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Section 401/Clean Water Act: South Carolina Supreme Court Addresses Challenge to Natural Gas Pipeline Water Quality Certification

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The Supreme Court of South Carolina (“SCT”) addressed in a January 28th Opinion an issue arising out of Section 401 of the Clean Water Act. *See Blue Ridge Environmental Defense League v. South Carolina Department of Environmental Services*, 2026 WL 217648.

The issue addressed is whether a 401 water quality certification (“WQC”) should have been granted in regard to a natural gas pipeline.

Section 401 of the Clean Water Act prohibits federal agencies from issuing permits or licenses that result in exceedance of water quality standards, or other applicable authorities, of the state. This provision of the Clean Water Act requires an applicant for a federal license or permit to provide a certification that any discharge from the facility will comply with applicable Water Quality Standards. If not, the federal permit or license may not be granted. Further, the states can impose certain conditions upon federal permits or licenses as a prerequisite to granting the permit or license.

Dominion Energy proposed to build a new pipeline running parallel with an existing pipeline located within the existing right-of-way after widening it by 10 feet. The natural gas pipeline would be constructed near the Great Pee Dee River in Florence County, South Carolina. The rationale for the new pipeline was the existing pipeline’s inadequacy to serve increasing demand.

The pipeline was to be constructed through or under several tributaries to the Great Pee Dee River. This included Jeffries Creek which was deemed a navigable water. In addition, a discharge of dredged or fill material would be necessary, triggering a requirement under Section 401 of the Clean Water Act to obtain a WQC from the state.

The South Carolina Department of Environmental Services (“SCDEC”) issued a 401 WQC after public notice and a hearing. Blue Ridge Environmental Defense League (“BR”) ultimately contested the WQC before an administrative law court (“ALC”). The ALC issued an order granting the Section 401 WQC.

BR appealed the ALC’s order to the South Carolina Court of Appeals which certified the case for review to the SCT.

BR argued that the ALC’s factual findings are not supported by substantial evidence. The issues raised by BR and the SCT’s responses included:

- Argued there was not a need for the project and feasible alternatives were not considered.

- Argument rejected because testimony indicated 8-inch pipeline cannot meet current gas demands and that feasible alternatives were considered but not viable.
- Argued water quality impacts for the project will not be temporary.
- Notes that SCDED staff assessed that impacts will be temporary/minimized and should not violated Water Quality Standards.
- Argued there are federally threatened or endangered species in the project area that will be affected.
- South Carolina Department of Natural Resources staffer's letter outlining concerns were considered and conditions incorporated in the WQC addressing the issue along with U.S. Fish and Wildlife Services' indication that project would have no effect.
- Argued project will impact more than one state navigable water.
- Finds that Jeffries Creek is the only navigable water as defined by South Carolina regulations.
- Argued environmental justice concerns were not considered.
- ALC is stated to have considered environmental justice concerns but also correctly concluded they are not required when reviewing a Section 401 WQC.

The SCT upholds the ALC determination to grant the Section 401 WQC.

A copy of the Opinion can be found [here](#).