



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

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TWELFTH DISTRICT

COMMITTEE ASSIGNMENTS:
EDUCATION
SCIENCE AND TECHNOLOGY

March 18, 2019

Mr. David K. Paylor
Director, Department of Environmental Quality
Department of Conservation and Recreation
1111 East Main Street, Suite 1400
Richmond, VA 23219

VIA ELECTRONIC MAIL

RE: Inquiry regarding immediate “stop work” instruction for the Mountain Valley Pipeline project

Dear Director Paylor:

I am writing you to urgently request that the Department of Conservation and Natural Resources, through its administration of the Department of Environmental Quality, immediately issue a “stop work” order for all current and imminent construction of the Mountain Valley Pipeline project.

During the 2018 General Assembly session, I applauded the efforts of the administration and the legislature to enact emergency legislation to address concerns that the Mountain Valley and Atlantic Coast pipelines would potentially violate existing stormwater management and erosion and sedimentation control laws.

SB698 and SB699, patroned by Senator Creigh Deeds, allows the Department to issue “a stop work instruction, without advance notice or hearing, requiring that all or part of such land-disturbing activities on the part of the site that caused the substantial adverse impacts to water quality or are likely to cause imminent and substantial adverse impacts to water quality be stopped until corrective measures specified in the stop work instruction have been completed and approved by the Department.” Va. Code §62.1-44.15:58.1, §62.1-44.15:37.1.

These provisions, as you know, apply to any interstate or intrastate natural gas pipeline greater than 36 inches in diameter; currently only the Mountain Valley and Atlantic Coast pipeline projects and the Transcontinental Pipeline (“Transco”) are subject to potential Virginia enforcement.

Mr. Paylor, you are the person who can issue the “stop work” order as the head of the Department charged with enforcing Va. Code §62.1-44.15:58.1 and §62.1-44.15:37.1. That much is clear from the plain reading of the legislation passed in 2018. What remains unclear is a lack of action to enforce these laws today.

During testimony in the Senate Committee on Agriculture, Conservation and Natural Resources, Senator Deeds mentioned how this was “an agency bill,” i.e. a measure requested to be introduced by the Administration. There was little debate except by Senator Frank Ruff who asked about amendments to the bill to include the words “substantial” throughout the measure, adding an additional criterion to initiate agency action (before, the impact to water quality needed only to be “imminent.”) Senator Deeds’s response, and it was deemed satisfactory to the Committee at large, was that it would be your decision making, Mr. Paylor, that would define what “substantial” means as it relates to a stop work order. When the bills were passed out of Committee, its chairman, Senator Richard Stuart even remarked, “this shows the faith everyone has in David Paylor, I guess.”

Unfortunately, the landowners in my district and many others cannot continue to guess what it will take for a reasonable stop work order for the Mountain Valley pipeline project. Clearly, there is evidence of violations and a lack of seriousness on the part of Mountain Valley Pipeline, LLC (MVP,) as shown in the lawsuit your agency filed in Henrico County Circuit Court this past December.

The complaint alleges more than 300 violations between June and mid-November 2018, mostly related to improper erosion control and stormwater management, according to the Attorney General’s Office. It further alleges that among the laws and provisions MVP has so far violated are:

- the State Water Control Law,
- the Virginia Stormwater Management Act,
- the Erosion and Sediment Control Law,
- the Virginia Stormwater Management Program Regulation,
- the Erosion and Sediment Control Regulations,
- the Virginia Water Protection Permit Program Regulations,
- Section 401 Water Quality Certification 17-001 issued to MVP.
- MVP’s Annual Standards and Specifications,
- MVP’s Site Specific Erosion and Sediment Control Plan and
- MVP’s Site Specific Stormwater Management Plans.

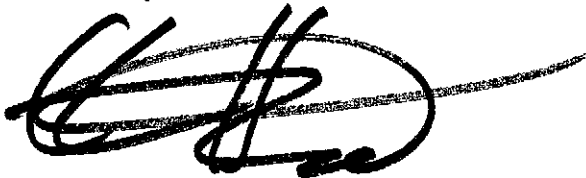
Mr. Paylor, ten counts of illegal actions by MVP are alleged in the lawsuit filed on your Department’s behalf, including failure to maintain and repair erosion and sediment control structures, failure to repair erosion and sediment controls within required timeframes and a failure to install clean water diversions.

Considering the allegations listed above in your Department's complaint in Henrico County Circuit Court, I am requesting you send my office any correspondence, memoranda, documentation or issued guidance defining what "imminent and substantial adverse impact to water quality" means to you as Director.

Further, because the complaint on its face provides for what I believe my constituents and many other Virginians believe is an imminent and substantial adverse impact to Virginia's water quality, I am asking you to issue a work stop order for the Mountain Valley Pipeline, pursuant to Va. Code §62.1-44.15:58.1 and §62.1-44.15:37.1 until pending litigation can be resolved and all parties have a chance to address these serious allegations in court.

Please reach out to my office with information you may be able to provide or questions regarding my request.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris L. Hurst", with a long horizontal stroke extending to the right.

Chris L. Hurst
Delegate, 12th District
Virginia House of Delegates

cc: The Honorable Governor Ralph S. Northam
The Honorable Secretary of Natural Resources Matthew J. Strickler
The Honorable Senator R. Creigh Deeds
The Honorable Senator Richard H. Stuart
The Honorable Senator Frank M. Ruff, Jr.
The Honorable Senator John S. Edwards
The Honorable Delegate Daniel W. Marshall, III
The Honorable Delegate Sam Rasoul