



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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July 9, 2018

Mr. Robert J. Cooper
EQT Corporation
625 Liberty Avenue, Suite 1700
Pittsburgh, Pennsylvania 15317

NOTICE OF VIOLATION

RE: **NOV No. 2018-CO-0001**
Mountain Valley Pipeline, LLC
Various Land Disturbing Locations Between Project Mile Posts 196.35 and 303.4
and Supportive Ancillary Areas
Erosion and Sediment Control and Stormwater Management Plan –
DEQ SWM #: MVP-17-1
Section 401 Water Quality Certification No. 17-001

Dear Mr. Cooper:

This letter notifies you of information upon which the Department of Environmental Quality (Department or DEQ) may rely in order to institute an administrative or judicial enforcement action. Based on this information, DEQ has reason to believe that Mountain Valley Pipeline, LLC (MVP) may be in violation of the Virginia Stormwater Management Act and Regulations, the Virginia Erosion and Sediment Control Law and Regulations, the Virginia Water Protection Permit Program and Regulations, and Section 401 Water Quality Certification No. 17-001 at certain locations where land disturbing activity is occurring along MVP's linear construction project. These land disturbing activities are located in Craig, Franklin, Giles, Montgomery, Pittsylvania and/or Roanoke County, Virginia and include multiple access locations and work in various stages of construction including tree removal, land clearing, and grading. Collectively they are referred to as the Site in this Notice of Violation.

This letter addresses conditions at the Site and also describes compliance requirements of the Virginia Stormwater Management Act, § 62.1-44.15:24 *et seq.*, and Regulations, the Virginia Erosion and Sediment Control Law § 62.1-44.15:51, *et seq.*, and Regulations, the Virginia Water Resources and Wetlands Protection Program, § 62.1-44.15:20 *et seq.*, and Regulations,

and MVP's approved Annual Standards and Specifications. Pursuant to Va. Code § 62.1-44.15(8a), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* (APA). DEQ requests that you respond **within 10 days of the date of this letter** to arrange a prompt meeting with DEQ staff.

OBSERVATIONS AND LEGAL REQUIREMENTS

On June 20, 2017, DEQ approved the Annual Standards and Specifications (AS&S) for Erosion & Sediment Control (ESC) and Stormwater Management (SWM) for the Mountain Valley Pipeline (MVP) LLC as revised June 2017. On December 8, 2017, DEQ issued to MVP Section 401 Water Quality Certification No. 17-001. Condition 13 of the 401 Certification requires that MVP comply with the requirements of the Stormwater Management Act (Va. Code § 62.1-44.15:24, *et seq.*), the Erosion and Sediment Control Law (Va. Code § 62.1-44.15:51, *et seq.*) and the Virginia Water Protection Permit Program Regulations (9 VAC 25-210-10, *et seq.*). On March 26, 2018, DEQ approved MVP ESC and SWM plans as consistent with Virginia Stormwater Management Act and Regulations and the Virginia Erosion and Sediment Control Law and Regulations. The approvals authorized MVP to start land disturbing activities consistent with approved plans and AS&S. On May 21, May 23, May 24, May 30, June 6, June 13, June 26, and June 27, 2018 DEQ staff conducted complaint investigations, in field compliance monitoring, and inspections of the Site. The following describes staff observations and identifies applicable legal requirements:

1. ***Observations:*** During the May 30, 2018 complaint investigation of Spread I, Grassy Hill Road and the June 6, 2018 inspection at Mount Tabor, clean water diversions shown on the approved ESC plan were not installed.

Legal Requirements: Va. Code § 62.1-44.15:31 states in part: “[I]nterstate and intrastate natural gas pipeline companies...shall...annually submit a single set of standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of [Article 2.3 of the State Water Control Law] and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 *et seq.*) and associated regulations.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

MVP Annual Standards & Specifications, Page 2 states: “MVP and its construction contractors will implement these Standards and Specifications for all regulated land disturbance activities associated with the Project in the Commonwealth.”

2. ***Observations:*** During the May 23 and 24 complaint investigations of Spread I, Cahas Mountain Road and Spread G, Catawba Road, and the June 6, 2018 inspections of Spread G and Mount Tabor, corrective actions were not taken within the time frame specified in the approved annual standards and specifications or were not documented appropriately in the corrective action log and no requests for extensions were received.

Legal Requirements: Va. Code § 62.1-44.15:31 states in part: “[I]nterstate and intrastate natural gas pipeline companies...shall...annually submit a single set of standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of [Article 2.3 of the State Water Control Law] and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations.”

9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

MVP Annual Standards & Specifications, Page 2 states: “MVP and its construction contractors will implement these Standards and Specifications for all regulated land disturbance activities associated with the Project in the Commonwealth.”

MVP Annual Standards & Specifications, Page 3 states: “The Lead Environmental Inspector will also keep a daily log of activity documenting Project activities related to environmental permit compliance and corrective measures implemented, site visitors (i.e. non-project staff), waterbody and wetland crossing log and ESC installation and maintenance activities.”

MVP Annual Standards & Specifications, Page 5 states: “Ensuring the repair of all ineffective temporary ESC measures within 24 hours of identification, or as soon as conditions allow if compliance with this time frame would result in greater environmental impacts”

3. ***Observations:*** During the May 23, 2018, complaint investigation on Spread I at Cahas Mountain Road, DEQ staff detected erosion and sediment controls near station markers 13476+16 and 13489+10 in need of repair, which resulted in a release of sediment laden stormwater off the construction right of way.

Legal Requirements: Va. Code § 62.1-44.15:31 states in part: “[I]nterstate and intrastate natural gas pipeline companies...shall...annually submit a single set of standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of [Article 2.3 of the State Water Control Law] and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater

from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations.”

9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

4. ***Observations:*** During the May 23, 2018 complaint investigation on Spread I, Cahas Mountain Road, sediment-laden stormwater had left the right of way in two locations (near station markers 13476+16 and 13489+10) and sediment was deposited in surface water on an adjacent property. On May 31, 2018, DEQ conducted a follow up inspection of the May 23, 2018 complaint investigation on Spread I, Cahas Mountain Road. DEQ staff evaluated the extent of the unauthorized sediment impacts to two separate unnamed stream channels located on adjacent property. Combined impacts to the two stream channels covered a distance of approximately 2,800 linear feet. This unauthorized fill ranged in depth up to eleven inches of sediment, which was released from MVP’s construction right of way due to overwhelmed and damaged erosion and sediment controls.

Legal Requirements: Va. Code § 62.1-44.5(A) states in part: “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . [d]ischarge stormwater into state waters from . . . land disturbing activities.”

Legal Requirements: Va. Code §62.1-44.15:20(A) states: “A. Except in compliance with an individual or general Virginia Water Protection Permit [VWP] issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or function; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”

9VAC 25-210-50 (A) states: “Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to

animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”

5. ***Observations:*** During the May 21 and 23, 2018 complaint investigations on Spread I, Cahas Mountain Road and during June 13, 2018 field monitoring documented in the daily log for Spread H (Callaway) and Spread I, (Cahas Mountain Road and Grassy Hill Road), DEQ observed denuded areas, including stockpiles and earthen structures, which were not stabilized as required by the approved standards and specifications, minimum standards and approved erosion and sediment control plan.

Legal Requirements: Va. Code § 62.1-44.15:31 states in part: “[I]nterstate and intrastate natural gas pipeline companies...shall...annually submit a single set of standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of [Article 2.3 of the State Water Control Law] and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations.”

9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

9 VAC 25-840-40(2) states: During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.

9 VAC 25-840-40(5) states: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

6. Observations: During the June 13, 2018 field monitoring, as documented in DEQ staff's daily log for Spread H (Callaway) and Spread I (Grassy Hill Road), DEQ observed that water bars were not installed in accordance with the approved erosion and sediment control plan and annual standards and specifications. In addition, the end treatments and conveyances down slope were not adequate or installed in accordance with the approved erosion and sediment control plans.

Legal Requirements: Va. Code § 62.1-44.15:31 states in part: “[I]nterstate and intrastate natural gas pipeline companies...shall...annually submit a single set of standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of [Article 2.3 of the State Water Control Law] and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations.”

9 VAC 25-840-40 (8) states: “Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.”

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

7. Observations: During the June 26 and 27, 2018, field inspections of Spread H, DEQ staff observed that wetland crossings WC5, WC6, WC11, and WC12 not completely installed prior to use. DEQ also observed that water bars above streams designated stream 39 and stream 40 required repair and that sediment was observed off the construction right of way at station point 12071+50. Additionally, access roads 270 and 272 required repair and sump maintenance.

Legal Requirements: Va. Code § 62.1-44.15:31 states in part: “[I]nterstate and intrastate natural gas pipeline companies...shall...annually submit a single set of standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of [Article 2.3 of the State Water Control Law] and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations.”

9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

8. *Observations:* During the June 26 and 27, 2018, field inspections of Spread H, DEQ staff observed that sediment-laden stormwater had left the right of way and sediment was deposited in streams designated stream 39, stream 40, SMM 15 and MN513. DEQ staff evaluated the extent of the unauthorized sediment impacts to these designated streams. Combined impacts to the four streams covered a distance of approximately 6009 linear feet. This unauthorized fill ranged in depth up to seven inches of sediment, which was released from MVP’s construction right of way due to damaged erosion and sediment controls.

Legal Requirements: Va. Code § 62.1-44.5(A) states in part: “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . [d]ischarge stormwater into state waters from . . . land disturbing activities.”

Legal Requirements: Va. Code §62.1-44.15:20(A) states: “A. Except in compliance with an individual or general Virginia Water Protection Permit [VWP] issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or function; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”

9VAC 25-210-50 (A) states: “Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New

activities that cause significant alteration or degradation of existing wetland acreage or functions.”

ENFORCEMENT AUTHORITY

Va. Code § 62.1-44.23 of the State Water Control Law provides for an injunction for any violation of the State Water Control Law, any State Water Control Board rule or regulation, an order, permit condition, standard, or any certificate requirement or provision. Va. Code §§ 62.1-44.15 and 62.1-44.32 provide for a civil penalty up to \$32,500 per day of each violation of the same. In addition, Va. Code § 62.1-44.15 authorizes the State Water Control Board to issue orders to any person to comply with the State Water Control Law and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the State Water Control Law and regulations, and to impose a civil penalty of not more than \$10,000. Va. Code §§ 62.1-44.32(b) and 62.1-44.32(c) provide for other additional penalties.

FUTURE ACTIONS

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed to ensure compliance with state law and regulations, any relevant or related measures you plan to take or have taken, and a schedule, as needed, for further activities. In addition, please advise DEQ if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In order to avoid adversarial enforcement proceedings, MVP may be asked to enter into a Consent Order with the Department to formalize a plan and schedule of corrective action, and to settle any outstanding issues regarding this matter, including the assessment of civil charges.

In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. Also, if informal discussions do not lead to a satisfactory conclusion, you may request in writing that DEQ take all necessary steps to issue a final decision or fact finding under the Administrative Procedure Act on whether or not a violation has occurred. For further information on the Process for Early Dispute Resolution, please see Agency Policy Statement No. 8-2005 posted on the Department's website under "Programs," "Enforcement," and "Laws, Regulations, & Guidance"

(http://www.deq.virginia.gov/Portals/0/DEQ/Enforcement/Guidance/process%20for%20early%20dispute%20resolution%20no8_2005.pdf) or ask the DEQ contact listed below.

Please contact Lee Crowell at (804) 698-4450 or lee.crowell@deq.virginia.gov within **10 days of the date of this letter** to discuss this matter and arrange a conference.

Sincerely,



Jerome A. Brooks
Manager- Office of Water Compliance

cc: CASE FILE
Lee Crowell - DEQ

