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No. \_\_\_\_\_

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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SIERRA CLUB, WEST VIRGINIA RIVERS COALITION, INDIAN CREEK  
WATERSHED ASSOCIATION, APPALACHIAN VOICES, and CHESAPEAKE  
CLIMATE ACTION NETWORK,  
*Petitioners*

v.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, and  
AUSTIN CAPERTON, Secretary of the West Virginia Department of  
Environmental Protection  
*Respondents*

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**PETITION FOR REVIEW**

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Derek O. Teaney  
Joseph M. Lovett  
Benjamin A. Lockett  
APPALACHIAN MOUNTAIN ADVOCATES. INC.  
P.O. Box 507  
Lewisburg, WV 24901  
Telephone: (304) 793-9007  
Facsimile: (304) 645-9008  
Email: dteaney@appalmad.org

*Counsel for Petitioners*

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Pursuant to Section 19(d)(1) of the Natural Gas Act, 15 U.S.C. § 717r(d)(1), and Rule 15(a) of the Federal Rules of Appellate Procedure, SIERRA CLUB, WEST VIRGINIA RIVERS COALITION, INDIAN CREEK WATERSHED ASSOCIATION, APPALACHIAN VOICES, and CHESAPEAKE CLIMATE ACTION NETWORK hereby petition the United States Court of Appeals for the Fourth Circuit for review of the order of the West Virginia Department of Environmental Protection issuing a Water Quality Certification under Section 401 of the Clean Water Act, 33 U.S.C. § 1341(a) for the Mountain Valley Pipeline entered on March 23, 2017, and finalized upon denial of requests for hearing on May 10, 2017. In accordance with Local Rule 15(b), a copy of the Water Quality Certification is attached hereto as Exhibit A, and the May 10, 2017 letter by which Respondent Austin Caperton denied certain Petitioners request for a hearing on the Water Quality Certification is attached as Exhibit B.

In accordance with Rule 15(c) of the Federal Rules of Civil Procedures, parties that may have been admitted to participate in the underlying procedure have been served with a copy of this Petition. Pursuant to Local Rule 15(b), attached hereto is a list of Respondents specifically identifying the Respondents' names and addresses.

Respectfully submitted,

/s/ Derek O. Teaney

Derek O. Teaney (W. Va. Bar No. 10223)

Joseph M. Lovett  
Benjamin A. Lockett  
APPALACHIAN MOUNTAIN ADVOCATES, INC.  
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Email: [dteaney@appalmad.org](mailto:dteaney@appalmad.org)

Dated June 9, 2017

*Counsel for Petitioners*

### **CERTIFICATE OF SERVICE**

In accordance with Federal Rule of Appellate Procedure 15(c)(1) & (2), the undersigned hereby certifies that, on June 9, 2017, a true copy of this Petition for Review was served via first-class mail on each of the following entities that may have been admitted to participate in the agency proceedings:

1. Megan Neylon  
Mountain Valley Pipeline, LLC  
555 Southpoint Boulevard, Suite 2000  
Canonsburg, PA 15317
2. CT Corporation System  
Registered Agent for Mountain Valley Pipeline, LLC  
5400 D Big Tyler Road  
Charleston, WV 25313
3. Kimberly D. Bose  
Secretary, Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426
4. Michael Hatten  
Chief, Regulatory Branch  
United States Army Corps of Engineers  
Huntington District  
502 Eighth Street  
Huntington, WV 25701
5. Jessica Martinsen  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

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6. John Schmidt  
U.S. Fish and Wildlife Service  
694 Beverly Pike  
Elkins, WV 26241
7. Danny Bennett  
West Virginia Division of Natural Resources  
Wildlife Resources Section, Elkins  
PO Box 67  
Elkins, WV 26241
8. Brian Bridgewater  
West Virginia Department of Environmental Protection  
Division of Water and Waste Management, In-Lieu Fee Program  
601 57th Street, SE  
Charleston, WV 25304
9. John Hendley  
West Virginia Department of Environmental Protection  
Divisions of Water and Waste Management, Environmental Enforcement  
601 57th Street, SE  
Charleston, WV 25304
10. O. Ashby Berkley  
P.O. Box 366  
Talcott, WV 24981
11. Tammy A. Capaldo and Caitlyn A. Gregg  
P.O. Box 58  
Alderson, WV 24910
12. Maury Johnson  
3227 Ellison's Ridge  
Greenville, WV 24945
13. Norvel and Jean Mann  
3330 Cooks Run Road  
Lindside, WV 24951

///

14. A. Petrie Brown  
1019 Hans Creek Road  
Greenville, WV 24945
15. Landcey Ragland  
163 Slate Run Road  
Greenville, WV 24945
16. Charles Chong and Rebecca A. Eneix-Chong  
1839 Halls Run Road  
Bristol, WV 26426-7350
17. Ty and Susan Bouldin  
P.O. Box 431  
Talcott, WV 24981
18. Dr. Stephen Miller  
Route 1, Box 665A  
Peterstown, WV 24963
19. James Gore  
49 Fairview Drive  
Peterstown, WV 24963
20. Shirley Hall  
Route 1, Box 240F  
Lindside, WV 24951
21. Dana O. Olson, M.D. & Jana M. Peters, D.O.  
P.O. Box 480  
Peterstown, WV 24963

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In addition, although not required by the rule, Petitioners have served Respondents via first-class mail this 9th day of June, 2017:

22. Kristin Boggs  
General Counsel  
Office of General Counsel  
West Virginia Department of Environmental Protection  
601 57th Street, S.E.  
Charleston, WV 25304

23. Austin Caperton  
Secretary  
West Virginia Department of Environmental Protection  
601 57th Street, S.E.  
Charleston, WV 25304

DATED: June 9, 2017

/s/ **Derek O. Teaney**

Derek O. Teaney (W. Va. Bar No. 10223)  
APPALACHIAN MOUNTAIN ADVOCATES, INC.  
P.O. Box 507  
Lewisburg, WV 24901  
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Facsimile: (304) 645-9008  
Email: dteaney@appalmad.org

*Counsel for Petitioners*

## **LIST OF RESPONDENTS**

Pursuant to Local Rule 15(b), Petitioners hereby provide a list of Respondents specifically identifying the Respondents' names and the addresses where Respondents and/or their counsel may be served with copies of the Petition:

Kristin Boggs  
General Counsel  
Office of General Counsel  
West Virginia Department of Environmental Protection  
601 57th Street, S.E.  
Charleston, WV 25304

Austin Caperton  
Secretary  
West Virginia Department of Environmental Protection  
601 57th Street, S.E.  
Charleston, WV 25304



# **EXHIBIT A**



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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Telephone Number: (304) 926-0495  
Fax Number: (304) 926-0496

Jim Justice, Governor  
Austin Caperton, Cabinet Secretary  
dep.wv.gov

March 23, 2017

Michael Hatten  
Chief, Regulatory Branch  
United States Army Corps of Engineers  
Huntington District  
502 Eighth Street  
Huntington, West Virginia 25701

Re: State 401 Water Quality Certification; Nationwide Permit No. 12; Mountain Valley Pipeline, LLC; Mountain Valley Pipeline Project; FERC Docket No. CP-16-10-000; Wetzel, Harrison, Doddridge, Lewis, Braxton, Webster, Nicholas, Greenbrier, Fayette, Summers, and Monroe Counties, West Virginia; WQC-16-0005

Dear Mr. Hatten,

The West Virginia Department of Environmental Protection-Division of Water and Waste Management (WVDEP-DWWM), in conjunction with the West Virginia Division of Natural Resources - Wildlife Resources Section (WVDNR-WRS), has completed review of the above-referenced project. In addition, WVDEP-DWWM has participated as a cooperating agency with the Federal Energy Regulatory Commission (FERC) on the project since May 2015.

Mountain Valley Pipeline, LLC (MVP) is proposing the Mountain Valley Pipeline Project (Project) which will include pipeline 303-miles in length and 42-inches in diameter in order to transport natural gas. The proposed route will begin at an existing Equitrans, L.P. transmission system near the Mobley processing facility in Wetzel County, West Virginia and extend to the Transcontinental Gas Pipe Line Company, LLC's Zone 5 Compressor Station 165 in Transco Village, Pittsylvania County, Virginia. To date; however, FERC has not issued the Final Environmental Impact Statement for the Project, confirming the final route of the Project. The proposed Project is approximately 196 miles long within West Virginia with approximately 147 miles of proposed temporary and permanent access roads. In addition to the proposed pipeline, the Project will include the construction of three compressor stations currently planned along the route in West Virginia as

Mr. Michael Hatten

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well as the installation of other ancillary facilities that are required for the safe and reliable operation of the pipeline.

The proposed Bradshaw Compressor Station will be located in Wetzel County, the proposed Harris Compressor Station will be located in Braxton County, and the proposed Stallworth Compressor Station will be located in Fayette County. In addition to compressor stations, the Project proposes three new meter stations within West Virginia: Mobley Meter Station in Wetzel County, Sherwood Meter Station in Harrison County, and WB Meter Station in Braxton County.

Delineation of Waters of the U.S. surveys were performed for approximately 189 miles of pipeline centerline and 141 miles of proposed access roads within West Virginia. While the majority of the Project has currently been surveyed for streams and wetlands, field teams have not been granted access by landowners to approximately 7 miles of proposed pipeline right-of-way (ROW) and 6 miles of proposed access roads. A desktop Waters of the U.S. evaluation of these unsurveyed areas was conducted to evaluate the likely presence and approximate location of aquatic resources. This survey was conducted so as to overestimate the potential impacts until surveys can be conducted in these areas. As a result, proposed impacts associated with the project are designated as surveyed and non-surveyed.

Proposed impacts are considered either temporary or permanent. Proposed temporary impacts will result from temporary disturbance to Waters of the U.S. within the pipeline ROW during pipeline construction, additional temporary work spaces, contractor yards, and temporary access roads. Impacts considered as temporary include aquatic resources that will be restored upon completion of proposed activities. Proposed permanent impacts will result from stream culverting along permanent access roads, constructing above ground facilities, converting palustrine forested and palustrine scrub-shrub wetlands along the pipeline ROW, and filling of wetlands for permanent access roads.

Construction of the Project would result in unavoidable temporary and permanent impacts to Waters of the U.S. in the Pittsburgh District and Huntington District of the U.S. Army Corps of Engineers (USACE). Permanent impacts to streams and wetlands were evaluated utilizing the West Virginia Stream and Wetland Valuation Metric (SWVM). To compensate for permanent impacts associated with this project, the applicant has proposed to purchase credits from a USACE approved mitigation bank if available or, if credits are not available, from the WVDEP In-Lieu Fee (ILF) Program. SWVM units for proposed permanent impacts were calculated for surveyed impacts only and represent the requirements stated in this Individual 401 Water Quality Certification (401 WQC). SWVM units for non-surveyed impacts will be calculated if survey permission is granted, submitted to the WVDEP-DWWM, and additional compensatory mitigation will be required for those areas.

Total proposed stream crossings associated with the Project in West Virginia include 631 crossings comprised of 569 crossings in the Huntington District and 62 crossings in the Pittsburgh District. Stream crossings in the Huntington District include 569 crossings comprised of 501 surveyed and 68 non-surveyed crossings. Of the 501 surveyed crossings, 464 are temporary crossings and 37 crossings are permanent. The remaining 68 non-surveyed crossings include 59 temporary and 9 permanent. Including both surveyed and non-surveyed crossings, 523 are temporary and 46 are permanent in the Huntington District. Stream crossings in the Pittsburgh District include 62 crossings

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comprised of 59 surveyed and 3 non-surveyed crossings. Of the 59 surveyed crossings, 53 are temporary crossings and 6 crossings are permanent. The remaining 3 non-surveyed crossings are all temporary. Including both surveyed and non-surveyed crossings, 56 are temporary and 6 are permanent in the Pittsburgh District. MVP does not intend to cross any streams by Horizontal Directional Drill (HDD). Permanent impact to streams associated with the Project includes 2,392 linear feet (lf), accruing a total of 1,411.171 SWVM debits.

Total proposed wetland crossings associated with the Project in West Virginia include 424 crossings comprised of 366 crossings in the Huntington District and 58 crossings in the Pittsburgh District. Wetland crossings in the Huntington District include 366 crossings comprised of 343 surveyed and 23 non-surveyed crossings. Of the 343 surveyed crossings, 282 are temporary crossings and 61 crossings are permanent. The remaining 23 non-surveyed crossings include 13 temporary and 10 permanent. Including both surveyed and non-surveyed crossings, 295 are temporary and 71 are permanent in the Huntington District. Wetland crossings in the Pittsburgh District include 58 crossings comprised of 56 surveyed and 2 non-surveyed crossings. Of the 56 surveyed crossings, 55 are temporary crossings and 1 crossing is permanent. The remaining 2 non-surveyed crossings are both temporary. Including both surveyed and non-surveyed crossings, 57 are temporary and 1 is permanent in the Pittsburgh District. MVP does not intend to cross any wetlands by HDD. Permanent impact to wetlands associated with the Project includes 2.132 acre, accruing a total of 4.113 SWVM debits.

WVDEP-DWWM received 875 total comments regarding this project that included 593 comments in favor of the project and 267 comments opposing it. The remaining 15 comments did not indicate being in favor of or opposed to the project. In addition, 100 public comments included a request for public hearings. WVDEP-DWWM held public hearings in Webster Springs, Hinton, and Clarksburg in March 2017.

Stream and wetland debits will be mitigated for using purchase of mitigation bank credits or purchase from the WVDEP ILF Program at the respective crediting ratios (greater than 1:1 when using the WVDEP ILF Program). As calculated by current methodologies, if completed in 5 years, mitigation for the project would be for proposed permanent impact of 2,392 lf of stream (1,411.171 SWVM debits) and 2.132 acre of wetland (4.113 SWVM debits). The total number of credits which will be purchased, if available, from a mitigation bank include 1,411.171 stream credits and 4.113 wetland credits. If mitigation bank credits are not available, the total number of credits which would be purchased from the WVDEP ILF Program includes 1,580.511 stream credits and 6.533 wetland credits.

In order to comply with the state's water quality certification, groundwater and water quality standards regulations the following special conditions must be met:

Special Conditions:

1. If project construction is not completed within five years of issuance of certification, impacts will be re-evaluated at the then current rates and methodologies.

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2. Representatives from WVDEP-DWWM and WVDNR-WRS must be allowed to inspect the authorized activity at any time deemed necessary to ensure that the terms and conditions of certification are being met or will be met.
3. WVDEP-DWWM 401 Certification Program is to be informed within 2 business days of the applicant's knowledge of any slips that have impacted or may impact a stream and/or wetland.
4. The applicant does not propose to cross any streams or wetlands by HDD method. If, during project construction it becomes necessary to cross a stream or wetland by HDD, a Horizontal Directional Drill Inadvertent Return and Contingency Plan must be provided to the WVDEP-DWWM prior to the activity.
5. At all times during pipeline operation, the applicant must adhere to the Section 10 Crossing Operations Plan dated March 2017.
6. All stream and wetland crossings must be completed in accordance with the Wetland and Waterbody Construction and Mitigation Procedures established by the Federal Energy Regulatory Commission (FERC); Upland Erosion Control, Revegetation Plan, and Maintenance Plan established by FERC; and the Stream Bank Restoration Plan submitted to the WVDEP-DWWM dated March 2017.
7. Completion of stream and wetland crossings must adhere to dates established in standard conditions for 404/401 permits including restrictions during the spawning season for warm water streams (April to June) and trout waters (September 14 to March 31).
8. At each stream crossing, substrate in the channel is to be removed and stockpiled separately from other excavated material. This native material must be reused in restoration of the stream channel. Upon final stream bed restoration, the stream must have similar substrate pattern, profile, dimension and embeddedness of the original stream channel.
9. At each wetland crossing, the top 12 inches of soil is to be removed and stockpiled separately from other excavated material. This native material must be reused in restoration of the wetland.
10. For stream crossings, prior to any construction activities photographs of the channel within the ROW, the channel upstream of the ROW, and the channel downstream of the ROW are to be taken. For wetland crossings, photographs of the wetland within the ROW, the ROW as it enters the wetland, and the ROW as it exits the wetland are to be taken. All photos are to be georeferenced to include a unique identification, date, and GPS coordinates. The photographs associated with each stream and wetland crossing are to be submitted to WVDEP-DWWM and WVDNR-WRS.
11. Upon completion of construction and reclamation of each stream and wetland crossing, associated photographs are to be taken in the same manner and locations as pre-impact existing conditions (as described above). Associated photographs of each stream and wetland crossing

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within the ROW upon completion of construction and reclamation are to be submitted to WVDEP-DWWM and WVDNR-WRS.

12. Stream and wetland crossings are to be monitored for a minimum period of 3 years. A monitoring report must be submitted annually to WVDEP-DWWM and WVDNR-WRS which includes photographs (as described above), details of any slips encountered which affected streams and/or wetlands, and an evaluation of the current conditions of each stream crossing.
13. Based on review of monitoring reports, additional restoration and/or mitigation may be required for permanent or temporary stream impacts/losses or conversion of palustrine scrub shrub and palustrine forested wetlands as outlined in 47CSR5A and 33 CFR Parts 325 and 332 Compensatory Mitigation for Losses of Aquatic Resources; Final Rule.
14. Compensatory mitigation requirements as presented in this 401 WQC are based on SWVM units for proposed permanent impacts for surveyed impacts only.
15. SWVM units for non-surveyed impacts will be calculated if survey permission is granted and submitted to the WVDEP-DWWM in order to calculate additional compensatory mitigation associated with this project. No impacts to non-surveyed areas are to occur until this information is submitted to WVDEP-DWWM.
16. In advance of pipeline construction in karst areas, the applicant must submit for review and concurrence an enhanced karst management plan. At a minimum, the plan shall include provisions for:
  - A preplan development meeting with agency staff to discuss the approach for, and agency expectations of, the plan
  - Ability to physically access all final Right-of Way (ROW) and access road areas
  - Field reviews with WVDEP-DWWM staff
  - Identification of all karst features in, and receiving drainage from, the ROW and access roads
  - Predictions and /or depictions of karst drainage patterns and springs receiving, or potentially receiving, ROW and access road drainage
  - Construction designs to minimize disturbed areas
  - Construction designs to minimize temporal disturbance
  - Construction schedule to avoid typically wetter periods of the year
  - Typical construction designs for mitigating encountered, unanticipated, karst openings
  - Mitigation measures to be deployed if a water supply's quality is affected
  - Mitigation measures to be deployed if a water supply's quantity is diminished or the supply is lost
  - Reexamination of setback distances for equipment storage/fueling areas
17. Only open bottom box culverts are to be used for culverts on permanent access roads that cross trout streams. The applicant shall contact the WVDEP-DWWM for a complete listing of trout streams after determination of the final route of the Project.

Mr. Michael Hatten

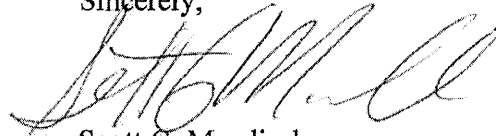
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18. Upon issuance of the FEIS by FERC and determination of the final route of the Project, the applicant will submit to WVDEP-DWWM either confirmation that the proposed route provided in the 401 WQC is the final route of the Project or provide the final route if it differs from the 401 WQC. If the final route differs from the 401 WQC, the applicant will provide updated impacts corresponding to the final route of the Project.
19. The applicant shall supply to the WVDEP-DWWM a copy of the Certificate issued by FERC for this project, not later than ten days after the issuance of such license. WVDEP-DWWM may revoke, suspend or modify this Conditional Water Quality Certification as it deems appropriate, depending upon the terms of said license.

State 401 Water Quality Certification, as required by the Federal Clean Water Act, is conditionally granted subject to the above special conditions and the attached 401 standard conditions. Certification shall be effective fifteen (15) days after receipt unless appealed under title 47, Series 5A, Section 7 of the Code of State Regulations, State Certification of Activities Requiring a Federal Permit. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It should be directed to: Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection, 601 57<sup>th</sup> Street SE, Charleston, West Virginia 25304: ATTENTION: 401 Certification Program.

Sincerely,



Scott G. Mandirola  
Director

SGM/njd

cc: Ms. Megan Neylon  
Mountain Valley Pipeline, LLC  
555 Southpoint Boulevard, Suite 2000  
Canonsburg, Pennsylvania 15317  
U.S. Environmental Protection Agency – Jessica Martinsen  
U.S. Fish and Wildlife Service – John Schmidt  
WVDNR-Wildlife Resources Section, Elkins – Danny Bennett  
WVDEP-DWWM, In-Lieu Fee Program – Brian Bridgewater  
WVDEP-DWWM, Environmental Enforcement – John Hendley

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
CONDITIONS REQUIRED FOR SECTION 404/10 PERMITS  
ISSUANCE AND STATE CERTIFICATION AS REQUIRED BY SECTION 401

Applicant: Mountain Valley Pipeline, LLC  
WQC No.: 16-0005  
Nationwide Permit No.: 12  
Date: March 23, 2017

1. In stream work in designated warm water streams and their adjacent tributaries during the fish spawning season, April - June and trout waters and their adjacent tributaries during the trout water fish spawning season September 15-March 31st requires a spawning season waiver from the West Virginia Division of Natural Resources, Wildlife Resources Section. For information about specific stream designations contact DEP's Water Quality Standards Section at 304-926-0495. The Wildlife Resources Section, Trout Fisheries Program at 304-637-0245 or Warm Water fisheries Program 304-558-2771 should be contacted if a waiver is needed. In stream work may occur during the respective spawning season in ephemeral waters without a waiver if all reasonable measures are taken to minimize turbidity and sedimentation downstream associated with the proposed project.
2. Operation of equipment instream is to be minimized and accomplished during low flow periods when practical. Ingress and egress for equipment shall be within the work site. Location of ingress and egress outside the immediate work area requires prior approval of the West Virginia Department of Environmental Protection, Division of Water and Waste Management in concurrence with the West Virginia Division of Natural Resources.
3. The permittee will investigate for the presence of water supply intakes or other activities within 1/2 mile downstream, which may be affected by suspended solids and turbidity increases caused by work in the watercourse. The permittee will give notice to operators of any such water supply intakes and such other water quality dependent activities as necessary before beginning work in the watercourse in sufficient time to allow preparation for any change in water quality.
4. Activities permitted under Section 404 of the Clean Water Act are not authorized in the vicinity of or within stream mouths, embayments or island backchannels. Stream mouth is defined as the area extending 100 feet upstream and 100 feet downstream on receiving streams that are classified as a Section 10 stream.
5. The permittee will employ measures to prevent or control spills from fuels, lubricants or any other materials used in connection with construction and restrict them from entering the watercourse. Storage areas for chemicals, explosives, lubricants, equipment fuels, etc., as well as equipment refueling areas, must include containment measures (e.g., liner systems, dikes, etc.) to ensure that spillage of any material will not contact surface or ground waters. Storage areas and refueling areas shall be a minimum distance of 100 feet from any surface waterbody. All spills shall be promptly reported to the State Center for Pollution, Toxic Chemical and Oil Spills, 1-800-642-3074.



6. Upon completion of in-stream operations all disturbances below the ordinary high water mark will be properly stabilized within 24 hours to prevent soil erosion. Where possible, stabilization shall incorporate revegetation using bioengineering as an alternative to rip rap. If rip rap is utilized, it is to be of such weight and size that bank stress or slump conditions will not be created due to its placement. Fill is to be clean, nonhazardous and of such composition that it will not adversely affect the biological, chemical or physical properties of the receiving waters. Unsuitable materials include but are not limited to: Cadmium chromium arsenate (CCA) and creosote treated lumber, car bodies, tires, large household appliances, construction debris, and asphalt. To reduce potential slope failure and/or erosion behind the material, fill containing concrete must be of such weight and size that promotes stability during expected high flows. Loose large slab placement of concrete sections from demolition projects greater than thirty-six inches in its longest dimension and tires are prohibited. Rebar or wire in concrete should not extend further than one (1) inch. All activities require the use of clean and coarse non erodible materials with 15% or less of like fines that is properly sized to withstand expected high flows.
7. Land disturbances, which are integral to the completion of the permitted activity and are one (1) acre or greater in total area, must comply with the National Pollutant Discharge Elimination System or other state stormwater permit requirements as established by the West Virginia Department of Environmental Protection, Division of Water and Waste Management, if applicable. Best Management Practices for Sediment and Erosion Control, as described in the West Virginia Department of Environmental Protection's Erosion and Sediment Control Best Management Practice Manual, 2006, or similar documents prepared by the West Virginia Division of Highways may be used. These handbooks are available from the respective agency offices.
8. Removal of well-established riparian vegetation not directly associated with the project construction is prohibited. Disturbance and removal of vegetation from project construction area is to be avoided, where possible, and minimized when necessary. Removal of vegetation shall not be allowed where stream bank stability under normal flow conditions would be compromised.
9. All permit modifications must be re-certified.
10. Spoil materials from the watercourse or onshore operations, including sludge deposits, will not be dumped in the watercourse, or deposited in wetlands or other areas where the deposit may adversely affect the surface or ground waters of the state.
11. Excavated material, other than rock or gravel, for use as backfill for the trench will not be stockpiled in the watercourse.
12. Excavation, dredging or filling in the watercourse will be done only to the extent necessary to achieve the project's purpose.
13. Bilge, ballast or wash water pumped from barges will not be discharged to the water course without acceptable removal of solids, oils or toxic compounds.

14. The pipeline should be designed and constructed to prevent flotation and minimize the possibility of leakage or rupture. Also, shutoff valves should be installed on both sides of the channel so that the crossing can be isolated in case of pipe failure. Submarine-type pipeline crossings must be designed and constructed to prevent flotation and the possibility of leakage or rupture and the top of pipelines must be buried a minimum of three (3) feet below the stream bottom.
15. Runoff from any storage areas or spills will not be allowed to enter storm sewers without acceptable removal of solids, oils and toxic compounds. Discharges from retention/detention ponds must comply with permit requirements of the National Pollutant Discharge Elimination System permit program of the West Virginia Department of Environmental Protection, Division of Water and Waste Management.
16. Concrete will not be permitted to enter the watercourse unless contained by tightly sealed forms or cells. Concrete handling equipment shall not discharge waste washwater into wetlands or watercourses at any time without adequate waste water treatment as approved by the WVDEP – DWWM.
17. The permittee will provide written notice of the proposed start-up date to the WVDEP-Environmental Enforcement (EE), fifteen days in advance of initiation of any activity authorized by the certification. The address for EE is 601 57th Street SE, Charleston, West Virginia 25304.
18. Stream activities permitted under the US Army Corps of Engineers 404 Program require that a West Virginia Public Lands Corporation Right of Entry be obtained. Application for this authorization should be made to the West Virginia Division of Natural Resources, Office of Lands and Streams, Building 74, Room 200, 324 Fourth Avenue, South Charleston, West Virginia 25303, or by contacting them at 304-558-3225. Any activity within the 100-year floodplain requires approval from the appropriate Floodplain Manager. The following website provides a statewide listing of Floodplain Managers in West Virginia:  
[www.dhsem.wv.gov/mitigation/floodplain/Pages/default.aspx](http://www.dhsem.wv.gov/mitigation/floodplain/Pages/default.aspx)
19. Should potentially hazardous waste materials be located, the permittee will advise the WVDEP, Division of Water and Waste Management (Hazardous Waste Section), telephone (304) 926-0495, prior to disturbance of material.
20. The permittee shall provide a copy of the State 401 Certification to the construction contractor. A copy of the State 401 Certification shall be available at the project site until such time as the project is complete.
21. The permittee will comply with water quality standards as contained in the WV Code of State Regulations, Requirements Governing Water Quality Standards Title 47, Series 2.

Document Content(s)

401 WQC for MVP (WQC160005).PDF.....1-9

# **EXHIBIT B**



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west virginia department of environmental protection

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Executive Office  
601 57th Street, Southeast  
Charleston, West Virginia 25304  
Phone: (304) 926-0440  
Fax: (304) 926-0446

Jim Justice, Governor  
Austin Caperton, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

May 10, 2017

Shirley Hall  
Rt. 1 Box 240F  
Lindside, WV 24951  
*Via Certified Mail, Return Receipt Requested*

Dana O. Olson, M.D.  
Jana M. Peters, D.O.  
Post Office Box 480  
Peterstown, WV 24963  
*Via Certified Mail, Return Receipt Requested*

Derek O. Teaney, Esquire  
Appalachian Mountain Advocates  
Post Office Box 507  
Lewisburg, WV 24901  
*Via Certified Mail, Return Receipt Requested*

Re: Request for Hearing on State 401 Water Quality Certification; Nationwide Permit No.12, Mountain Valley Pipeline, LLC; Mountain Valley Pipeline Project; FERC Docket No. CP-16-10-000; Wetzell, Harrison, Doddridge, Lewis, Braxton, Webster, Nicholas, Greenbrier, Fayette, Summers, and Monroe Counties, West Virginia; WQC-16-005

All:

This will acknowledge receipt of your letters of April 8, 2017, requesting a hearing pursuant to W. Va. Code R. § 47-5A-7, on the Section 401 Certification, WQC-16-005, issued by the West Virginia Department of Environmental Protection on March 23, 2017, for the Mountain Valley Pipeline Project Section 404 permit authorization and Natural Gas Act Certificate of Public Convenience and Necessity.

Pursuant to the discretion granted by W. Va. Code R. § 47-5A-7.1.c, I hereby deny your request for a hearing.

Very truly yours,

Austin Caperton  
Cabinet Secretary