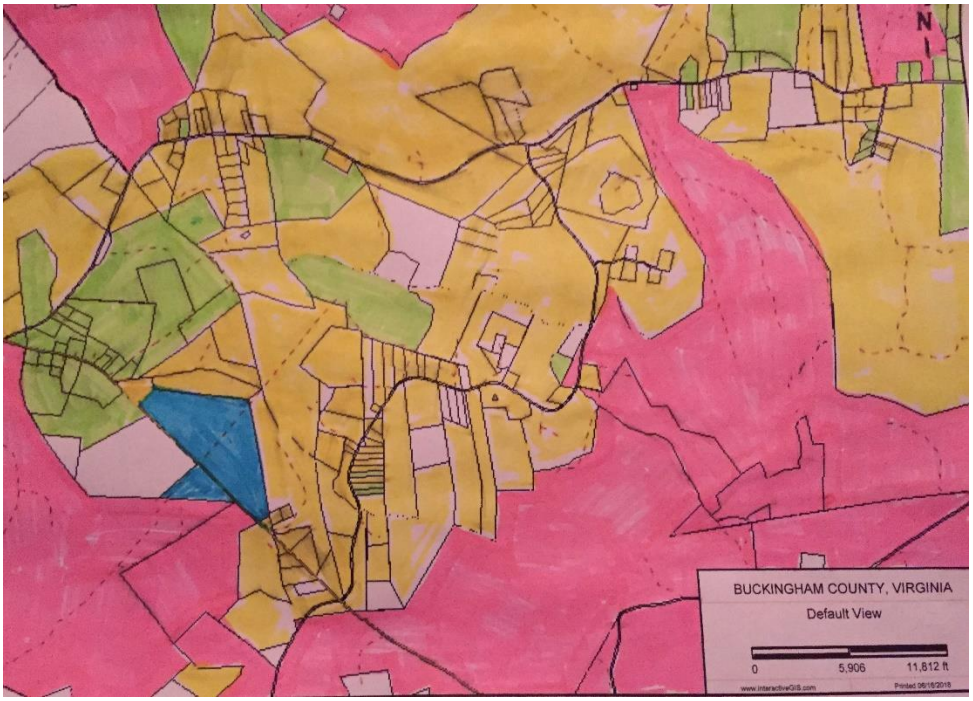
than average populations living in poverty. Virginia's poverty population is 10.7%; the 13 counties range between 11.9 percent and 20.2 percent. These trends continue into North Carolina into seven of the eight counties along the route of the ACP. We do not believe the path and the statistical facts included herein happened by coincidence.

[25] Governor's Advisory Council on Environmental Justice meeting regarding recommendations to the Governor on Pipelines, May, 31, 2018



Notably, although FERC's study appropriately compares poverty data in census tracts within one mile of the pipeline corridor to poverty data for the State as a whole, when it comes to population percentages for communities of color, FERC compares census tracts near the pipeline only with the percentage of minorities in the county in which the census tract is located. This dilutes the data and makes it nearly impossible to ever designate any community as an environmental justice community. Since most of the Virginia counties along the proposed ACP corridor have communities of color significantly above the State average, this decision greatly minimizes the disproportionate impact. The decision to use county-level reference statistics for race and ethnicity left regulators unable to determine whether any pipeline route through these specific counties would place a disproportionate burden on minority populations when compared to the broader population of Virginia.

We also assert using Census data alone—as the sole variable in judging whether there is a disproportionate impact on communities of color—lacks reason and forethought. Rural communities have vast amounts of undeveloped land and yet FERC is silent on the taking of undeveloped land from landowners of color. Obviously, census data only reflects the people who live in homes on developed land. It does not reflect who owns undeveloped tracts in those same communities. BREDL has many examples of undeveloped lands owned by members of minority communities in Virginia and North Carolina which are being taken by the proposed ACP—parcels of land within those same census tracts which indicate an above average population of people of color. The impact of these takings on African American, Native American and other people of color are not reflected in any way in the ACP/FERC analyses. These undeveloped parcels are an important part of the heritage and culture of the impacted communities and should be considered in any environmental justice analysis. We have included below a color coded map of the area around the Buckingham County compressor station to indicate the number of minority owned properties in this community. The compressor station site is blue; yellow, minority owned; green, caucasian; pink, timber companies; and those left white we could not discern the ethnicity of the owners.



According to census data, there are 563,358 Virginians in the 14 counties through which the ACP is proposed to pass. If we use the overall minority population of the state, 19.8 percent, to determine our baseline, we find 110,418 in the 14 counties should be people of color. However, reality on the ground tells a completely different story—thirty-five (35) percent, or 197,654 Virginia residents are members of minority communities in those 14 counties—an increase of 79% over the state baseline of 110,418.

Virginia has a total of 132 counties and cities. Of those 132 jurisdictions, 31 have minority populations greater than 30 percent. Ten (10) of those 31 counties (32.25 percent) are ACP counties.

The NAACP report, "Fumes across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities, November 2017", documents the health and safety impacts of compressor stations on public health.[26] Additional studies available include: Physicians for Social Responsibility[27]; and a BREDL technical document specific to the compressor station for the proposed ACP in Buckingham County.[28] Many residents in poor, rural communities are medically underserved. Diabetes, asthma and other conditions increase their susceptibility to more severe responses to methane leaks along pipeline routes and increased toxic emissions from compressor stations. Suzanne Keller, a retired (2017) epidemiologist recently presented research indicating the average ambient air standards which the air permit must meet are not "protective" of public health because the averages do not tell a complete story.[29] The releases of toxic emissions don't occur as "averages," they spike when there is a problem and during scheduled blowdowns. While prolonged exposure from the day-to-day operations of pipelines and compressor stations are detrimental to public health, those periods of high emission releases cause tremendous health consequences to community members. While, the

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[26] www.naacp.org/wp-content/uploads/2017/11/Fumes-Across-the-Fence-Line_NAACP_CATF.pdf

[27] *Too Dirty, Too Dangerous: Why Health Professionals Reject Natural Gas,* A Report by Physicians for Social Responsibility, November 2017

[28] *Buckingham Compressor Station, Atlantic Coast Pipeline, Pollution Report, Unfair, Illegal and Unjust*, Blue Ridge Environmental Defense League, December, 2016

[29] Suzanne Keller presentation, Governor's Advisory Committee on Environmental Justice, May 30, 2018

proposed compressor station may meet ambient air standards that are measured in years, the health of individuals exposed to intense episodic releases will not be protected.

In FERC's disregard of the meaning of environmental justice, it asserts that because impacts may be happening in low population areas, fewer people would be hurt. Therefore, it cannot see evidence of disproportionate impact. As noted, FERC's order 255 concludes "these impacts would occur along the entire pipeline route and in areas with a variety of socioeconomic background." We assert simply because rural areas have low concentrations of population does not mean people of low income and/or people of color would not be disproportionately impacted. Reality on the ground tells us, the counties along the path of the proposed ACP have a 79% higher concentration of minority population than the Commonwealth's 19.8 percent. Moreover, the impact of the proposed compressor station will be felt by a majority African American population.

As has occurred in North Carolina, the methodology used by FERC and the ACP fails to identify the major impacts on people of color, whether African American, Native American or another minority. Ryan Emanuel's letter published in Science Magazine outlines how data show in North Carolina, some 30,000 Native Americans live in census tracts along the route, yet FERC and the ACP claim there is not an environmental justice issue in those communities.[30]

The methodology used by the FERC, ACP and State Agencies fails to compare the currently preferred route with other alternative routes. The only major route alterations occurred because of the insistence of the United States Forest Service in protecting endangered species. While we sincerely appreciate and support the efforts of the USFS to protect endangered species by requiring the pipeline be moved, we assert the same concern and protection should be afforded human health and safety. FERC simply concluded the preferred route has no disproportionate impacts on environmental justice families. It comes to this faulty conclusion by counting the number of census tracts with "meaningfully

[30] Emanuel, Ryan, Flawed Environmental Justice Analyses, Science Magazine, July 21, 2017 (attached).

greater" minority populations than the county in which those communities are located.

Compounding the failure of a proper environmental justice analysis by the State Agencies, FERC and the ACP refused consultation with tribal councils along the route of the ACP. The cursory attempts to interact with Tribal leaders seemed to be more of an attempt to simply check a box on a step needed to move forward, rather than meaningful consultation. Additionally, six tribes in Virginia received federal recognition by the US government in March, 2018. These tribes should receive the consultation on tribal sites, and cultural and environmental resources known by their members and it should occur as an integral part of the review process.

The ACP, FERC and the State Agencies failed when they attempted to disguise a major interstate project by breaking it into a series of county-level projects to dilute and minimize the impact of the project on communities of color and disadvantaged communities. We assert it is reprehensible behavior and erodes confidence by members of the public that the permitting processes used are fair, scientific and transparent. The ACP, FERC and State Agencies must be held to the highest standard in their permitting processes. Anything less is irresponsible and an affront to the public trust.

REMEDY

The only just remedy is for the permits to be voided until such time as a thorough environmental justice analysis is conducted to determine the true impacts on communities of color and those living in poverty along the path of the proposed ACP. The new analysis should include:

1) A complete study of census data within a 1 mile-radius of the proposed ACP and its compressor stations of African American and other minority populations which is compared to state averages, not county level data.
2) A study of the undeveloped tracts of land being taken by eminent domain that are owned by African Americans and other minority populations within

the communities which have higher than state averages of people of color along the path of the proposed ACP is completed.

CONCLUSION

Pursuant to 40 CFR Part 7.120(d), it is our understanding ECRCO is required to notify us within 20 calendar days of acknowledgement of this complaint and your subsequent actions regarding it.

Respectfully submitted,

/sharonponton

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The Honorable Mark Herring, Attorney General of Virginia
Matthew Strickler, Secretary, Virginia Division of Natural Resources
David Paylor, Director, Virginia Department of Environmental Quality