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November 19, 2021

United States Army Corps of Engineers
Huntington District
502 Eighth Street
Huntington, WV 25701-2070
ATTN: Adam Fannin and CELRH-RD-E
CELRP-MVP@usace.army.mil

Submitted Via Email

Re: Comments in Response to Public Notice LRH 2015-00592-GBR,
LRP-2015-798, NAO-2015-0898; Mountain Valley Pipeline, LLC's
Application for a Department of the Army Permit Under Section 10 of
the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water
Act

Dear Mr. Fannin:

In previous comments to the U.S. Army Corps of Engineers (Corps) regarding this permitting action, Wild Virginia and other members of the public have recounted the extensive record of water quality-related violations and harms caused by Mountain Valley Pipeline, LLC (Mountain Valley) throughout the period of construction. This history of the company's repeated failures to comply with requirements and of the impacts those failures have caused, to the nation's waters and to communities all along the pipeline route, has two important implications that should compel the Corps to deny the Clean Water Act (CWA) section 404 permit.

First, Mountain Valley has demonstrated that it is unable and/or unwilling to do the things that are necessary to protect water quality and people. The facts in the record before the Corps overwhelmingly disprove Mountain Valley's claim that "it is appropriate for the Corps to conclude that Mountain Valley's E&S control measures will function as designed and will be effective in reducing impacts to waters of the U.S."¹ And, while the company's poor performance in so-called "upland" areas has exacted a high cost, the threat posed by the same approach to waterbody crossings is simply too great a risk.

¹ Response to U.S. Army Corps of Engineers Request for Information, letter from Matthew Eggerding, Mountain Valley Pipeline, LLC to Kimberly D. Bose, FERC, October 15, 2021, FERC docket no. CP21-57-000, accession # 20211015-5213, Comment ID AMA-404-51.

Second, the pollution Mountain Valley has produced has damaged dozens of streams and wetlands and the proposal to make hundreds of new discharges in these same watersheds and streams will have combined effects that must be fully assessed. We do not start this permit review with a clean slate. Where waters have already been deluged with mud, had physical habitat marred or destroyed, and had hydrologic patterns severely disrupted, the risk of harm from an addition of more pollutants is much greater than if this were a new project. And no party, neither Mountain Valley nor any of the agencies charged with protecting these environments, has even attempted to adequately document current conditions or account for the concentration of new impacts within small drainages that are appropriate to understand the true ecological costs of this project.

Evidence Submitted

Wild Virginia has reviewed two sets of inspection records, including thousands of observations by Virginia state inspectors and we are submitting a large body of that evidence for the record in this case. Much of this information has not been acknowledged or incorporated into analyses previously.

The first body of evidence comes from the DEQ staff inspectors and these reports are available on the Department's website at <https://www.deq.virginia.gov/get-involved/topics-of-interest/mountain-valley-pipeline>. Altogether, more than eight hundred reports are accessible through the DEQ website. We are providing a subset of those inspection reports as appendices to this letter and have previously supplied an additional set of inspection reports with comments submitted to the Corps on May 28, 2021. The Corps must base its decision on this and other evidence and not accept Mountain Valley's conclusory and unsupported claims as to the sufficiency of its plans and efforts to achieve compliance.

The second body of evidence comes in the form of reports and photographs compiled by personnel working for McDonough Bolyard Peck (MBP), a contractor hired by the DEQ to perform inspections on the MVP. Wild Virginia acquired thousands of documents through a Freedom of Information Act request. We are providing two summary documents from MBP with these comments. The first is a table which contains more than 4,600 records of what MBP terms "action items."² These items include a wide range of issues for which the inspectors concluded that actions by Mountain Valley were required. The second MBP document we are submitting is a table describing waterbody crossings in Virginia.³ On each of these tables, inspectors have designated each issue by a separate ID number and additional documents related to each of those issues can be retrieved separately.

MVP's Failure to Implement Approved Plans

Inspection reports reveal hundreds of instances when Mountain Valley has failed to install pollution control measures as required to meet approved plans. Records show that in many cases, throughout the entire period of construction, Mountain Valley failed to install even the most basic measures correctly and sometimes not at all.

² The title of the file containing this table is "MVP Action Item Log through 3-18-21.pdf."

³ This file is labeled "MVP Stream Crossing Log through 3-18-21 (1).pdf."

MBP inspectors have documented more than two hundred instances where pollution control features were installed incorrectly or omitted altogether. Failures to act in accordance with the plans for erosion and sediment control and stormwater management plans are among the violations cited in Virginia's enforcement lawsuit against the MVP. Mountain Valley repeatedly states or implies that it has reformed since that lawsuit was settled and the same types of problems no longer occur. This is flatly untrue. The records show that these types of violations have occurred regularly.

Even the simplest and most basic measures, whose necessity must be clear even to an untrained observer, have been ignored dozens of times and over the course of many months. Where these measures are not built to specifications, or at all, pollution incidents are nearly certain to occur.

As just one example, waterbars are essential to slow runoff that would otherwise rush down slopes and cause dire erosion problems. They must be built so that they can effectively channel those flows toward perimeter structures that allow sediment to settle out and be filtered before the water leaves the construction area. Mountain Valley is obligated to build these correctly throughout the entire 300-mile pipeline route.

The kind of pattern shown in Table 1 below, which is repeated for multiple other features, raises the concern that similar obvious and simple measures required at stream crossing sites will, likewise, be omitted or incorrectly installed on a frequent basis. Here, more than fifty times between May, 2018 and August, 2020, Mountain Valley simply failed one of the most basic tests for building a pipeline through this terrain.

Table 1

MBP ID #	Action Item Issue	Date
25	water bar outlet is missing silt fence behind sump	5/31/2018
121	missing outlet protection from temporary water bars	6/16/2018
122	missing water bars	6/16/2018
145	improperly constructed water bars	6/18/2018
172	missing outlet protection at temporary water bars	6/21/2018
173	missing water bars	6/21/2018
183	install water bars per spec	6/21/2018
219	improperly constructed waterbars	6/23/2018
332	install waterbars per spec; waterbars improperly constructed - slope exceeds 5%, not a clear flow line to sump pit	7/5/2018
338	waterbar is missing	7/5/2018
343	waterbar next to stream is missing	7/5/2018
355	waterbar is missing	7/6/2018
367	install waterbar per spec	7/9/2018

368	install waterbar per spec meeting 18" minimum height requirement	7/9/2018
370	waterbar not installed in travel lane	7/12/2018
383	compact waterbars on the erodible side of the berm per spec	7/12/2018
385	install waterbars per spec	7/12/2018
386	compact waterbar and install per spec	7/13/2018
387	compact waterbars on the erodible side of the berm per spec	7/13/2018
388	compact waterbars on the erodible side of the berm per spec	7/13/2018
389	compact waterbars on the erodible side of the berm per spec	7/13/2018
390	compact waterbars on the erodible side of the berm per spec	7/13/2018
428	j-hooks on waterbar end treatments were improperly installed at multiple locations	7/21/2018
472	water bars missing	7/27/2018
518	waterbar is missing	8/9/2018
827	waterbar does not meet spec	9/11/2018
930	missing water bar on slope	9/20/2018
1214	install waterbar per spec	10/22/2018
1232	waterbar is not installed per spec	10/24/2018
1347	install waterbar per spec	11/8/2018
1348	missing waterbar, no waterbar installed 25' from stream crossing	11/9/2018
1454	waterbar not built to spec and not tracked in allowing water to bust through	12/1/2018
1469	regrade waterbar to spec	12/5/2018
1470	regrade waterbar to spec	12/5/2018
1813	install waterbars per spec	2/5/2019
1819	waterbar not installed per spec	2/5/2019
1873	waterbars do not meet spec	2/13/2019
1903	waterbar not built to spec	2/18/2019
1914	waterbar not installed per spec	2/19/2019
1965	waterbar not installed per spec	2/25/2019
2236	waterbar/end treatment not installed	3/15/2019
2368	water bar is missing	3/27/2019
2414	install waterbar to spec	4/1/2019
2481	waterbar is not installed per spec	4/12/2019
2518	waterbar was not per spec	4/17/2019
2696	waterbar not installed per spec; not 18", no clear flow path	5/1/2019
3433	waterbar not maintained to spec	8/21/2019
3460	waterbar not installed per spec	8/22/2019
3461	waterbar not installed per spec	8/22/2019
3760	waterbar does not meet spec	11/7/2019
3795	waterbar does not meet spec requirement	12/6/2019
3923	waterbar does not meet spec near creek area	2/7/2020

4006	waterbar does not meet height in specification	2/19/2020
4352	waterbar not built to spec	8/17/2020
4353	waterbar not to spec	8/17/2020

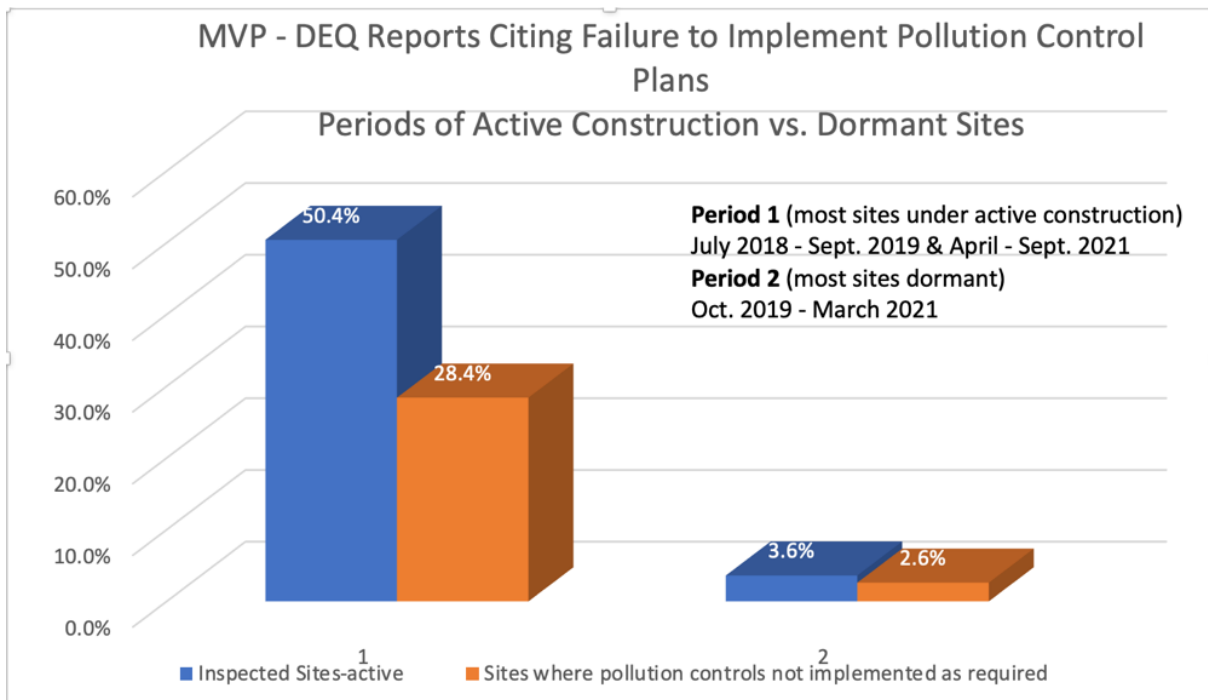
One type of report prepared by DEQ inspectors includes the answers to several standard questions. One of those questions - "Are controls installed and implemented in accordance with the approved erosion and sediment control plan and stormwater management plans?" The answer to that question was "no" in more than 60 of these reports. And the actual number of instances where measures were not installed as required is significantly higher, because multiple areas were covered by each field inspection report. For example, in two inspections on portions of the pipeline in Franklin County, on October 29 & 30, 2019, inspectors answered no to the question about conformance with construction plans and then listed a total of fourteen problems with the installation of erosion and sediment control measures.

Mountain Valley's failure to abide by approved plans has been documented from early July, 2018 through at least September of 2021. In a response to comments and in other documents, Mountain Valley has repeatedly referred to the "record-setting precipitation levels that occurred in 2018"⁴ and implied that their problems with pollution control were in some significant part due to extraordinary weather conditions. Of course, the company may not blame its failures to control pollution on storms when it failed even to take the minimum measures that it was required and had committed to take.

Further, there is an obvious explanation for variations in the level of compliance by Mountain Valley. During the period between October 2019 and October 2020, almost all construction was stopped on the pipeline and on certain sections there have been significant periods when sites laid dormant. Reviewing the DEQ inspection reports, which note the stage of activity at each area addressed, we see that violation frequency has been relatively high whenever construction activity has been high.

As shown in the graph below, during the times when a majority of sites DEQ inspectors visited were in active phases of construction, more than 28% of the reports found that pollution controls measures were not installed as required. Then, in the period when almost no construction was underway, only 2.6% of the reports showed that problem. This point is important because, should Mountain Valley be allowed to proceed with waterbody crossings under the 404 permit, it will certainly undertake an aggressive pace in its desperation to finish the pipeline on its pronounced schedule and to avoid any further delays that could come through court actions. Thus, it seems all but certain that Mountain Valley's disastrous record on non-compliance with the law would be repeated.

⁴ Response to U.S. Army Corps of Engineers Request for Information, October 15, 2021, FERC docket no. CP21-57-000, accession # 20211015-5213, Comment ID AMA-404-51.



Inadequate Pollution Controls

Another finding from reviews of the Virginia inspection reports is that in hundreds of cases, even if installed and maintained as designed, these measures have simply failed to control pollution. The MBP Action Item Log that we have submitted to the Corps includes nearly 400 notations indicating that sediment control devices were "undermined" or "overwhelmed" and, in many of these cases sediment was deposited off-site and into waterbodies. The DEQ inspection reports we have submitted contain many similar instances. Wherever these failures of devices occurred, the sediment-laden water discharging from the right of way was settled or filtered as required. Therefore, these discharges did not conform to the regulations because the discharges were not properly treated.

Here again, this history must cause great scepticism about Mountain Valley's competence to design and install adequate pollution controls in relation to stream crossings, when it has had such poor success in its upland operations. And the Corps must not accept the excuse that heavy rains caused these failures and that they should somehow be accepted. Heavy rains are a common occurrence in the region under study here and measures not designed to handle them are simply not acceptable. The fact that Mountain Valley has so frequently tried to hide behind this excuse, rather than truly facing up to its responsibilities, indicates that it is likely to continue this pattern if allowed to go forward under Corps approvals.

Again, we strongly urge that the Corps acknowledge the harm that Mountain Valley has already caused and prevent it from causing further damage. Many of the waterbodies threatened by this proposal are of extremely high value, not only as individual streams but as important headwaters of larger stream systems. The public interest will not be served by allowing the Mountain Valley Pipeline to create hundreds more pollution discharges.

Adam Fannin, USCOE - Huntingdon District
November 19, 2021

Thank you for accepting these comments and please contact me if we can provide further information.

Sincerely,
/s/ David Sligh
David Sligh
Conservation Director