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To: "Director David Paylor (VDEQ)" <dkpaylor@deq.virginia.gov>
Date: Tue, Oct 31, 2006 2:50 PM
Subject: Request for VDEQ to reevaluate it federal consistency plans

31 October 2006

To: David Paylor (Director of Va. Dept of Environmental Quality),

Dear David,

Thanks for responding and clarifying your current intentions about the Federal Consistency Certification process for the North Anna Power Plant ESP Processing.

If we are interpreting your 30 October 2006 email correctly that defines your current consistency plans, we ask that you reconsider your approach to protect the health, safety and welfare of Virginia citizens. Please see the attached letter that defines the details of our request.

How could the state assert that the proposed Early Site Permit (ESP) for the North Anna power plant is consistent with its "enforceable policies" when the very scope, definition and legality of these policies and outlined in VDEQ's six queries of 2 October to the Environmental Protection Agency (EPA) remain in question? If we are correct in our interpretation of your email that you are not planning to wait for the EPA answers to each of the six questions before making a federal consistency decision, then the public at the present time can have no assurance that Dominion's ESP as proposed will not result in continued or even greater thermal pollution of Lake Anna and ecologically harmful reduced downstream water flow in the North Anna river. Absent final resolution of the EPA's answers to each of the 6 questions defining the states scope, monitoring, and enforcement issues, the state is in no position to "certify" that the ESP will result in "enforceable policies" that protect the natural resources of Virginia's Coastal Zone Management Area, including Lake Anna and the North Anna-Pamunkey watershed.

A Federal Consistency "Objection" will preserve Virginia's authority to demand any conditions necessary to protect the health, welfare and safety of its citizens, until all issues are resolved, at which time a Consistency Certification could be granted. As you are aware, a conditional concurrence cannot be legally enforced in the future as defined in our 20 October letter to the Governor.

Despite the current 16 November deadline, which can be easily changed, there is no need to hasten the federal consistency process, for an ESP permit that may not be exercised for the next 20 years.

We and others believe the EPA answers to each of the six questions identified in the 2 Oct VDEQ letter to the EPA are not only relevant, but critical to an informed decision and to the integrity of the Virginia Coastal Program and to protect the health, welfare and safety of Virginia citizens.

As always, thank you for your kind consideration of the attached letter. I'll look forward to your timely response.

Sincerely,

Harry Ruth
for the Friends of Lake Anna
C/O 230 Heather Drive, Bumpass, Va. 23024

Phone 540-872-3632

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| MESSAGE | 2990 | Tuesday, October 31, 2006 2:40 PM |
| TEXT.htm | 5693 | |
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FRIENDS OF LAKE ANNA

31 October 2006

To: David Paylor (Director of Va. Dept of Environmental Quality)

Reference Your October 30, 06 email re summary of our October 26 telecon about the Federal Consistency Certification process for the North Anna Power Plant ESP processing

Dear David,

Thanks for responding and clarifying your current intentions. If we interpret your response correctly and your spokesperson Mr Hayden's Virginia Pilot press response; you do not believe that all the questions are germane to the certification review and should be addressed later. Mr. Hayden also said "if the answers arrive in time, they will not be considered in the certification review". What specific questions do you feel are not germane and why? If this is VDEQ's position, we ask you to reconsider this approach, as we believe it would be a major mistake for the state to not consider the EPA answers to all the six questions in the Federal Consistency decision from the VDEQ letter submitted to the letter EPA on October 2 (DEQ-05-079F) in response to questions raised at the VDEQ 16 August public hearing. Below and in attachments 1 and 2 are many reasons that it is essential that (1) the EPA answers are germane to all the questions and must be considered in the Federal Consistency Process, together with (2) why the answer to each question is important. Despite the current deadline, which can be easily changed, there is no need to hasten the federal consistency process, for a ESP permit that may not be exercised for the next 20 years.

We ask that you take the appropriate actions to insure that the EPA answers to all six questions are considered in the Federal Consistency process for the reasons stated in this letter. The interpretation of the U.S. Clean Water Act (CWA) must come from the EPA, as they are the federal agency charged by the U.S. Congress with administering the Act. Although the Virginia's Attorney General legal opinion is desirable, we believe it would not carry the same weight in any legal dispute. This action to include the answers to all six questions will also take away the cloud of "suspicion" that currently is over VDEQ with a perceived cover-up by a senior VDEQ official.

As noted on your VDEQ website, the Virginia Pollutant Discharge Elimination System Permit (VPDES) Program is one of the enforceable policies under Point Source Pollution Control comprising Virginia's Coastal Resources Management Program (VCRMP, or coastal program). The answers to all six questions sent to the EPA are relevant to the Point Source Pollution Control as defined in Attachment 2.

VDEQ must factor cumulative impacts and future water demands into its analysis before concurring with the federal consistency certification. Waiting for the permit phase will be too late. *The authority granted under the U.S. Coastal Zone Management Act (CZMA) is far superior with the states ability to "object to a federal ESP permit", then to go through all the coordination processes required to obtain any water permit.*

How could the state assert that the proposed ESP is consistent with its "enforceable policies" when the very scope, definition and legality of these policies, as applied to the North Anna Power Station (NAPS) and outlined in VDEQ's queries of October 2 to EPA, remain in question? The public at the present time can have no assurance that Dominion's ESP as proposed will not result in continued or even greater thermal pollution of the Lake and ecologically harmful reduced downstream flow. Absent final resolution of the NPDES scope, monitoring, and enforcement issues, the State is in no position to "certify" that the ESP will

FRIENDS OF LAKE ANNA

result in “enforceable policies” that protect the natural resources of Virginia’s Coastal Zone Management Area, including Lake Anna and the North Anna-Pamunkey watershed.

If these matters remain unresolved, VDEQ has no business certifying anything on Nov 16 and should “object” until such time as Dominion and the state have come to terms on a new NPDES/VPDES permit, variance, and any necessary mitigation measures – such as spray cooling in the discharge canal and/or dry cooling for Unit 3 – required to protect Lake Anna and the downstream watershed.

Notwithstanding the new wet/dry cooling method proposed for Unit 3, the Friends of Lake Anna, Natural Resources Defense Council, and Southern Environmental Law Center, as defined in testimony at the 16 August public hearing and follow-up correspondence, find the project inconsistent with the (1) fisheries, (2) section 401 water quality certification and Virginia Water Protection Permit, and (3) Virginia Pollutant Discharge Elimination System (VPDES) enforceable policies of the Virginia Coastal Program (VCP) for all the reasons stated in the correspondence to VDEQ. In addition, the various citizens groups also have found that Dominion’s application of the VPDES permit is inconsistent with the Clean Water Act.

Additional water demands in the Lake would reduce the amount of water available in the River downstream. More frequent low flows in the River, due to an increased drought cycle, would raise water temperatures, reduce the availability of water and stream habitat to fish populations, and impair the quality of the North Anna River. The North Anna River is part of the tributary system of the Chesapeake Bay, which flows into the Atlantic Ocean.. We continue to recommend that the applicant (Dominion) adequately analyze the use of dry cooling for both Units 3 and 4 for the following reasons:

- the limited water in the North Anna watershed;
- the amount of water already being consumed by lake evaporation from the existing two reactors;
- the competition for water resources downstream
- building a new reactor that requires water from a lake that takes over two (2) years to refill if the dam is blown up (draining the lake) by terrorists, when other dry cooling unit technologies used in other parts of the world are available, simply does not make any sense. If the water is drained from Lake Anna, it would result in a reduction of over 20% in Virginia’s power production capabilities for over (2) years while the lake would re-fill and the other two reactors also could not be used during this time. Why should a public utility put billions of dollars at risk (that the public will eventually have to pay for through increased user fees) and the state permit it to occur, when other technologies such as the dry cooling tower proposed by Dominion for Unit 4 are available?.

As reflected in the NRC Draft Environmental Impact Statement (DEIS), one county upstream of Lake Anna and three counties downstream of the Lake are considering whether the North Anna or Pamunkey Rivers could serve as sources for drinking water. *The NRC refused to even consider how this potential conflict over the limited water in the North Anna River may be resolved, asserting that “any future conflicts over water use fall within the regulatory authority of the Commonwealth of Virginia.”*

We remind you that an ESP is not a required step in NRC’s licensing process, but merely affords the applicant the opportunity and convenience of resolving and permanently disposing of site-specific environmental issues years—and possibly decades—ahead of the actual inception of reactor construction. Moreover, environmental concerns that the NRC deems to have been “resolved” during an ESP proceeding cannot be raised again at a subsequent stage of NRC’s “streamlined” licensing process.

FRIENDS OF LAKE ANNA

Faced with a project whose design is continually evolving, this foreclosing aspect of the ESP process is not currently in the state's favor. From Jan 2006 through September 28, 2006 (just days before the 16 August public hearing) Dominion submitted four different changes (the latest being Revision 9) to their proposal. Several of these revisions were submitted after the NRC Supplemental to the Draft Environmental Impact Statement (SDEIS) was published in July 2006 and therefore their environmental impacts were not included in the SDEIS for the public's review of the environmental impacts prior to the Coastal Zone Public Hearing on 16 August 06. The latest revision (Revision 9) was not received by the NRC from Dominion until September 28, 2006. The potential terrorist threat to the Lake Anna dam is not even mentioned in the NRC's Safety Report. There are many missing pieces to this puzzle.

Finally, as you well know, once a state concurs, even with conditions, it "retains no further consistency authority over the project..." and cannot, through the CZMA, enforce its conditions after it has concurred (Federal Register, Vol., 65, No. 237, page 77127). But by objecting, VDEQ preserves its option either to continue its objection or to revisit the issue if Dominion agrees to conditions that are fully protective of the environmental equities at stake. We recommend, the best way to protect Virginia's citizens is to register a Federal Consistency Certification "Objection" and have the applicant amend their proposal for the Early site Permit to reflect the changes necessary to comply with the conditions that protect Virginia citizens. ***The Federal Consistency Certification Objection will preserve Virginia's authority to demand any conditions necessary to protect the health, welfare and safety of its citizens, until all issues are resolved, at which time a Consistency Certification could be granted.***

Since the ESP is an optional early stage process devised primarily for the convenience of the applicant, and the environmental impacts of Dominion's continually evolving proposal are at this point still defined by a general "plant parameter envelope," comprised of nominal operating values rather than those pertaining to a site-specific detailed plant design, we see no advantage to the Commonwealth of Virginia and significant disadvantages, to VDEQ by offering its concurrence (or conditional concurrence which cannot be legally enforced in the future as defined in our 20 Oct letter to the Governor) at this time.

We and others believe the EPA answers to all of the questions identified in the 2 Oct VDEQ letter are not only relevant, but critical to an informed decision and to the integrity of the Virginia Coastal Program and to protect the health, welfare and safety of Virginia citizens. Please see attachments 1 and 2 for more specific details.

As always, thank you for your kind consideration of the above. I'll look forward to your timely response to the above questions and your decision whether or not to include the EPA answers to all six questions in the Federal Consistency Certification decision..

Sincerely,

Harry

Harry Ruth

FRIENDS OF LAKE ANNA

For the Friends of Lake Anna
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FRIENDS OF LAKE ANNA

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FRIENDS OF LAKE ANNA**Attachment 1 – Why all six questions identified in the 2 Oct 06 (DEQ-05-079F) to the EPA are relevant to any Federal Consistency Certification decision.**

Before Virginia can concur that a project is consistent with its federally approved Coastal Program it must fully analyze any reasonably foreseeable impacts of a proposal on the enforceable policies. To date, it appears this has not been done. There has been no analysis by VDEQ on the effects of the new reactor on the Virginia Pollution Discharge Elimination System (VPDES) enforceable policy; merely the appearance of conclusion statements.

It appears that VDEQ erroneously continues to insist that questions raised by citizens about the VPDES program pertain only to the existing two units. Inasmuch as the VPDES permit program is one of the enforceable policies of the Virginia Coastal Resources Management Program (VCRMP), VDEQ is required to consider the reasonably foreseeable effects of the proposed units on that policy before rendering its decision on the consistency of the proposed project with the coastal program. Otherwise VDEQ would not be complying with the Coastal Zone Management Act (CZMA) requirements that a Coastal State must administer its approved program effectively.

With regard to the VPDES permit and the existing units, Friends of Lake Anna (FOLA), Southern Environmental Law Center (SELC) and the Natural Resource Defense Council (NRDC) and many other citizens have raised questions on the applicability of permit requirements to cooling lagoons and the monitoring responsibilities of Dominion in regard to discharged water temperatures.

According to the preamble to the Federal Consistency Regulations (see Federal Register, Volume 65, Number 237, dated December 8, 2000, page 77127), a State cannot adequately implement its management program unless the state ensures, through federal consistency, that federal activities are consistent with the State's enforceable policies. As stated in VDEQ's Federal Consistency Information Packet (on the VDEQ web site), the VPDES permit program is one of the enforceable policies, administered by VDEQ pursuant to the State Water Control Law (*Virginia Code* section 62.1-44.15).

We continue to believe that the VPDES permit program, as applied to the existing units at North Anna, has not been administered effectively. For this reason among others, concurrence now would be premature and not in the interests of ensuring protection of Virginia's citizens, coastal uses, and resources. Furthermore, the analysis of state agencies in earlier reviews of the National Environmental Protection Act (NEPA) documents for this project, posted on VDEQ's web site, did not support a concurrence with the federal consistency certification. Also see our previous correspondence on this subject.

FRIENDS OF LAKE ANNA

In our opinion, because of the six questions submitted to Environmental Protection Agency (EPA), the only way the answers would not be pertinent to the state's federal consistency review would be if:

(1) VDEQ were to object to the consistency certification, thereby maintaining its authority over the project under the CZMA pending resolution of questions relating to environmental issues identified by the public and by state agencies during the review of the Draft Environmental Impact Statement (DEIS), the Supplement to the Draft EIS (SDEIS), and public review of the federal consistency certification; (or)

(2) Dominion were to amend its application to use dry air cooling for both Units 3 and 4, and NRC were to approve the application as amended. In this case, the question of implementation of the VPDES program in connection with Units 3 and 4 would not apply because dry air-cooled units would not require water quality permits under VPDES.

In their comments on the DEIS and the SDEIS, various state reviewers recommended using dry cooling for Unit 3, as proposed for Unit 4, stating that they would have no concerns about this project if both the third and fourth reactors were dry air cooled.

According to the DEIS, Unit 4 operating as an air-cooled system would use a maximum of 1 gpm of water and would have negligible water-related impacts on Lake Anna, the cooling lagoons, or the North Anna River. Environmental concerns raised during VDEQ's review of the Draft EIS and SDEIS are water-related. **The SDEIS fails to analyze a dry air-cooled Unit 3 alternative despite recommendations by several state reviewers and public citizens written comments in earlier reviews.**

FRIENDS OF LAKE ANNA

Attachment 2 – Why do the answers to each of the 6 questions pertain to the Federal Consistency?

Each of the six questions pertain to VDEQ's administration of the point source pollution control enforceable policy, as administered through the VPDES permit program for the following reasons: We have quoted each question from the 2 Oct VDEQ letter (DEQ-05-079F) to the EPA, followed by the reason why it pertains to the U.S. Coastal Zone Management Act and Virginia's Coastal Resources Management Program.

1. Does the "hot side" of the lake constitute "Waters of the United States" within the meaning of the Clean Water Act, and thus within the protection of the NPDES-VPDES permit program?

If the EPA determines that cooling lagoons (the "hot side") are part of a public waterway, subject to the protection of the Clean Water Act, including its NPDES permit program and the State's VPDES program under § 402 of the Clean Water Act, VDEQ will be required to comply with the CWA. Since temperature of the cooling lagoons reach and exceed 104 degrees, as reported by local citizens, with some frequency during the summer months with the existing two units, adding another water-cooled reactor unit would necessarily exacerbate this problem.

For example, the additional withdrawal of water from this small watershed for cooling Unit 3, as well as the increase in consumptive loss associated with the evaporation of water at the new cooling tower, would lower the level of water in the cooling lagoons. This would then result with less water in the cooling lagoons to accommodate the additional thermal discharge from "blowdown" discharge water from the wet/dry cooling tower. Dominion has proposed that this additional heated water from the blowdown would be 100 degrees F. Does having less water to cool more heat where the public is recreating make any sense when the public is swimming and recreating in the water and there are currently no U.S. Clean Water Act protections?

2. Is the VPDES permit and the § 316(a) variance on the temperature standard accompanying it warranted for a new unit that may raise the temperature? If the temperature requirement is delegated to the State under the VPDES program, what are the temperature limits, if any, which may be set by the state for the proposed Unit 3?

Before concurring that the environmental impacts of activities described in Dominion's Early Site Permit are consistent with the enforceable policies of the Virginia's Coastal Zone Management Program, VDEQ has a duty to resolve outstanding issues surrounding the existing VPDES permit for the North Anna Power Station.

If the current 316A variance granted by the VPDES has led to overheating of Lake Anna in violation of the Clean Water Act, it follows that any future VPDES permit will probably also be in violation if immediate changes to protect the lake and downstream resources are not made a part of the state's concurrence process for federal consistency certification under the Coastal Zone Management Program

We note that a recent nuclear industry document cites an analysis performed for the Department of Energy regarding a further 5% uprating of these existing units with once-through cooling. VDEQ should query Dominion regarding the thermal discharge effects of this potential upgrade before renewing the NAPS VPDES permit and variance or offering its concurrence in the granting of the Early Site Permit for Units 3 and 4.

FRIENDS OF LAKE ANNA**3. Under the Clean Water Act, would a NPDES permit require monitoring of the temperature where the cooling water discharge enters the Lake (at the end of the discharge canal) or at Outfall 001, as is presently done under the VPDES?**

If the EPA answer is at the end of the discharge canal, VDEQ must take steps to reduce existing thermal impacts within the cooling lagoons "hot side" of the lake by requiring compliance with water quality standards to be measured at the point of discharge from the plant at the end of the discharge canal.

Evaporation of lake water, and therefore adequacy of flows downstream of the dam, remain significant concerns. The Lake Anna watershed is relatively small, as compared with other water cooling sources (major free-flowing rivers and oceans) for nuclear reactors, with a mean annual flow at the Lake Anna Dam ("Dam") of approximately 370 cubic feet per second (cfs). As such, the ability of both Lake Anna and the North Anna River to withstand additional consumptive use of water must be closely scrutinized. At some times during the summer months with a drought, this water flow rate is reduced to only 20 CFS going over the dam.

Also, if it is determined that monitoring is necessary in the cooling lagoons "hot side", DGIF must evaluate the impacts of temperature on fisheries. Currently, DGIF analysis is limited to the "cool side" of the Lake and the North Anna River downstream. With regard to the River, DGIF continues to express concerns about the adverse impacts the 3rd unit would have on the Fisheries Management enforceable program of the VCP.

4. Does the state administration of the VPDES permit program, either as an enforceable policy of the Virginia Coastal Resources Management Program or as a delegated program under the Clean Water Act, give the state any discretion over the stringency of the standards to be applied insofar as temperature, pollutants, and possibly flow are concerned?

If the EPA answer is negative, then VDEQ might have to work with the applicant and citizens to make needed adjustments. If the answer is affirmative, then the limits of the state's discretion should be defined. FOLA's understanding is that the state can be as stringent or more stringent than the standards put forth in the CWA, but not less stringent.

Answers to this and other questions are needed before the conclusion of the federal consistency review process in order to ensure that the decision taken by the State results in a project that is consistent with the enforceable policies of the coastal program. Waiting for a later permit process would be too late, because the Nuclear Regulatory Commission (NRC) would have already issued its Early Site Permit (ESP) with the "plant parameter envelope." The NRC then has no legal requirement to review the ESP decision unless there is significant new information about the environmental impact of whatever Dominion proposes. *As a matter of common sense, it is preferable for the state to address the answers to all six questions now to prevent the state from incurring many legal costs to address these issues later.*

FRIENDS OF LAKE ANNA**5. Under the NPDES federal program, would the "hot side" be subject to monitoring requirements? If the answer is "yes," does the law or the NPDES regulation give states any discretionary authority regarding monitoring stipulations in the VPDES program?**

If the answer is "yes," then VDEQ should work with the applicant and citizens to develop a reasonable monitoring program for the "hot side" of the Lake, acting within the discretionary authority given to the State.

If the answer is "no," we recommend that VDEQ pursue innovative approaches to protect human health as well as coastal uses and resources. These innovative approaches should not include posting a public notice "Don't go in the water because it is unsafe", which would have a drastic impact on surrounding property values. The innovative approaches must protect the public's health, safety and welfare similar to the clean water act; while recreating in the cooling lagoons which together with the main reservoir were initially planned in 1970 for residential development around the total lake. Since 1970, Dominion, together with local and state governmental authorities have endorsed this residential development and recreational aspects of swimming/boating in the cooling lagoons.

6. Is there any provision in the Clean Water Act which allows this difference in the definitions in a federal program which has been delegated to a state?

We believe that VDEQ and the Virginia State Water Control Board do not have the authority to denationalize national waters and designate the Lake Anna cooling lagoons as a waste heat treatment facility (see previous correspondence). Federally delegated programs such as VPDES can be more stringent than the national program, but cannot be less so. The Virginia State Water Control Board cannot arbitrarily exclude U.S. surface waters from the regulatory purview of its delegated national program. As indicated previously, the U.S. Army Corp of Engineers define the cooling lagoons under Section 404 (Dredge and Fill of Navigable Water of the U.S) as jurisdictional Waters of the United States. The definition of Waters of the United States under these implementing regulations at 33 USC 328.3 is identical in all necessary respects to that of the NPDES regulations implementing Section 402 (40 CFR 122.2).