

Governor McAuliffe Can – and Must – Act Now to Protect Virginians from: Pipelines, Coal Ash, and Rising Seas

THE PROBLEM: Virginia communities are on the front lines of three major fossil fuel threats:

- 1) **Pipelines:** Two proposed fracked-gas pipelines – the Atlantic Coast Pipeline and the Mountain Valley Pipeline – threaten to bisect hundreds of miles of forests and farmland, jeopardize drinking water, and would trigger nearly twice as much climate pollution as all existing power plants in Virginia *combined*.ⁱ
- 2) **Coal Ash:** The state’s largest utility, Dominion Power, is rushing forward with a “pollute in place” coal ash disposal plan that would virtually guarantee further contamination of the Potomac, James, and Elizabeth Rivers and nearby drinking sources with toxic heavy metals for decades to come.
- 3) **Flooding:** Due to rising sea levels, Virginia’s coastal communities and military bases face daily flood danger now -- and inundation within this century. These areas lack a comprehensive, coordinated investment in adaptation solutions and depend on a rapid switch to 100% clean energy.

On each of these issues, Governor Terry McAuliffe continues to inaccurately deny or downplay the state’s authority and responsibility to take action to protect Virginians.

THE SOLUTIONS: Governor McAuliffe does have the power to make a difference. Through executive actions and political leadership, he *can* put people above polluters. Here’s how:

1. Gas Pipelines: Gov. McAuliffe’s administration *can* make the determination that proposed fracked-gas pipelines violate the Clean Water Act.

The proposed Atlantic Coast Pipeline (ACP) and Mountain Valley Pipeline (MVP) would each impact hundreds of waterways and wetlands, endangering drinking water and sensitive ecological terrain. **The State of Virginia has the clear authority to grant or deny the Water Quality Certification that each pipeline needs under section 401 of the Clean Water Act -- and Gov. McAuliffe and his Department of Environmental Quality must exercise it.**

- Pipeline companies have applied for a blanket “one-size-fits-all” permit, called a Nationwide Permit 12 (NWP 12). This controversial move would combine state approval with the Army Corps of Engineers review under section 404 of the Clean Water Act.
- The NWP 12 permit process was never intended for projects on the scale of the massive ACP and MVP. This process does not allow for public input and a growing number of public interest advocates view authorization under this permit as unlawful.
- **Gov. McAuliffe’s Department of Environmental Quality should instead conduct a project-specific review of each pipeline before issuing state certification. Leaving critical water decisions up to the Army Corps** is simply unacceptable given the Corps’ controversial track record of improperly rubber-stamping massive pipeline projects.
- Gov. McAuliffe should follow in the footsteps of Governor Andrew Cuomo of New York State. After a rigorous, multi-year review process, the Cuomo administration denied a 401 water permit earlier this year for the 124-mile Constitution Pipeline, another fracked-gas pipeline that would have crossed hundreds of streams and wetlands.ⁱⁱ

2. Coal Ash: Gov. McAuliffe’s administration *can* require Dominion to move toxic coal ash away from waterways.

Dominion is currently seeking permits to close coal ash waste ponds across the commonwealth. This is in response to a rule issued by the federal Environmental Protection Agency in 2015.ⁱⁱⁱ Testing indicates that coal ash ponds operated by Dominion at Possum Point, Brems Bluff, Chesapeake, and Chesterfield are actively leaking toxic heavy metals like arsenic into surrounding water.^{iv} Yet, Dominion wants the McAuliffe administration to sign off on a “cap in place” approach that would involve burying the toxic ash in unlined pits next to rivers where it could continue to pollute rivers and drinking water supplies for years to come. This amounts to a “pollute in place” approach.^v

Instead, Gov. McAuliffe’s Department of Environmental Quality should immediately require Dominion to move the waste to modern, lined landfills in a way that permanently protects water resources, just as the Carolinas and Georgia are requiring utilities to do.

- This can be done because the EPA rule only sets basic minimum standards that the State of Virginia has full authority to exceed when issuing solid waste permits.^{vi}
- Virginia Code § 10.1-1402(11) authorizes the Virginia Waste Management Board to:

“[p]romulgate and enforce regulations,” including “any proposed regulation which [is] more restrictive than applicable federal requirements.” The Board must simply notify the General Assembly with “a description of . . . the regulation [and] the reason why the more restrictive provisions are needed.” No action from the General Assembly is required.
- Given that Dominion is already facing lawsuits under the Clean Water Act for contaminants leaking from its coal ash ponds,^{vii} DEQ must hold the company to the highest bar to protect the health and water quality of Virginians, not simply rubber-stamp Dominion’s preferred approach.
- Virginia is an outlier in allowing a “pollute in place” approach.^{viii} In North and South Carolina and Georgia, utilities are moving coal ash away from waterways to modern, lined landfills. Recent polling shows that 71% of Virginians want Gov. McAuliffe to follow the approach of other southern states on coal ash.^{ix}

3. Coastal Flooding: Gov. McAuliffe *can* champion state-based solutions to protect Virginia’s coast from rising seas.

Virginia’s coast urgently needs a massive, coordinated investment in new and resilient infrastructure, living shorelines, and emergency planning to keep people safe and dry. The biggest obstacle is the money to pay for it – likely upwards of \$1 billion for Norfolk alone. Yet, Gov. McAuliffe has so far remained silent when it comes to the single best proposed state-level solution: adding Virginia to the Regional Greenhouse Gas Initiative (RGGI). **To keep his promises to “act decisively to protect our coastal communities,”^x Gov. McAuliffe can and must:**

- **Endorse and champion the bipartisan Virginia Coastal Protection Act, or an equally robust plan for mobilizing dedicated state funding for adaptation solutions.** By adding Virginia to the RGGI program, a proven regional carbon cap system, the legislation would generate more than \$250 million per year in new, dedicated state revenue to support statewide flooding resiliency efforts.^{xi}
- **Use his microphone and his influence as chief executive to be a full-time champion of 100% renewable energy solutions.** The latest climate math shows that investments in new fossil fuels must stop now in order to avoid catastrophic climate change,^{xii} including the permanent flooding of low-lying neighborhoods, vital infrastructure, and military bases in coastal Virginia. Gov. McAuliffe must push Dominion to invest in solutions like offshore wind power, and he must stop supporting fossil fuel plans like massive pipelines that will only worsen dangerous flooding.

ⁱ Ball, R.H., Penniman, W., & Bowers, K., GHG emissions associated with two proposed natural gas transmission lines in Virginia (Jan. 28 2016) available at <http://hub.vasierraclub.org/data/public/6bb5c2>

ⁱⁱ Wall St. J., New York Environmental Regulators Deny Permit for Constitution Pipeline (Apr. 22 2016), available at <http://www.wsj.com/articles/new-york-environmental-regulators-deny-permit-for-constitution-pipeline-1461366759>.

ⁱⁱⁱ 80 Fed. Reg. 21,302 (April 17, 2015).

^{iv} For example, see: Richmond Times-Dispatch, Environmental group finds coal-ash contamination near Dutch Gap (Sept. 13 2016), available at http://www.richmond.com/news/article_ebde78ec-2560-5192-9af0-e2b117c7fe37.html

^v Southern Environmental Law Center, Virginia DEQ’s rubber-stamp permits do nothing to stop coal ash pollution (June 3 2016) available at <https://www.southernenvironment.org/news-and-press/news-feed/virginia-deqs-rubber-stamp-permits-do-nothing-to-protect-elizabeth-river>

^{vi} 80 Fed. Reg. at 21,302 (“EPA is finalizing national *minimum* criteria for existing and new [coal ash] landfills and existing and new [coal ash] surface impoundments”) (emphasis added).

^{vii} Daily Press, Coal ash case opens; Sierra Club says move pollutants away from water (June 2, 2016) available at <http://www.dailypress.com/news/politics/dp-nws-dominion-coal-ash-20160621-story.html>.

^{viii} Richmond Times-Dispatch, ‘Is everybody else wrong?’ In other states, coal ash being excavated to protect waterways (July 2, 2016) available at http://www.richmond.com/news/virginia/article_a6829ea9-623d-516a-a65e-a1e907152da2.html

^{ix} The Cromer Group, Virginia Statewide Energy Survey (Sep. 7 2016) available at <http://chesapeakeclimate.org/wp/wp-content/uploads/2016/09/Gov-McAuliffe-Survey-Results-Sep-16.pdf>

^x Blue Virginia, McAuliffe Launches Plan to Protect VA’s Environment to Ensure Econ. Growth for Future Generations (Aug. 15 2013) available at <http://bluevirginia.us/2013/08/mcauliffe-launches-plan-to-protect-vas-environment-to-ensure-econ-growth-forfuture-generations>

^{xi} Union of Concerned Scientists, Virginia Coastal Protection Act: New UCS Analysis Highlights Opportunity for Carbon Revenue (Jan. 14 2016) available at <http://blog.ucsusa.org/jeremy-richardson/new-analysis-supports-virginia-coastal-protection-act>

^{xii} Oil Change International, The Sky’s The Limit (Sept. 22 2016) available at <http://priceofoil.org/2016/09/22/the-skys-limit-report>