



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley
Governor

Robert M. Summers, Ph.D.
Secretary

Anthony G. Brown
Lieutenant Governor

January 17, 2013

Franz Gerner, Ph.D.
President
Myersville Citizens for A Rural Community, Inc.
PO Box 158
Myersville, MD 21773-0158

Dear Dr. Gerner:

Thank you for your letter to Governor O'Malley regarding your concern about the issuance of a Federal Energy Regulatory Commission ("FERC") certificate for the Myersville compressor station proposed by Dominion Transmission, Inc. ("DTI"), and the certificate's potential impact on local zoning decisions. The Governor received your letter and asked me to respond on his behalf.

Construction of the proposed compressor station may not proceed without an air quality permit to construct from the Department of Environment. The applicable statutory provision – § 2-404(b)(1) of the Environment Article of the Maryland Code – requires a permit applicant to submit documentation with the application demonstrating that the applicant's project either has local zoning approval, or that it meets all applicable zoning and land use requirements. In the absence of such documentation, the Department is prohibited from processing the application. In the event of a dispute over zoning or land use approval, the permit applicant and the local jurisdiction are responsible for resolving the dispute prior to the submission of a permit application.

The Department has received documentation from the town of Myersville that it has denied zoning approval for the proposed compressor station. Dominion Transmission, Inc. ("DTI") submitted the FERC certificate with its permit application for the purpose of satisfying the requirements of § 2-404(b)(1). Dominion asserts that under the Natural Gas Act, the issuance of the FERC certificate preempts local zoning and land use requirements. The FERC certificate, however, does not definitively state that all of Myersville's applicable zoning requirements are preempted in this particular case, only that where local zoning conflicts with a federal regulatory scheme, local zoning would be preempted.

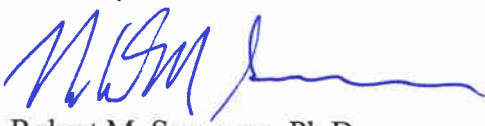
Given that the documentation of compliance with zoning and land use requirements submitted by DTI in connection with its permit application does not satisfy the requirements of § 2-404(b)(1) of the Environment Article, the Department has advised DTI that we are unable to process the permit application.

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With regard to the question of FERC's preemptive authority, the Department is without authority to make binding determinations on the scope of federal preemption as it relates to zoning and land use requirements. The application of local zoning requirements to the proposed project is for Myersville, FERC and the applicant to decide, or failing that, for resolution ultimately by the courts.

I trust this information is helpful. If you have any questions, please contact Mr. Angelo Bianca, Deputy Director of the Air and Radiation Management Administration at 410-537-3260 or by email at abianca@mde.state.md.us.

Sincerely,



Robert M. Summers, Ph.D.
Secretary

cc: Carolyn Elefant, Esquire
Angelo Bianca, Deputy Director, Air and Radiation Management Administration

