

# Compressor Station/Clean Air Act: Virginia Appellate Court Addresses Whether "Redefining the Source Doctrine" Is Applicable to a Minor Source



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

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Co-Author: Hannah Hines

The Fourth Circuit Court of Appeals ("Court") addressed in a January 7th opinion issues associated with the Virginia Air Pollution Control Board's ("Board") issuance of an air permit for construction of a compressor station to Atlantic Coast Pipeline, LLC. *See Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68 (4th Cir. 2020).

The issues addressed included:

1. Whether a sufficient and rational explanation was provided for not considering electric turbines in place of gas-fired turbines
2. Whether the Board adequately evaluated health impacts and site suitability

Atlantic Coast Pipeline submitted an air permit application to the Virginia Department of Environmental Quality ("DEQ") to construct a compressor station. The compressor station would be a component of a pipeline using gas turbines. The site for construction would be the historic community of Union Hill in Buckingham County, Virginia.

A minor source air permit was required to be obtained for construction of the compressor station. Several comment periods regarding the proposed facility (beginning in August 2018) were provided.

The Board received more than 5,300 comments over a 40-day comment period. Many comments expressed concern about the potential for disproportionate impacts on the proposed facility on the African American population of Union Hill.

Some comments questioned whether the compressor station could use electric turbines as opposed to gas. Such a change was stated to be a means of eliminating emissions.

The Board subsequently deferred consideration of the Permit. Governor Ralph Northam removed two Board members who had voiced concerns about the disproportionate harm to Union Hill, replacing them with two new members. A third member recused himself from the decision.

The remaining four original Board members reconvened on December 19, 2018,. They once again deferred a decision on the permit. A limited period of public comment on documents pertaining to the demographics and site suitability was ordered. The Board reconvened on January 8, 2019, and voted unanimously to adopt the DEQ's recommendation and approve the Permit.

The petitioners (opponents) argued on appeal that:

- the Board erred in failing to consider electric turbines as zero-emission alternatives to gas-fired turbines in the Compressor Station, and
- the Board erred in failing to assess the Compressor Station's potential for disproportionate health impacts on the predominantly African-American community of Union Hill.

The first issue involved a Clean Air Act doctrine known as "redefining the source." This doctrine was used to justify the Board's failure to consider electric turbines for the Compressor Station. Under certain federal Clean Air Act regulations, a major source "does not have to consider a control alternative—even if it is effective at reducing emissions—if it "redefines the source;" that is, "if it requires a complete redesign on the facility."

The Board argued that to require the Compressor Station to change from gas to electric turbines would constitute a complete redesign. Therefore it did not require this change, even though emissions would be reduced.

The Court held that Virginia law (applicable to minor sources) did not address "redefining the source." The Board conceded that it was not relying on any federal redefinition of the source doctrine. It offered no other explanation for why the it failed to consider electric turbines over gas turbines.

The compressor was a minor source as opposed to federal Clean Air Act major source. Therefore, the regulations and other requirements associated with "redefining the source" were held inapplicable. The Court concluded that the decision to grant the permit was arbitrary and capricious, and required reversal.

The Court addressed the second issue by concluding the Board failed to make any findings regarding the character of the local population at Union Hill, in the face of conflicting evidence. Further, the Board failed to individually consider the potential degree of injury to the local population independent of National Ambient Air Quality Standards and state emissions standards. This was deemed a requirement under Virginia law.

The Court relied heavily on environmental justice analysis. The purpose of such analysis is to determine whether a project will have a disproportionately adverse effect on minority and low income populations. It noted that the Board was presented with conflicting evidence about whether and how Union Hill was a minority environmental justice population. No finding of the conflicting evidence was made. It stated:

. . . even if all pollutants within the county remain below state and national air quality standards, the Board failed to grapple with the likelihood that those living closest to the Compressor Station will be affected more than those living in other parts of the same county."

The Court further noted that "the Board accepts without deciding that this area may be an environmental justice minority community with a high risk for asthma complications, and then does not properly recognize the localized risk of the very particulate matter that exacerbates asthma." Because the Board did not consider this potential disproportionate impact, did not seek to determine if this was an "especially sensitive" community, and further failed "to provide any explanation regarding the environmental justice issue," the Court held that the granting of the permit was arbitrary and capricious, and reversed the decision from below.

A copy of the decision can be downloaded [here](#).