

Department of Planning & Community Development



MEMORANDUM

To: Brent Robertson, County Administrator
Chris Whitlow, Assistant County Administrator

From: Neil Holthouser, Director of Planning & Community Development

Date: August 18, 2015

RE: Oversight of land disturbing activities associated with proposed natural gas pipeline

At its July 21, 2015, meeting, the Board of Supervisors was presented with a draft resolution by a citizens group concerned about the construction of the Mountain Valley Pipeline - a proposed interstate natural gas pipeline which is currently being reviewed by the Federal Energy Regulatory Commission (FERC). The draft resolution expressed concern about the potential environmental impacts of the proposed pipeline, specifically the potential for soil erosion and the sedimentation of water courses due to extensive land disturbing activities.

The draft resolution calls on Franklin County to petition the Governor of Virginia and other state officials, to request the following (paraphrased):

1. A commitment that the state Department of Environmental Quality (DEQ) will require project-specific Erosion & Sediment Control and Stormwater Management plans, rather than a general plan lacking site-specific engineering. *(The concern seems to be that a general plan will not adequately address site-specific topographic, soil, and water constraints.)*
2. A guarantee that local governments will have the right to conduct their own plan review and inspections of project-specific plans. *(The concern seems to be that DEQ may not be adequately resourced to conduct a thorough plan review or to perform thorough and frequent inspections.)*
3. A requirement that the pipeline developer and third-party inspectors must hold a pre-construction meeting with local officials to discuss project-specific implementation of the required Erosion & Sediment Control and Stormwater Management measures. *(The concern seems to be that a regional or centralized DEQ office might not adequately explain to the pipeline developer any unique and local constraints or concerns, which are best understood by the locality itself)*

It is staff's understanding, based on the language of the Code of Virginia, advice offered by state officials, and peer consultation with neighboring localities, that linear utility projects - including natural gas pipelines - are required to abide by state laws related to Erosion & Sediment Control and Stormwater Management. The mechanism for compliance is known as an "annual general" permit, whereby the entire linear length of the project, spanning multiple local government jurisdictions, is covered under a singular permit reviewed and renewed annually by DEQ. This annual general permit acts an agreement between the pipeline developer and the state, and essentially says that the pipeline developer understands and agrees to abide by all applicable standards and specifications for Erosion & Sediment Control and Stormwater Management.

By contrast, a non-linear/non-utility development project occurring entirely within one local government jurisdiction, would require an Erosion & Sediment Control and Stormwater Management permit from the locality itself. In order to obtain this permit, the developer would conduct site-specific engineering and prepare a site-specific plan, which would be reviewed and inspected by the local government.

Staff notes that, in either case noted above, the "permit" for land disturbance is a Virginia state permit, not a local permit. Franklin County operates as a "program authority" under the auspices of the state. Franklin County maintains and enforces its local ordinance for Erosion & Sediment Control and Stormwater Management as a mandate from the state, with guidance and oversight provided by DEQ. Any Erosion & Sediment Control or Stormwater Management permits issued by the County are considered to be state-issued permits, issued by a state-established program authority. The state delegates certain responsibilities to the local program authority for Erosion & Sediment Control and Stormwater Management, but may supersede the local program authority at any time.

The concern in the case of the proposed Mountain Valley Pipeline seems to be that, if linear multi-jurisdictional land disturbance is permitted at the state level, such permit will be general in nature and lack thorough review and monitoring. Staff notes that road crossings will require input and review from VDOT, and stream or water-course crossings will require review and approval by the Department of the Army (Army Corps of Engineers.) In past experience with linear utility projects, including water lines and electrical transmission lines, both VDOT and the Army Corps have required detailed site-specific engineering in order to ensure compliance with Erosion & Sediment Control and Stormwater Management regulations. Staff anticipates that site-specific engineering would be required of the proposed Mountain Valley Pipeline in similar circumstances.

To date, staff has been unable to locate a definitive source within DEQ or other state agency to speak to the state's intended permitting posture for the proposed Mountain Valley Pipeline. The pipeline project has not yet been authorized by the FERC; until such time as it is approved by the FERC, staff believes it unlikely that DEQ will officially announce or comment on its permitting posture. Through conversations with peers in neighboring localities, there seems to be a general understanding among local governments that the project will be reviewed under an annual general permit issued by and monitored by DEQ. Staff notes that other localities are considering similar petitions to the Governor, requesting that the state declare its permitting posture and assure local governments that a thorough environmental review will be conducted.