

**Update on North Anna Units 1 & 2 NPDES challenge to VDEQ
NARRATIVE AND FINANCIAL REPORTS
SEPTEMBER 17, 2008**

I am pleased to give you all the following update on our appeal of the state water pollution discharge permit granted by the Virginia Department of Environmental Quality to Dominion Virginia Power's North Anna Nuclear Power Station Units 1 and 2. You all have done a good job with fundraising and I want to recognize the special efforts made by Vanthi Nguyen, John Cruickshank, Rebecca Faris and Jerry Rosenthal. The financial report follows the narrative report.

We are at a critical juncture and I want you all to know where we stand. I suggest we have a meeting or a conference call sometime soon to discuss the case and to determine our ultimate goals. The legal fees are mounting and we need to think about how far PACE is willing to pursue this case. BREDL is continuing to work to find additional resources, both technical and monetary, but of course PACE is the ultimate source of the funds.

Narrative Report

The appeal was brought by the Blue Ridge Environmental Defense League, the People's Alliance for Clean Energy, Tersh Norton, Virginia Jones Crawford and Gary Muller. On December 28, 2007 BREDL and PACE filed the appeal bases on (1) the failure of the Virginia Department of Environmental Quality to abide by the federal Clean Water Act and (2) the State water Control Board's obligation to make an explicit finding in permit decisions. On January 29, 2008 both Dominion Virginia Power and the Commonwealth of Virginia filed legal responses called demurrers, disputing our appeal. (For more detail, on this early phase of the case, see the February Report attached at the end of this update.)

On March 19, 2008 Dominion Virginia Power filed a motion to dismiss BREDL's claims. Dominion argued that Virginia has been granted authority to administer the federal law by the USEPA and therefore State permits are issued under state law, not federal law. Also, Dominion argued that "there is no statutory requirement that the state Water Control Board make a finding of fact before approving a permit." Finally, Dominion argued against granting standing to Gary Muller.

On the same day, the Commonwealth of Virginia also filed a motion which argued Gary Muller lacks standing to appeal, and that BREDL and PACE lack "individual" standing. (However, neither Dominion nor the state challenged "representational" standing for BREDL or PACE.)

On April 29, 2008 the Commonwealth of Virginia replied to our memorandum opposing the motion to dismiss and said that their motion was filed on time. (This issue is about legal procedure; that is, whether they filed a "responsive pleading" or an "affirmative defense.") They repeated that DEQ was immune from suits and that "sovereign immunity is alive and well in Virginia." The State argued that requirements for Blue Ridge Environmental Defense League's appeal under VAC 62.1-44.29 were not met. The State allowed that it had not challenged the standing of every Appellant, but they said that not challenging Barbara Crawford and/or Tersh Norton's standing (and BREDL's) did not matter. BREDL argued that the admission of one party with standing was enough to comply with Virginia's Article 3, the "case-or-controversy requirement and therefore the issue was moot. The State said Muller is the only appellant who has access to the WHTF and therefore is the only one who can claim injury related to it. (In other words, if Muller is dismissed, we might not be able to challenge the DEQ permit in that area.) The State again pointed to Muller's participation in the DEQ permit Process, saying that he only attended and didn't sign in or speak at the hearing "as required by statute."

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Also on April 29th, Dominion Virginia Power replied to our memorandum opposing dismissal. DVP cited the same case law as the State did and also agreed with the State as to the issues. DVP went further and argued against BREDL's reliance on the Clean Water Act to challenge a VPDES permit. DVP also disputed that the DEQ and SWCB must make an "explicit finding." DVP added that the law enacted in 2008 requiring the SWCB to provide a "clear and concise statement of the legal basis" of its decision proved that it did not have to do so in 2007! (rather than the opposite, that the legislature's act was a clarification and that the Board had always had the responsibility.)

So, on May 6, BREDL's attorney Rob Wise, Lou Zeller and Barbara Crawford went to Richmond Circuit Court for the oral argument before Judge Spenser. Dominion's attorney argued that an appeal of the permit could be brought only if the Clear Water Act provision violated was also in Virginia state statutes or State Water Control Board rules. Rob Wise contended that, regarding state law and VPDES, "you can't swing a dead cat without hitting the Clean Water Act." He said the state board's determination to approve the permit was not a "rubberstamp" and that this is an issue of law. Regarding legislation in 2008, the General Assembly made the law; the issue raised by DVP only appears in a footnote.

In rebuttal, Dominion repeated the assertions about WHTF and private property and lake access stating that if Muller were to be eliminated only the Lake Anna water quality issues remain. Regarding Muller's participation, Rob Wise argued back that Muller had indeed attended, that the hearing in Louisa was "tightly run," and that citizens were specifically asked to consolidate their comments and Muller gave his time over to Harry Ruth. It was unfair to expect the public to know legal rules of procedure and precedent. He said, "Citizens are not lawyers" and that the Department could not now use the streamlining of the proceeding to omit Muller. Next, Rob wise argued that the WHTF and Lake Anna are not discrete bodied of water-the WHTF flows into the lake. And, although the response of DVP was "styled" as a motion to dismiss, it was really a response; therefore, the 21 days rule applied.

So, where do we stand? Our attorney is convinced that the position of Dominion and the State is factually and legally incorrect on the merits and that even with the standing question unresolved we may argue the impacts on Lake Anna and the WHTF. Of course, DVP will argue it their way. However, the standing issue has other consequences. If an ordinary citizen cannot have standing in a case unless he or she follows the regulations perfectly, the public would be forced to retain legal counsel very early, even at the public hearing stage, in order to retain their rights under the law. The additional burden would fall on the public and, indeed, on the state agencies themselves because public interest groups would then be forced to load the hearing record with information; every conceivable argument, detail, paper and fact would become part of the state file on every permit. Our interests and the interests of other public interest groups are at stake here. So, we at Blue Ridge Environmental Defense League recommend that this larger issue be pursued in addition to the environmental issues on Lake Anna. As a result, we would move to have the Judge reconsider the issue of standing in addition to arguing the merits of the DEQ permit.

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Financial report

To date, we have incurred the following legal expenses pursuing this case:

November	\$1,716.00	Draft and file Notice of Appeal, confer with clients
December	\$4,069.00	Review legal issues and VPDES permit, obtain case documents and confer with client, draft appeal of DEQ permit and service to all parties
January-February	\$1,125.74	Review DVP answers and demurrers regarding our appeal; discussions with client; communication with Commonwealth on schedule, obtain case record from DEQ and SWCB
March	\$840.04	Correspondence with Commonwealth attorneys, analyze hearing order, confer with client
April	\$5,602.42	Draft opposition to demurrers and DVP motion to dismiss, research Clean Water Act, draft affidavit for Gary Muller regarding participation, communicate with clients
May	\$3,393.01	Review filings on demurrers and forward to client, conference with Commonwealth attorney regarding Clean Water Act and possible resolution, preparation for hearing, arguments in court on May 6 th and meet with clients
June	\$3,844.96	Telephone client re case status and lake visit, draft letter to Judge Spencer regarding site visit to Lake Anna, travel and inspection of lake access and lagoon, research and conference with DVP and Commonwealth attorneys regarding withdrawal of motions to dismiss, waiver and revisiting later.
July	\$1,575.30	Review of demurrer order and prepare recommendations, research interlocutory appeal and motion to reconsider, confer with clients, prepare motion to reconsider.
Total	\$22,166.47	

To date, we have paid \$9,500 in legal fees, leaving a balance of \$12,666.47.
So far, the Peoples Alliance for Clean Energy Legal Fund has raised a total of \$6,795.23

PACE donations	\$1,500.00	(\$500 on 9/11/08, \$500 on 7/16/08, \$500 on 1/21/08)
Rebecca Faris	\$300.00	
Jerry Rosenthal	\$1,535.23	
John Foster	\$20.00	
John & Barbara Cruickshank	\$200.00	(\$100.00 on 5/24/08, \$100.00 on 3/14/08)
Virginia Sierra Club	\$2,000.00	(This donation was the work of John Cruickshank)
anonymous	\$1000.00	
Sarah Lanzman	\$40.00	
Miguel Auclair-Valdez	\$100.00	
Jean Hiatt	\$25.00	
Herbert Tucker	\$25.00	
Earl Cornette	\$50.00	

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Previous Update on the Case February 20, 2008

Our Petition for Appeal was filed in Circuit Court for the City of Richmond on December 28, 2007 by the Blue Ridge Environmental Defense League et al pursuant to Virginia Code §§ 62.1-44.29 and 2.2-4026 and Rule 2A:4 of the Rules of the Supreme Court of Virginia. We are seeking judicial review of the October 29th decision by the Virginia State Water Control Board to re-issue Virginia Pollution Discharge Elimination System Permit No. VA0052451. The full Petition for Appeal is posted at http://www.bredl.org/pdf2/BREDL-PACE_Appeal071208.pdf

Based on documents filed by the company, the Virginia Department of Environmental Quality recommended that the Virginia State Water Control Board re-issue the Permit to Virginia Electric and Power Company, doing business as Dominion Virginia Power, for its Dominion-North Anna Power Station in Louisa County, Virginia.

We assert the Board's re-issuance of this Permit was in violation of Virginia's State Water Control Law, the federal Clean Water Act, and the Virginia Pollution Discharge Elimination System. Specifically, state and federal laws and regulations require regulation of and limitations on thermal pollution discharges into Virginia's waters. There was ample evidence presented to the Board and DEQ as contained in the record which demonstrated that thermal pollution discharges from the North Anna Power Station into Lake Anna are causing and contributing to serious harm to the lake.

Despite the mandate under state and federal law and the record of evidence of the thermal pollution problem in Lake Anna, this Permit contains virtually no limits at all on thermal pollution. For the reasons stated in this Petition for Appeal, BREDL asked the Court to suspend and set aside the Permit and to remand the Permit to the Board and DEQ for further proceedings consistent and in compliance with federal and state water laws and regulations.

On January 28th and 31st the Commonwealth of Virginia and Dominion-Virginia Power, respectively, filed demurrers. A demurrer is a formal response which asserts that there is no cause of action; the defendant awaits the decision of the Court as to whether they must respond further. Both demurrers challenge our standing to bring the case and broadly deny our allegation saying no response is necessary or required. Interestingly, the demurs state "The Commonwealth lacks sufficient knowledge to respond to the allegations..." or "VEPCO lacks sufficient information to admit or deny the allegations..." This is striking because our Petition for Appeal is a "case on record," meaning it is based solely on the information developed by the DEQ and the SWCB before they re-issued the permit. This record comprises the case file. This record should be the only knowledge needed to respond to the allegations.

Last week we received a call from Commonwealth Office of Attorney General. They want a hearing on their demurrer. They want to challenge Blue Ridge Environmental Defense League's standing to bring this matter. The hearing on their demurrer could be

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in May, maybe sooner. DEQ must now transmit the case record, the permit documents, to the court; it should be filed with the Circuit Court by the end of the month. They will send us an index.

Challenging our institutional and individual standing means that they are trying to get our case dismissed without a hearing on the issues; instead, they would like to win on procedural grounds. We don't intend to let them. We told them that we had concerns about their non-responses.