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DEP concedes Mountain Valley Pipeline permit needs to be 'further evaluated'

By Ken Ward Jr. Staff writer Sep 13, 2017

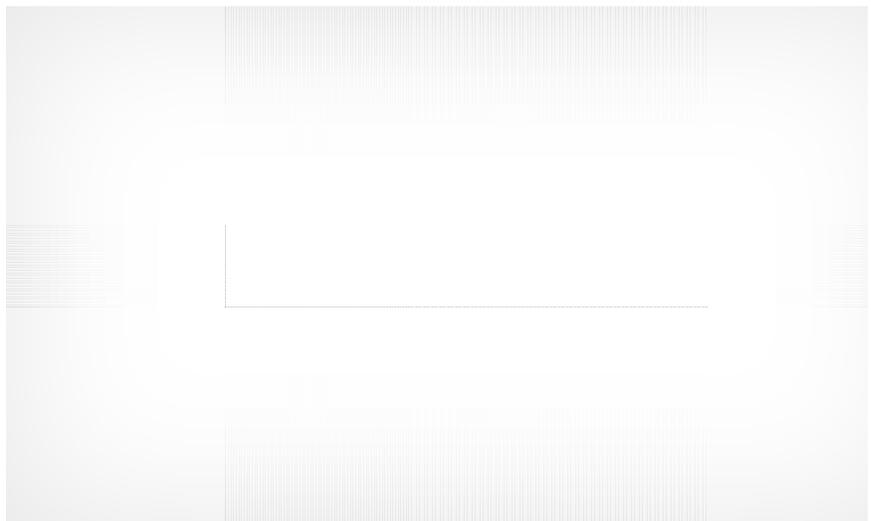


Austin Caperton
Gazette-Mail file photo

West Virginia regulators conceded Wednesday that a state-issued permit for the Mountain Valley Pipeline should have undergone more extensive review to determine if the controversial project would degrade the water quality in rivers and streams along its 300-mile route through nearly a dozen counties.

The state Department of Environmental Protection described the need for further review in a court filing in which it asked the 4th U.S. Circuit Court of Appeals, which is hearing a legal challenge to the DEP's approval of the pipeline, to send the state's water quality certification for the MVP back to the agency.

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DEP lawyer Jason Wandling said in the court filing the agency had “determined that the information used to issue” the certification “needs to be further evaluated and possibly enhanced.”

Wandling specifically noted that the legal challenge – filed by the Sierra Club, the West Virginia Rivers Coalition and other groups – questioned a requirement that the DEP, before issuing the permit, “examine compliance with all water quality standards, including the state’s anti-degradation policy.”

Wandling told the court that, “in light of that requirement,” the DEP “recognizes that it needs to consider its anti-degradation analysis” in the MVP permit and “commits to doing so as expeditiously as possible.” Lawyers for the MVP and for the citizen groups agreed to the DEP’s motion, Wandling told the court.

The DEP court filing comes after the agency, late last week, quietly informed the U.S. Army Corps of Engineers that it was going to “vacate and remand” the MVP permit.

Wandling had faced a deadline of today to file a response to the citizen group legal challenge. The 4th Circuit did not immediately rule on the DEP’s request to remand the permit to the state agency, but it did approve a short order suspending the deadline for Wandling to file his legal defense of the agency’s permit approval.

“We’re pleased that [the] DEP recognized its 401 certification was defective,” said Derek Teaney, senior attorney at Appalachian Mountain Advocates, who represented the citizen groups. “But it’s a shame that it took a lawsuit to get [the] DEP to do its job.”

The Mountain Valley Pipeline would run about 300 miles from Northwestern West Virginia to Southern Virginia. It is a joint project of EQT Midstream Partners LP, NextEra US Gas Assets LLC, WGL Midstream and Vega Midstream MVP LLC. The pipeline originates in Wetzel County and goes through Harrison, Doddridge, Lewis, Braxton, Webster, Nicholas,

Greenbrier, Fayette, Summers and Monroe counties, before entering Virginia.

Earlier this year, DEP Secretary Austin Caperton refused a request by the citizen groups for a hearing on their administrative appeal of his agency's approval of the water quality permit for the MVP project. Caperton did not explain his reasons for that decision.

The Sierra Club, the West Virginia Rivers Coalition and other groups then filed a court challenge against Caperton and the DEP.

Jake Gance, communications director for the DEP, did not respond to questions about the agency's handling of the pipeline permit.

Natalie Cox, a spokeswoman for the MVP, said in an email that the pipeline developer "shares" the DEP's interest in "protecting the environment along this important project's proposed route" and looks "forward to continuing to work with the department and other stakeholders to ensure the state's Section 401 Water Quality Certification complies with federal requirements."

The MVP project is among a collection of pipelines that are proposed or under construction across the region that are meant to take advantage of the Marcellus Shale gas boom, but are drawing opposition from local citizens and national environmental groups.

In their legal challenge of the DEP permit, the citizen groups specifically challenged the DEP for not fully reviewing the potential for the MVP project to degrade streams, as required by the state's Clean Water Act anti-degradation rule.

More than 15 years ago, the DEP had sought to exempt projects that receive certain types of permits – such as the Clean Water Act general dredge-and-fill permit that the MVP obtained from the Corps of Engineers – from undergoing a complete anti-degradation review. But in a 2003 decision, U.S. District Judge Joseph Goodwin threw out the U.S. Environmental Protection Agency's approval of that part of the DEP's water

quality rules.

Citizen group lawyers noted that ruling by Goodwin in their brief to the 4th Circuit and commented that water quality standards that haven't been approved by the EPA "are not operative," meaning that the DEP could not use the rule Goodwin threw out to avoid anti-degradation review of the MVP.

"We're glad [the] DEP is acting on what we've said all along — consideration of [the] MVP requires much more thorough information and review," West Virginia Rivers Coalition Executive Director Angie Rosser said. "With [the] DEP recently citing several pipeline projects for damaging our streams, it's impossible to imagine that this massive pipeline will not impact water quality. They've got to get this right."

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