



Great Horned Owl © Estate of Roger Tory Peterson. All rights reserved.

# APPALACHIAN MOUNTAIN ADVOCATES

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March 5, 2015

VIA CERTIFIED MAIL and E-MAIL ([mail@mountainvalleypipeline.info](mailto:mail@mountainvalleypipeline.info))

Mountain Valley Pipeline, LLC  
ATTN: Stephen E. Hastings  
625 Liberty Avenue, Suite 1700  
Pittsburgh, PA 15222

Dear Mr. Hastings:

We represent \_\_\_\_\_, whom you recently threatened with legal action in your letter on behalf of Mountain Valley Pipeline, LLC (“MVP”).

You assert that West Virginia Code § 54-1-1 permits natural gas companies to enter on lands for the purpose of surveying. You evidently intend to rely on that statute to access private property without the property owner’s permission.

Your letter is entirely insufficient to demonstrate any entitlement to enter our client’s property. First, West Virginia Code § 54-1-1 provides that, for certain defined purposes, certain entities shall have the right of eminent domain if that entity is “organized under the laws of, or authorized to transact business in the state, for any purpose of internal improvement for which private property may be taken or damaged for public use as authorized in section two of this article.” Your letter does not provide any information about the organization and purpose of MVP.

Second, West Virginia Code § 54-1-2 provides that one of the public uses for which private property may be taken or damaged is “for constructing, maintaining and operating pipelines, plants, systems and storage facilities for manufacturing gas and for transporting ... natural gas ... when for public use”. Your letter ignores the “public use” limitation and does not, therefore, assert that the project qualifies as a public use.

In West Virginia, “questions whether the proposed use of property is public or private ... are judicial in their nature,” State, by State Road Commission v. Bouchelle, 137 W.Va. 572, 577-578, 73 S.E.2d 432, 435 (W.Va. 1952). You have not provided any judicial determination that your proposed use is in fact public. Further, you have not provided any information indicating that any agency, such as the Federal Energy Regulatory Commission, has determined that your proposed use is public. Without such a demonstration, the statute you cite has no application to MVP.

Neither have you provided a judicial determination of the area to be acquired, based on the “reasonable need therefore,” as required by § 54-1-2(a)(3). Instead, your letter improperly asserts the right to inspect any part and/or all of our clients’ property prior to a judicial “reasonable need” determination and prior to a proper “public use” determination.

Property may only be condemned in the statutory process of eminent domain when the condemner pays just compensation for the use of the property. Based on the fact that MVP cannot be invested with the power of eminent domain until completes the process set forth in § 54 or in the Natural Gas Act, we reject the unsupported assertions of your letter. Until the requisite determinations have been made, any entry to our client’s property is a trespass. Consider this letter a formal Notice Against Entry to MVP and its agents for purposes of West Virginia Code § 61-3B-3 and any other applicable provision of law. If you believe MVP has been conferred the power of eminent domain by a proper state or federal authority, please provide the supporting documentation.

To date, you have provided nothing to our clients beyond your bald assertion that you have the right to enter their private property without their permission. Not only have you failed to explain how you believe you acquired the right of eminent domain, you have completely failed to assert that right. Surely, you do not believe it is the case that any pipeline company that unilaterally declares that its activities are for public use has the right to go onto private property without landowner permission. As I understand it, MVP has not even determined the final route of the pipeline yet. How, then, can my clients or a court begin to understand whether you have a “reasonable need” to survey their property or that you are limiting the scope of your survey narrowly to comply with West Virginia law?

You conclude your letter by threatening legal action. If you provide any supporting information in response to this letter, it will be the first time our clients have been provided the opportunity to fairly evaluate your request. Accordingly, your March 9 deadline is not appropriate, nor is your contemplated lawsuit.

Sincerely,