

Blue Ridge Environmental Defense League

8260 Thomas Nelson Hwy., Lovingson, VA ponton913@msn.com (434) 420-1874

November 27, 2019

David Paylor, Director
Virginia Department of Environmental Quality
PO Box 1105
Richmond, VA 23218

Mark Herring
Virginia Attorney General
202 North Ninth Street
Richmond, VA 23219

Re: Mountain Valley Pipeline Consent Decree Comments

Dear Director Paylor and Attorney General Herring:

On behalf of our chapters and members in Virginia, we submit the following comments regarding the Mountain Valley Pipeline (MVP) Consent Decree.

Devastating erosion has caused failures of stream, creek and river banks, inundating streams with sediment that threatened aquatic life and endangered species, such as the Roanoke logperch. The devastation has resulted in some landowners selling their livestock and abandoning their farms. All of this has occurred before any in-stream work has been completed because of permits voided by the courts or withdrawn by the Army Corps of Engineers.

Any and all payments received from the Mountain Valley Pipeline for their failures to meet soil erosion and sediment regulations must be placed in a fund dedicated to the landowners and communities who have had to endure the devastation from the construction of this ill-permitted and regulated pipeline. The Virginia Department of Environmental Quality (VADEQ) should not have access to these monies to fund any of their programs. VADEQ's lack of concern for these communities and landowners has been clear from the beginning of the permitting process. VADEQ ignored the valid concerns of the communities and discounted expert witness testimony when permitting construction. Those ignored and discounted concerns have been proven to be true repeatedly. The communities knew this pipeline could not be built in the rugged, mountainous terrain in southwest Virginia. So-called best management practices have not stopped erosion from occurring and sediment from leaving MVP rights-of-way even with rain amount below 1-inch.

The consent decree is weak and lets MVP off the hook for all violations which occurred during the 10-month period after the lawsuit was filed. The original lawsuit addressed over 300 violations which occurred in 2018, but the consent decree clears all violations through September 18, 2019 even though VADEQ issued a stop work order in the summer of 2019 and we know there were many other violations

during this time period. (We have included a few photos of a few of the known violations which occurred in an addendum attached to these comments).

There has been no transparency in how VADEQ and the Office of Attorney General (OAG) determined the rates for the penalties assessed in the consent decree. We know there is a worksheet used by VADEQ which sets out specific criteria used in calculating penalties. Was compliance history used as a part of the calculation? We know penalties were assessed by the West Virginia DEP. Was consideration given to those violations? Was consideration given to the frequency of the violations which occurred during 2018 up to the filing of the lawsuit? Were those same considerations given to the continued violations during 2019? Did VADEQ and the OAG consider the potential for harm to property and endangered species in their calculations? Or a degree of culpability? VADEQ rates culpability and can add a multiplying factor in calculating penalties for delays in preventing, mitigating or remedying a violation. Were those calculations made and included in the penalty amounts levied? We cannot determine those factors because there has been no transparency around how the penalties were determined. We can say that a penalty equal to 20% of the maximum allowed leads us to believe many of these factors were not included in the assessments made.

It is our understanding that VADEQ can levy penalties not to exceed \$32,500 for each violation. Chapter 3.1. State Water Control Law, Article 6, Offenses and Penalties Sec 62.1-44.3.2 “that any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.” Yet, the consent decree levies only \$7,000 per violation based on the 300 violations in the lawsuit filed by the Attorney General’s office. The \$7,000 figure is roughly 20% of the allowable penalty and it is our assertion, a paltry sum which will not serve as a deterrent to MVP to stop these violations.

We believe MVP has repeatedly demonstrated that they take these violations and the penalties assessed as nothing more than the cost of doing business. If MVP was concerned, after the lawsuit was filed, MVP would have stopped violating our laws and regulations for fear of paying fines and penalties. They did not. Levying a penalty of 20% of the allowed amount simply perpetuates the mindset of these corporations—and is not a deterrent. The only way to ensure MVP knows the Commonwealth is serious in its efforts to protect landowners and communities is to require the maximum penalty for each violation for which MVP was sued. The landowners and communities deserve nothing less. We do not agree with, nor understand, why the Commonwealth would forgive violations which occurred in 2019. Violations are violations, no matter the year. These continued violations indicate that MVP does not take state law seriously. Therefore, we demand maximum penalties be levied for the 2019 violations as well.

In the “Force Majeure” section of the decree, it lists floods and earthquakes as beyond MVP’s control and therefore it is relieved of liability in these cases. While we agree that MVP cannot control whether an earthquake or flood occurs, it certainly should have been aware it was choosing to build in an earthquake zone and/or a flood zone. MVP is also aware that it is contributing to the climate crisis we find ourselves in by drilling fracked gas wells, building pipelines and burning fracked gas. It is certainly aware that cutting a swath of trees through a mountainous region only exacerbates the chance of flooding in a region which is already flood prone. We, therefore, request that this provision be changed to any earthquake or flood outside of the 100-year range, which we would consider to be normal as many areas in our country are now dealing with 500-year floods on a regular basis.

MVP is currently required to have third-party inspectors along the path of the pipeline to ensure construction and environmental regulations are met. We do not understand why a condition in the consent decree calls for third-party inspectors. Were it not for community members and landowners documenting violations as they occurred, there would have been little basis for the lawsuit which was filed in 2018. Federal and state regulators have been lax and deficient in their inspections, perhaps to the point of negligence. It is well documented that VADEQ did not have enough inspectors on the ground to cover all the spreads being constructed at the same time. We therefore suggest if there are to be additional inspectors, MVP be required to pay for additional VADEQ inspectors, not third-party inspectors they control. We would also suggest recognition of those community volunteers who have been doing VADEQ's work for them for over a year-and-a-half to be appropriate.

Are the OAG and VADEQ going to represent the best interests of the people or roll over to their corporate masters yet again by allowing MVP to walk away without admitting liability and guilt. MVP has caused grave circumstances to many along the route of this boondoggle. MVP should be required to admit guilt and its liability in the devastation it has caused during construction to landowners and communities.

Respectfully,

/sharon ponton

Sharon Ponton
Stop the Pipelines Campaign Coordinator

Photos of some 2019 violations





Jul 21, 2019 at 3:54:50 PM
+37.252002 -80.259256
Bradshaw Rd, Montgomery



October 27, 2019 at 9:33:11 AM
+37.210935 -80.193854
VA, Elliston
Altitude: 1549.9ft
Speed: 1.1mph