

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

DAVID K. PAYLOR, Director of the)
 Department of Environmental Quality,)
)
 and)
)
 STATE WATER CONTROL BOARD,)
)
 Plaintiffs,)
)
 v.)
)
 MOUNTAIN VALLEY PIPELINE, LLC,)
)
 Serve: CT CORPORATION SYSTEM)
 4701 Cox Road, Suite 285)
 Glen Allen, VA 23060)
)
 Defendant.)

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Case No.:

COMPLAINT

The Plaintiffs David K. Paylor, Director of the Department of Environmental Quality (the “Department” or “DEQ”), and the State Water Control Board (the “Board”) (collectively the “Plaintiffs”) bring this action against the Defendant Mountain Valley Pipeline, LLC (“MVP” or “Defendant”) for its violations of the Commonwealth’s environmental laws and regulations at sites in Craig, Franklin, Giles, Montgomery, and Roanoke Counties. Plaintiffs state the following in support of their Complaint:

INTRODUCTION

1. This is a civil action seeking injunctive relief and civil penalties brought pursuant to Va. Code §§ 62.1-44.15:42, 62.1-44.15:48, 62.1-44.15:63, 62.1-44.23, and 62.1-44.32 for violations of the State Water Control Law, Va. Code §§ 62.1-44.2, *et seq.*, the Virginia Stormwater Management Act, Va. Code §§ 62.1-44.15:24, *et seq.*, the Virginia Erosion and

Sediment Control Law, Va. Code §§ 62.1-44.15:51, *et seq.*, the Virginia Stormwater Management Program (VSMP) Regulation, 9 VAC 25-890, *et seq.*, the Erosion and Sediment Control Regulations, 9 VAC 25-840, *et seq.*, the Virginia Water Resources and Wetlands Protection Program, Va. Code § 62.1-44.15:20, *et seq.*, the Virginia Water Protection Program Permit Regulation, 9 VAC 25-210, *et seq.*, and the Clean Water Act § 401 Water Quality Certification No. 17-001 issued to MVP on December 8, 2017.

PARTIES

2. The State Water Control Board (the “Board”) is an agency of the Commonwealth of Virginia. The Board has the duty and authority to issue, revoke or amend certificates – i.e., permits, under prescribed conditions for the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters and also to initiate administrative and civil enforcement actions to prevent pollution.

3. David K. Paylor is the Director of the Department of Environmental Quality and the Executive Director of the Board. It is the duty of the Executive Director of the Board to exercise general supervision and control over the quality and management of all state waters and to administer and enforce the State Water Control Law, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board.

4. MVP is a foreign limited liability company registered to do business in the Commonwealth.

VENUE

5. The Circuit Court of Henrico County is the proper forum pursuant to Va. Code § 8.01-262(2).

STATUTORY AND REGULATORY AUTHORITY

6. The purposes of the State Water Control Law are to (1) protect existing high quality state waters and restore all other state waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (2) safeguard the clean waters of the Commonwealth from pollution; (3) prevent any increase in pollution; and (4) reduce existing pollution. *See* Va. Code § 62.1-44.2.

7. To accomplish these purposes, the State Water Control Law prohibits certain activities without a certificate or a permit issued by the Board.

8. Specifically, the State Water Control Law provides that 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 the State Water Control Law, it shall be unlawful for any person to, among other things, discharge stormwater into state waters from land disturbing activities or otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to uses of such waters for domestic or industrial consumption, recreation, or for other uses. *See* Va. Code §§ 62.1-44.5(A)(3) and (5)

9. In addition, the Virginia Water Resources and Wetlands Protection Program and Virginia Water Protection Permit Program Regulations prohibit the dredging, filling, or discharging of any pollutant into, or adjacent to wetlands or other surface waters without a Virginia Water Protection Permit issued by the Board. *See* Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

10. “Land disturbance” or “land-disturbing activity” means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation. *See* Va. Code § 62.1-44.15:24.

11. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. *See* Va. Code § 62.1-44.3.

12. The Commonwealth has developed a regulatory framework designed to minimize the environmental impact associated with land disturbing activities that imposes strict requirements on entities in advance of engaging in any such activity and continuing until land disturbing activity is complete and permanent stabilization is achieved.

13. Accordingly, “Interstate and intrastate natural gas pipeline companies...shall...annually submit a single set of standards and specifications for Department approval that describes how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of [the Stormwater Management Act] 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.” Va. Code § 62.1-44.15:31(A); *see also* Va. Code § 62.1-44.15:55(D).

14. The standards and specifications shall include:

- a. Technical criteria to meet the requirements of [the Stormwater Management Act] and regulations developed under [the Stormwater Management Act];
- b. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;

- c. Provisions for erosion and sediment control and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement;
- d. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for local government;
- e. Implementation of a project tracking and notification system to the Department of all land-disturbing activities covered under [the Stormwater Management Act]; and
- f. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of the [Stormwater Management Act].

Id.

15. In addition to Annual Standards and Specifications, the Department may require site specific erosion and sediment control and stormwater management plans for linear projects. *See* 9 VAC 25-840-30(B) and 9 VAC 25-870-76.

16. Both Annual Standards and Specifications and any site specific plan must meet the minimum standards and technical criteria laid out in the Board’s regulations at 9 VAC 25-840-40. *See* 9 VAC 25-840-30(A).

17. “Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, approved standard and specification, order, or permit condition issued by the Board, Department, or [Virginia Stormwater Management Program] authority as authorized to do such, or any provisions of this article, may be compelled in a proceeding instituted in any appropriate court by the Board, Department, or [Virginia Stormwater Management Program] authority where authorized to enforce this article to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.” Va. Code § 62.1-44.15:42(A).

18. “Any person who violates any provision of [the Virginia Stormwater Management Act] or of any regulation, ordinance, or standard and specification adopted or approved

hereunder, including those adopted pursuant to the conditions of an MS4 permit, or who fails, neglects, or refuses to comply with any order of a VSMP authority authorized to enforce this article, the Department, the Board, or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.” Va. Code § 62.1-44.15:48(A).

19. “Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water quality standard, pretreatment standard, or requirement of or any provision of any certificate issued by the Board, or by the owner of a publicly owned treatment works issued to an industrial user, or any provisions of [the State Water Control Law], except as provided by a separate article, may be compelled in a proceeding instituted in any appropriate court by the Board to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.” Va. Code § 62.1-44.23.

20. “Except as otherwise provided in [the State Water Control Law], any person who violates any provision of [the State Water Control Law], or who fails, neglects, or refuses to comply with any order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.” Va. Code § 62.1-44.32.

GENERAL ALLEGATIONS

21. MVP proposes to construct and operate a 303.5-mile long, 42-inch-diameter natural gas pipeline from Wetzel County, West Virginia to Pittsylvania County, Virginia.

22. Approximately 106 miles of pipeline will be located in Virginia and traverse portions of Giles County, Craig County, Montgomery County, Roanoke County, Franklin County, and Pittsylvania County.

23. The proposed project is regulated by the Federal Energy Regulatory Commission (FERC) pursuant to Section 7(c) of the Natural Gas Act, 15 U.S.C. § 717f(c), which provides that “[n]o natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension of shall...undertake the construction or extension of any facilities therefor...unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations.”

24. FERC issued a Certificate of Public Convenience and Necessity to MVP on October 13, 2017 (“FERC Certificate”).

25. The FERC Certificate imposed 40 separate environmental conditions upon MVP.

26. Paragraph 187 of the FERC Certificate provides that in addition to the conditions required therein, the U.S. Army Corps of Engineers and the respective states in which the proposed project may be constructed may impose additional conditions to protect water quality pursuant to Sections 401 and 404 of the Clean Water Act; that MVP must obtain all necessary federal and state permits and authorizations, including water quality certifications, prior to receiving FERC authorization to commence construction; and that FERC expects strict compliance with any federal and state mandated conditions.

27. Section 401(a) of the Clean Water Act, 33 U.S.C. § 1341(a), provides that “[a]ny applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge to navigable waters,

shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate...that any such discharge will comply with the applicable provisions of [the Clean Water Act].”

28. “Any certification provided under [Section 401 of the Clean Water Act] shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to ensure that any applicant for a Federal license or permit will comply with any applicable [provisions of the Clean Water Act], and with any other appropriate requirements of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of [Section 401 of the Clean Water Act].” 33 U.S.C. § 1341(d).

29. The State Water Control Board issued a Section 401 Water Quality Certification to MVP on December 8, 2017.

30. Condition 13 of the Section 401 Water Quality Certification requires that MVP comply with the requirements of the Virginia 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.*

31. In accordance with the Virginia Stormwater Management Act, MVP sought approval of its Annual Standards and Specifications.

32. The Department approved MVP’s Annual Standards and Specifications related to erosion and sediment control and stormwater management on June 20, 2017.

33. The Annual Standards and Specifications required MVP to submit site specific Erosion and Sediment Control and Stormwater Management Plans to the Department for review and approval and that any erosion and sediment control program adopted by MVP be consistent

with minimum standards outlined in the Virginia Erosion and Sediment Control Regulations at 9 VAC 25-840-40.

34. MVP's approved Annual Standards and Specifications state that it is MVP's responsibility to ensure "the repair of all ineffective temporary [erosion and sediment control] measures within 24 hours of identification, or as soon as conditions allow if compliance with this time frame would result in greater environmental impacts."

35. In addition, the Annual Standards and Specifications provide that the Department will perform pre-scheduled as well as random site inspections for the project to ensure compliance with the Stormwater Management Act, the Erosion and Sediment Control Law, and regulations adopted thereunder and that the Department may take enforcement action if areas of non-compliance are identified during a routine inspection or in response to a complaint report.

36. The Department approved MVP's site specific Erosion and Sediment Control and Stormwater Management Plans ("Site Specific ESC and SWM Plans") on March 26, 2018.

37. MVP has since commenced land disturbing activities along the pipeline route.

38. Since commencement of land disturbing activities, the Department has inspected specific locations along the pipeline route in response to complaints received by the Department and in accordance with its inspection authority under the Annual Standards and Specifications.

39. In addition, the Department has engaged a third-party contractor, McDonough Bolyard Peck, Inc. ("MBP"), to evaluate compliance with MVP's Annual Standards and Specifications as well as MVP's Site Specific ESC and SWM Plans. Each of MBP's compliance monitor inspectors holds the requisite Erosion and Sediment Control and Stormwater Management inspector certification.

Department Inspections

40. On May 21, 2018, the Department conducted a complaint investigation of a site in the vicinity of Cahas Mountain Road in Franklin County and observed denuded areas, including stockpiles and earthen structures, which lacked temporary or permanent stabilization as required by MVP's Annual Standards and Specifications as well as MVP's Site Specific ESC and SWM Plans . The Department documented that erosion and sediment controls were overwhelmed resulting in sediment going onto Cahas Mountain Road which caused the road to be closed.

41. On May 23, 2018, the Department revisited the site in the vicinity of Cahas Mountain Road in Franklin County and observed: (i) that the temporary or permanent stabilization had not been applied; (ii) that MVP's self-inspection reports failed to identify all erosion and sediment controls requiring maintenance; and (iii) that erosion and sediment controls near station markers 13476+16 and 13489+10 were in need of repair, which resulted in a release of sediment and sediment laden stormwater off of the right of way onto adjacent private property and into surface waters of the Commonwealth.

42. On May 24, 2018, the Department conducted a complaint investigation of a site in the vicinity of Catawba Road in Montgomery County and observed: (i) that erosion and sediment controls including a silt fence and J hooks were in need of repair; (ii) that MVP's self-inspection reports contained inadequate information regarding the specific location of all erosion and sediment controls requiring maintenance; and (iii) that controls identified as in need of repair had not been repaired within 24 hours as required by the approved Annual Standards and Specifications.

43. On May 30, 2018, the Department conducted a complaint investigation of a site in the vicinity of Grassy Hill Road in Franklin County and observed that clean water diversion

structures were not installed in accordance with MVP's approved Site Specific Erosion and Sediment Control Plan.

44. On May 31, 2018, the Department revisited the site in the vicinity of Cahas Mountain Road in Franklin County and observed sedimentation within two separate unnamed stream channels on property adjacent to the MVP right of way. In the first stream, located approximately 260 feet south of the right of way, the Department observed approximately 1,110 linear feet of stream channel containing sediment ranging from 1 to 11 inches in depth. In the second stream, located approximately 420 feet north of the right of way, the Department observed approximately 1,110 linear feet of stream channel containing sediment ranging from 1 to 10 inches in depth. MVP did not possess a permit to discharge the fill into surface waters.

45. On June 6, 2018, the Department conducted an inspection of a site in the vicinity of Mount Tabor Road in Montgomery County and observed clean water diversion structures were not installed in accordance with MVP's approved Site Specific Erosion and Sediment Control Plan and that MVP's self-inspection reports contained inadequate information to verify whether repair of deficient erosion and sediment controls was accomplished within 24 hours.

46. On June 13, 2018, the Department conducted field monitoring of various sites within Spreads H and I in Franklin County and observed (i) denuded areas, including stockpiles and earthen structures which lacked temporary or permanent stabilization; (ii) that water bars were not installed in accordance with the MVP's approved Annual Standards and Specifications and MVP's approved Site Specific ESC and SWM Plans; and (iii) end treatment conveyances down slope were not adequate or installed in accordance with the approved Site Specific ESC and SWM Plans.

47. On June 26, 2018 the Department conducted field monitoring of various sites within Spread H in Montgomery County and observed that erosion and sediment controls, including water bars above stream crossing 39 and stream crossing 40 were not maintained or repaired to ensure functionality and that as a result sediment-laden stormwater left the right of way causing sediment to be deposited within the stream channel. In the vicinity of stream crossing 39 and stream crossing 40, the Department observed approximately 2,200 linear feet of stream channel containing sediment ranging from 1 to 5 inches in depth. MVP did not possess a permit to discharge the fill into surface waters.

48. On June 27, 2018 the Department conducted field monitoring of various sites within Spread H in Montgomery County and observed that wetlands crossings WC5, WC6, WC11, and WC12 were not properly installed prior to use and that access roads 270 and 272 required repair and sump maintenance. In addition, the Department observed sediment to be deposited within the stream channel of streams identified as SMM-15 and MN-513. With respect to SMM-15, the Department observed approximately 3,600 linear feet of stream channel containing sediment ranging from 1 to 7 inches in depth, and with respect to MN-13, the Department observed approximately 209 linear feet of stream channel containing sediment ranging from <0.5 to 3 inches in depth. MVP did not possess a permit to discharge the fill into surface waters.

49. The Department's observations on May 21, May 23, May 24, May 31, June 6, June 13, June 26, and June 27 constitute violations of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Erosion and Sediment Control Law, the Virginia Stormwater Management Program Regulation, the Erosions and Sediment Control Regulations,

the Virginia Water Protection Permit Program Regulations, and Section 401 Water Quality Certification 17-001 issued to MVP.

50. On July 9, 2018, the Department issued a Notice of Violation (“NOV”) to MVP citing the alleged violations identified during the May and June complaint investigations and inspections.

51. On August 29, 2018 the Department conducted field monitoring of various sites within Spread G in Giles County in the vicinity of stream crossing NN-12 and observed that erosion and sediment controls in the vicinity of stream crossing NN-12 had been repaired but that sediment-laden stormwater had left the right of way causing sediment to be deposited within the stream channel. The Department observed approximately 600 linear feet of stream channel containing sediment ranging from <.5 to 3 inches in depth. MVP did not possess a permit to discharge the fill into surface waters.

52. On September 5, 2018 the Department conducted field monitoring of various sites within Spread G in Giles County in the vicinity of stream crossing Q-14 and observed that erosion and sediment controls in the vicinity of stream crossing Q-14 were in the process of being repaired but that sediment-laden stormwater had left the right of way causing sediment to be deposited within the stream channel. The Department observed approximately 630 linear feet of stream channel containing sediment ranging from <.5 to 9 inches in depth. MVP did not possess a permit to discharge the fill into surface waters.

53. On September 19, 2018, the Department conducted a comprehensive inspection of Spread G in Craig, Giles, and Montgomery Counties and observed that ineffective temporary ESC measures were not repaired within 24 hours of identification.

54. On September 20, 2018 the Department conducted field monitoring of various sites within Spread H in Roanoke County in the vicinity of wetland crossing IJ-10 and observed that erosion and sediment controls in the vicinity of wetland crossing IJ-10 had been repaired but that sediment-laden stormwater had left the right of way causing sediment to be deposited within a wetland. The Department observed approximately 350 square feet of wetland containing sediment ranging from <.5 to 6 inches in depth. MVP did not possess a permit to discharge the fill into surface waters.

55. On September 25, 2018, the Department conducted a field inspection within Spread H in Montgomery County in the vicinity of MP 227.9 and observed that the dewatering structure was inadequately stabilized and that the pump around energy dissipator was inadequate resulting in sediment deposition in a stream.

56. On October 3, 2018, the Department conducted a comprehensive inspection of Spread G in Craig and Giles Counties and observed that ineffective temporary ESC measures were not repaired within 24 hours of identification.

57. On October 16, 2018, the Department conducted a field inspection within Spread I in Franklin County in the vicinity of MP 262-266 and observed inadequate stabilization, that sediment and debris had been deposited off of the construction right of way, and that ineffective temporary ESC measures were not repaired within 24 hours of identification..

58. On October 16, 2018 the Department conducted field monitoring of various sites within Spread I in Franklin County in the vicinity of stream crossing E-48 and observed that erosion and sediment controls in the vicinity of stream crossing E-48 were in the process of being repaired but that sediment-laden stormwater had left the right of way causing sediment to be deposited within the stream channel. The Department observed stream channel containing

sediment ranging from <.5 to 2 inches in depth. Linear footage of stream channel impacts could not be assessed because access to downstream property was denied. MVP did not possess a permit to discharge the fill into surface waters.

59. On October 17, 2018, the Department conducted a comprehensive inspection of Spread G in Giles and Montgomery Counties and observed inadequate stabilization and that ineffective temporary ESC measures were not repaired within 24 hours of identification.

60. The Department's observations on August 29, September 5, September 19, September 20, September 25, October 3, October 16, and October 17 constitute violations of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, 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, and Section 401 Water Quality Certification 17-001 issued to MVP.

MBP Inspections

61. In addition to the Department's observations, from the beginning of June through November 15, 2018, MBP documented an additional 180 instances where MVP failed to repair ineffective erosion and sediment control measures within 24 hours of identification. The individual delays range from 1 to 48 days past due.

62. From the beginning of June through November 15, 2018, MBP identified 42 instances where sediment was deposited off of the construction right of way as a result of erosion and sediment control measures being improperly installed or maintained. In 16 such instances, sediment was observed in an adjacent stream.

63. From the beginning of June through November 15, 2018, MBP observed 58 instances of inadequate stabilization in violation of Minimum Standard 1, which provides that “Permanent or temporary 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.” 9 VAC 25-840-40(1).

64. From the beginning of June through November 15, 2018, MBO observed 65 instances of inadequate stabilization in violation of Minimum Standard 2, which provides that “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 as well as borrow areas and soil intentionally transported from the project site.” 9 VAC 25-840-40(2).

65. MBP’s observations from the beginning of June through November 15, 2018, constitute violations of MVP’s Annual Standards and Specifications, MVP’s Site Specific ESC and SWM Plans, 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, and Section 401 Water Quality Certification 17-001 issued to MVP.

COUNT I
Unpermitted Discharge

66. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

67. As noted on May 23, 2018, the Department observed that the release of sediment and sediment laden stormwater off of the right of way onto adjacent private property and into surface waters of the Commonwealth had occurred near stations markers 13476+16 and

13489+10.

68. As noted on May 31, 2018, the Department observed sedimentation within two separate unnamed stream channels on property adjacent to the MVP right of way in the vicinity of Cahas Mountain Road in Franklin County.

69. As noted on June 26, 2018, the Department observed that the release of sediment and sediment laden stormwater off of the right of way onto adjacent private property and into surface waters of the Commonwealth had occurred near stream 39.

70. As noted on June 26, 2018, the Department observed that the release of sediment and sediment laden stormwater off of the right of way onto adjacent private property and into surface waters of the Commonwealth had occurred near stream 40.

71. As noted on June 27, 2018, the Department observed that the release of sediment and sediment laden stormwater off of the right of way onto adjacent private property and into surface waters of the Commonwealth had occurred near stream SMM15.

72. As noted on June 27, 2018, the Department observed that the release of sediment and sediment laden stormwater off of the right of way onto adjacent private property and into surface waters of the Commonwealth had occurred near stream MN-513.

73. From the beginning of June through November 15, 2018, MBP observed 16 additional instances where sediment was deposited off of the construction right of way into an adjacent stream as a result of erosion and sediment control measures being improperly installed or maintained.

74. The activities described herein are in violation of the State Water Control Law, the Virginia Water Resources and Wetlands Protection Program, and the Virginia Water Protection Permit Program Regulations.

75. Pursuant to Va. Code § 62.1-44.23 and Va. Code § 62.1-44.32, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

COUNT II

Failure to Maintain and Repair Erosion and Sediment Control Structures

76. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

77. The Erosion and Sediment Control Regulations state that “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 25-840-60(A).

78. The Stormwater Management Program Regulation states that “An erosion and sediment control plan consistent with the requirements of Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.” 9 VAC 25-870-54(B).

79. As noted on May 23, 2018, the Department detected erosion and sediment controls near station markers 13476+16 and 13489+10 in need of repair.

80. As noted on May 24, 2018, the Department detected erosion and sediment controls near station markers 11971+00 and 11972 in need of repair.

81. As noted on June 26, 2018, the Department detected water bars above stream crossing 39 and stream crossing 40 were not maintained or repaired to ensure functionality and sediment was observed off of the construction site at station point 12071+50.

82. The activities described herein are in violation of MVP’s Annual Standards and Specifications, MVP’s Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board’s regulations.

83. Pursuant to Va. Code § 62.1-44.23, Va. Code § 62.1-44.32, Va. Code § 62.1-

44.15:42, and Va. Code § 62.1-44.15:48, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

COUNT III

Failure to Repair Erosion and Sediment Controls within Required Timeframe

84. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

85. The Erosion and Sediment Control Regulations state that “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 25-840-60(A).

86. MVP’s approved Annual Standards and Specifications require MVP to ensure 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.”

87. As noted on May 23 and 24, 2018, the Department observed that areas had not been stabilized and that repairs to controls had not been performed in accordance with the time frame specified in MVP’s approved Annual Standards and Specifications or as directed by the Department during the May 21, 2018 inspection.

88. From the beginning of June through November 15, 2018, MBP documented an additional 180 instances where MVP failed to repair ineffective erosion and sediment control measures within 24 hours of identification. The individual delays range from 1 to 48 days past due.

89. The activities described herein are in violation of MVP’s Annual Standards and Specifications, MVP’s Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board’s regulations.

90. Pursuant to Va. Code § 62.1-44.23, Va. Code § 62.1-44.32, Va. Code § 62.1-44.15:42, and Va. Code § 62.1-44.15:48, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

COUNT IV
Failure to Apply Temporary or Permanent Stabilization

91. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

92. The Erosion and Sediment Control Regulations state that “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(1).

93. “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(2).

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

95. The Stormwater Management Program Regulation states that “An erosion and sediment control plan consistent with the requirements of Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.” 9 VAC 25-870-54(B).

96. As noted on May 21, May 23, and June 13, 2018, the Department observed denuded areas, including stockpiles and earthen structures, which were not stabilized.

97. From the beginning of June through November 15, 2018, MBP observed 58 instances of inadequate stabilization in violation of 9 VAC 25-840-40(1) (“Minimum Standard 1”).

98. From the beginning of June through November 15, 2018, MBP observed 65 instances of inadequate stabilization in violation of 9 VAC 25-840-40(2) (“Minimum Standard 2”).

99. The activities described herein are in violation of MVP’s Annual Standards and Specifications, MVP’s Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board’s regulations.

100. Pursuant to Va. Code § 62.1-44.23, Va. Code § 62.1-44.32, Va. Code § 62.1-44.15:42, and Va. Code § 62.1-44.15:48, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

COUNT V
Sediment off of Right of Way

101. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

102. The Erosion and Sediment Control Regulations state that “Properties and waterways downstream from development sites shall be protected from sediment deposition....” 9 VAC 25-840-40(19).

103. The Stormwater Management Program Regulation states that “An erosion and sediment control plan consistent with the requirements of Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.” 9 VAC 25-870-54(B).

104. From the beginning of June through November 15, 2018, MBP identified at least 26 instances where, as a result of erosion and sediment control measures being improperly installed or maintained, sediment was deposited off of the construction right of way but where stream impacts were not observed.

105. The activities described herein are in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

106. Pursuant to Va. Code § 62.1-44.23, Va. Code § 62.1-44.32, Va. Code § 62.1-44.15:42, and Va. Code § 62.1-44.15:48, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

COUNT VI
Failure to Install Clean Water Diversions

107. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

108. The Stormwater Management Program Regulation states that "An erosion and sediment control plan consistent with the requirements of Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities." 9 VAC 25-870-54(B).

109. MVP's approved Annual Standards and Specifications state that "MVP and its construction contractors will implement these Standards and Specifications for all regulated land disturbances associated with the Project in the Commonwealth."

110. As noted on May 30 and June 6, 2018, MVP failed to ensure that clean water diversions shown on MVP's approved Site Specific ESC Plan were constructed and made functional before upslope land disturbance took place.

111. The activities described herein are in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

112. Pursuant to Va. Code § 62.1-44.23, Va. Code § 62.1-44.32, Va. Code § 62.1-44.15:42, and Va. Code § 62.1-44.15:48, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

COUNT VII

Failure to Keep a Daily Log of Activity Documenting Project Activities Related to Environmental Permit Compliance and Corrective Measures Implemented

113. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

114. MVP's approved Annual Standards and Specifications state that "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."

115. As noted on May 23, May 24, and June 6, 2018, the Department's review of records on site revealed that self-inspection reports failed to identify erosion and sediment controls requiring maintenance and failed to document that corrective action was performed within the requisite timeframe.

116. The activities described herein are in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

117. Pursuant to Va. Code § 62.1-44.23, Va. Code § 62.1-44.32, Va. Code § 62.1-44.15:42, and Va. Code § 62.1-44.15:48, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

COUNT VIII
Failure to Install Adequate Channel, Flume, or Slope Drain Structure

118. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

119. The Erosion and Sediment Control Regulations state that “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(8).

120. “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 25-840-40(11).

121. The Stormwater Management Program Regulation states that “An erosion and sediment control plan consistent with the requirements of Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.” 9 VAC 25-870-54(B).

122. As noted on June 13, 2018 the Department observed that water bars were not installed in accordance with the MVP’s approved Annual Standards and Specifications and MVP’s approved Site Specific ESC and SWM Plans and that end treatment conveyances down slope were not adequate or installed in accordance with the approved Site Specific ESC and SWM Plans.

123. The activities described herein are in violation of MVP’s Annual Standards and Specifications, MVP’s Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the

Board's regulations.

124. Pursuant to Va. Code § 62.1-44.23, Va. Code § 62.1-44.32, Va. Code § 62.1-44.15:42, and Va. Code § 62.1-44.15:48, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

COUNT IX
Failure to Construct Vehicular Stream Crossing

125. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

126. The Erosion and Sediment Control Regulations state that “When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.” 9 VAC 25-840-40(13).

127. The Stormwater Management Program Regulation states that “An erosion and sediment control plan consistent with the requirements of Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.” 9 VAC 25-870-54(B).

128. As noted on June 27, 2018 the Department observed that wetlands crossings WC5, WC6, WC11, and WC12 were not properly installed prior to use.

129. The activities described herein are in violation of MVP's Annual Standards and Specifications, MVP's Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board's regulations.

130. Pursuant to Va. Code § 62.1-44.23, Va. Code § 62.1-44.32, Va. Code § 62.1-44.15:42, and Va. Code § 62.1-44.15:48, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

COUNT X
Failure to Maintain Access Roads

131. Plaintiffs reallege and incorporate by reference Paragraphs 1-65.

132. The Erosion and Sediment Control Regulations state that “Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.” 9 VAC 25-840-40(17).

133. The Stormwater Management Program Regulation states that “An erosion and sediment control plan consistent with the requirements of Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.” 9 VAC 25-870-54(B).

134. As noted on June 26, the Department detected that access roads 270 and 272 required repair and sump maintenance.

135. The activities described herein are in violation of MVP’s Annual Standards and Specifications, MVP’s Site Specific ESC and SWM Plans, the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Board’s regulations.

136. Pursuant to Va. Code § 62.1-44.23, Va. Code § 62.1-44.32, Va. Code § 62.1-44.15:42, and Va. Code § 62.1-44.15:48, the Defendant is liable for injunctive relief and civil penalties up to \$32,500 per day for each violation.

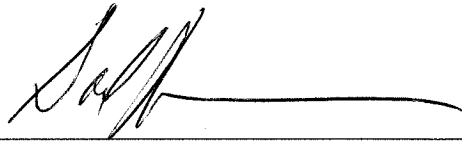
PRAYER FOR RELIEF

WHEREFORE, David K. Paylor, Director of the Department of Environmental Quality, and the State Water Control Board respectfully request that this Court:

- A. Order the Defendant to immediately come into compliance with the State Water Control, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, the Board's regulations;
- B. Assess a civil penalty against the Defendant to the maximum allowed by law;
- C. Award the Plaintiffs their costs and reasonable attorneys' fees; and
- D. Grant any and all further relief that this Court deems just and proper.

Respectfully submitted,

David K. Paylor, Director of the Department
of Environmental Quality, and the State
Water Control Board



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