

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

DAVID K. PAYLOR, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No.: CL18006874-00
)	
MOUNTAIN VALLEY PIPELINE, LLC,)	
)	
Defendant.)	

CONSENT DECREE

WHEREAS Plaintiffs David K. Paylor, Director of the Department of Environmental Quality, and the State Water Control Board (collectively, “Plaintiffs”) have filed a Complaint in this matter asserting alleged violations of the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, the Virginia Stormwater Management Program Regulations, the Erosion and Sediment Control Regulations, the Virginia Water Resources and Wetlands Protection Program, the Virginia Water Protection Program Permit Regulation, and Clean Water Act § 401 Water Quality Certification No. 17-001 (collectively, the “Allegations”) against Defendant Mountain Valley Pipeline, LLC (“MVP” or “Defendant,” together with Plaintiffs, the “Parties”);

WHEREAS the Parties, as evidenced by the signatures that follow, have consented to the entry of this consent decree (“Consent Decree”) without trial of any issues; and

WHEREAS the Parties recognize, and this Court finds by entering into this Consent Decree, that the Parties have negotiated this Consent Decree in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that the terms of this Consent Decree are fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

I. DEFINITIONS

Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

- (a) “Annual Standards and Specifications” means the Mountain Valley Pipeline Project Specific Standards and Specifications for Erosion & Sediment Control and Stormwater Management approved by the Department on June 20, 2017, and any approved modification thereto.
- (b) “Board” means the State Water Control Board, as described in Va. Code § 62.1-44.7.
- (c) “Complaint” means the initial pleading filed in the Circuit Court of Henrico County styled *David K. Paylor, Director, Virginia Department of Environmental Quality and State Water Control Board v. Mountain Valley Pipeline, LLC*, Case No.: CL180006874-00.
- (d) “Court” means the Circuit Court of Henrico County, Virginia.
- (e) “Department” and “DEQ” means the Virginia Department of Environmental Quality, as described in Va. Code § 10.1-1183.
- (f) “Director” means the Director of the Virginia Department of Environmental Quality, as described in Va. Code § 10.1-1185.

- (g) “Environmental Auditor” means an individual and/or company that provides the services described in more detail in Section IV(b) below.
- (h) “Land Disturbance” or “Land Disturbing Activity” means a man-made change to the land surface that potentially changes the runoff characteristics including clearing, grading, or excavation, except that the terms shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
- (i) “Lead Environmental Inspector” means the MVP Personnel holding this title for the relevant Project construction spread as identified in the applicable Stormwater Pollution Prevention Plan.
- (j) “Ineffective Temporary Erosion and Sediment Control Measure” or “Ineffective Temporary ESC Measure” means an erosion and sediment control measure implemented in accordance with MVP’s Site Specific ESC and SWM Plans that has been degraded, damaged, or destroyed to the extent that it would not reasonably be expected to perform its intended function if subjected to a runoff producing storm event.
- (k) “Personnel” means the employees, contractors, and subcontractors performing Land Disturbing Activity, Site Stabilization or implementing the best management practices in

accordance with the MVP's Annual Standards and Specifications and MVP's Site Specific ESC and SWM Plans.

- (l) "Project" means the Virginia portion of the interstate natural gas pipeline project authorized by the Certificate of Public Convenience and Necessity issued by the Federal Energy Regulatory Commission to MVP on October 13, 2017 and the subject of Clean Water Act § 401 Water Quality Certification No. 17-001 issued by the Board to MVP on December 8, 2017, now under construction or proposed to be constructed by MVP from Wetzel County, West Virginia, to Pittsylvania County, Virginia including approximately 106 miles of pipeline, access roads, auxiliary facilities, and appurtenances necessary for the construction or operation of the pipeline.
- (m) "ESC Measure in Need of Routine Maintenance" means an erosion and sediment control measure that is functioning, but which may become ineffective if routine maintenance (i.e., minor upkeep, repair, cleaning, or modification) is not performed in a timely manner in accordance with this Consent Decree.
- (n) "Site Specific ESC and SWM Plans" means the site specific Erosion and Sediment Control and Stormwater Management Plans approved by the Department on March 26, 2018, and any approved amendment thereto.

- (o) “Stabilized” means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage. “Final Stabilization” shall have the same meaning as it is defined in 9 VAC 25-880-1.
- (p) “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Virginia Code.
- (q) “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth of Virginia or within its jurisdiction, including wetlands. *See* Va. Code § 62.1-44.3.
- (r) “Stormwater” means precipitation that is discharged across land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. *See* Va. Code § 62.1-44.15:24.
- (s) “Supplemental Environmental Project” or “SEP” means an environmentally beneficial project undertaken in accordance with Va. Code § 10.1-1186.2 as partial settlement of a civil enforcement action and not otherwise required by law.
- (t) “Virginia Stormwater Management Act” means Article 2.3 (§ 62.1-44.15:24 *et seq.*) of Chapter 3.1 of Title 62.1 of the Virginia Code.
- (u) “VSMP Regulations” mean the Virginia Stormwater Management Program Regulations, 9 VAC 25-870-10, *et seq.*

II. JURISDICTION AND VENUE

The Parties agree that this Court has jurisdiction over the subject matter herein and over the Parties and that venue is proper in this Court. The Parties further agree that this Court shall retain jurisdiction over the Parties with respect to this Consent Decree until this Consent Decree is terminated as provided in Section IX (Termination).

III. PARTIES

The obligations of this Consent Decree apply to and are binding upon Plaintiffs and MVP, and any of their respective successors, assigns, or other entities or persons otherwise bound by law. Except as expressly provided herein, this Consent Decree shall not create any rights in any party other than the Parties of this Consent Decree.

IV. COMPLIANCE PROGRAM

(a) **Project Compliance.** Within thirty (30) days of the entry of this Consent Decree, MVP shall provide confirmation that all alleged instances of non-compliance with MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, and Clean Water Act § 401 Water Quality Certification No. 17-001 addressed in this Consent Decree have been corrected. For the duration of this Consent Decree, MVP shall remain in compliance with all applicable provisions of the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, the Virginia Stormwater Management Program Regulations, the Erosion and Sediment Control Regulations, the Virginia Water Resource and Wetlands Protection Program Permit Regulations, MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, and Clean Water Act § 401 Water Quality Certification No. 17-001.

(b) **Environmental Auditors.** MVP, at its expense, shall retain one or more third-party Environmental Auditors for the duration of this Consent Decree to provide the services discussed in this Section.

(1) Within fifteen (15) days of entry of this Consent Decree, MVP shall submit in writing the name, affiliation, contact information, and detailed summary of qualifications for the work contemplated for any Environmental Auditor required by this Consent Decree to the Department for review. At a minimum, the Environmental Auditor, or staff under the oversight of the Environmental Auditor, selected for this task shall (i) have completed the 3-day “Plan Reviewer for Erosion and Sediment Control” course offered by the Department, the 2-day “Inspector for Erosion and Sediment Control” course offered by the Department, the 3-day “Plan Reviewer for Stormwater Management” course offered by the Department, and the 2-day “Inspector for Stormwater Management” course offered by the Department, including any annual recertification or possess equivalent qualifications as approved in writing by the Department; (ii) have relevant construction related-experience; and (iii) be knowledgeable regarding the erosion and sediment control measures and best management practices required by MVP’s Annual Standards and Specifications and MVP’s Site Specific ESC and SWM Plans. The submittal shall include the names of the relevant individuals employed by the Environmental Auditor who will perform the services for MVP, as well as the relevant certificates of competence as identified in 9 VAC 25-850-40 related to training courses completed by the Environmental Auditor, or staff under the oversight of the Environmental Auditor. Within fourteen (14) days of the date that MVP identifies any Environmental Auditor pursuant to this paragraph, the Department may object for failure of that Environmental Auditor, or staff under the oversight of the Environmental Auditor, to satisfy the criteria for qualification stated herein. If the Environmental Auditor is disapproved,

the Department shall issue instructions to MVP for resubmitting the names and qualifications of one or more Environmental Auditors. The Parties shall work in good faith to select Environmental Auditors to be reviewed by the Department in accordance with this paragraph, and MVP shall have a reasonable time to make submissions to the Department, as necessary. Upon entry of this Consent Decree, the Environmental Auditor described in this paragraph shall assess, on a bi-weekly basis, whether (i) the best management practices for the Project are in accordance with MVP's Annual Standards and Specifications and MVP's Site Specific ESC and SWM Plans, (ii) the temporary erosion and sediment control measures are properly installed, inspected, and maintained, and (iii) all Ineffective Temporary Erosion and Sediment Control Measures are repaired and ESC Measures in Need of Routine Maintenance are maintained within the timeframes required by MVP's Annual Standards and Specifications or as otherwise provided in this Consent Decree. Any individual performing an inspection for the purpose of completing the assessment referenced in the preceding sentence shall have completed the 2-day "Inspector for Erosion and Sediment Control" course offered by the Department including any annual recertification. The Environmental Auditor described in this paragraph may rely on any relevant and competent information to perform its assessment, including inspection reports and other reliable information obtained from Personnel, Plaintiffs, other regulatory agencies, stakeholders, and property owners. The Environmental Auditor described in this paragraph shall further determine whether additional resources are necessary to ensure that temporary erosion and sediment control measures are properly installed, inspected, and maintained and that all Ineffective Temporary Erosion and Sediment Control Measures are repaired and ESC Measures in Need of Routine Maintenance are maintained within the timeframes required by MVP's Annual Standards and Specifications or as otherwise required by this Consent Decree. Within

thirty (30) days of the date of entry of this Consent Decree, the Environmental Auditor described in this paragraph shall submit an independent report of the Environmental Auditor's review to the Department and to MVP. Subsequent reports shall be submitted to the Department and MVP on or before the fifteenth day of each quarter (*e.g.*, January 15, April 15, July 15, and October 15) covering the prior calendar quarter, for the duration of this Consent Decree. MVP will make the reports of the Environmental Auditor available for public review at mountainvalleypipeline.info. The Department will provide a link to such reports on its website.

(2) In addition, MVP, at its expense, shall retain a third-party Environmental Auditor to provide on-site monitoring of instream invertebrate and fisheries resources during all construction activity related to waterbody and wetland crossings and document instream conditions and any impacts to the resources. Within thirty (30) days of the date of entry of this Consent Decree, MVP shall submit in writing to the Department for its review, the name and documentation of the experience, qualifications, and certifications of the Environmental Auditor who will provide the services described in this paragraph, including the names of the individuals who will perform the actual services on behalf of the Environmental Auditor. Within fourteen (14) days of the date that MVP identifies any Environmental Auditor pursuant to this paragraph, the Department may object for failure of that Environmental Auditor to satisfy the criteria for qualification stated herein. If the Environmental Auditor is disapproved, the Department shall issue instructions to MVP for resubmitting the names and qualifications of one or more Environmental Auditors. The Parties shall work in good faith to select Environmental Auditors to be reviewed by the Department, and MVP shall have reasonable times to make submissions to the Department, as necessary. The Environmental Auditor will prepare and submit to the Department and MVP an independent report within fourteen (14) days after the completion of

each wetland or waterbody crossing describing instream biological conditions. Within ten (10) days of submittal of each of the Environmental Auditor's independent reports to the Department and MVP, MVP will make the reports of the Environmental Auditor available for public review at mountainvalleypipeline.info. The Department will provide a link to such reports on its website.

(c) **Notification for Waterbody and Wetland Crossings.** Prior to commencing Land-Disturbing Activity in any waterbody or wetland or boring under a waterbody or wetland, MVP shall provide Plaintiffs at least 48 hours advance notice. The notification shall be sent to LinearProjects@deq.gov and shall include the following information:

- (i) Crossing name or number as specified in the MVP's Site Specific ESC and SWM Plans;
- (ii) Lead Environmental Inspector name and contact information; and
- (iii) Anticipated crossing start and anticipated completion date.

(d) **Additional Resources to Repair Previously Damaged or Implemented Ineffective Erosion and Sediment Control Measures.** If the Environmental Auditor reports, in accordance with Section IV(b)(1), that MVP has insufficient resources available to regularly and consistently repair Ineffective Temporary ESC Measures in a timely manner in accordance with this Consent Decree and MVP's Annual Standards and Specifications, MVP shall provide a plan to the Department within seven (7) business days of such report that outlines measures to be taken to ensure that sufficient resources are available. MVP shall implement the plan including any remedial action upon approval by the Department.

(e) **System to Track Timely Maintenance of ESC Measures in Need of Routine Maintenance.** Within thirty (30) days of entry of this Consent Decree, MVP shall create and

maintain a system to track and verify timely maintenance of any ESC Measure in Need of Routine Maintenance and shall propose guideline criteria to the Department for review and approval for identifying such measures. Any ESC Measure in Need of Routine Maintenance shall be logged into the tracking system the same day that it is identified by MVP or communicated to MVP by the Department's inspectors if received during normal business hours. Notifications received from the Department's inspectors after normal business hours shall be logged on the following day. Timely maintenance shall be completed as soon as practicable, but within such time as to prevent the erosion and sediment control measure from becoming ineffective and no later than three (3) days from the date the ESC Measure in Need of Routine Maintenance is identified. MVP's environmental inspectors (including any third-party inspector employed by MVP) and MVP's Environmental Auditors shall be responsible for identifying ESC Measures in Need of Routine Maintenance and logging them in the system. On a daily basis, the tracking system shall reconcile all ESC Measures in Need of Routine Maintenance identified by MVP (including any third-party inspector employed by MVP) with those identified by the Department's inspectors.

V. PENALTIES AND PAYMENT OF COSTS

(a) **Civil Penalty.** MVP shall be assessed a civil penalty in the amount of Two Million One-Hundred Fifty Thousand and 00/100 Dollars (\$2,150,000). MVP shall make payment within thirty (30) days after the date of entry of this Consent Decree as specified in Section V(d), with notice therefore provided to the individuals identified in Section XI(i)(Notices). If MVP fails to pay the civil penalty in whole or in part when due, MVP shall pay interest on the outstanding balance due at the applicable judgement interest rate.

(b) **Stipulated Penalties.** MVP shall be liable for stipulated penalties to the Plaintiffs for violations of this Consent Decree as specified below, unless excused under Section VI (Force Majeure). Failures resulting from a force majeure event shall not be considered a breach of this Consent Decree, and MVP shall not be liable for any stipulated penalties occurring as a result of the force majeure event.

(1) For failure to stabilize denuded areas, stockpiles, stormwater conveyance channels, and earthen structures in accordance with MVP's Annual Standards and Specifications and MVP's Site Specific ESC and SWM Plans, \$500 per day per violation;

(2) For failure to properly install erosion and sediment controls, post-construction stormwater management best management practices (BMPs), or other pollution prevention measures in accordance with MVP's Annual Standards and Specifications and MVP's Site Specific ESC and SWM Plans, \$500 per day per violation;

(3) For failure to properly install, repair, or maintain erosion and sediment controls, post-construction stormwater management BMPs, or other pollution prevention measures in accordance with MVP's Annual Standards and Specifications and MVP's Site Specific ESC and SWM Plans or as otherwise required by this Consent Decree which results in visible and measurable sediment deposition off of the right of way onto adjacent property, \$2,500 per violation;

(4) For failure to maintain any ESC Measure in Need of Routine Maintenance within the timeframes required by MVP's Annual Standards and Specifications and MVP's Site Specific ESC and SWM Plans or as otherwise required by this Consent Decree, \$500 per day per violation;

(5) For failure to repair any Ineffective Temporary ESC Measure within the timeframes required by MVP's Annual Standards and Specifications and MVP's Site Specific ESC and SWM Plans or as otherwise required by this Consent Decree, \$1,000 per day per violation;

(6) For the release of sediment off of the right of way into surface waters of the Commonwealth that results in the accumulation of fill material, a separate penalty shall apply for each separate, identifiable, and discrete discharge to wetlands and streams:

a. For impacts to more than two (2) acres of wetlands or more than 1,500 linear feet (LF) of stream, \$26,000 per violation;

b. For impacts from 1/10 to two (2) acres of wetlands or from 301 to 1,500 LF of stream, \$13,000 per violation;

c. For impacts to less than 1/10 acre of wetlands or up 300 LF of stream, \$6,500 per violation;

(7) For failure to timely identify and retain a qualified Environmental Auditor as specified in Section IV(b), \$500 per day per violation for the first ten days and \$1000 per day thereafter;

(8) For failure to submit reports as specified in Section IV(b); \$500 per violation;

(9) Failure to keep a daily log documenting Project activities related to environmental permit compliance and corrective measures implemented, site visitors (not including unauthorized persons, agency inspectors, and other persons who do not or are not required to make MVP aware of their presence), waterbody and wetland crossings, and erosion and sediment control installation and maintenance in accordance with MVP's

Annual Standards and Specifications and MVP's Site Specific ESC and SWM Plans, \$500 per violation;

(10) Failure to notify Plaintiffs prior to commencing Land-Disturbing Activity in a waterbody or wetland as described in Section IV(c), \$1,000 per violation;

(11) For failure to make payments as specified in Section V; \$250 per day for the first ten days and \$500 per day thereafter, plus interest, as described in Section V(a) and (b); and

(12) For failure to comply with any other requirement of this Consent Decree not addressed in subparagraphs (1) through (11) above, \$500 per violation.

All penalties shall begin to accrue on, as may be appropriate, the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties may begin to accrue prior to entry of this Consent Decree except as provided in Section VIII(a).

The Department shall send MVP a written demand for the payment of the penalties. However, penalties shall accrue as provided above, regardless of whether the Department has notified MVP of a violation.

All penalties accruing under this Section shall be due and payable to the Plaintiffs within thirty (30) days of the Department's demand for payment of the penalties unless the Dispute Resolution provisions in Section VII are triggered. If the Plaintiffs prevail after the Dispute Resolution provisions in Section VII are triggered, then payment for penalties and any applicable interest shall be due and payable within thirty (30) days of the conclusion of the dispute process. All payments to the Plaintiffs under this Section shall indicate that the payment is for stipulated

penalties. If MVP fails to pay stipulated penalties when due, MVP shall pay interest on the unpaid stipulated penalties at the judgment rate of interest.

Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the Commonwealth to seek any other remedies available by virtue of MVP's violation of any state law or regulation, this Consent Decree, or of the statutes and regulations upon which it is based.

Notwithstanding any other provision of this Section, the Department may, subject to State Water Control Board approval, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

Notwithstanding the preceding paragraph and following receipt of a demand for stipulated penalties, MVP may propose that it undertake a Supplemental Environmental Project as partial settlement of the demand. The Department, on behalf of the Director of the Department, will consider the Supplemental Environmental Project in accordance with Va. Code § 10.1-1186.2 and the Department's guidance.

(c) **Costs.** Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce the provision of this Consent Decree including but not limited to any action necessary to collect any undisputed portion of the (1) civil penalty or (2) any stipulated penalty due but not paid by MVP. MVP shall also pay Plaintiffs' costs (including attorneys' fees) for any action by Plaintiffs to enforce this Consent Decree in which MVP is unsuccessful in a dispute resolution proceeding.

(d) **Method of Payment.** Any payments made pursuant to Section V shall be by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond Virginia 23218

Any payment made pursuant to the terms of this Consent Decree shall indicate that the payment is being made in accordance with the requirements of this Consent Decree.

VI. **FORCE MAJEURE**

(a) MVP shall be responsible for failure to comply with any of the terms and obligations of this Consent Decree unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, protest actions by third parties, or such other unforeseeable circumstances beyond the control of MVP or any of MVP's officers, directors, agents, employees, subcontractors, successors, or assigns and not due to a lack of good faith or diligence on their part. MVP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on their part. "Force Majeure" does not include MVP's financial inability to perform any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with performance of any obligations under this Consent Decree shall not constitute circumstances beyond MVP's control nor serve as the basis for an extension of time to come into compliance.

(b) MVP shall notify the Department (i) verbally as soon as practicable but in no event later than five (5) days and (ii) in writing as soon as practicable thereafter but in no case later than ten (10) days of when MVP becomes aware that circumstances will occur, are

occurring, or have occurred that have or are reasonably certain to delay compliance or cause noncompliance with any requirement of the Consent Decree. Such notice shall set forth:

- (1) the reasons for the delay or noncompliance;
- (2) the projected duration of any such delay or noncompliance;
- (3) the measures taken and to be taken to prevent or minimize such delay or noncompliance;
- (4) the timetable by which such measures will be implemented and the date full compliance will be achieved; and
- (5) available documentation supporting the claim that the delay or noncompliance is attributable to a force majeure event.

(c) In the event the Department sends MVP a written demand for the payment of penalties for alleged violations that occurred prior to the date this Consent Decree is entered, the verbal and written notification timelines in Section VI(b) shall run from the date of such demand.

(d) Failure to timely notify the Department as described above shall constitute a waiver of any claim to inability to comply with a requirement of this Consent Decree for the period beyond the deadlines above until the time the notice was actually made.

(e) If the Department agrees that the delay, anticipated delay, or noncompliance is attributable to a force majeure event, either the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the Department for such time as the Department deems necessary to complete those obligations or the noncompliance will be deemed excused. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for

performance of any other obligation. The Department will notify MVP in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

(f) If the Department does not agree that the delay, anticipated delay, or noncompliance has been or will be caused by a force majeure event, the Department will notify MVP in writing of its decision. The decision of the Department shall become final thirty (30) days) after the Department notifies MVP, unless MVP elects to invoke the dispute resolution set forth in Section VII (Dispute Resolution). In any such dispute, MVP shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that all reasonable efforts were exercised to avoid and mitigate the effects of the delay, and that MVP complied with the requirements of this Section VI (Force Majeure).

VII. **DISPUTE RESOLUTION**

(a) **Dispute Resolution Process.** The Dispute Resolution procedures set forth in this Section VII (Dispute Resolution) shall be the exclusive mechanism to resolve disputes arising under this Consent Decree. The dispute shall be considered to have arisen when MVP sends the Department a written Notice of Dispute. Such Notice of Dispute shall clearly state the matter in dispute. Any such dispute shall first be subject to informal negotiations. The period of informal negotiations shall not exceed sixty (60) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then Plaintiffs shall send to MVP a Statement of Position within fifteen (15) days following the end of the period of informal negotiations. Such Statement of Position shall be binding unless, within thirty (30) days after MVP's receipt of the Statement of Position, MVP seeks judicial review of the dispute in accordance with Section VII(b).

(b) **Judicial Review.** MVP may seek judicial review of the dispute by filing with the Court and serving on Plaintiffs a motion requesting judicial resolution of the dispute. The Plaintiffs may respond to MVP's motion within the time allowed by the Rules of the Supreme Court of Virginia. MVP shall have the burden of demonstrating, by a preponderance of the evidence, that the Plaintiffs' position is arbitrary and capricious, not in accordance with law, or contrary to the terms of this Consent Decree.

VIII. **EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

(a) **Claims Resolved.** This Consent Decree resolves the Plaintiffs' civil claims against MVP for the violations alleged in the Complaint, as well as any additional alleged violations that may have occurred through September 18, 2019.

(b) **Plaintiffs' Reservation of Rights.** The Plaintiffs reserve all legal and equitable remedies to enforce the provisions of this Consent Decree. This Consent Decree does not limit the Plaintiffs' rights to obtain penalties or injunctive relief under any applicable law or regulation including but not limited to the State Water Control Law or its implementing regulations except as expressly specified in Section VIII(a). Plaintiffs further reserve all legal and equitable remedies available to address any imminent and substantial endangerment to the public health or welfare or the environment caused by any and all Land-Disturbing Activities related to the Project whether related to the Allegations addressed in this Consent Decree or otherwise.

(c) **Responsibility for Acts of Agents and Employees.** In any action to enforce this Consent Decree, MVP shall not assert as a defense the failure of its officers, directors, agents, employees, subcontractors, successors, and assigns to take actions necessary to comply with this Consent Decree, except to the extent such failure constitutes a force majeure event as defined in Section VI (Force Majeure).

(d) **Waiver of Defenses.** MVP waives any and all defenses raised in its responsive pleadings filed with this Court on or about January 11, 2019, with respect to the specific Allegations addressed in this Consent Decree and with respect to any action legal or equitable brought by the Plaintiffs to enforce the terms of this Consent Decree.

(e) **Not a Permit.** This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local law or regulation. MVP is responsible for achieving and maintaining compliance with any applicable federal, state, and local law, regulation, permits, and approvals of any kind. MVP's compliance with this Consent Decree shall be no defense to any action commenced pursuant to such law, regulations, permits, or approvals, except as set forth herein or otherwise provided by law.

(f) **Right of Entry/Inspection.** This Consent Decree in no way limits or affects any right of entry and inspection or any right to obtain information, held by the Plaintiffs pursuant to applicable federal or state laws, regulations, permits, certificates, certifications, or authorizations, nor does it limit or affect any duty or obligation of MVP to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, permits, certificates, certifications, or authorizations.

IX. **TERMINATION**

Upon achieving Final Stabilization for the entire Project, MVP may submit to Plaintiffs a request for termination certifying that MVP (i) has fulfilled the requirements of this Consent Decree; (ii) has paid all civil penalties and related interest due under this Consent Decree; (iii) and has paid all stipulated penalties, if any, and related interest due under this Consent Decree.

If the Plaintiffs agree that the conditions for termination as set forth in the preceding paragraph have been met, the Plaintiffs shall timely file, for the Court's approval, a joint stipulation terminating this Consent Decree. If the Plaintiffs do not agree that the conditions for

termination have been met, the Plaintiffs shall submit in writing to MVP the basis for their disagreement within sixty (60) days of receipt of the request for termination. The decision of the Plaintiffs shall become final thirty (30) days after basis for their decision is submitted to MVP unless MVP invokes dispute resolution in accordance with Section VII (Dispute Resolution).

Termination of this Consent Decree, or any obligation imposed by this Consent Decree, shall not relieve MVP from its obligation to comply with any statute, regulation, permit condition, plan, order, certificate, certification, standard, or requirement otherwise applicable.

X. GENERAL PROVISIONS

(a) **Entire Agreement.** This Consent Decree represents the entire agreement and understanding between the Parties, and supersedes any and all prior oral and written agreements, orders and understandings. The Parties acknowledge that there are no inducements, promises, representations, agreements, or understandings relating to the subject matter of this Consent Decree other than those expressly contained in this Consent Decree.

(b) **Headings.** Headings in this Consent Decree are provided for convenience only and shall not limit, expand, modify or otherwise affect the meaning of any provision of the Consent Decree.

(c) **Modification.** No provision of this Consent Decree may be waived, amended or modified in any respect whatsoever, except by written agreement signed by the Parties.

(d) **Severability.** If any provision of this Consent Decree is held to be invalid, void or unenforceable, all other provisions of this Consent Order nevertheless will remain in full force and effect.

(e) **Calculation of Reporting and Notification Deadlines.** If the final day of any requirement stated in this Consent Decree to provide information or reports to Plaintiffs within a

specified number of days falls on a weekend or holiday, MVP shall provide the information or report on the next business day.

(f) **No Admission of Liability and Reservation of Rights.** This Consent Decree is entered into by the Parties without any adjudication or finding of violation or liability of MVP by the Court. MVP, by its consent or otherwise, does not admit fault or liability to Plaintiffs or to any third party/ies. This Consent Decree is intended by the Parties to constitute a consensual resolution of the Allegations and Complaint without any finding that would form the basis of any enforcement orders or actions against MVP. Except as expressly provided in this Consent Decree, MVP nor is it an admission or denial of the factual allegations arising out of the transactions or occurrences alleged in the Complaint or relating to the Allegations.

(g) **Full Authority.** The Parties represent, through their signatures below, that they have full authority to enter into this Consent Decree, and that they are competent and over the age of majority.

(h) **Final Judgment.** Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties.

(i) **Notices.** Unless otherwise specified herein, whenever written notifications, communications, or submittals are required by this Consent Decree, such notifications, communications, or submittals shall be made to the individuals specified below, or to such other individuals as may be designated by a Party on written notice to the other Parties:

As to the Plaintiffs:

Director, Enforcement Division
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

As to Mountain Valley Pipeline, LLC:

Deputy General Counsel – Environmental and Safety
Mountain Valley Pipeline, LLC
2200 Energy Drive
Canonsburg, PA 15317

Any Party may amend or substitute its designated notice recipient by providing written notification of the change to all other Parties.

(j) **Governing Law.** This Consent Decree shall be interpreted, enforced and governed in accordance with the laws of the Commonwealth of Virginia, regardless of any conflicts-of-law principles.

Dated and entered this ____ day of _____, _____.

Judge of the Circuit Court

FOR PLAINTIFFS DAVID K. PAYLOR, DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, AND THE STATE WATER CONTROL BOARD:

DATE

Mark R. Herring
Attorney General

Donald D. Anderson
Deputy Attorney General

Paul Kugelman, Jr.
Senior Assistant Attorney General/Chief

David C. Grandis
Senior Assistant Attorney General
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
Counsel for the Plaintiffs

The undersigned consents to the entry of this Consent Decree, subject to public notice and comment.

FOR DEFENDANT MOUNTAIN VALLEY PIPELINE, LLC:

10/23/2019
DATE



ROBERT J. COOPER
Senior Vice President, Construction Services
Equitrans Midstream Corporation
2200 Energy Drive
Canonsburg, Pennsylvania 15317