
No. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SIERRA CLUB, APPALACHIAN VOICES, CHESAPEAKE CLIMATE
ACTION NETWORK and WILD VIRGINIA,
Petitioners

v.

STATE WATER CONTROL BOARD, ROBERT DUNN, Chair of the State
Water Control Board, HEATHER WOOD, Vice-Chair of the State Water Control
Board, LOU ANN JESSEE-WALLACE, Member of the State Water Control
Board, TIMOTHY G. HAYES, Member of the State Water Control Board,
ROBERTA A. KELLAM, Member of the State Water Control Board, G. NISSA
DEAN, Member of the State Water Control Board, ROBERT H. WAYLAND, III,
Member of the State Water Control Board, DEPARTMENT OF
ENVIRONMENTAL QUALITY, DAVID K. PAYLOR, Director, Department of
Environmental Quality, and MELANIE D. DAVENPORT, Director, Water
Permitting Division, Department of Environmental Quality.
Respondents

PETITION FOR REVIEW

Benjamin A. Luckett
Joseph M. Lovett
Derek O. Teaney
APPALACHIAN MOUNTAIN ADVOCATES. INC.
P.O. Box 507
Lewisburg, WV 24901
Telephone: (304) 645-0125
Facsimile: (304) 645-9008
Email: bluckett@appalmad.org
Counsel for Petitioners

Pursuant to Section 19(d)(1) of the Natural Gas Act, 15 U.S.C. § 717r(d)(1), and Rule 15(a) of the Federal Rules of Appellate Procedure, SIERRA CLUB, APPALACHIAN VOICES, CHESAPEAKE CLIMATE ACTION NETWORK, and WILD VIRGINIA hereby petition the United States Court of Appeals for the Fourth Circuit for review of the order of the Virginia State Water Control Board and the Virginia Department of Environmental Quality issuing a Water Quality Certification under Section 401 of the Clean Water Act, 33 U.S.C. § 1341(a), for the Mountain Valley Pipeline entered on December 8, 2017. In accordance with Local Rule 15(b), a copy of the Water Quality Certification is attached hereto as Exhibit A.

In accordance with Rule 15(c) of the Federal Rules of Civil Procedures, parties that were admitted to participate in the underlying procedure have been served with a copy of this Petition. Pursuant to Local Rule 15(b), attached hereto is a list of Respondents specifically identifying the Respondents' names and addresses.

Respectfully submitted,

/s/ Benjamin A. Luckett

Benjamin A. Luckett

Joseph M. Lovett

Derek O. Teaney

APPALACHIAN MOUNTAIN ADVOCATES, INC.

P.O. Box 507

Lewisburg, WV 24901

Telephone: (304) 645-0125

Facsimile: (304) 645-9008

Email: bluckett@appalmad.org

Dated December 8, 2017

Counsel for Petitioners

CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 15(c)(1) & (2), the undersigned hereby certifies that, on December 8, 2017, a true copy of this Petition for Review was served via first-class mail on each of the following entities that may have been admitted to participate in the agency proceedings:

CT Corporation System
Registered Agent For Mountain Valley Pipeline, LLC
4701 Cox Rd., Suite 285
Glen Allen, VA 23060-6802

In addition, although not required by the rule, Petitioners have served Respondents via first-class mail this 8th day of December, 2017:

State Water Control Board
P.O. Box 1105
Richmond, VA 23218

Robert Dunn, Chair
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Heather Wood, Vice-Chair
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Lou Ann Jessee-Wallace, Member
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Timothy G. Hayes, Member
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Roberta A. Kellam, Member
State Water Control Board
P.O. Box 205
Franktown, VA 23354

///

G. Nissa Dean, Member
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Robert H. Wayland, III, Member
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

David K. Paylor, Director
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Melanie D. Davenport, Director
Water Permitting Division
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

DATED: Dec. 8, 2017

/s/ Benjamin A. Lockett

Benjamin A. Lockett
APPALACHIAN MOUNTAIN ADVOCATES, INC.
P.O. Box 507
Lewisburg, WV 24901
Telephone: (304) 645-0125
Facsimile: (304) 645-9008
Email: bluckett@appalmad.org

Counsel for Petitioners

LIST OF RESPONDENTS

Pursuant to Local Rule 15(b), Petitioners hereby provide a list of Respondents specifically identifying the Respondents' names and the addresses where Respondents and/or their counsel may be served with copies of the Petition:

State Water Control Board
P.O. Box 1105
Richmond, VA 23218

Robert Dunn, Chair
State Water Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
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Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Exhibit A



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

December 8, 2017

Certified Mail

John Centofanti
Corporate Director, Environmental Affairs
Mountain Valley Pipeline, LLC
EQT Plaza, Suite 1700
625 Liberty Avenue
Pittsburgh, PA 15222-3111

Re: Issuance 401 Water Quality Certification
No. 17-001

Dear Mr. Centofanti:

Enclosed is Section 401 Water Quality Certification No. 17-001 issued to Mountain Valley Pipeline, LLC (MVP) on December 8, 2017.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty days from date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period.

Alternatively, any owner aggrieved by any action of the State Water Control Board taken without a formal hearing, or by inaction of the Board, may petition in writing for a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. Said petition must meet the requirements set forth in 9VAC25-230-130 (Procedural Rule No. 1 – Petition for formal hearing). In cases involving actions of the Board, such petition must be filed within thirty days after notice of such action is mailed to such owner by certified mail.

MVP 401 Certification No. 17-001

Page 2

If you have any questions about this Certification, please contact me at (804) 698-4038 or Melanie.Davenport@deq.virginia.gov.

Sincerely,

A handwritten signature in blue ink that reads "Melanie D. Davenport". The signature is written in a cursive style with a large, stylized "M" and "D".

Melanie D. Davenport, Director
Water Permitting Division

Enclosure 401 Certification No, 17-001



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

CERTIFICATION No. 17-001

401 Water Quality Certification Issued To

Mountain Valley Pipeline, LLC
625 Liberty Avenue, Suite 1700
Pittsburgh, PA 15222

Pursuant to Guidance Memo No. GM17-2003
Interstate Natural Gas Infrastructure Projects -
Procedures for Evaluating and Developing Additional Conditions for Section 401 Water Quality
Certification Pursuant to 33 USC § 1341 ("401" Certification)

I. CERTIFICATION

The State Water Control Board finds that, subject to the additional conditions set out in Section V below, there is reasonable assurance that the Mountain Valley Pipeline, LLC activities covered by this Certification will be conducted in a manner that will not violate applicable Water Quality Standards in 9 VAC 25-260-5, *et seq.*, and will comply with the applicable provisions of 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317.

II. DEFINITIONS

The following terms as used in this Certification shall have the following meaning:

"Annual Standards and Specifications" means the program for linear utility projects implementing the requirements of the Stormwater Management Act (Va. Code § 62.1-44.15:24, *et seq.*) and Erosion and Sediment Control Law (Va. Code § 62.1-44.15:51, *et seq.*).

"Board" means State Water Control Board.

“Certification” means Clean Water Act Section 401 Water Quality Certification developed in accordance with Guidance Memo No. GM17-2003, Interstate Natural Gas Infrastructure Projects – Procedures for Evaluating and Developing Additional Conditions for Section 401 Water Quality Certification Pursuant to 33 USC § 1341 (“401” Certification).

“Construction material or waste material” means solid waste as defined in the Solid Waste Management Regulations (9 VAC 20-81-95).

“Corps” means U.S. Army Corps of Engineers.

“Department” means the Virginia Department of Environmental Quality.

“Environmental Impact Statement” or “EIS” means the Final Environmental Impact Statement (FEIS) issued by FERC on June 23, 2017.

“FERC” means the Federal Energy Regulatory Commission.

“Guidance” means Guidance Memo No. GM17-2003, Interstate Natural Gas Infrastructure Projects - Procedures for Evaluating and Developing Additional Conditions for Section 401 Water Quality Certification Pursuant to 33 USC § 1341 (“401” Certification) dated May 19, 2017.

“Karst feature” means any sinkhole, sinkhole lineament, cave, cavern, swallet, spring, or similar feature found in an area identified as an area of karst geology characterized by the presence of soluble bedrock such as limestone, dolomite, marble or gypsum. Karst features shall include all such features identified in Appendix L of the EIS and any subsequently identified features in areas of karst geology.

“Owner” means Mountain Valley Pipeline, LLC (MVP) a joint venture between EQT Midstream Partners, LP and affiliates of NextEra US Gas Assets, LLC; Con Edison Gas Midstream, LLC; WGL Midstream; and RGC Midstream, LLC.

“Project” means the Virginia portion of a pipeline project approximately 303 miles in length and 42-inches in diameter to transport up to 2.0 MMDth/d of natural gas from an interconnect point in Wetzel County, West Virginia, to an interconnect with an existing pipeline in Pittsylvania County, Virginia including approximately 106 miles of pipeline, 58 miles of Project access roads, and appurtenances which will be located within Virginia and traverse portions of Giles County, Craig County, Montgomery County, Roanoke County, Franklin County and Pittsylvania County. The 401 Water Quality Certification applies to the location of pipeline right of way, access roads, and appurtenances as described in the EIS and any changes thereto subsequently approved by FERC.

“Riparian buffer” means a vegetated area near a stream, usually forested, which helps shade and partially protect a stream from the impact of adjacent land uses.

III. SCOPE OF CERTIFICATION

This Certification addresses Project activities in upland areas outside of the Corps jurisdictional areas under 33 U.S.C. § 1344 and water withdrawal activities that are exempt from coverage under the Virginia Water Protection Permit Program Regulation (9 VAC 25-210-10, *et seq.*). In the manner and to the extent described herein, this includes all proposed upland activities associated with the construction, operation, maintenance, and repair of the pipeline, any components thereof or appurtenances thereto, and related access roads and rights-of-way as well as certain project-related surface water withdrawals. This Certification covers all relevant upland Project activities within the route identified in the Environmental Impact Statement.

As this Certification and the conditions contained in Section V are intended to address Project activities that are outside the jurisdictional scope of the Virginia Water Protection Permit Program Regulation, this Certification shall not be interpreted as limiting or otherwise relieving the Owner of any conditions for any portion of the Project that are imposed pursuant to the Virginia Water Protection Permit Program Regulation, to any permit issued by the Corps or Virginia Marine Resources Commission in response to the February 26, 2016 joint permit application, or to any other separate state or federal permit, license, or approval required for the Project.

In addition, this Certification operates in conjunction with other regulatory actions including: (a) regulations adopted for land disturbing activities pursuant to the Stormwater Management Act (Va. Code § 62.1-44.15:24, *et seq.*) and Erosion and Sediment Control Law (Va. Code § 62.1-44.15:51, *et seq.*); and, (b) all requirements of the Annual Standards and Specifications applicable to the Project approved by the Department on June 20, 2017. These completed regulatory actions remain in full force and effect, and this Certification shall not be interpreted as limiting, modifying, or otherwise relieving the Owner of any conditions imposed pursuant thereto.

Pursuant to 33 U.S.C. § 1341 (a)(3), the Board reserves the right to impose further conditions if any existing plans and/or mitigation measures are amended by the Owner and/or FERC that may materially reduce the water quality protection provided thereunder.

IV. INFORMATION EXAMINED

In developing this Certification and the additional conditions imposed herein, the Board and Department have considered the record relevant to water quality considerations associated with the Project, including but not limited to:

1. All applicable FERC documents, including Draft and Final Environmental Impact Statements issued by FERC and the associated docket materials including all Appendices, and the FERC order granting a Certificate of Public Convenience and Necessity (Certificate) on October 13, 2017;
2. The Department's initial Request for Information (RFI) dated May 19, 2017 in accordance with the Guidance, the Department's subsequent June 15, 2017 RFI

- and the Owner's June 1, 2017, and June 22, 2017 responses including but not limited to requested supplemental responses dated August 8, 2017, October 27, 2017, and November 2 and 6, 2017;
3. Proceedings of the multi-agency technical work session held June 6-7, 2017 (Lexington, Virginia);
 4. Documents submitted for approval by the Department pursuant to requirements of the Stormwater Management Act (Va. Code § 62.1-44.15:24, *et seq.*) and Erosion and Sediment Control Law (Va. Code § 62.1-44.15:51, *et seq.*);
 5. Corps Nationwide Permit 12 and Norfolk District Regional Conditions;
 6. Guidance Memo No. GM17-2003, Interstate Natural Gas Infrastructure Projects- Procedures for Evaluating and Developing Additional Conditions for Section 401 Water Quality Certification Pursuant to 33 USC § 1341 ("401" Certification); and,
 7. Public comments submitted during the public comment period, including both written (electronic or paper copy) and oral comments provided during the August 8 and 9, 2017 public hearings.

V. CONDITIONS

In consideration of the recommendations of the Department, the Board finds that there are additional reasonable and prudent conditions that will provide the Commonwealth with an increased degree of assurance that upland Project activities which may result in a discharge to surface waters will be conducted in a manner that will not violate applicable water quality standards. This Certification is only valid provided the Owner complies with the following conditions, limitations, and/or requirements:

1. The Owner shall follow the measures detailed in its June 1, 2017 and June 22, 2017 responses to the Department's May 19, 2017 and June 15, 2017 Requests for Information including but not limited to requested supplemental responses dated August 8, 2017, October 27, 2017, and November 2 and 6, 2017.
2. Riparian Buffer Requirements
 - a. Removal of riparian buffers not directly associated with the Project's construction activities is prohibited. Disturbance and removal of riparian buffers from Project-related upland land disturbing activities that would occur within 50 feet of any perennial, intermittent, or ephemeral surface waters shall be avoided where possible, and minimized to the maximum extent practicable if 50 feet is not possible. The Owner shall notify the Department of any and all instances in which it believes 50 feet is not possible and shall proceed only where the Department concurs with the Owner's use of less than 50 feet of buffer. Removal of riparian buffers not associated with crossings shall not be allowed where stream bank stability under normal flow conditions would be compromised.

- b. The construction limit of disturbance (LOD) in upland areas approaching waterbody and wetland crossings shall be reduced from 125 feet to 75 feet wide and shall apply 50 feet from each side of the stream or wetland crossing to minimize the extent of riparian buffer disturbance. For any upland area approaching a waterbody or wetland crossing where this reduced LOD is not possible, notification of FERC approval (and Corps approval, if required) shall be provided to the Department prior to initiating land disturbing activity in that area.
- c. No refueling, hazardous materials storage, equipment maintenance, or equipment parking will take place within 100-feet of the waterbody or wetland crossing, except as allowed by the approved Annual Standards and Specifications.

3. Karst Terrain Requirements

- a. An addendum to the Karst Hazard Assessment (February 2017), and any subsequent revisions or addenda to the same approved by FERC, will be provided to the Department upon completion of field survey activities and final pipeline alignments, and prior to land disturbing activities, that address those properties in Virginia where the Owner could not previously conduct karst surveys due to land access restrictions.
- b. The Owner shall follow the measures as detailed in the Karst Mitigation Plan (March 2017), and any subsequent revisions or addenda to the same approved by FERC.
- c. To further evaluate flow paths for karst features in the vicinity of the project, the Owner shall develop a Supplemental Karst Evaluation Plan to be submitted to the Department for review and concurrence prior to initiation of land disturbing activities in karst terrain. The Department, with assistance from the Virginia Department of Conservation and Recreation (DCR) identified areas of concern in Attachment B of the Department's June 15, 2017 request letter. The Owner will conduct contingency planning in accordance with the findings and conclusions of the Supplemental Plan, as appropriate, in order to monitor and mitigate a potential accidental release or spill during construction in Virginia's karst terrain.
- d. The Owner shall: (1) conduct a survey to identify wells, cisterns, springs, and other surface waters within 1,000 feet of the project centerline in areas known to have karst topography; and, (2) conduct one water quality sampling event to evaluate wells and springs used for human consumption and located between 500 feet to 1000 feet from the project centerline. The sampling shall include the parameters identified in the Water Resources Identification and Testing Plan (February 2017), and any subsequent revisions or addenda to the same approved by FERC. The survey and/or water quality sampling event shall be conducted by the Owner at the request of a property owner and only if the property owner provides permission for access. This survey and/or water quality sampling event shall be conducted before the pipeline is placed into operation. The Owner must complete any survey and water quality evaluation requests received at least 30 days prior to placing the project in service.

- e. The Owner shall provide a financial responsibility demonstration to the Department in the amount of five million dollars (\$5,000,000), to support the Complaint Resolution Process contained in the Water Resources Identification and Testing Plan (February 2017) in the event a private water supply used for human consumption is impacted from project construction activities.

This demonstration requirement may be satisfied by any of the financial assurance mechanisms that are set forth in 9 VAC 25-650-90 through 9 VAC 25-650-130. The mechanism or combination of mechanisms shall not be accessible by third parties and shall be used by the Department to implement the Water Resources Identification and Testing Plan when necessary due to the Owner's failure to do the same.

The mechanism or combination of mechanisms shall be submitted to the Department for review and approval and must contain such wording and terms as specified by the Department to satisfy this condition.

The demonstration, having been approved by the Department, shall be made available prior to initiation of land disturbing activities in karst terrain and shall be maintained until 180 days after all land disturbing activity associated with the construction of the pipeline, and related access roads and rights-of-way have achieved final stabilization as required by the Erosion and Sediment Control Law (Va. Code § 62.1-44.15:51, *et seq.*). The Department will notify the Owner when the conditions to release the financial demonstration have been met.

4. Surface Water Withdrawals

- a. Any surface water withdrawals for the purposes of hydrostatic testing shall not violate applicable Water Quality Standards and shall be managed so that no more than 10% of the instantaneous flow rate from the channel is removed; the intake screens shall be designed so that screen openings are not larger than 1 millimeter and the screen face intake velocities are not greater than 0.25 feet per second.
- b. Any surface water withdrawals for the purposes of horizontal directional drilling or dust control that do not exceed 10,000 gallons per day from non-tidal waters or two million gallons per day from tidal waters shall not violate applicable Water Quality Standards and shall be managed so that no more than 10% of the instantaneous flow rate from the channel is removed and the intake screens shall be designed so that screen openings are not larger than 1 millimeter and the screen face intake velocities are not greater than 0.25 feet per second.
- c. Daily withdrawals from horizontal directional drilling or dust control activities that exceed 10,000 gallons per day from non-tidal waters and two million gallons per day from tidal waters must comply with the requirements of the Virginia Water Protection Permit Program Regulation. The Owner shall record and track the daily volumes of water withdrawn for horizontal directional drilling or dust control activities and make such records available during inspection or upon request by the Department.

- d. Hydrostatic test water shall be released to upland areas through energy dissipating dewatering devices. The energy dissipating dewatering devices must be sized to accommodate the rate and volume of release and be monitored and regulated to prevent erosion and over pumping of the energy dissipating dewatering devices. There shall be no direct point source discharge or intentional indirect discharge of hydrostatic test water to surface waters. The upland discharge of hydrostatic test waters shall be monitored in accordance with the General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests (9 VAC 25-120-10, *et seq.*) ("VPDES General Permit"). The Owner shall record and track the daily volumes of water withdrawn for hydrostatic testing activities and make such records available during inspection or upon request by the Department. In the event of an inadvertent indirect discharge to surface waters, the Owner shall be responsible for ensuring that such discharge complies with all requirements of the VPDES General Permit, including the requirement to notify the Department within 14 days.
5. The Owner shall implement water quality monitoring in accordance with the Upland Construction Water Quality Monitoring Plan (May 31, 2017, revised June 19, 2017).
6. The Owner shall implement the measures identified in the Spill Prevention, Control, and Countermeasure (SPCC) Plan (submitted with the June 1, 2017 response to the Department and additional information submitted June 22, 2017), and any subsequent revisions or addenda to the same approved by FERC.
7. All construction and installation associated with the Project, except as permitted by the Corps, shall be accomplished in such a manner that construction material or waste material shall not be placed into any perennial, intermittent, or ephemeral surface waters or karst features.
8. The Owner shall implement the measures intended to minimize the potential for discharges of soil or rock as detailed in the General Blasting Plan (February 2017) and the Landslide Mitigation Plan Revision 4 (February 2017), and any subsequent revisions or addenda to the same approved by FERC. The Owner shall notify the Department immediately, but no later than 24 hours after discovery, if blasting or landslide activity results in unpermitted discharges of soil or rock to any perennial, intermittent, or ephemeral surface waters. Any potential impacts to karst features will be addressed in accordance with the Karst Mitigation Plan.
9. The Owner shall follow the measures intended to minimize the potential for impacts as detailed in the Acid Forming Materials Mitigation Plan (May 2017), and any subsequent revisions or addenda to the same approved by FERC.

10. The Project, including all relevant records, is subject to inspection at reasonable hours and intervals by the Department or any authorized representative of the Department to determine compliance with this Certification.
11. The Owner shall provide the Department with written or electronic notification at least 10 business days prior to any planned Construction Spread pre-construction conferences.
12. The Owner shall immediately notify the Department of any modification of this Project and shall demonstrate in a written statement that said modifications will not violate any conditions listed in this Certification. If such demonstration cannot be made, the Owner shall apply for a modification of this Certification.
13. The Owner shall comply with the requirements of the Stormwater Management Act (Va. Code § 62.1-44.15:24, *et seq.*) and 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.*). The enforceability under this Certification is in addition to the independent enforcement authority of each individual program and/or permit.
14. This Certification is subject to revocation for failure to comply with the above conditions after a proper hearing. Any unpermitted or unauthorized direct or indirect discharge to State waters shall be subject to enforcement under the State Water Control Law.
15. The terms and conditions of this Certification shall remain in effect until 180 days after all land disturbing activity associated with the construction, operation, maintenance, and repair of the pipeline, and related access roads and rights-of-way have achieved final stabilization as required by the Erosion and Sediment Control Law (Va. Code § 62.1-44.15:51, *et seq.*).
16. This Certification is binding on the Owner and any successors in interest, designees and assigns, jointly and severally.

VI. CONCLUSION

The additional conditions contained in Section V of this Certification along with the requirements imposed by the VWP regulation, the Corps Section 404 permitting requirements, and prior regulatory actions associated with the approval and requirements of the June 2017 Annual Standards and Specifications, and the April 7, 2017 Section 401 Water Quality Certification of the Corps Nationwide Permit 12 provide reasonable assurance that water quality standards will not be violated. The conditions included in this Certification for upland areas are in addition to any other federal or state permit or regulatory requirements with which the Project must comply, including federal resource agency requirements embodied in the FERC certificate.

This Certification constitutes the Commonwealth's final decision on the upland activities associated with the construction, operation, maintenance, and repair of the Project under the requirement of Clean Water Act § 401. The provisions of this Certification are severable and

should any provision(s) of this Certification be declared invalid or unenforceable, the remainder of the Certification, including without limitation any additional conditions imposed hereunder, shall continue in full force and effect. The Commonwealth reserves its right to review this certification decision and take any appropriate action in accordance with 33 U.S.C. § 1341(a)(3). This Certification applies solely to upland activities authorized by FERC and shall not waive or otherwise impair or affect the authority of the Board to require additional certification under state or federal law.

By: Melanie A. Baneyport

Date: December 8, 2017

