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No. \_\_\_\_\_

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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SIERRA CLUB, WEST VIRGINIA RIVERS COALITION, WEST VIRGINIA  
HIGHLANDS CONSERVANCY, APPALACHIAN VOICES, and  
CHESAPEAKE CLIMATE ACTION NETWORK,  
*Petitioners*

v.

UNITED STATES ARMY CORPS OF ENGINEERS; MARK T. ESPER, in his  
official capacity as Secretary of the U.S. Army; TODD T. SEMONITE, in his  
official capacity as U.S. Army Chief of Engineers and Commanding General of the  
U.S. Army Corps of Engineers; PHILIP M. SECRIST, in his official capacity as  
District Commander of the U.S. Army Corps of Engineers, Huntington District,  
and MICHAEL E. HATTEN, in his official capacity as Chief, Regulatory Branch,  
U.S. Army Corps of Engineers, Huntington District  
*Respondents*

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**PETITION FOR REVIEW**

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DEREK O. TEANEY  
JOSEPH M. LOVETT  
BENJAMIN A. LUCKETT  
APPALACHIAN MOUNTAIN ADVOCATES, INC.  
P.O. Box 507  
Lewisburg, WV 24901  
Telephone: (304) 793-9007  
Email: dteaney@appalmad.org  
*Counsel for Petitioners*

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Pursuant to Section 19(d)(1) of the Natural Gas Act, 15 U.S.C. §717r(d)(1), and Rule 15(a) of the Federal Rules of Appellate Procedure, SIERRA CLUB, WEST VIRGINIA RIVERS COALITION, WEST VIRGINIA HIGHLANDS CONSERVANCY, APPALACHIAN VOICES, and CHESAPEAKE CLIMATE ACTION NETWORK hereby petition the United States Court of Appeals for the Fourth Circuit for review of the February 7, 2018 issuance by the United States Army Corps of Engineers of an authorization under Nationwide Permit 12 for the discharge of dredged and/or fill material to Atlantic Coast Pipeline, LLC (United States Army Corps of Engineers File Number LRH-2014-00484-GBR) (hereinafter, “NWP 12 Authorization”). In accordance with Local Rule 15(b), a copy of the NWP Authorization is attached hereto as Exhibit A.

In accordance with Rule 15(c) of the Federal Rules of Civil Procedure, parties that may have been admitted to participate in the underlying procedure have been served with a copy of this Petition. Pursuant to Local Rule 15(b), attached hereto is a list of Respondents specifically identifying the Respondents’ names and addresses.

DATED: July 3, 2018

Respectfully submitted,

**/s/ Derek O. Teaney**

DEREK O. TEANEY

JOSEPH M. LOVETT

BENJAMIN A. LUCKETT

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*Counsel for Petitioners*

## CERTIFICATE OF SERVICE

In accordance with Federal Rules of Appellate Procedure 15(c)(1) & (2), the undersigned hereby certifies that, on July 3, 2018, a true copy of this Petition for Review was served via first-class mail on each of the following entities that may have been admitted to participate in the agency proceedings:

1. CT Corporation System  
Registered Agent for Atlantic Coast Pipeline, LLC  
5400 D Big Tyler Road  
Charleston, WV 25313
2. Leslie Hartz  
Atlantic Coast Pipeline, LLC  
707 E Main Street, 19th Floor  
Richmond, VA 23219
3. Richard Gangle  
Dominion Resources Services, Inc.  
5000 Dominion Boulevard  
Glenn Allen, VA 23060
4. Spencer Trichell  
Dominion Resources Services, Inc.  
5000 Dominion Boulevard  
Glenn Allen, VA 23060
5. Kevin Bowman  
Federal Energy Regulatory Commission  
888 First St. NE  
Washington, DC 20426
6. Steve Gibson  
U.S. Army Corps of Engineers  
Norfolk District  
803 Front Street  
Norfolk, VA 23510-1096

7. Samantha Dailey  
U.S. Army Corps of Engineers  
Regulatory Division  
3331 Heritage Trade Drive, Suite 105  
Wake Forest, NC 27587
  
8. Josh Shaffer  
U.S. Army Corps of Engineers  
Pittsburgh District  
1000 Liberty Avenue  
Pittsburgh, PA 15222

DATED: July 3, 2018

**/s/ Derek O. Teaney**

DEREK O. TEANEY

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P.O. Box 507

Lewisburg, WV 24901

Telephone: (304) 793-9007

Email: [dteaney@appalmad.org](mailto:dteaney@appalmad.org)

*Counsel for Petitioners*

## LIST OF RESPONDENTS

Pursuant to Local Rule 15(b), Petitioners hereby provide a list of Respondents specifically identifying the Respondents' names and the addresses where Respondents may be served with copies of the Petition:

United States Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314

Dr. Mark T. Esper  
Secretary, United States Army  
101 Army Pentagon  
Washington, DC 20310-0101

Lt. General Todd T. Semonite  
Commanding General and Chief of Engineers  
United States Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314

Col. Philip M. Secrist  
District Commander  
United States Army Corps of Engineers  
Huntington District  
502 Eighth Street  
Huntington, WV 25701

Michael E. Hatten  
Chief, Regulatory Branch  
United States Army Corps of Engineers  
Huntington District  
502 Eighth Street  
Huntington, WV 25701

# **EXHIBIT A**



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

February 7, 2018

Regulatory Division  
Energy Resources Branch  
LRH-2014-00484-GBR

NATIONWIDE PERMIT NO. 12 VERIFICATION

Leslie Hartz  
Atlantic Coast Pipeline, LLC  
707 E Main Street, 19th Floor  
Richmond, Virginia 23219

Dear Mr. Hartz:

I refer to the Atlantic Coast Pipeline, LLC's request received on September 16, 2015 with an updated application received on September 18, 2017 and additional information received December 7, 2017 requesting a Department of the Army (DA) authorization to discharge dredged and/or fill material into waters of the United States (U.S.) in association with the Atlantic Coast Pipeline (ACP) Project. The proposed project will involve the construction of a 331.3-mile 42-inch natural gas pipeline in West Virginia, Virginia, and North Carolina. The ACP will cross the United States Army Corps of Engineers (Corps) Pittsburgh, Norfolk, Huntington, and Wilmington Districts regulatory boundaries. Approximately 37.4-miles of the proposed pipeline and approximately 61-miles of proposed access roads are located within the Huntington District's regulatory boundary in Randolph and Pocahontas Counties, West Virginia. The project has been assigned the following file number: LRH-2014-00484-GBR. Please reference this number on all future correspondence related to this proposed project.

The Corps' authority to regulate waters of the U.S. is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act (Section 404) requires a Department of the Army (DA) permit be obtained prior to discharging dredged or fill material into waters of the U.S., including wetlands. Section 10 of the Rivers and Harbors Act of 1899 (Section 10) requires a DA permit be obtained for any work in, on, over or under a navigable water.

***Nationwide Permit 12***

This project has been reviewed in accordance with Section 404 and Section 10. Based on your description of the proposed work, and other information available to us, it has been determined this project will involve activities subject to the requirements of Section 404 and Section 10.



-2-

CELRH-RD-E

FANNIN/6901

In the submitted information you have requested a DA authorization to temporarily discharge dredged and/or fill material into 2,312 linear feet (0.21 acre) of ephemeral streams, 5,023 linear feet (0.53 acre) of intermittent streams, 1,544 linear feet (1.26 acres) of perennial streams 1.97 acres of palustrine emergent (PEM) wetlands, 0.23 acre of palustrine scrub-shrub (PSS) wetland and 0.10 acre of palustrine-forested (PFO) wetland and permanently discharge dredged and/or fill material into 432 linear feet (0.02 acre) of ephemeral streams, 236 linear feet (0.03 acre) of intermittent streams, 176 linear feet (0.07 acre) of perennial streams, 1.08 acres of PEM wetland, and 0.27 acre of PSS wetland at 153 separate and distant locations. There are 153 single and complete crossings in the portion of the proposed project located within the Huntington District's regulatory boundary, as shown on the enclosed Table titled *Single and Complete Crossings of Waters of the U.S. for the Atlantic Coast Pipeline within the U.S. Army Corps of Engineers – Huntington District*.

Based on the provided information, it has been determined the proposed discharge of dredged and/or fill material into waters of the U.S. in conjunction with the construction of the ACP meets the criteria for Nationwide Permit Number (NWP) 12 (enclosed) January 6, 2017 Federal Register, Issuance and Reissuance of NWPs (82 FR 1860) provided you comply with all terms and conditions of the enclosed material, the enclosed special conditions, and the general Section 401 Water Quality Certification issued by the West Virginia Department of Environmental Protection. A copy of this NWP can be found on our website at: <http://www.lrh.usace.army.mil/Missions/Regulatory.aspx>. A copy of this NWP and this letter should be supplied to your project engineer responsible for project activities and a copy kept at the site during project work. Please be aware this NWP verification does not obviate the requirement to obtain any state or local assent required by law for the activities.

This verification is valid until the expiration date of the NWPs, unless the NWP authorization is modified, suspended, or revoked. The verification will remain valid if the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. All of the existing NWPs are scheduled to be modified, reissued, or revoked on March 18, 2022. Prior to this date, it is not necessary to contact this office for re-verification of your project unless the plans for the proposed activity are modified. Furthermore, if you commence or under contract to commence this activity before March 18, 2022, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

CELRH-RD-E

-3- FANNIN.A  
DAM.E.13  
86572271

Digitally signed by  
FANNIN.A.DAM.E.1386572271  
DN: cn=US, o=U.S. Government,  
ou=DoD, ou=PKI, ou=USA,  
c=FANNIN.A.DAM.E.1386572271  
Date: 2018.02.07 12:39:18 -0500

FANNIN/6901

Upon completion of the work, the enclosed certification must be signed and returned to this office. If you have any questions concerning the above, please contact Adam Fannin of the Energy Resource Branch at (304) 399-6901 or by email at [adam.e.fannin@usace.army.mil](mailto:adam.e.fannin@usace.army.mil).

Sincerely,

SPAGNA RD-N

Teresa Spagna  
Chief, North Branch

Enclosures

cc:

Richard Gangle  
Dominion Resources Services, Inc.  
5000 Dominion Boulevard  
Glenn Allen, Virginia 23060

Spencer Trichell  
Dominion Resources Services, Inc.  
5000 Dominion Boulevard  
Glenn Allen, Virginia 23060

Kevin Bowman  
Federal Energy Regulatory Commission  
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Steve Gibson  
U.S. Army Corps of Engineers  
Norfolk District  
803 Front Street  
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Samantha Dailey  
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3331 Heritage Trade Drive, Suite 105  
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(919) 554-4884, Ext. Ext. 22

Mr. Josh Shaffer  
U.S. Army Corps of Engineers  
Pittsburgh District  
1000 Liberty Avenue  
Pittsburgh, Pennsylvania 15222

**Nationwide Permit 12 Verification Special Conditions**  
**Atlantic Coast Pipeline, LLC ACP Project**  
**LRH-2014-00484-GBR**

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1. This verification remains contingent upon the permittee's submitted Pre-Construction Notification (PCN) information regarding the scope and/or impacts of the project as described in Figure 1 titled *Atlantic Coast Pipeline Overview Map* and the aquatic resources identified in the enclosed Table titled *Single and Complete Crossings of Waters of the U.S. for the Atlantic Coast Pipeline within the U.S. Army Corps of Engineers – Huntington District*. Should new information regarding the scope and/or impacts of the project become available that was not submitted to this office during our review of the proposal, the permittee must submit written information concerning proposed modification(s) to this office for review and evaluation, as soon as practicable.

The permittee must complete wetland and stream investigations on all desktop evaluated aquatic resources, as identified in the enclosed Table titled *Single and Complete Crossings of Waters of the U.S. for the Atlantic Coast Pipeline within the U.S. Army Corps of Engineers – Huntington District*, once access is granted. The permittee must submit to the Huntington District the information gathered during the field reconnaissance, including data forms, photographs, impact analysis and mitigation requirements, prior to the discharge of dredged and/or fill material into these desktop evaluated resources. If additional mitigation is necessary, the permittee will purchase the required mitigation credits prior to the discharge of dredged and/or fill material into waters of the United States.

2. The permittee is required to apply for and secure all necessary permits, certifications or other approvals from Federal, State and/or local regulatory agencies, prior to commencing the construction activity. These other Federal, State and/or local approvals and all conditions attached to or contained therein are hereby incorporated by reference as being special conditions of this verification.
3. Enclosed is a copy of Nationwide Permit 12, which will be kept at the site during construction. A copy of the nationwide permit verification, special conditions, and the submitted construction plans must be kept at the site during construction. The permittee will supply a copy of these documents to their project engineer responsible for construction activities.
4. Construction activities will be performed during low flow conditions to the greatest extent practicable. Additionally, appropriate site specific best management practices for sediment and erosion control will be fully implemented during construction activities. The permittee shall ensure avoided stream and riparian upland buffers are adequately flagged and/or staked before construction activities to ensure these areas

**Nationwide Permit 12 Verification Special Conditions**  
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- are not inadvertently impacted pre-, during- or post-construction and follow the *Wetland and Waterbody Construction and Mitigation Procedures* and the *Upland Erosion Control, Revegetation Plan, and Maintenance Plan* established by the Federal Energy Regulatory Commission.
5. Completion of stream and wetland crossings must adhere to the dates established in the Standard Conditions of the State 401 Water Quality Certification applicable to the Nationwide Permits, including the established restrictions during the spawning season for warm water streams and their adjacent tributaries (April to June) and trout waters and their adjacent tributaries (September 15 to March 31) or in accordance with any applicable timing restriction waivers issued by the State of West Virginia. For waiver requests, the permittee must contact the West Virginia Division of Natural Resources Coordination Unit, at (304) 637-0245. For information about specific stream designations, the permittee must contact the West Virginia Department of Environmental Protection, Water Quality Standards Section at (304) 926-0495.
  6. At each stream crossing, substrate in the channel will be removed and stockpiled separately from other excavated material. This native material must be reused in restoration of the stream channel and, upon final stream bed restoration, the stream must have similar substrate pattern, profile, dimension and embeddedness of the original stream channel. At each wetland crossing, the top 12 inches of soil will be removed and stockpiled separately from other excavated material. This native material must be reused in restoration of the wetland.
  7. The permittee will document pre- and post-construction activities through photographs, both upstream and downstream of each channel and each bank. A minimum of four (4) photographs per stream crossing will be taken. For the major streams, as defined by the Federal Energy Regulatory Commission, additional photographs of the streams' banks will be taken for a minimum of six (6) photographs. For wetland crossings, the permittee will document prior to construction through photographs of the wetland with the Right of Way (ROW), the ROW as it enters the wetland, and the ROW as it exits the wetland will be obtained by the permittee. All photographs are to be geo-referenced and identified to correspond with aquatic feature names as described in the Table titled *Single and Complete Crossings of Waters of the U.S. for the Atlantic Coast Pipeline within the U.S. Army Corps of Engineers – Huntington District* with a date of the photograph taken and corresponding GPS coordinates. Upon completion of construction and reclamation of each stream and wetland crossing, associated photographs must be taken in the same manner and locations as pre-impact existing conditions with

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- narrative documentation that the area has been returned to pre-construction contours. The pre- and post-construction photographs associated with each stream and wetland crossing must be submitted to the Huntington District along with the enclosed "Activity Completion Certification."
8. The permittee will submit post-construction reports upon completion of the activities conducted within waters subject to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) to document the restoration of the stream to pre-construction contours. One Section 10 river falls within the project within the Huntington District falling within the project boundary includes the Greenbrier River. Post-construction reports will include in-stream habitat and bank characteristics. The reports will include obtaining post-construction data consistent with methods used to document pre-construction conditions provided by the permittee for the above Section 10 stream crossing. The permittee will provide post-construction documentation that streams have similar substrate pattern, profile, dimension and embeddedness of the original stream channels.
  9. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the United States Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. The permittee is solely responsible for insuring all activities are performed in compliance with all permit conditions.
  10. The authorized work shall not interfere with the public's right to free navigation on navigable waters of the United States. The permittee will provide a site-specific spill response plan for the Greenbrier River crossing.
  11. The permittee will purchase stream and wetland mitigation credits from multiple federally-approved mitigation bank(s) and the West Virginia In-Lieu Fee Program as indicated on the below Table as excerpted from the applicant's compensatory mitigation plan. The permittee will submit confirmation to the Corps, Huntington District (Permit Number LRH-2014-00484) of the purchase of the mitigation credits prior to the discharge of dredged and/or fill material into waters of the United States.

**Nationwide Permit 12 Verification Special Conditions  
Atlantic Coast Pipeline, LLC ACP Project  
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Table 4: ACP West Virginia Mitigation Summary (Continued)						
MITIGATION						
Resource	Mitigation Credit Needs	Bank Credits		ILF Credits		Total Credits Delivered
Stream	1,009.44	0.00		Tygart Valley	339.46	1,009.44*
				West Fork	95.06	
				Elk	295.91	
				Greenbrier	279.02	
Wetland	3.310	Tygart Valley Bank	1.580	Greenbrier	0.380	3.310
		Beverly #1 Bank	1.350			

*\*Individual impacts were aggregated and summed, resulting in a rounding discrepancy of 0.01 acres in the total impacts calculated.*

12. In the event any previously unknown historic or archaeological sites or human remains are uncovered while accomplishing the authorized activity, the permittee must cease all work in waters of the United States immediately and contact local, state and county law enforcement offices (only contact law enforcement on findings of human remains), the Corps at (304) 399-5210 and West Virginia State Historic Preservation Office at (304) 558-0220. The FERC will initiate the Federal, state and tribal coordination required to comply with the National Historic Preservation Act and the applicable state and local laws and regulations. Federally recognized tribes are afforded a government-to-government status as sovereign nations and consultations are required under Executive Order 13175 and 36 CFR Part 800.
13. The United States Fish and Wildlife Service (USFWS) Biological Opinion for the Atlantic Coast Pipeline, LLC; Docket Numbers CP15-554-000, CP15-554-001, CP15-555-000; Project #05E2VA00-2016-F-1219, #05E2WV00-2014-F-0832, #05E2PA00-2016-TA-0960, #04EN2000-2017-I-0738 (BO) and dated October 16, 2017 contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with “incidental take” that is also specified in the BO. The permittee’s authorization under this Corps nationwide permit verification is conditional upon their compliance with all of the mandatory terms and conditions associated with the incidental take of the BO, which terms and conditions are incorporated by reference as being special conditions of the Section 404 and Section 10 nationwide permit verification. Section 7 obligations under Endangered Species Act must be reconsidered if new information reveals impacts of the project that may affect federally listed species or critical habitat in a manner not previously considered, the proposed project is subsequently modified to include activities which were not considered during Section 7 consultation with the United States Fish and Wildlife Service, or new species are listed or critical habitat designated that might be affected by the subject project. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the Endangered Species Act.
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