

Documenting the Damage

An Analysis of Virginia State Inspection Reports for MVP



Wild Virginia
December 13, 2021

Introduction

The public and the State Water Control Board (Board) have seen only a small portion of the record on Mountain Valley Pipeline's failures to comply with water quality requirements, because no comprehensive look at the huge mass of state inspection reports has been presented previously. A more complete picture, which Wild Virginia has assembled through an exhaustive review of records, demonstrates that there is no reasonable assurance that MVP is able or willing to abide by requirements imposed on it by Virginia, under the existing certification or under that which the Board is now considering.

Based on our review of the state inspection reports, we believe that:

MVP has violated rules imposed by the Board's water quality certification for upland activities at least 1,500 times.

This number eclipses the total of 396 violations the Department of Environmental Quality (DEQ) has alleged.¹

The record shows the following:

- ◆ MVP has deposited sediment off of its construction sites at least 569 times. At least 100 of those off-site releases have deposited sediments in streams or wetlands.
- ◆ In more than 360 instances, MVP has failed to install pollution controls in accordance with state-approved plans. 37 of these occurred in spring and summer of 2021.
- ◆ In at least 553 instances, MVP failed to meet deadlines to fix deficiencies in pollution controls.

This record must compel the State Water Control Board to insist that DEQ reform the way it reports MVP violations for its upland activities and the way the Department responds to them, to ensure that this pattern does not continue.

The magnitude and scope of violations makes clear that the Board cannot assume that MVP would comply with any new requirements the Board might approve, if it issues a new water quality certification for stream and wetland crossings.

State Inspection Reports

¹ See [A pipeline runs through it: Stream crossings by the Mountain Valley Pipeline](#), by Laurence Hammack, Roanoke Times, December 11, 2021.

Wild Virginia has reviewed 895 inspection reports prepared by DEQ staff.² These cover the period from May, 2018 to October, 2021.

On most of the documents, labeled "Field Inspection" reports, the inspectors have given "yes" or "no" answers to the following questions:

1. Are controls installed and implemented in accordance with the approved erosion and sediment (E&S) control plan and stormwater management plans?
2. Are all control measures properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications?
3. Areas of offsite sediment deposition were observed?

If the inspector answered "no" for the first question, that MVP has failed to implement the approved plans for construction and pollution controls, then MVP has violated the provisions of the State Water Control Law and regulations.

Likewise, a "yes" answer to the third question, indicating that sediment has been deposited offsite, indicates a violation of applicable legal requirements. Further, if the materials flowing offsite are deposited into a stream or wetland, the DEQ considers this an illegal discharge.

Without more information than is provided on the reports, it is not possible to determine whether a "no" answer on question 2 constitutes a violation. The company is given 24 or 72 hours to maintain or repair features and only assesses a violation if those deadlines are missed.

Similar information about conformance with plans and offsite discharges is found in a body of evidence assembled by the firm McDonough Bolyard Peck (MBP), which conducts inspections of MVP sites under contract with DEQ. Wild Virginia acquired thousands of records on the MBP inspections from DEQ, through a Freedom of Information Act (FOIA) request.

In regard to regular inspections, MBP has created what it terms "action items" for which MVP responses and follow-up by inspectors are needed. A summary table of all action items contains 4,687 action items (Appendix A to this report). MBP's action item log we acquired covers the period from May, 2018 to March 18, 2021.

Each item on MBP's log has an identification number, pertinent dates, and descriptive information about the issues and how they have been or are to be addressed.

² These reports are accessible on the DEQ website at <https://www.deq.virginia.gov/get-involved/topics-of-interest/mountain-valley-pipeline>, listed under Spreads G, H, and I.

The specific problems on the Action Item Log are not as neatly categorized as those on the DEQ reports discussed above. However, many of the same types of violations are noted. In some cases, the same incident is addressed in both the DEQ reports and the MBP list but some from each source appear to be unique. We have taken pains not to "double count" alleged violations in our review.

Sediment Releases Off MVP Rights of Way

Appendix B to this report includes a list of five hundred and sixty-nine instances where MVP is alleged to have released pollutants off of its sites and those releases caused sediment deposits on the ground and/or in waterbodies. Both inspectors' descriptions and photographs which we have reviewed support these assertions. That list, which we still believe to be incomplete, was an astounding revelation, given that DEQ has cited MVP for around 50 such releases.

Figure 1 shows the geographic spread of the offsite discharges that affected streams and wetlands and a partial list of those streams includes:

- Blackwater River
- Doe Creek
- Foul Ground Creek
- Harpen Creek
- Little Creek
- Mill Creek
- Multiple tributaries to Blackwater River
- Multiple tributaries to Flatwoods Branch
- Multiple tributaries to Foul Ground Creek
- Multiple tributaries to North Fork Blackwater River
- Multiple tributaries to North Fork Roanoke River
- Multiple wetlands near Blackwater River tributaries
- Tributary to Catawba Creek
- Tributary to Cherrystone Creek
- Tributary to Indian Run
- Tributary to Jonnikin Creek
- Tributary to Little Cherrystone Creek
- Tributary to Owens Creek
- Tributary to Pole Bridge Branch
- Tributary to Poplar Camp Creek
- Tributary to Roanoke River
- Tributary to Sinking Creek
- Tributary to Teels Creek
- Tributary to Turkey Creek
- Wetland near Little Cherrystone Cr.
- Wetland near tributary To Rocky Creek

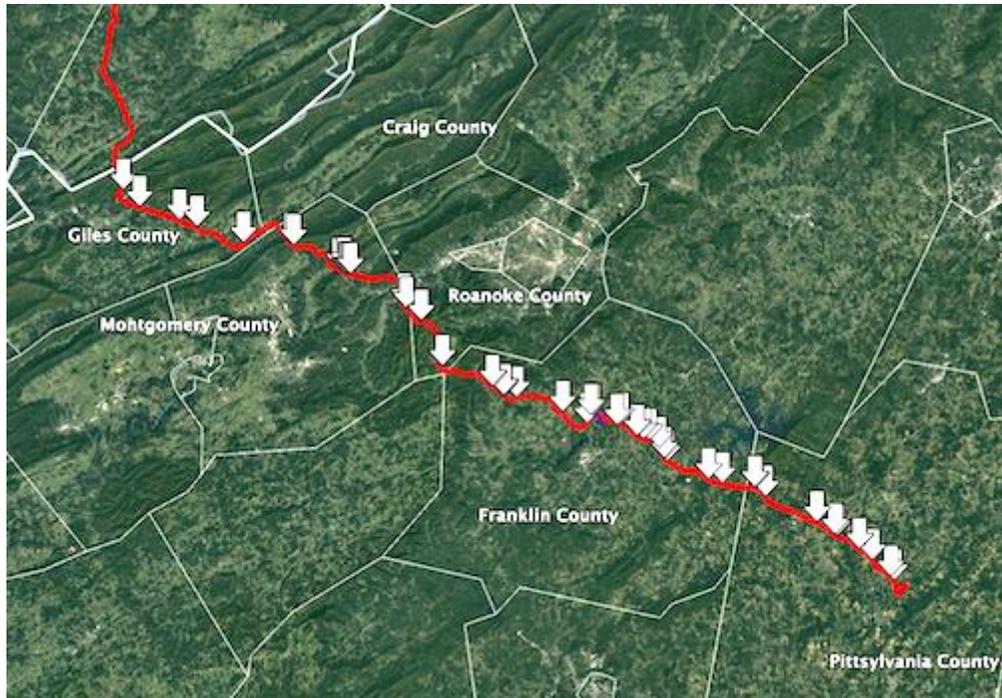


Figure 1 - sites of reported sediment deposits in streams and wetlands along MVP's path

These pollution events violate state law in at least two ways. First, as explained in Virginia's enforcement lawsuit against MVP, those that impact waterbodies are unpermitted discharges under the State Water Control Law and Virginia Water Protection Permit regulations. Second, Virginia's Erosion and Sediment Control regulations state that both "[p]roperties and waterways downstream from development sites shall be protected from sediment deposition. . . ." 9 VAC 25-840-40(19).

In addition, in many if not all cases these impacts violate Virginia's water quality standards regulation as well. These pollution events, especially in headwater systems, are of great concern and may have serious and long-lasting ecological impacts. Many of the small streams affected play extremely important roles as habitat for rare and sensitive species and as vital parts of the larger stream systems in which they lie. DEQ claims that allowing MVP to enter the streams with shovel and dig out its mud is "remediation" but provides no analysis to justify this assumption. In fact, given the sensitivity of many of these tiny streams and the native organisms, it seems possible that this intrusive operation may cause more harm than good.

Serious and Repeated Offenses

There are a number of individual streams and small watersheds where state inspectors documented dumping of sediments from MVP on multiple occasions. These specific instances are sometimes also combined with repeated deficiencies in pollution controls. These other incidents, even if they did not

result in direct discharges of sediments into the waterbodies, presented threats of additional off-site sediment deposition and often of discharges of water bearing large concentrations of sediment but not filtered through the pollution control structures as required.

One stream that has been beleaguered by MVP's violations and assaults is a small unnamed tributary to the Blackwater River. This waterbody begins as an intermittent stream with associated wetlands and flows through a predominately forested watershed of about 1 square mile in area. Downstream from the sites of repeated MVP discharges of mud to the stream, the tributary is designated as habitat for the rare Orangefin Madtom, a fish listed by the State of Virginia as "threatened" and which has been proposed for a federal endangered or threatened listing.

On December 29, 2018, MBP inspectors created action items, noting problem accumulations of sediment on a bridge and in a water bar channel and deposition of sediment into both this small tributary stream and an adjacent wetland. On January 9, 2019, they again reported that the water bar channel had excess sediments and on April 19, 2019 that perimeter filter socks were full of sediment and there was a problem with filter fabric on the bridge. Then in November 2020, inspectors again found that there was erosion upslope from the stream, accumulations of dirt on the bridge, and that sediment-laden water bypassed pollution control structures and polluted the stream again.

In all, MBP personnel cited ten different times when problems were cited and actions required by MVP, stretching over a period of nearly two years. There can be no clearer example to show that MVP has failed to reform its behavior through the life of this project or that DEQ actions have been ineffective at forcing change.

In some cases, these discharges of mud have inundated large portions of streams and, according to DEQ scientists' reports resulted in serious impairments of aquatic life designated uses. This certainly violates narrative water quality criteria contained in the standards, which prohibit interference with any designated use. And aquatic life support is a designated use for all waters in the Commonwealth. Recreational designated uses, which include aesthetic enjoyment as well as activities like fishing, swimming, and boating, are also surely "interfered with" when a stream bottom is coated with a thick layer of mud.

For example, in a report labeled "VWP Field Inspection Checklist" and dated June 26, 2018, inspectors noted that "[a]pproximately 3,600 linear feet of stream channel have been impacted by sedimentation." The deposits in this tributary to Flatwoods Branch were as much as 7 inches deep. The report

indicates that the sedimentation affected the "channels' viable habitat" and were "substantially disrupting aquatic life movement."³

These types of impacts in a stream constitute an immediate impairment in the section directly affected but impacts can and almost certainly are found farther downstream and may be long-lasting. Flatwoods Branch is one of the feeder streams to the North Fork Roanoke River, which provides habitat for the federally endangered Roanoke Logperch. And several streams in the small Flatwoods Branch watershed were negatively affected by MVP discharges and on numerous occasions MVP failed to adequately implement and/or maintain pollution controls.

Other streams with extensive impacts from illegal sediment discharges are within the Blackwater River watershed in Franklin County. Figure 2 shows one of these, which was covered in mud for a length of nearly 1,700 linear feet. The stream in Figure 3 is near the site of a crossing made by boring under the small tributary, also in the Blackwater River drainage.

In a recent document given to the Board, DEQ attempts to downplay the seriousness of the pollution incidents caused by MVP, with an emphasis on the assertion that "there has never been any reported evidence of a fish kill."⁴ Surely DEQ knows and the Board must understand that this is a weak and wholly insufficient measure as to whether damage was done to these waters. Prevention of fish kills, while important, is far from the ultimate goal of the water regulations and standards. Rather, these waters are to be maintained in a state to fully support all designated uses, preserving the physical, chemical, and biological integrity of the stream systems and wetlands.

There is simply no question as to whether each of the streams into which sediments were deposited were degraded to some extent and the full weight and duration of those impacts is not known, because there is no evidence that DEQ has even attempted to assess those factors.

³ The wording of the report form calls for a yes or no answer to the statement "Construction activities are **not** substantially disrupting aquatic life movement." An answer of "no," as was entered on this inspection report, creates a double negative, meaning that movement of organisms is disrupted. This reading is clearly supported by the reality that the thick coating of mud would inevitably affect movement within the stream channel.

⁴ Agenda document with attachments for December 14, 2021 State Water Control Board meeting, at pdf page 295.



Figure 2 - Tributary to North Fork Blackwater River, Franklin County

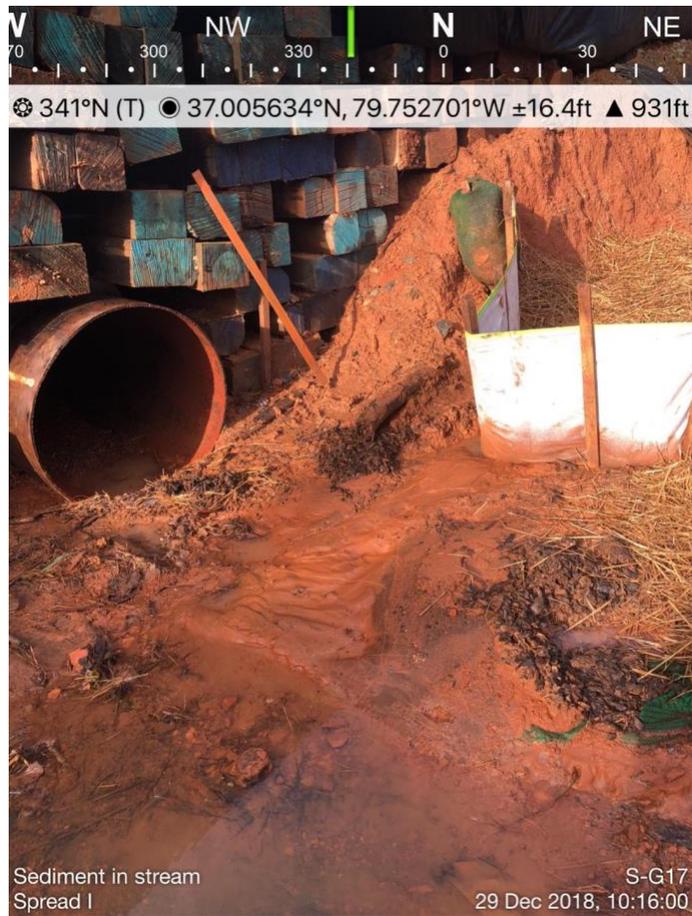


Figure 3 - Tributary to Blackwater River

In addition to the assaults that have been shown to affect waters through direct deposition, sediment-laden water certainly reaches those streams as a result of off-site sediment.

Every deposit of sediment in an area not protected by pollution-control structures is a constant threat to water quality unless and until it is removed to a controlled site. The next storm may well carry that pollution to the nearest waterbody and certainly has done so, considering the huge number of times these events have occurred. And, the delays that have often happened, due both to MVP's violation of time requirements and practical limits on their ability to retrieve the sediments, heighten those threats. This reality is reflected in Virginia law, which deems situations where "sediment has been deposited in significant amounts in areas where those deposits are not contained by best management practices" as "likely to [cause] adverse impacts to water quality"⁵ These conditions may justify a stop work order for pipeline work where they are found, based this statute.

Fig. 6: **STA 15338+00 – Sediment off ROW.**



Figure 4 - Sediment dumped on a neighbor's farm filed by MVP

Plans Aren't Implemented as Required

⁵ See Code of Virginia § [62.1-44.15:37.1](#).A.(iii)(b).

The backbone of the regulatory scheme for the pipeline is the approved plans and specifications that DEQ has reviewed and approved. If those plans are executed as required, then proper treatment and control of pollution is supposed to result.

In at least three hundred and sixty instances, MVP has failed to install the structures or take other actions as it is obligated to do. These failures to carry out the plans sometimes lead directly to polluted discharges and impairment of waterbodies. Sometimes the failures create the risk of pollution problems that may be produced, depending on other factors.

For example, DEQ cited a case in the fourth quarter of 2019 when the Department said MVP discharged " [s]ediment off ROW caused by [an] incorrectly installed water bar."⁶ As shown by the action item log, both before and since DEQ identified that violation, MVP has on many occasions failed to install water bars correctly or at all, until ordered to do so. Many of these instances were not asserted in DEQ enforcement actions and, to the best of our knowledge, have not been reported to the Board.

MVP has violated a wide range of requirements under approved plans and those violations have extended from the first months of construction through this year. The record clearly refutes the company's claim that pollution problems are traceable to record amounts of rainfall in 2018 and that those "challenge" have since been addressed with additional protections. On the contrary, problems continue to arise on a frequent basis, due at times to MVP's failure to carry out the plans it is required to implement.

During the period from April through August of 2021, state inspectors documented thirty-seven times when MVP simply failed to install required controls or installed them incorrectly. This is particularly difficult to justify, since these are measures MVP has been required to install for more than two years, so the company cannot claim either newly encountered conditions or a lack of knowledge or ability to perform these required tasks. On fifteen separate occasions MVP failed to build water bars in accordance with specifications, despite the fact that it has built thousands of these structures along the path of the pipeline.

These and other basic components of the erosion and sediment (E&S) control and stormwater management systems for the pipeline, that must be in place to prevent pollution, have too often been "missing" or "not installed," in the words of inspectors but it seems that DEQ has assessed allowed these shortcomings to continue throughout the life of the project. What assurances can the Board or the public have that MVP will do better in the future, either in further upland work or in waterbody crossings.

⁶ Letter from Tiffany R. Severs, DEQ to Todd L. Normane, Mountain Valley Pipeline, LLC, April 30, 2020, Appendix A, page 1.

Deadline Missed

As noted above, for some deficiencies identified by state inspectors MVP is allowed periods of 24 or 72 hours to make repairs or perform necessary maintenance. Missed deadlines are violations of the upland certification.

In its enforcement complaint against MVP, the state cited 180 instances where such deadlines were exceeded. During that same period leading up to the court action, DEQ reports show that MVP missed the deadlines 408 times in 2019. In just one one period, from June 11 - July 16, 2019, MVP violated this provision 120 times.⁷

Conclusion

MVP's record of violating requirements has exacted a heavy cost on our state waters and on landowners and nearby residents. We respectfully request that the State Water Control Board take the necessary action to ensure that this deplorable pattern does not continue and that new activities do not exacerbate the problems already created.

⁷ DEQ Comprehensive Pipeline Inspection Report, July 18, 2019, accessible through DEQ website under Spread I, document entitled SWPPP report.