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May 8, 2024

Hon. Scott S. Harris, Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543-0001

Re: *Cletus Bohon, et al., v. FERC, et al., No. 23-1053*

Dear Mr. Harris,

Since the filing of the petition for writ of certiorari in the above-captioned case, there has been an alarming new development. Following complaints of muddy waters, on Friday, May 3, it was reported that a portion of pipe burst on Bent Mountain during hydrostatic testing, not far from Petitioners' (Hamms') property. What MVP downplayed as a 'water release' was revealed, by photographic evidence taken by local landowners who spotted the truck on the highway, to be a large rupture in buried pipe that failed when pressurized. The ruptured pipe was then dug up at nighttime. This has caused widespread panic and fear among property owners on Bent Mountain, Poor Mountain, and across the region.

This alarming situation underscores the importance of this case and the reason for structural limitations and political accountability when eminent domain power is employed. The controversies and dangers associated with its use punctuate the Framers' desire to vest this type of coercive power exclusively in the *legislature's* hands, not those of an unelected executive agency or private actor. When property rights are at stake, and private land forcibly seized, the separation of powers is of particular import. Eminent domain abuse in America has run rampant but is particularly repugnant here when wielded by the wrong entity. From the Bronx to the Appalachians, from the big cities to John Denver's country roads, this legislative power robs the individual of his peace, his land, his liberty. And because of this grave deprivation, structural limitations were imposed to ensure accountability to the People, which the Constitution provides, but which is lacking here under this unconstitutional scheme. Petitioners accordingly supplement the factual record with the attached Exhibits.

Respectfully submitted,

/s/ Mia Yugo

Counsel for Petitioners

cc: Counsel of record (via email)

Exhibit 1



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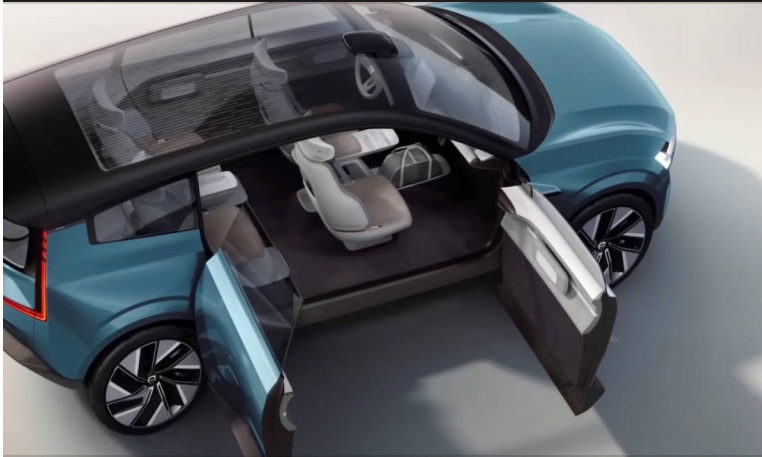
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ROANOKE VALLEY NEWS

Section of Mountain Valley Pipeline in Roanoke ruptures during pressure test

by: Odyssey Fields

Posted: May 6, 2024 / 12:57 PM EDT

Updated: May 6, 2024 / 01:01 PM EDT



FILE - This July 18, 2018, file photo, shows the Mountain Valley Pipeline route on Brush Mountain in Virginia. (Heather Rousseau/The Roanoke Times via AP, File)

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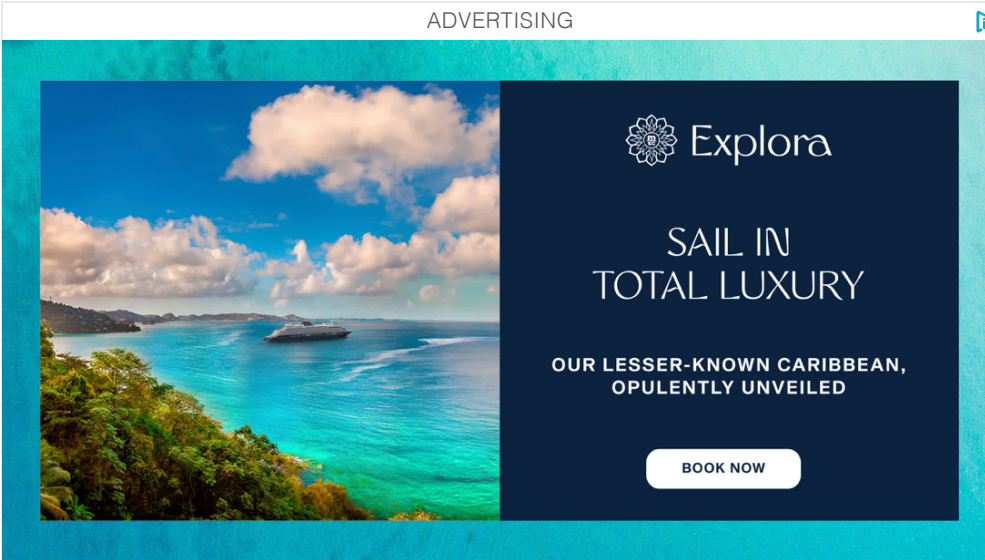


ROANOKE, Va. (WFXR) — A section of the **Mountain Valley Pipeline** ruptured during a pressure test leading to muddy water in the stream in Roanoke on May 1.

A report from the Virginia Department of Environmental Quality (**VADEQ**) states the incident happened on Wednesday around 10 a.m. during a hydrostatic test on Green Hollow Drive in the Bent Mountain area.

A spokesperson with the MVP told WFXR News the Mountain Valley Pipeline LLC. reported a water release while conducting a standard hydro test on the mainline pipe, near Route 221.

ADVERTISING



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The **report from the VADEQ** states milky, muddy water began filling the stream, under the timbermat bridge. This stream drains into the Mill Creek. MVP said by May, 2, the released water had dissipated, and the temporarily affected streams returned to normal.

| **[Everything you need to know about the Mountain Valley Pipeline](#)** >

We're told no one was injured and the VADEQ, Federal Energy Regulatory Commission, and United States Pipeline and Hazardous Materials Safety Administration were notified of the incident.

Equitrans Midstream says the hydrotreating is an element of the overall commissioning reader process for the pipeline's infrastructure projects. It serves as a quality assurance test before

introducing the product to a pipeline. This process included filling the pipe with water.

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The company says as of April 30, the Mountain Valley successfully completed hydro testing on about 269 miles of the project’s 303-mile route. However, crews are working to evaluate what caused the line to burst in Bent Mountain.

“

We are committed to ensuring the safe and responsible operation of this project, and the hydrotesting process is an important aspect of preparing this pipeline system to operate safely for decades to come, just as hundreds of thousands of miles of other natural gas transmission pipelines do every day across the U.S.,”

- SAID A SPOKESPERSON FOR THE MOUNTAIN VALLEY PIPELINE.

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Exhibit 3

https://www.wvgazette.com/news/energy_and_environment/mountain-valley-pipeline-ruptures-with-requested-in-service-date-looming-this-month/article_96dbc67c-b3e0-572e-bb36-67c42cda5d0e.html

Mountain Valley Pipeline ruptures with requested in-service date looming this month

By Mike Tony mtony@hdmediallc.com
May 4, 2024



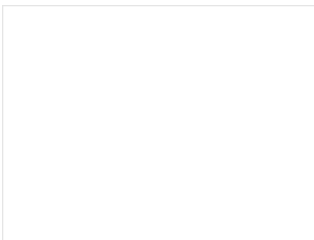
1 of 2



Pictured in this photo taken by Bent Mountain landowner Grace Terry is what landowners say was pipe that blew open from a rupture of the Mountain Valley Pipeline in Roanoke County, Virginia. The ruptured pipe was being transported on Virginia Route 221 on May 3, 2024.

Grace Terry | Courtesy photo

MORE INFORMATION



Not much about the Mountain Valley Pipeline was clear on Bent Mountain in Virginia Thursday.



Safety, oversight questions linger after Mountain Valley Pipeline rupture

Not the muddy water Bent Mountain resident Kathy Chandler reported to Virginia state regulators was running through her pasture and draining into the Mill Creek watershed.

Not the extent of environmental impacts from the pipeline rupture triggering the municipal water discharge during a pipe pressure test, according to the Virginia Department of Environmental Quality.

And to Chandler and other Bent Mountain landowners, not how they could consider themselves safe from a potential pipe explosion or other catastrophe just three weeks away from the gas pipeline developer's planned in-service date for the 303.5-mile project.

One thing was clear to Chandler Thursday night.

"This pipeline is not ready to put in service," Chandler said in a phone interview.

[Mountain Valley Pipeline LLC](#), the joint venture behind the pipeline long delayed by legal challenges rooted in recurring environmental issues, was pressurizing pipe roughly 215 feet east of Route 221 in Roanoke County as part of hydrostatic testing, according to the DEQ.

Hydrostatic testing is a pressure-based method of assessing the integrity of pipes that pipeline operators perform after construction to identify possible leaks and confirm construction techniques are sufficient before a line is placed into service.

A spokesperson for the federal [Pipeline and Hazardous Materials Safety Administration](#) said Thursday testing had been suspended while the operator confirms the cause of the failure and conducts remedial actions. The spokesperson said Friday the agency couldn't give an estimated time frame for the cause of the failure to be confirmed and remedial action to be completed.

Mountain Valley spokesperson Natalie Cox said Friday an evaluation was underway "to determine the cause and circumstances around the hydrotest disruption."

"The important fact for your readers to understand is: the disruption of this hydrotest demonstrates that the testing process is working as designed and intended," Cox asserted in an email,

adding that hydrotesting had been completed for roughly 269 of the project's 303.5-mile route.

But Chandler didn't take comfort in the 42-inch-diameter steel pipe not holding up under pressure within a half-mile of her home.

"If it can happen here, it can happen any other place along the route," Chandler said.

"This is actually one of the more relatively level areas," fellow Bent Mountain resident Robin Austin said.

Pipeline and environmental integrity concerns

The project passing through 11 counties in West Virginia and six in Virginia has long sparked safety concerns due to the mountainous terrain it crosses and questions over the integrity of the pipeline.

The National Association of Pipe Coating Applicators has recommended against aboveground storage of coated pipe for longer than six months without additional ultraviolet protection.

But some of the pipe slated for use in constructing the pipeline had been lying uninstalled along the route for years during project hiatuses amid court challenges.

Pipeline safety advocates have noted prolonged ultraviolet exposure can cause a loss of pipe flexibility.

Bill Caram, executive director of the [Pipeline Safety Trust](#), a Bellingham, Washington-based pipeline safety nonprofit, previously told the Gazette-Mail a pipe could pass a coating test while lying in place but crack once lifted and placed in the ground.

Chandler is concerned about potential corrosion of pipeline in the area she said was buried in 2018.

Amid a rush to finish construction since Congress forced completion of the pipeline through a provision in the Fiscal Responsibility Act enacted in June 2023, Chandler said dewatering containers have failed, leaking into streams and wetlands.

The DEQ said sediment was discharged into a stream and wetland in the Mill Creek watershed following Thursday's rupture.

Austin, whose property comes within roughly a quarter of a mile of pipeline right-of-way crossings, said past Mountain Valley Pipeline construction has left behind sediment-laden stream bottoms with a mud-caked coating.

"It's killing off all the little invertebrates and everything that supports the health of the streams," Austin said.

The West Virginia Department of Environmental Protection fined Mountain Valley a combined \$569,000 in 2019 and 2021 for erosion and sedimentation issues.

The Virginia Department of Environmental Quality fined Mountain Valley \$2.15 million in 2019, resolving a lawsuit the agency and former Virginia attorney general Mark Herring filed alleging the company violated a previously issued water quality certification by not controlling sediment and stormwater runoff.

Economic reward versus risk

But the Mountain Valley Pipeline's proponents hope its life is only just beginning, nine years after the \$7.85 billion project was first announced.

Last month, Mountain Valley asked for approval from the Federal Energy Regulatory Commission to place the project in service by May 23, adding the entire project area was expected to be fully restored by August — depending on weather and other unidentified "external factors."

The pipeline's supporters have predicted it will be an economic and energy boon.

Cecil Township, Washington County, Pennsylvania-based lead pipeline developer [Equitrans Midstream Corp.](#) said during an investor presentation Tuesday the gas pipeline would be a "long-haul" enterprise meant to be the "main takeaway artery" out of the Appalachian basin.

Mountain Valley Pipeline cost rises as opponents urge in-service date rejection

By Mike Tony mtony@hdmediallc.com  2 min to read

Equitrans said in an investor presentation published in February the pipeline is fully subscribed under 20-year contracts, with Pittsburgh gas producer EQT holding 1.29 billion cubic feet per day of capacity on the pipeline.

Mountain Valley has estimated the 11 West Virginia counties along the pipeline route would receive a combined \$35 million annually in tax revenue from the project. The pipeline's supporters say the project reward will be great. But a recent study contends the project risk will be great, too — approaching \$1 billion.

The property value of parcels within a half-mile of the pipeline totals \$999.2 million, including \$203.7 million in West Virginia, according to the study by [UrbanFootprint](#), a California-based community planning analysis company.

An UrbanFootprint spokesperson said previously the data underscore that building fossil fuel infrastructure in and around communities can expose thousands of property owners to the economic impact of pipeline failures.

The pipeline is designed to cross over 75 miles of slopes greater than 30%, an unusually high amount of pipeline over slopes that steep.

From 2004 through 2023, West Virginia had 40 “significant” pipeline incidents — a category including any of these conditions:

- Fatality or injury requiring in-patient hospitalization
- \$50,000 or more in total costs (measured in 1984 dollars)
- Highly volatile liquid releases of five barrels or more or other liquid releases of 50 barrels or more
- Liquid releases resulting in an unintentional fire or explosion

The incidents resulted in four deaths and nine injuries, causing over \$61 million in damages.

PHMSA says consent agreement must be satisfied

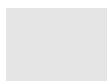
As of Mountain Valley's in-service request last month, over a third of the pipeline route wasn't yet in “final restoration,” which the company has defined as including installation of permanent erosion control devices, the return of topsoil, and seeding and mulching along the pipeline right-of-way.

Mountain Valley said it hadn't yet completed pipeline coating and dent detection surveys required by a consent agreement it entered into in October 2023 with the PHMSA.

The consent agreement requiring corrective measures the PHMSA struck with Equitrans came after the agency found project conditions may pose safety risks.

A PHMSA spokesperson said Friday the operator must complete coating and detection survey requirements in the consent agreement prior to commissioning the pipeline, even if the project is approved by the FERC.

A FERC spokesperson did not respond to a request for comment on whether it would approve Mountain Valley's May 23 in-service date request following the rupture. The spokesperson said the agency was aware of the incident and was obtaining information.



Mountain Valley Pipeline asks to go in service next month as project warning signs grow

By Mike Tony mtony@hdmediallc.com 5 min to read

'Not almost finished'

Just after noon on Thursday, as Chandler filed an incident report with the DEQ, Sen. Shelley Moore Capito, R-W.Va., held a news conference at which she cheered the project's progress.

"My hope is that the final completion and ribbon-cutting will occur sooner than later," Capito said.

Sen. Joe Manchin, D-W.Va., and other supporters have argued the pipeline will be a national security asset.

"This pipeline is essential to ensuring our nation's energy and national security and providing affordable, reliable natural gas to hundreds of thousands of Americans, all while creating jobs and increasing tax revenue," Manchin said in a September 2023 statement.

But Chandler doesn't feel secure with her family living in the pipeline's shadow.

"I think this incident shows that the pipeline is not almost finished," Chandler said. "I think that's probably the greatest message. If this pipeline is mandated as an effort in national

security and it has that kind of gravity, it must be completed as the safest pipeline it can be. And today's incident shows that it's not ready for that yet."

Mike Tony covers energy and

the environment. He can be

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Environment and Energy Reporter