

February 12, 2021

David Paylor, Director
Virginia Department of Environmental Quality
david.paylor@deq.virginia.gov

Sent via email

Re: Request for Pre-Filing Meeting on MVP 401 Certification Request

Director Paylor:

Mountain Valley Pipeline, LLC (Mountain Valley) sent you a letter on January 26, 2021 stating that it intends to submit an application for an individual Clean Water Act (CWA) section 404 permit from the U.S. Army Corps of Engineers (Corps) and a request for a CWA section 401 certification from the Virginia Department of Environmental Quality (DEQ). In accordance with its intent, Mountain Valley asked for a pre-filing meeting with DEQ as required by 40 C.F.R. § 121.4.

We request that DEQ also meet with representatives of the undersigned groups before the 401 request is submitted, to discuss issues associated with these regulatory processes. These include both procedural matters and substantive requirements to be applied at the application stage and in the review of Mountain Valley's 401 request.

The most urgent procedural issue is the necessity for DEQ to determine the steps it must take to avoid waiving the state's authority to act on Mountain Valley's 401 request. It would be unconscionable for DEQ to allow waiver by inaction or to affirmatively give away its authority. We seek your assurance that the state will not do so. At the same time, DEQ must not rush its application review and preparation of documents to deny or issue certification based on unreasonable deadlines.

To accomplish these duties, DEQ must acquire a written extension of the Corps' standard 60-day period for state action or deny certification before that period expires. It will be impossible for the state to acquire all necessary information to adequately review the impacts of hundreds of waterbody crossings in sixty days. If the Corps refuses to grant an extension, such that DEQ cannot meet its responsibilities under the CWA and state law, then DEQ must deny certification to prevent water quality impacts that have not been fully described or analyzed.

In accordance with the Virginia Water Protection (VWP) Permit statute, at § 62.1-44.15:20.D., the issuance of a VWP permit shall constitute the CWA section 401 request for this project, so the specific application requirements in the VWP regulations at 9VAC25-210-80. will apply for this project. The regulation enumerates the detailed information a 401 applicant must supply, "at a minimum," 9VAC25-210-80.A., thus DEQ can and must require additional materials if necessary to make a valid finding as to whether potential impacts will violate water quality standards.

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We draw your attention to just a few particular types of information specified in the regulation. The regulation requires an "alternatives analysis," as described at 9VAC25-210-80.B.1.g. A robust examination of potential discharges to waterbodies during Corps-regulated activities is necessary to determine whether and how the pipeline may be built across waterbodies at the individual crossing points, each of which DEQ defines as a "single and complete project[]," 9VAC25-210-10. Also, the regulation requires cross sectional and profile drawings of each site, 9VAC25-210-80.B.1.j., and assessment of potential impacts to federal and state listed threatened or endangered species, 9VAC25-210-80.B.1.l. Additionally, DEQ must require MVP to supply adequate information to allow the agency to properly apply its antidegradation policy, 9VAC 25-260-30. Up-to-date details in these categories have not been presented by MVP or any other agency and DEQ may not rely on data that is several years old, such as that presented in the previous Corps review or the Environmental Impact Statement prepared by the Federal Energy Regulatory Commission.

The impacts of discharges that will occur at crossing sites must be examined in combination with pre-crossing conditions and with other discharges that have or are likely to occur in the same waterbody segments. DEQ has thoroughly documented hundreds of discharges to various waters from upland construction activities and from crossings already completed. As just one example, in June of 2018 MVP caused the bed of a tributary to Flatwood Branch in Montgomery County to be covered with sediment as much as 7 inches deep in a segment 3,600 feet long. Information from follow-up assessments by Mountain Valley to document current conditions in this and many other impacted streams must be part of the application materials required.

We look forward to hearing from you and to arranging a meeting between you and your staff and our groups. We will be prepared to discuss additional details at that time and will be active participants in the regulatory review for the MVP certification request. Thank you for your consideration of this request.

Sincerely,

/s/ David Sligh
David Sligh
Conservation Director
Wild Virginia

/s/ Joe Lovett
Joe Lovett
Executive Director
Appalachian Mountain Advocates

/s/ Bill Wolf
Bill Wolf
Chair
Preserve Craig

/s/ Roberta Motherway Bondurant
Roberta Motherway Bondurant
Preserve Roanoke
Preserve Bent Mountain

/s/ Russell Chisholm
Russell Chisholm
Co-Chair
Protect Our Water, Heritage, Rights

/s/ Amy Mall
Amy Mall
Senior Advocate
National Resources Defense Council

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/s/ Kate Addleson

Kate Addleson
Director, Virginia Chapter
Sierra Club