

FEDERAL ENERGY REGULATORY COMMISSION
Washington, DC 20426

OFFICE OF ENERGY PROJECTS

Docket No: CP16-10-000
Mountain Valley Pipeline, LLC

August 28, 2019

VIA USPS First-Class Mail

David Sligh
Wild Virginia
108 Fifth Street, S.E.
Room 206
Charlottesville, VA 22902

Subject: Complaint regarding the Mountain Valley Pipeline Project

Dear Mr. Sligh:

The Federal Energy Regulatory Commission (Commission or FERC) received your June 21, 2019 filing on behalf of Wild Virginia, Inc., Indian Creek Watershed Association, Preserve Craig, Inc., Neal J. Laferriere, and Betty B. Werner, alleging Mountain Valley Pipeline, LLC (Mountain Valley) failed to adhere to the environmental conditions required by the Commission's October 13, 2017 certificate order for the Mountain Valley Pipeline Project (Project).¹ The Commission's practice is for allegations of noncompliance with the environmental conditions contained in an order issuing a certificate under section 7 of the Natural Gas Act, as is the case here, to be addressed by the Commission's environmental staff. Accordingly, the formal complaint procedures under Rule 206 of the Commission's Rules of Practice and Procedure will not apply to your allegation of non-compliance.

The Project certificate order includes mandatory environmental conditions, which provide a framework to ensure protection of the environment during construction of the Project and to address any instances of non-compliance encountered during construction. Moreover, Environmental Condition 2 of the certificate order grants the Director of the Office of Energy Projects, or the Director's designee, the authority to take whatever steps

¹ *Mountain Valley Pipeline LLC*, 161 FERC ¶ 61,043 (2017) *Order Issuing Certificates and Granting Abandonment Authority* (Certificate Order).

are necessary to ensure the protection of environmental resources during construction and operation of the Project. Since construction of the Project commenced in February 2018, the Commission's Compliance Monitors have inspected construction of the pipeline right-of-way to ensure Mountain Valley's full compliance with its proposed mitigation, the environmental conditions of the certificate order, and compliance with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (FERC Plan) and *Wetland & Waterbody Construction and Mitigation Procedures* (Procedures). Summaries of the FERC Compliance Monitor's inspection reports are filed weekly in the Commission's public record for the Project, which document any measures Mountain Valley must implement to ensure compliance. In addition, Mountain Valley is required, by the certificate order, to file weekly construction status reports, which include environmental compliance issues documented by Mountain Valley's environmental inspectors, descriptions of any landowner complaints, and the measures Mountain Valley implemented to resolve the environmental issues and complaints.

In the June 21, 2019 filing, you indicated that:

- Mountain Valley has continued construction after authorizations by federal agencies were invalidated or suspended, in violation of Appendix C, Condition 9 of the certificate order.

As stated in our August 29, 2018 letter, the Director of the Office of Energy Projects (Director) authorized construction to continue in areas where Mountain Valley had the applicable authorizations required under federal law because it was deemed the best way to mitigate further impacts on the environment.² Given the large percentage of right-of-way that had been cleared and graded, the Director determined that protection of the environment along the Project's right-of-way across non-federal land is best served by completing construction and restoration activities in as short a time as feasible, while complying with all laws and conditions of the certificate order.

The Director's August 29, 2018 authorization excludes construction from milepost (MP) 196.0 through MP 221.0 due to vacatur of the Bureau of Land Management and U.S. Forest Service authorizations. Mountain Valley notified the Commission of its suspension of construction in waters of the United States in the U.S. Army Corps of Engineers Huntington District on October 3, 2018,³ in the U.S. Army Corps of Engineers

² August 29, 2018, Letter from the Director of the Office of Energy Projects Authorizing Mountain Valley Pipeline to Resume Partial Construction of the Project, Accession no. 20180829-3026.

³ Mountain Valley, October 3, 2018, Letter Filing the U.S. Court of Appeals for the Fourth Circuit Order Vacating U.S. Army Corps of Engineers Huntington District Nationwide Permit No. 12. Accession no. 20181003-5084.

Norfolk District on October 9, 2018,⁴ and the U.S. Army Corps of Engineers Pittsburgh District on October 22, 2018.⁵ Therefore, the construction that is currently proceeding is in accordance with the authorization provided by the Director.

In the June 21, 2019 filing, you indicated that:

- Mountain Valley impacted one wetland (W-J40) between MP 40 and MP 42 in West Virginia on seven different occasions between June 2018 and April 2019.

Wetland W-J40 lies within the right-of-way. All of the impacts caused by pipeline construction were addressed in the Final Environmental Impact Statement for the Project. In addition to the impacts related to construction (i.e., clearing, grading, and trenching), Commission staff identified seven additional impacts to wetland W-J40. These impacts have been documented in the public record. The FERC Environmental Compliance Monitoring Program Weekly Summary Reports (FERC weekly reports) identified additional impacts to this wetland on the following dates: June 7, 19, 21, and 23, 2018; October 12, 2018; February 11, 2019; and April 16, 2019.

On June 19 and June 21, 2018, upland soil impacted this wetland during rain events due to ineffective slope breakers. In both instances, the sediment was vacuumed out of the wetland.

Erosion control devices were upgraded to more substantial erosion control devices following the incidents on June 7, and June 23, 2018, and February 11, 2019. We have confirmed that Mountain Valley's measures to upgrade ineffective erosion controls is an appropriate response to these incidents.

The October 12, 2018 impact was due to placement of rock into the wetland during backfilling. Mountain Valley's crews removed the rock from the wetland to regain compliance.

With respect to the seventh impact on wetland W-J40, red-tinted water was observed in the wetland on April 16, 2019, as documented in the FERC weekly reports. However, the source of the red-tinted water was not determined. Although there was no evidence to conclude the source of the water was from a Mountain Valley construction workspace, Mountain Valley redirected the slope breakers and installed additional

⁴ Mountain Valley, October 9, 2018, Letter Notifying of the Suspension of Nationwide Permit No. 12 by the U.S. Army Corps of Engineers Norfolk District. Accession no. 20181009-5188.

⁵ Mountain Valley, October 22, 2018, Letter Notifying of the Suspension of Nationwide Permit No. 12 by the U.S. Army Corps of Engineers Pittsburgh District. Accession no. 20181022-5075.

erosion controls in an attempt to ensure that runoff from the right-of-way would not enter the wetland.

In the June 21, 2019 filing, you indicated that:

- Mountain Valley has allowed mud, sediment-laden water, or other such materials to exit the limits of disturbance (LOD) 307 times between February 10 and May 25, 2018 and that Mountain Valley delayed retrieving off right-of-way sediment days, weeks, or even months after the material had moved off-site.

Commission staff reviewed the FERC weekly reports between February 10 and May 25, 2018 (15 weeks) and counted about 40 documented incidents, rather than 307, where mud or sediment-laden water went outside the LOD. Regardless, Mountain Valley must obtain permission from the landowner to travel outside of the LOD to obtain sediment and in some cases, acquiring landowner permission may take an extended period of time. In addition, if a landowner does not grant permission, the off right-of-way sediment cannot be retrieved. Finally, all activities outside of previously authorized workspaces must be compliant with Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act. Coordination with the appropriate agencies may also delay a response. Therefore, there may be legitimate reasons why Mountain Valley was unable to retrieve off right-of-way sedimentation in a timely manner.

In the June 21, 2019 filing, you indicated that:

- Mountain Valley has allowed landslides (commonly referred to as slips) to continue to advance further and further off-site without adequate measures to stop them, entered and worked in an off-limits archeological site, worked in bat areas outside allowed time periods, and hundreds of trees were cut or allowed to fall off-site (sometimes damaging property).

As discussed in FERC weekly reports or as filed separately on the docket, Mountain Valley has requested several variances for slip repairs since the beginning of the Project. Some slip remediation requires the use of additional area outside of the LOD, which require landowner approval and may require additional surveys. These additional requirements have to be completed before Mountain Valley can complete slip repairs. As previously stated, all activities outside of previously authorized workspaces must have landowner permission and be compliant with Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act. In addition, Mountain Valley has made attempts to remediate slips to be consistent with their *Revised Landslide Mitigation Plan* in addition to the FERC Plan and Procedures. Within these constraints, we believe that Mountain Valley is remediating slips appropriately.

In the June 21, 2019 filing, you indicated that:

- Each of the requirements for which Virginia found violations by Mountain Valley is incorporated under the state's 401 certification, are therefore part of the FERC's certificate order, and the Commission has an obligation to enforce them. Further, violations to West Virginia water quality standards should be counted as damage to the affected waterbodies and the uses the public has a right to make of them.

Enforcement of the West Virginia and Virginia permit requirements falls under the jurisdiction of West Virginia and Virginia. Whether or not a violation of the state's water quality regulations has occurred, and the determination of appropriate enforcement actions in response to identified violations, is determined by the West Virginia Department of Environmental Protection and the Virginia Department of Environmental Quality.

In the June 21, 2019 filing, Ms. Betty B. Werner indicated that:

- Mountain Valley has failed to stabilize the bare soil on the right-of-way for months, caused discharges of sediment-laden water on many occasions, applied pellet mulch (containing toxic and carcinogenic acrylamide) outside of the LOD and in standing water, disrupted a wetland and the flow of a spring, and allowed large volumes of water to accumulate in the open trench and adjacent areas on the property of Ms. Betty B. Werner.

The FERC Compliance Monitor conducted a site visit to the Werner property (Four Corners Farm) on June 29, 2019, as summarized in the FERC weekly report.⁶ Our environmental compliance records indicate that we generated 30 reports for the right-of-way in the immediate vicinity of Ms. Werner's property. These monitoring exercises identify areas of noncompliance and instances of erosion and instability. None of the 30 reports identified an environmental noncompliance incident. Generally speaking, the right-of-way has been stable and Mountain Valley has applied and re-applied straw mulch, pellet mulch, and seed. Our reports show that Mountain Valley maintained erosion controls. Other than issues caused by a few large rain events, our assessment is that the erosion control and stabilization measures employed by Mountain Valley in this area are adequate.

As stated in the weekly report, many of the areas identified in Ms. Werner's affidavit are outside of the LOD and Ms. Werner has not granted permission for access outside of approved workspaces. Therefore, these areas cannot be inspected or remediated by Mountain Valley. As summarized in the FERC weekly report, many areas

⁶ July 15, 2019, Environmental Compliance Report for the Period of June 23 to June 29, 2019. Accession no. 20190715-3005.

both within the LOD and adjacent to the LOD have standing water due to heavy rain events. Standing water within the LOD is not a violation of the environmental conditions of the order. Following installation of the pipeline, the parcel will be restored to pre-existing contours and revegetated, in accordance with the conditions of the certificate order.

Mountain Valley applied EarthGuard Edge seed pellets to many portions of the right-of-way to stabilize the soil. On March 15, 2019, Mountain Valley filed a statement on the docket regarding EarthGuard Edge⁷. The pellets contain linear polyacrylamide (PAM). According to the West Virginia Department of Environmental Protection's *Erosion and Sediment Control Best Management Practice Manual*, PAM is a suggested best management practice for soil stabilization⁸. According to the manufacturer, EarthGuard Edge is non-toxic, 100 percent biodegradable, and meets National Sanitation Foundation (NSF) drinking-water standards⁹.

In the June 21, 2019 filing, Mr. Neil Laferriere indicated that:

- Mountain Valley failed to provide 48-hours' notice prior to tree felling so Mr. Laferriere could move equipment. Mountain Valley felled the trees over the equipment causing several thousand dollars of damage. Mountain Valley applied erosion control pellets to his property both inside and outside of the LOD. The erosion control pellets hit him and his family during application.

As previously stated, Mountain Valley applied EarthGuard Edge seed pellets to many portions of the right-of-way to stabilize the soil. As documented in the final Environmental Impact Statement, Mountain Valley agreed to notify landowners in residential areas of construction at least 3 days in advance. However, the LOD within Mr. Laferriere's parcel is not classified as residential. We can neither confirm nor deny that Mountain Valley provided notice in advance of the tree felling on Mr. Laferriere's property or that tree felling activities damaged property. The Commission expects Mountain Valley to make good faith attempts to communicate with landowners and

⁷ Mountain Valley, March 15, 2019, Response to Claims Regarding Seed Pellets. Accession 20190315-5214.

⁸ West Virginia, Department of Environmental Protection Division of Water and Waste Management, *Erosion and Sediment Control Best Management Practice Manual*. 2006 (revised Aug. 29, 2016). https://dep.wv.gov/WWE/Programs/stormwater/csw/Documents/E%20and%20S_BMP_2006.pdf.

⁹ Terra Novo, Apr. 10, 2013 Announcement of EarthGuard Product, <http://www.terranovo.com/announcements/terra-novo-announces-launch-of-earthguard-edge>.

resolve any disputes. The Commission's Dispute Resolution Service can assist parties in resolution of disputes. Dispute Resolution Service staff can be reached at 1-844-238-1560 or ferc.adr@ferc.gov.

In the June 21, 2019 filing, Mr. Neil Laferriere indicated that:

- Mountain Valley worked outside of the right-of-way in a wetland, worked within a wetland without the required permits, and failed to maintain erosion control measures.

The FERC weekly report provides summaries of the FERC Compliance Monitor's field inspections regarding Mr. Laferriere's specific complaints.¹⁰ As discussed in the FERC weekly report, the FERC Compliance Monitor generally observed that the installed erosion control devices appeared to be functional and little or no sediment was observed off of the right-of-way at the reported wetland. At one location in proximity to Mr. Laferriere's property, a small amount of sediment was observed off right-of-way, but it was unclear if the off right-of-way sediment was related to Mountain Valley activities. The FERC weekly reports also document what appeared to be footprints within the wetland referenced by Mr. Laferriere. However, the source of the footprints was not determined. Based on the FERC Compliance Monitor's investigation of Mr. Laferriere's claims of non-compliance, FERC staff determined no further action was required.

In the June 21, 2019 filing, you provide:

- Summaries of erosion and sediment control incidents prepared by the Indian Creek Watershed and Mountain Valley Watch.

On March 20, 2019, Indian Creek Watershed provided details of erosion and sediment control incidents from October 2018. In June 2019, Mountain Valley Watch filed information on what it believes were erosion and sediment control incidents from mid-August 2018 through April 1, 2019. During this period, FERC monitors regularly inspected erosion controls and right-of-way stabilization, documented instances of non-compliance, and oversaw responses to all incidences of non-compliance. These activities were summarized in weekly summary reports which are in the Commission's public record for the Project. We have reviewed the details provided by Indian Creek Watershed and Mountain Valley Watch and compared them to the information summarized in the public weekly reports. We were not able to identify any incidents that were not addressed. To the extent that Indian Creek Watershed or Mountain Valley Watch believes it has identified current instances, we encourage prompt notification of alleged non-compliance. Each day that passes between a possible violation and our

¹⁰ June 21, 2019, Environmental Compliance Report for the Period of May 25 to June 1, 2019. Accession no. 20190621-4002.

notification makes an assessment of the magnitude or the cause of an alleged incidence, and the deployment of corrective measures, increasingly difficult.

We have reviewed your complaint and believe your concerns of non-compliance have been properly addressed. Our ongoing Compliance Monitor inspection program will provide us an opportunity to confirm the effectiveness of Mountain Valley's continuing construction and restoration work and confirm that the Project remains in compliance with the environmental conditions of the certificate order. Further, Commission staff will continue to review Mountain Valley's weekly status reports and other filings to ensure that Mountain Valley's environmental inspectors are appropriately inspecting construction activities, identifying compliance concerns, and ensuring that its construction crews implement corrective actions to maintain compliance.

Per environmental condition No. 14 of the certificate order, Mountain Valley developed *Environmental Compliant Resolution Procedures*.¹¹ Mountain Valley has established a 24-hour hotline (1-844-MVP-TALK) or email (mail@mountainvalleypipeline.info) for landowner complaints. We encourage you to use this established process to remedy any further issues.

This letter constitutes final agency action. Requests for rehearing must be filed within 30 days of the date of issuance of this letter, pursuant to 18 C.F.R § 385.713. If you have any questions concerning this matter, please contact Paul Friedman at (202) 502-8059.

Sincerely,

James Martin, Chief
Gas Branch 3
Division of Gas Environment and
Engineering
Office of Energy Projects

¹¹ Mountain Valley, November 1, 2017, Implementation Plan. Accession no. 20171101-5042.

Document Content(s)

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