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WV DEP vacates permit for Mountain Valley Pipeline

By Ken Ward Jr. Staff writer Sep 8, 2017



Austin Caperton
Gazette-Mail file photo

Faced with a deadline to defend their permit approval against a federal court challenge, West Virginia regulators moved this week to back off their certification that the Mountain Valley Pipeline would not violate the state's water quality standards.

The state Department of Environmental Protection said in a Thursday letter to the pipeline developers and other state and federal agencies that it "hereby vacates and remands" its water quality certification for the controversial natural gas pipeline.

Scott Mandirola, director of the DEP Division of Water and Waste Management, said in the letter that the move would allow the DEP "to re-evaluate the complete application to determine whether the state's certification is in compliance" with the federal Clean Water Act.

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“We’ve been asking [the] DEP to take a closer look at the more than 600 streams affected by this massive project from the beginning, so [the] DEP’s letter is a positive step,” said Angie Rosser, executive director of the West Virginia Rivers Coalition.

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 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. The state agency is due to file a response by next Thursday to the brief filed with the 4th U.S. Circuit Court of Appeals on behalf of the citizen groups by lawyers from Appalachian Mountain Advocates.

Among other things, the citizen groups specifically challenged the DEP for not fully reviewing the potential for the MVP project to degrade streams.

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 MVP obtained from the U.S. Army Corps of Engineers – from needing to be fully reviewed under the state’s water quality anti-degradation rule. 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.

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 from national environmental groups.

When it initially approved the pipeline's 401 certification, the DEP issued a news release about the action and pointed members of the media to the MVP developer's website for "information about the potential economic benefit" of the project.

In that news release, the DEP described the MVP as a project that would "transport West Virginia's abundant natural gas to meet the growing need for power generation in the Mid-Atlantic and Southeast regions." The release also said stream and wetland mitigation required of the MVP under the permit would "put West Virginians to work improving streams and wetlands throughout the state."

Jake Glance, the DEP's communications director, said in an email late Friday that, during the agency's review of the legal challenge at the 4th Circuit, DEP officials determined that "the information used to issue" the water quality certification "needs to be further evaluated and possibly enhanced."

Glance said the DEP acted "out of an abundance of caution" and "to ensure that all aspects of the potential environmental impact" of the pipeline are considered. Glance also said the DEP had suspended a second permit for the MVP that had been issued under the agency's program for stormwater pollution associated with oil and gas construction activities. He said that action also was "to allow for proper consideration and response to all comments received."

“The fracked gas Mountain Valley Pipeline is dirty, dangerous and needlessly endangers West Virginia’s waterways, wilderness and communities and should be rejected,” said Justin Raines, gas committee chairman for the West Virginia Sierra Club. “This project never should have been approved in the first place, and we hope this pipeline now receives the scrutiny it deserves.”

MVP officials did not respond to a request for comment.

It was not clear what impact the DEP decision would have on the state agency’s mandate to meet a one-year deadline to review and act on a water quality certification like the MVP’s or – by not acting one way or the other – waiving the state’s authority to do so.

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