

# Oil and Gas, Natural Resources, and Energy Journal

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Volume 6

Number 2 *The 2020 Survey on Oil & Gas*

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October 2020

## Virginia

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### Recommended Citation

Zachary H. Barrett, *Virginia*, 6 OIL & GAS, NAT. RESOURCES & ENERGY J. 295 (2020), <https://digitalcommons.law.ou.edu/onej/vol6/iss2/24>

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*Oil and Gas, Natural Resources, and Energy Journal*

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VOLUME 6

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## VIRGINIA



*Zachary H. Barrett\**

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### *I. Introduction*

The following is an update on Virginia legislative activity and case law relating to oil, gas and mineral law from August 1, 2019 to July 31, 2020.

### *II. Legislative and Regulatory Developments*

The following is a discussion of notable legislation:

#### *A. House Bill 646*

House Bill 646 (“HB 646”) — An Act to amend and reenact §62.1-44.15, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to pipeline permit violations; penalty amounts.

HB 646 amends and reenacts Virginia Code §62.1-44.15 by adding a new sub-section (8g), authorizing the Control Board to issue special orders for violations to persons constructing or operating natural gas transmission pipelines greater than 36 inches inside diameter.<sup>1</sup> Orders for violation issued pursuant to Virginia Code §62.1-44.15(8g) may include a civil penalty of up to \$50,000.00 per violation, not to exceed \$500,000.00 per order with such funds to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund.

SIGNED INTO LAW ON MARCH 25th, 2020

### *II. Judicial Developments*

#### *A. Supreme Court of Virginia*

##### *1. Vest v. Mountain Valley Pipeline, LLC<sup>2</sup>*

In *Vest v. Mountain Valley Pipeline, LLC* the Supreme Court of Virginia reaffirmed its holding in *Chaffins v. Atlantic Coast Pipeline, LLC* (293 Va. 564 (2017)), holding that notice provided to landowners of intent to enter onto private property for the purpose of conducting surveys pursuant to VA Code Ann. §56-49.01 is not rescinded merely by the issuing of a subsequent notice for a later date.

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1. VA Code Ann. §62.1-44.15(8g).

2. *Vest v. Mountain Valley Pipeline, LLC* (Not Reported in S.E. Rptr., 2020 WL 3618943).

*a) Facts and Proceedings*

On March 23, 2016, Mountain Valley Pipeline, LLC (“MVP”), in compliance with VA Code Ann. §56-49.01, sent notice to Fred W. Vest (“Vest”) requesting permission to enter his property beginning on April 8 to conduct examinations, tests, appraisals and surveys (the “March 23 Letter”). Vest received the notice on March 29, and denied MVP permission to access his property. Thereafter, on March 31, MVP sent a second notice of intent to enter Vest’s property on April 25 and 26 to conduct various surveying activities, and Vest again informed MVP that he did not give MVP his permission to enter the property (the “March 31 Letter”). On April 9, 2016, MVP’s surveyors entered Vest’s property but were told to leave.

On April 27, MVP brought suit against Vest requesting:

- (1) a declaratory judgment that it had satisfied the requirements to enter Vest’s property under Code § 56-49.01;
- (2) injunctive relief to prevent Vest from further interfering with MVP’s surveyors; and
- (3) \$25,000.00 in damages.

At trial, Vest asserted “that MVP had waived its right to enter Vest’s property on April 9 because the March 31 request letter had superseded the March 23 request and notice letters.”<sup>3</sup> “After holding a hearing on the cross-motions for summary judgment, the circuit court granted summary judgment to MVP, denied Vest’s motion for summary judgment, dismissed Vest’s trespass counterclaim, dismissed MVP’s claim for damages based upon MVP’s agreement, and dismissed MVP’s injunction claim as moot.”<sup>4</sup>

*b) Conclusion*

The Supreme Court of Virginia held that “Because the March 31 letter does not expressly or impliedly repudiate the March 23 letters, Vest has failed to demonstrate by “clear and unmistakable proof,” *Chawla*, 255 Va. at 623, that MVP intended to waive any right that it had to enter Vest’s property on April 9, and thus, the circuit court did not err in awarding summary judgment to MVP.”<sup>5</sup>

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3. *Id.* at \*5.

4. *Id.* at \*3.

5. *Id.* at \*5.