NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE BUILDING
RALEIGH 27601

September 7, 2018

The Honorable Roy A. Cooper
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699

Dear Governor Cooper:

To start, we would like to thank Ms. Kristi Jones for speaking before the Joint Commission on Governmental Operations on August 29th. We appreciated her input as we continue to exercise our oversight obligations.

In responding to the information presented by members of the Joint Commission, Ms. Jones stated that the Governor's Office has "no secrets." Additionally, a Democratic member of the Joint Commission inquired as to whether we had resubmitted to your office our unanswered questions regarding the Atlantic Coast Pipeline (ACP) permitting process.

In keeping with Ms. Jones' transparency pledge, and in the spirit of again granting you the opportunity to provide full and complete information about the ACP permitting process, we are respectfully submitting our questions below.

Please be advised that the Subcommittee on the Atlantic Coast Pipeline will convene its first hearing on or after Tuesday, September 18, 2018. We acknowledge that some of our questions and documentation requests may require significant time to fulfill. To provide you ample opportunity to respond to our questions –many of which you have known about for seven months, but some of which are new – we have presented reasonable timelines for response. We respectfully request responses from you on some questions by Friday, September 14, 2018 which is one full week from today. For the other questions, we respectfully request full and complete responses by Tuesday, September 25, 2018.

Please provide responses to the following questions by Friday, September 14, 2018:

- Why did the Governor renegotiate the original Memorandum of Understanding (MOU) from the ACP Partners so that instead of the $57.8 million "contribution" going to the Director of the Wildlife Resources Commission (WRC) for environmental mitigation purposes, the funding was instead directed to an account controlled by the Governor for extension of renewable energy projects, funding for economic development, and environmental mitigation?
- Why was an MOU similar to the one executed between the ACP Partners and the Commonwealth of Virginia unacceptable to the Governor?
- The Governor leased a portion of his property, which lies close to the projected path of the ACP, to a renewable energy company in a potentially lucrative arrangement. The Governor negotiated an MOU to grant himself control over funding that would benefit renewable energy companies. Does the Governor believe that there are any conflicts of interest or ethical issues raised by this?
- Why did the Governor repeatedly refer to the $57,800,000 in the MOU as a "voluntary contribution?"
- Does the Governor believe that negotiating MOUs to place large sums of money in accounts under his direct control will encourage business development in North Carolina?
- Why does the Governor believe that the North Carolina Constitution permits him to execute an MOU with a person or company doing business in North Carolina to place $57,800,000 in an account under his control?
- Please describe any coordination between the Governor's Office and the Department of Environmental Quality (DEQ) regarding the issuance of the 401 Certification for the ACP, which is a critical water quality permit necessary for the project to advance. Please also include any coordination relevant to the press releases for the ACP MOU and for the ACP 401 Certification issuance.
- Please explain why the Director of the Division of Water Resources (DWR), Mr. Stanley "Jay" Zimmerman, was relieved of his duties as Division Director in November 2017 when, according to notes in the permit file for the ACP 401 Certification dated Nov 1, 2017, Mr. Zimmerman appeared to be making significant progress in the final issuance of the permit.
- Please provide an explanation for the composition of the attached Draft Denial Letter for the ACP 401 Certification, dated January XX, 2018 (Attachment 1). Please explain why this document was drafted, the date that it was drafted, who requested that it be drafted, and what purpose it served. Please also explain if it is a normal process for DWR to compose a draft denial letter when reviewing an application for a 401 Certification. If not, please explain why this draft denial letter was composed in this specific instance. Please provide examples of other instances where a draft denial letter has been composed for a 401 Certification while undergoing application review.
- Please provide the earliest date that Mr. Brian Wrenn, the DWR Hearing Officer for the ACP 401 Certification, submitted a draft Hearing Officer's Report to the Director of DWR. Please describe any changes to the Hearing Officer's Report that were enacted in the final Hearing Officer's Report between the date of this first submission and the date

of the submission of the final Hearing Officer's Report on January 22, 2018. Please provide a detailed explanation of what was discussed between Mr. Wrenn and DEQ Secretary Regan in their meeting on January 12, 2018 and, specifically, if Secretary Regan, or anyone else in attendance, made any suggestions or comments at this time that ultimately delayed the issuance of the 401 Certification.

- Please provide the name of the individual who rejected the initial draft Hearing Officer's Report submitted by Mr. Wrenn for further revisions and for what reasons the draft report was rejected.
- Why are the attached redacted documents present in the official permit file for the ACP 401 Certification (Attachments 2, 3, and 4)? Please provide unredacted copies of these documents. Who redacted these documents and why? Is it a normal practice for DEQ to redact official public documents?
- Please provide copies of the additional information that was received from the ACP Partners on January 17 and 18, 2018. Please provide the request to which this additional information responded.
- Please explain why on December 6, 2017, at a weekly meeting on the ACP 401 Certification, DEQ employees were told that they had to "notify the Department before sending communications to the Company" while these employees were still actively engaged in requesting additional information from the ACP Partners. Is it a normal process at DEQ to restrict communications between a permit applicant and the DEQ regulators while a permit application is under review? If so, please provide other instances during your administration when this has occurred. Please explain why it is conducive to government business to restrict communications between a permit applicant and public employees.
- What interactions have you or your staff had with the ACP Partners about next steps for payment of the $57,800,000 fund?
- Please affirm that all employees of DEQ and the Executive Branch are free to discuss any and all aspects of this issue with the General Assembly Subcommittee on the Atlantic Coast Pipeline, or their representatives, at the convenience of the Subcommittee with no fear of retribution or reprisal.

Please provide responses to the following questions by Tuesday, September 25, 2018:

- Please provide a listing of every instance when the Governor, or someone from the Governor's Office, met with any representative from Duke Energy or any representative of the ACP from July 1, 2017 to February 1, 2018. Please provide a list of the date and time of these meetings, a list of all attendees for each meeting, and an explanation of what was discussed at each meeting.
- Please provide a listing of every instance when the Governor, or someone from the Governor's Office, discussed the Atlantic Coast Pipeline 401 Certification with a

representative of DEQ, including the DEQ Secretary. Please provide a list of the date and time of these discussions, a list of the participants in these discussions, and an explanation of what was discussed.

- Please provide all documents, correspondence, and e-mails from the Governor's Office related to the ACP, including all correspondence and e-mails with the ACP Partners and all correspondence and e-mails to and from DEQ related to the ACP.
- Why did senior leadership at DEQ implement a weekly meeting with the individuals working on the ACP 401 Certification beginning in September 2017? Please provide any other instances when senior leadership at DEQ implemented a weekly meeting regarding the review of a permit application.

Sincerely,

Senator Harry Brown
Co-Chairman
Subcommittee on the Atlantic
Coast Pipeline

Senator Paul Newton
Advisory Member
Subcommittee on the Atlantic
Coast Pipeline

ATTACHMENT 1

January XX, 2018

DWR # 14-0957 v2
Northampton, Halifax, Nash,
Wilson, Johnston, Sampson,
Cumberland and Robeson Counties

CERTIFIED MAIL: XXXX XXXX XXXX XXXX XXXX
RETURN RECEIPT REQUESTED

Atlantic Coast Pipeline, LLC
Attn: Ms. Leslie Hartz
707 E. Main Street, 19th Floor
Richmond, VA 23219

DRAFT

Subject: DENIAL OF 401 WATER QUALITY CERTIFICATION AND TAR-PAMLICO/NEUSE RIPARIAN BUFFER AUTHORIZATION CERTIFICATES
Atlantic Coast Pipeline
USACE Action ID. No. SAW-2014-01558

Dear Ms. Hartz:

On May 9, 2017, the Division of Water Resources (Division) received your application requesting a 401 Water Quality Certification and Tar-Pamlico and Neuse Riparian Buffer Authorization Certificates from the Division for the subject project. Pursuant to 15A NCAC 02H .0506, a certification shall be issued when the Director determines that water quality standards are met. Pursuant to 15A NCAC 02B .0233 (8) and .0259 (8), a Buffer Authorization Certificate shall be granted when the Division determines there is no practical alternative. The project has not met the following requirements:

- **Rule Citation**
  "Rule text..."
  Explanation...

- ...

In accordance with 15A NCAC 02H .0507(e), 15A NCAC 02B .0233(8), and 15A NCAC 02B .0259(8), your application for a 401 Water Quality Certification and Buffer Authorization Certificates are hereby denied.
This decision can be contested as provided in General Statute 150B by filing a written petition for an administrative hearing to the Office of Administrative Hearings (hereby known as OAH) **within sixty (60) calendar days.**

A petition form may be obtained from the OAH at http://www.ncoah.com/ or by calling the OAH Clerk's Office at (919) 431-3000 for information. A petition is considered filed when the original and one (1) copy along with any applicable OAH filing fee is received in the OAH during normal office hours (Monday through Friday between 8:00am and 5:00pm, excluding official state holidays).

The petition may be faxed to the OAH at (919) 431-3100, provided the original and one copy of the petition along with any applicable OAH filing fee is received by the OAH within five (5) business days following the faxed transmission.

Mailing address for the OAH:

If sending via US Postal Service:
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

If sending via delivery service (UPS, FedEx, etc):
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285

One (1) copy of the petition must also be served to DEQ:

William F. Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

This completes the review of the Division under section 401 of the Clean Water Act and 15A NCAC 02H .0500 and the Neuse and Tar-Pamlico Riparian Buffer Protection Rules. Please be aware that you have no authorization under Section 401 of the Clean Water Act or the Neuse/Tar-Pamlico Riparian Buffer Protection Rules for this activity and any work done within waters of the state may be a violation of North Carolina General Statutes and Administrative Code. Contact Karen Higgins at 919-807-6360 or karen.higgins@ncdenr.gov if you have any questions or concerns.

Sincerely,

Linda Culpepper, Interim Director
Division of Water Resources

cc: Richard Gangle, Dominion Resources Services, Inc. (via richard.b.gangle@dom.com)
Spencer Trichell, Dominion Resources Services, Inc. (via spencer.trichell@dom.com)
USACE Raleigh Regulatory Field Office
USACE Wilmington Regulatory Field Office
Todd Bowers, EPA (via bowers.todd@epa.gov)
DWR 401 & Buffer Permitting Branch file

Filename: 140957v2AtlanticCoastPipeline(Multi)_401_IC_NRB_TAR_DENIAL.docx

HIGGINS PHONE LOG

Date	M/A for	Name	Phone Number	Note	Response Date	Log Comments
12-Dec	M	Elizabeth Ootz	919-672-9803	reporter - working on a story re Atlantic Coast Pipeline (left message Thursday)	12-Dec	sent to Marla
11-Jan	M	Hope Taylor	919-401-9600	Clean Water for North Carolina - have changed our address (would like to update name and 3326 guess road, suite 105, durham, nc 27705)	17-Jan	sent email
26-Apr	M	Sheila		go ahead and call ACP; no press release	-	
8-May	M	Hope Taylor		calling re ACP	8-May	spoke 5-8
10-May	M	Mark McIntyre	919-302-2448	did we get what we wanted with ACP app	-	JB is talking with ACP
19-Jun	M	Hope Taylor		just got PN - is it a 20 in or 36 in pipe?	-	JB sent email
29-Aug	M	Spencer	804-273-3472	Dominion - putting together a meeting with all the Corps districts - VA requested to be included, extending invitation to us as well	-	JB spoke with Spencer
9-Jan	M	Spencer	804-263-5980	Dominion - just touching base	-	
26-Jan	M	[redacted]		calling re pipeline coming through - have some questions about EIS; wondering if there are going to be more hearings	.	
29-Jan	M	Amy Bircher	919-917-3920	get some info for a memo about ACP	1-Feb	spoke on 2/1
1-Feb	M	Spencer	804-263-59_0	want to set up preconstruction meeting per 401	5-Feb	

ATTACHMENT 2

ATTACHMENT 3

ACP – EJ Follow-up Mtg 9/1/17
(MPK, J Osborne, B. Munger, S. Rice, B. Nlean) J. Burdette

Sierra case – D.C. District

MPK – uses may be path to ask about E.J.
↳ relates to people

ATTACHMENT 4

DATE | NAME

TIME		NAME	MESSAGE	CALL COMPLETED
6 23	11 09	828-386-1920	Fee ?s	Ans
6 23	2 30	Gabriel [illegible] WRC	[illegible] ?	[illegible]
6 23	2 29	Katie Mills	[redacted]	NM
6 26	1 53	Julie Teal Mack SW Services 980-250-9577	need [illegible] → check [illegible]	LM 6/2[illegible] 2:42
6 27	3 09	Bradley - GA 912 262 3196	Steve	LM 6/26
6 27	2 53	Chris Flowers - Unique Places 919 724 0676	meeting for buffer rest proj in Orange Co. - need contact person	3:27
6 27	2 10	Alexis Kaiser K-H 919-653-6657	SW info need for IP app.	6/29 2:51
6 26	3 49	Andrew Moore ARO 828 296-4684	Tyson - touching base	6/2[illegible]
6 26	3 46	Matt Rutledge Triangle Land Cons 919-908-0057	hiking trails in Wake/Johnston BA	6/27 3:21
6 29	3 02	C[illegible] Madden Davis Assoc 919 736 [illegible]	[illegible]	6/30