



September 17, 2020

Dear Attorney General Herring,

Thank you for standing up to protect our Commonwealth from the current administration's attempts to erode our democracy and pollute our environment. In July you filed a lawsuit to challenge the current administration's undermining of the Clean Water Act. **Now we need you to protect Virginia's water and endangered species at risk within our borders by considering taking the following actions:**

- **Suing the [Trump administration for rolling back the protections Congress passed in the Endangered Species Act.](#)**
- **Providing guidance to the State Water Control Board to add the Mountain Valley Pipeline (MVP) update to their September 24 meeting agenda. The board needs to address [MVP's pollution of Virginia waterways that provide habitat for endangered fish.](#) It is the board's responsibility to enforce the Clean Water Act and Endangered Species Act regulations.**

Last year your A.G. Consent decree required an environmental auditor to monitor the MVP corridor. MVP hired Tetra Tech to be the environmental auditor and Virginia's DEQ approved its selection. This is problematic because Tetra Tech is the company that has repeatedly underperformed on the MVP project.

Tetra Tech has provided:

- Flawed stormwater drainage analysis.
- Failing erosion and sediment control (ESC) construction plans.
- Variance plans for up to 5 miles of open trench in a watershed in which endangered fish (the Roanoke logperch and Candy darter) are vulnerable to sediment.

Preserve Craig et al. filed a motion with the Federal Energy Regulatory Commission (FERC) in September 2019 to require the Mountain Valley Pipeline to revise its stormwater drainage analysis and then revise its ESCs to correct Tetra Tech's errors. FERC responded to the motion last March claiming it is the states' responsibility to approve the stormwater drainage analysis and ESCs.

Thank you for your attention to this important matter and for your service to our Commonwealth. Please read the addendum for supporting information and documentation.

**Freeda Cathcart**, *Gas And Pipeline Coalition (GAP Coalition)*

**The following organizations respectfully ask your office to take any and all actions to protect Virginia's waterways and endangered species from further harm:**

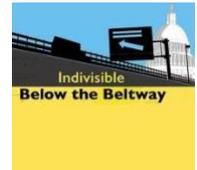
Indivisible Virginia  
Clean Virginia  
Food and Water Action

Mothers Out Front Roanoke  
Virginia Democracy Forward (VADF)  
*(continued on next page)*



Network NOVA  
 Virginia Poor People's Campaign  
 Veterans Service Corps  
 Protect Our Water, Heritage Rights (POWHR)  
 Roanoke Group, Sierra Club  
 Preserve Salem  
 Preserve Giles  
 Preserve Craig  
 Preserve Montgomery County VA  
 CommUNITY ARTS-reach  
 Center for the Support of Native Lands  
 Climate Reality Project, NOVA Chapter  
 Biology Club @ Blue Ridge Community College  
 RAISE (Roanoke Area Interfaith Stewards of the Earth)

Gas and Pipelines Working Group, Virginia  
 Grassroots Coalition  
 The Rural Project  
 Protect Our Commonwealth  
 Oil Change International  
 Women On Your Left  
 Earth Rise Indivisible  
 Williamsburg JCC Indivisible  
 New River Valley Indivisible  
 Climate Action Alliance of the Valley  
 NRV Land, Air & Water Watch  
 350 Loudoun  
 350 Fairfax  
 ARTivism  
 Hunter Mill Huddle  
 Managing Love



RAISE  
 Roanoke Area Interfaith  
 Stewards of the Earth





## ADDENDUM:

The SWCB canceled their March meeting due to COVID19. In April, the VADEQ approved the 2020 Annual Standards and Specifications for Erosion & Sediment Control (ESC) and Stormwater Management (SWM) for Mountain Valley Pipeline (MVP) LLC. The documents continue to rely on Tetra Tech stamped document that contains a TEST AREA STORMWATER MANAGEMENT NARRATIVE dated 01/22/2018. Virginia's waterways cannot be protected by using Tetra Tech's flawed and outdated data.

Volunteer citizen monitors met with the VADEQ's MVP project manager, a civil engineer and a monitor in May 2020 to show them where the erosion and sediment controls continued to fail, causing the pollution of waterways that are the habitat for endangered fish. The SWCB needs to be informed that the VADEQ response to that meeting was that the pollution going into the waterways doesn't count as violations because Mountain Valley's ESCs were installed and being maintained according to the approved plans.



**The picture on the left is upstream from the MVP**

**The picture on the right is downstream from the MVP**

**The VADEQ doesn't count this as a violation.**



Hundreds of people have signed a petition asking the SWCB to add Mountain Valley Pipeline to their agenda. So far the updates on the MVP have not been on the SWCB agenda. Instead the MVP has been under the staff report, giving citizens no opportunity to comment on the report or to give a comprehensive presentation on problems that are causing the continuing pollution. The only opportunity citizens have had to comment has been under the public forum which is limited to just 45 minutes in increments of 3 minutes for each person. This also prevents the board members from asking questions on what is being presented to them. The VADEQ staff updates have only addressed the AG Consent Decree and continuing violations, but they have not included information about the flawed stormwater drainage analysis or the failing ESCs that cause pollution to enter the waterways and aren't being counted as violations.

There appears to be confusion about the SWCB's responsibilities. Board members have said they don't have the power to issue a stop work instruction because the statute specifies the "department," however the SWCB has the responsibility for oversight and instructing the



department to take necessary actions to protect the water. [Statute 62.1-44.15:37.1](#) contains the following:

“When the Department determines that there has been a substantial adverse impact to water quality or that an imminent and substantial adverse impact to water quality is likely to occur as a result of such land-disturbing activities, the Department may 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.”

Citizen monitors have provided ample documentation of MVP continuing to pollute the waterways which serve as habitat for endangered fish, including this [report filed to the FERC on September 8, 2020](#) containing documentation of an August 31, 2020 pollution event (reported to VADEQ on September 1 pollution report number #296536).

On Friday September 4, the [Trump administration released a proposal that would allow the government to deny habitat protections for endangered animals and plants in areas that would see greater economic benefits from being developed](#). Coincidentally, the same day the US Fish and Wildlife Service released their updated Biological Opinion for the MVP that contained misleading information. From page 18 of the USFWS BiOp for the MVP:

“E&S control failures have occurred due to excessive precipitation or other factors that were not analyzed in the 2017 BiOp (M. Neylon, Mountain Valley, letter to J. Martin, FERC, July 2, 2019). In certain instances, sediment may have traveled beyond the MVP LOD (Table 7). When sediment leaves the MVP LOD, due to an E&S control failure, Mountain Valley immediately repaired or replaced those E&S controls (M. Neylon, Mountain Valley, letter to J. Martin, FERC, July 2, 2019). In many instances, additional E&S controls were added to reinforce protection of resources and to keep material within the LOD. In some instances, Mountain Valley has worked with the applicable state to redesign the controls in a particular area to reduce off ROW events (M. Neylon, Mountain Valley, letter to J. Martin, FERC, July 2, 2019).”

The revisions approved in April 2020 by the VADEQ for the 2020 Annual Standards and Specifications for Erosion & Sediment Control (ESC) and Stormwater Management (SWM) for Mountain Valley Pipeline (MVP) LLC have not stopped the MVP project from continuing to pollute the waterways that are the habitat for endangered fish. The FERC’s stop work instruction was predicated on waiting for the Biological Opinion and there are concerns the FERC may allow MVP to resume construction. MVP should not be allowed to continue their project in Virginia until they have a new stormwater drainage analysis and revised erosion and sediment controls.

cc Governor Northam  
Secretary Strickler  
State Water Control Board