

# SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 615-921-9470

1033 DEMONBREUN STREET, SUITE 205  
NASHVILLE, TN 37203

Facsimile 615-921-8011

April 29, 2021

**VIA E-mail to David.Salyers@tn.gov**

Mr. David Salyers  
Commissioner, Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 11th Floor  
Nashville, TN 37243

**Re: Demand to Immediately Revoke or Suspend ARAP/Section 401 Certification  
NRS20.089 for the Byhalia Connection Pipeline for Cause Based on Failure to  
Disclose All Relevant Facts**

Dear Commissioner Salyers:

On behalf of Memphis Community Against Pollution,<sup>1</sup> Protect Our Aquifer, and Tennessee Chapter Sierra Club, we demand that you immediately revoke or suspend the Aquatic Resource Alteration Permit and Section 401 Certification for the Byhalia Connection Pipeline.<sup>2</sup> Cause exists to revoke or suspend the permit because the permit applicant, Byhalia Pipeline LLC (Byhalia), failed to disclose fully all relevant facts during the permitting process.<sup>3</sup> Specifically, Byhalia failed to disclose the existence of the Collierville Connection Pipeline, a crude oil pipeline that *already* connects the Diamond Pipeline and the Capline Pipeline—the same two pipelines proposed to be connected by the Byhalia Connection Pipeline. If the company had disclosed the Collierville Connection Pipeline, the Tennessee Department of Environment and Conservation (TDEC or Department) would have been required to evaluate it as an alternative to the construction of the Byhalia Connection Pipeline because the use of an existing pipeline or pipeline route has the potential to avoid and minimize new impacts on waters of the State,

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<sup>1</sup> Memphis Community Against the Pipeline recently incorporated under Tennessee law as Memphis Community Against Pollution, but also continues to organize and advocate as Memphis Community Against the Pipeline.

<sup>2</sup> NRS20.089,  
[http://tdec.tn.gov:8080/pls/enf\\_reports/f?p=9034:34051::NO:34051:P34051\\_PERMIT\\_NUMBE R:NRS20.089](http://tdec.tn.gov:8080/pls/enf_reports/f?p=9034:34051::NO:34051:P34051_PERMIT_NUMBE R:NRS20.089).

<sup>3</sup> Tenn. Comp. R. & Regs. 0400-40-07-.04(6)(b) (cause to modify, suspend, or revoke a permit includes “[o]btaining a permit by misrepresentation or failure to disclose fully all relevant facts”).

including streams, wetlands, and groundwater.<sup>4</sup> Use of an existing pipeline would also avoid impacts on residents along a new path.

Byhalia's failure to disclose the Collierville Connection Pipeline as an alternative is particularly egregious because the company *also* failed to disclose the fact that the Byhalia Connection Pipeline would plow between two wells in a municipal wellfield that provides drinking water to predominantly Black neighborhoods in Southwest Memphis.<sup>5</sup> That wellfield is located in an area in which the Memphis Sand Aquifer—Memphis's sole drinking water source—is known to be vulnerable to contamination.<sup>6</sup> In fact, Memphis Mayor Jim Strickland recently announced that after consultation with environmental scientists, he considers the Byhalia Connection Pipeline an “unacceptable risk” to the city's drinking water.<sup>7</sup>

The people of Tennessee, including Memphians, have a “right to unpolluted waters,”<sup>8</sup> including groundwater. The Department is charged with “prevent[ing] the future pollution of the waters . . . so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters.”<sup>9</sup>

The fact that a potentially less environmentally damaging alternative exists, and the fact that the proposed route would run a new crude oil pipeline through a drinking water wellfield are relevant to the Department's considerations in the permitting process and were not disclosed by Byhalia. Cause therefore exists to revoke or suspend the permit issued to Byhalia.

The proposed Byhalia Connection Pipeline currently threatens the drinking water source of communities in Southwest Memphis that are 97% Black, low-income, and already burdened by dozens of industrial facilities and major pollution sources. Revoking the permit will also allow TDEC to ensure that its permitting decision does not disparately impact Black residents in violation of Title VI of the Civil Rights Act of 1964.

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<sup>4</sup> Tenn. Comp. R. & Regs. 0400-40-07-.04(5)(b).

<sup>5</sup> Att. 1, Douglas Cosler, *Evaluation of the Risk of Contamination of the Memphis Sand Aquifer by the Proposed Byhalia Connection Pipeline* 2-3 (February 1, 2021) [hereinafter Cosler Report].

<sup>6</sup> *Id.*

<sup>7</sup> Sarah Macaraeg, 'An unacceptable risk': Memphis Mayor Jim Strickland opposes Byhalia pipeline, Memphis Commercial Appeal (April 20, 2021), <https://www.commercialappeal.com/story/news/2021/04/20/memphis-mayor-jim-strickland-opposes-byhalia-pipeline-tennessee-mississippi/7301469002/>.

<sup>8</sup> Tenn. Code § 69-3-102(a).

<sup>9</sup> *Id.* at 102(b).

**I. Byhalia failed to disclose any information about the Collierville Connection Pipeline, a potentially practicable alternative that would likely avoid or mitigate some or all of the proposed Byhalia Pipeline's impacts.**

On April 20, 2020, Byhalia applied for an Aquatic Resources Alteration Permit (ARAP) and Section 401 Certification for a proposed 49.63-mile, high-pressure crude oil pipeline. On April 24, 2020, the Department notified Byhalia that its application was deficient, for, among other reasons, failure to submit a detailed alternatives analysis.<sup>10</sup> On June 19, 2020, Byhalia submitted an alternatives analysis describing five alternatives, including a no action alternative, and identifying its preferred route—a route that turns abruptly south to snake through predominantly Black neighborhoods in Southwest Memphis—as the least environmentally damaging alternative.<sup>11</sup>

From July 21 through September 11, 2020, TDEC received numerous public comments, many expressing concerns that the pipeline would present an unacceptable threat to the Memphis Sand Aquifer and unjustly burden the Black communities of Southwest Memphis. TDEC issued the ARAP permit and Section 401 Certification on November 17, 2020. In the Notice of Determination for the permit, TDEC expressly found that “[T]he permittee’s preferred alternative, with conditions, represents the practicable alternative that would achieve the project objective and have the least adverse impact on resource values.”<sup>12</sup>

Since the closure of the public comment period and the issuance of the permit, new information has come to light that Byhalia never disclosed. Specifically, in its ARAP application, Byhalia did not disclose a crucial fact: there already *is* a pipeline connecting the same origin with the same destination. Like the proposed Byhalia Pipeline, the Collierville Connection Pipeline is a bi-directional crude oil pipeline connecting the Valero Refinery in Memphis with Valero’s Collierville Terminal in Mississippi.<sup>13</sup> The Collierville Terminal already receives crude oil “from

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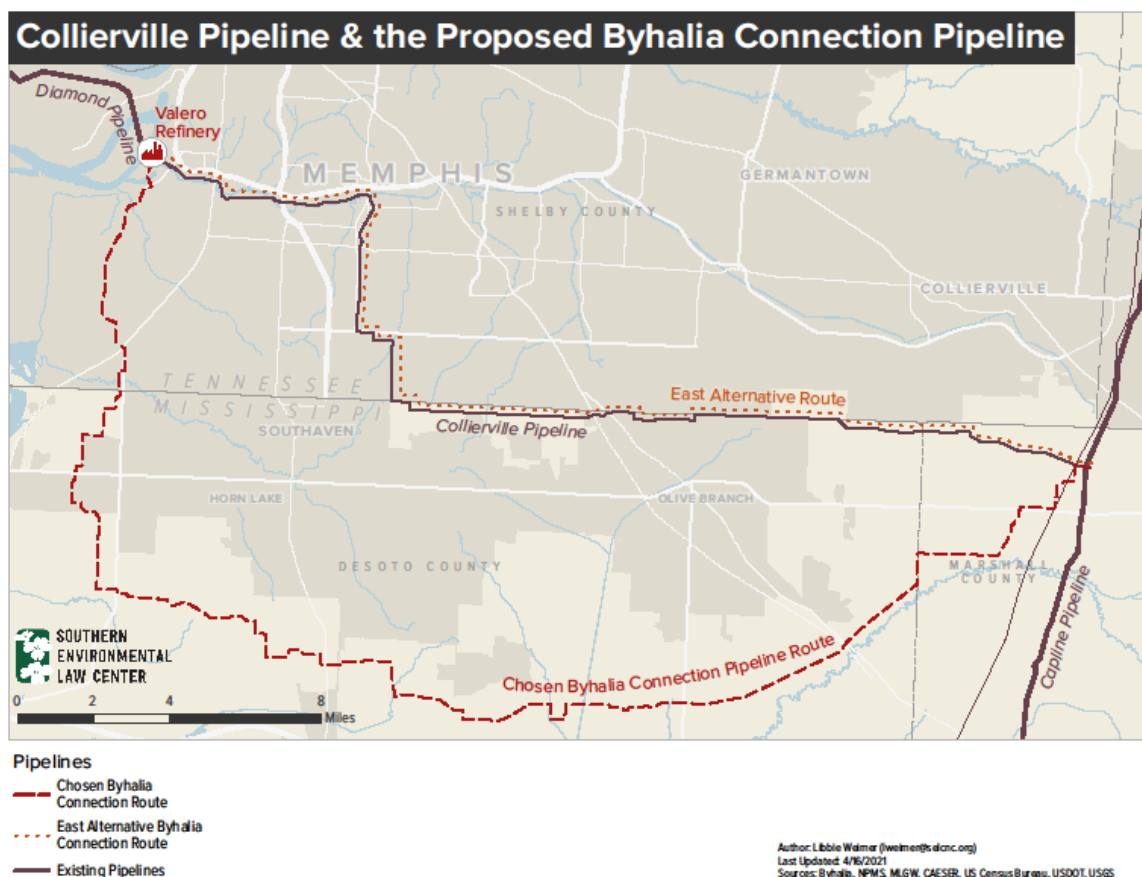
<sup>10</sup> Letter from Mike Lee, TDEC, to William Gore, Byhalia Pipeline LLC, re: Letter of Deficiency- §401 Water Quality Certification; State of Tennessee Application NRS 20.089-Byhalia Pipeline Connection; Shelby County, TN (April 24, 2020) (“Detailed information is required under Section 10. Detailed Alternative Analysis, especially in regards to any other sites that were evaluated, avoidance and minimization. The social and economic justification should include information on jobs created, revenue generated, and taxes collected.”)

<sup>11</sup> Alternatives Analysis, Byhalia Connection Pipeline, TDEC ARAP NRS20.089 (June 19, 2020).

<sup>12</sup> Notice of Determination, ARAP NRS20.089, Byhalia Pipeline LLC, p. 3 (November 9, 2020).

<sup>13</sup> See Att. 2, Valero MKS Logistics, L.L.C., Docket No. OR20-10-000, 171 FERC ¶ 61,190 (June 1, 2020), available at <https://www.ferc.gov/sites/default/files/2020-06/OR20-10-000.pdf>.

the Capline, Dakota Access, and Diamond pipelines,”<sup>14</sup> and the bi-directional Collierville Pipeline has capacity for 210,000 barrels per day.<sup>15</sup>



The Department’s ARAP regulations provide as follows:

The applicant shall submit an alternatives analysis evaluating a range of potentially practicable alternatives to avoid and minimize the loss of resource values consistent with the overall purpose of the proposed activity. *No Individual Permit shall be granted if there is a practicable alternative to the proposed activity that would have less adverse impact on resource values*, so long as the alternative does not have other significant adverse environmental consequences.<sup>16</sup>

<sup>14</sup> *Id.*

<sup>15</sup> Att. 3, Valero Energy Partners LP Form 10-K for fiscal year ended December 31, 2017.

<sup>16</sup> Tenn. Comp. R. & Regs. 0400-40-07-.04(5)(b) (emphasis added).

Yet nowhere in its permit application, let alone in its alternatives analysis, did Byhalia even acknowledge the existence of the Collierville Connection Pipeline, much less discuss its relationship to the proposed Byhalia Pipeline. Byhalia rejected the No Action Alternative because it “does not meet the project’s overall purpose of providing a connection between [the Diamond Pipeline with the Capline Pipeline] and was not further considered.”<sup>17</sup> But why doesn’t the bi-directional Collierville Connection Pipeline, running between the same origin and the same destination, adequately serve that purpose?

Using the existing Collierville Connection Pipeline could entirely eliminate the proposed Byhalia Pipeline’s adverse environmental impacts, including its additional impacts on streams and wetlands as well as groundwater. The Collierville Connection Pipeline should have been disclosed and evaluated as a practicable alternative that has the potential to have less adverse impact on resource values.

Further, as shown in the map above, for Alternative 1 (“East Alternative Route”), Byhalia proposed a route that appears to closely if not fully align with the Collierville Pipeline. Byhalia rejected Alternative 1 as impracticable due partly to impacts to the Nonconnah River and its associated wetland and floodplains.<sup>18</sup> TDEC recognized that running parallel to existing pipelines reduces a project’s footprint and impacts, and TDEC cited that factor as favoring Byhalia’s preferred route.<sup>19</sup> Yet Byhalia did not disclose that Alternative 1 would parallel an existing pipeline, and it did not discuss how doing so would change or reduce the Byhalia Pipeline’s impacts to the waters of the State. To the extent any additional construction would be necessary, building in or adjacent to the Collierville Connection Pipeline’s existing easements could avoid or significantly minimize impacts as required by the Department’s regulations.

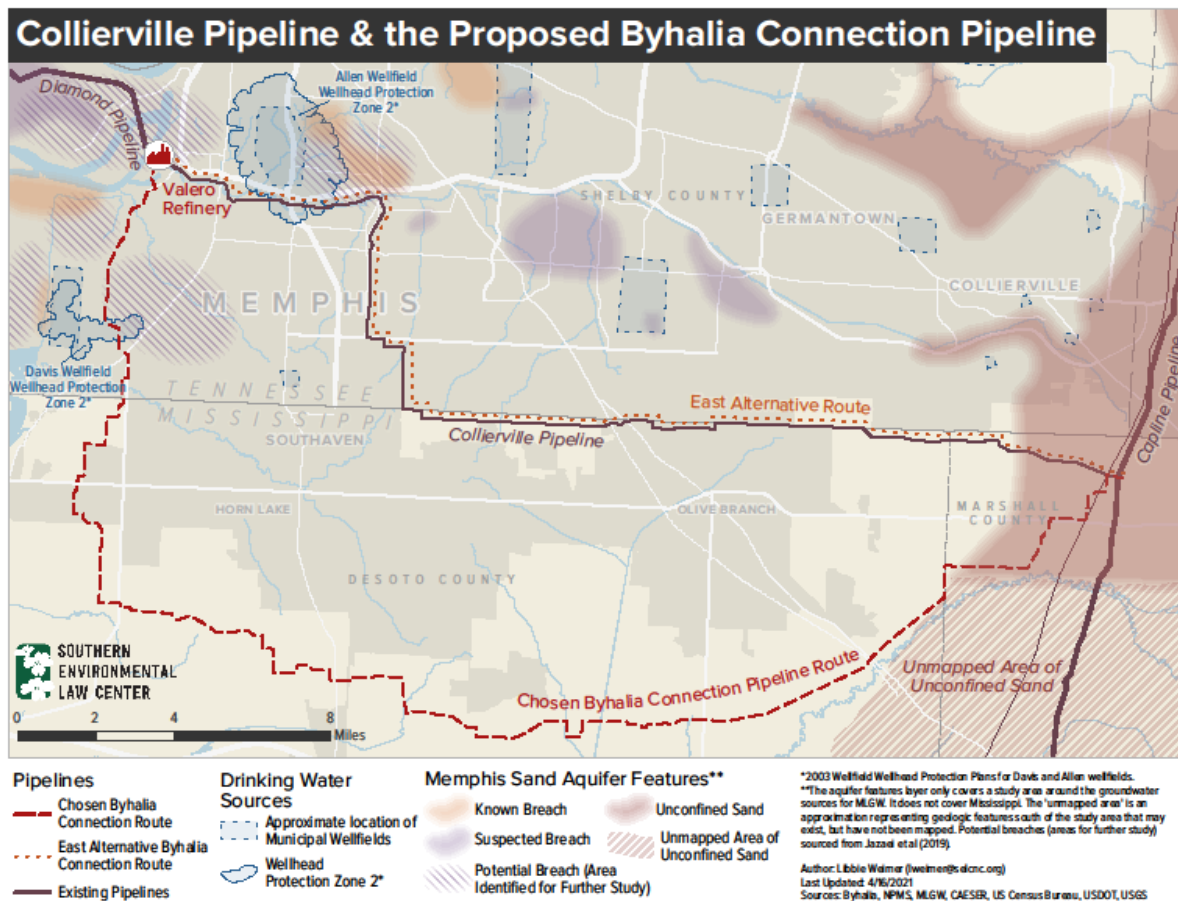
To be clear, we are not endorsing the idea that oil should flow through the Collierville Connection Pipeline to the Capline and down to the Gulf Coast. Like the proposed Byhalia Connection Pipeline, the existing Collierville Connection Pipeline also runs through predominantly Black neighborhoods. And as shown on the map below, the existing Collierville Connection Pipeline raises concerns about risks to Memphis’s sole drinking water source because it runs through the wellhead management area for the Allen Wellfield, another municipal wellfield operated by Memphis Light, Gas & Water. Both the Collierville Connection Pipeline and the Byhalia Connection Pipeline also would cross through the recharge area for the Memphis Sand Aquifer just over the border in Mississippi, posing additional contamination risks to the aquifer. But the fact remains that the Collierville Connection Pipeline is an existing crude oil pipeline that could do the job that the pipeline company claims it needs to build a *new* pipeline to do. And Byhalia did not disclose that fact to the Department during the permitting process.

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<sup>17</sup> Alternatives Analysis, Byhalia Connection Pipeline, TDEC ARAP NRS20.089 at 2.

<sup>18</sup> Alternatives Analysis, Byhalia Connection Pipeline, TDEC ARAP NRS20.089 at 2.

<sup>19</sup> Notice of Determination at 7.



By withholding information about the Collierville Connection Pipeline, Byhalia failed to fully disclose information critical to TDEC’s analysis of alternatives. Accordingly, TDEC should revoke or suspend Byhalia’s permit in order to evaluate the potential use of the Collierville Connection Pipeline itself (under the no action alternative) and re-evaluate Alternative 1 in light of the existence of that pipeline as potentially practicable alternatives.

## II. Byhalia failed to disclose that its preferred route would run through a municipal wellfield and put drinking water for predominantly Black neighborhoods in Southwest Memphis at risk.

Although TDEC’s ARAP decision focused on impacts to surface waters, the Tennessee Water Quality Control Act requires TDEC to consider groundwater, too. TDEC’s own regulations require it to consider “any other factors relevant under the Act” when considering an ARAP application.<sup>20</sup> The Tennessee Water Quality Control Act prohibits the unpermitted “alteration of the physical, chemical, radiological, biological, or bacteriological properties of any

<sup>20</sup> Tenn. Comp. R. & Regs. 0400-40-07.04(6)(c).

waters of the state.”<sup>21</sup> The waters of the State include groundwater,<sup>22</sup> and the “government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve” the public’s right to clean water.<sup>23</sup> Because the Act seeks to protect all waters of the State, a substantial risk of groundwater pollution—especially near drinking water intakes—is highly relevant to TDEC’s decision to issue an Aquatic Resources Alteration Permit for a crude oil pipeline.

Despite its proposed crude oil pipeline’s potential impacts to the Memphis Sand Aquifer, a water of the State, Byhalia failed to disclose any information regarding the threat to the sole source of drinking water for more than one million people. Its application makes no mention of drinking water at all.<sup>24</sup> In fact, Byhalia failed to disclose that its preferred route for the pipeline—and the alternative the Department selected as the one that would have the least adverse impacts on resource values—would pass through the Davis Wellfield, which MLGW operates to provide drinking water to predominantly Black communities in Southwest Memphis. The following map shows where the pipeline route crosses the Davis Wellfield and MLGW’s Wellhead Protection Zone 2 near areas of known or suspected breaches in the clay layer separating the shallow alluvial aquifer from the Memphis Sand Aquifer.<sup>25</sup>

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<sup>21</sup> T.C.A. § 69-3-108(b)(1).

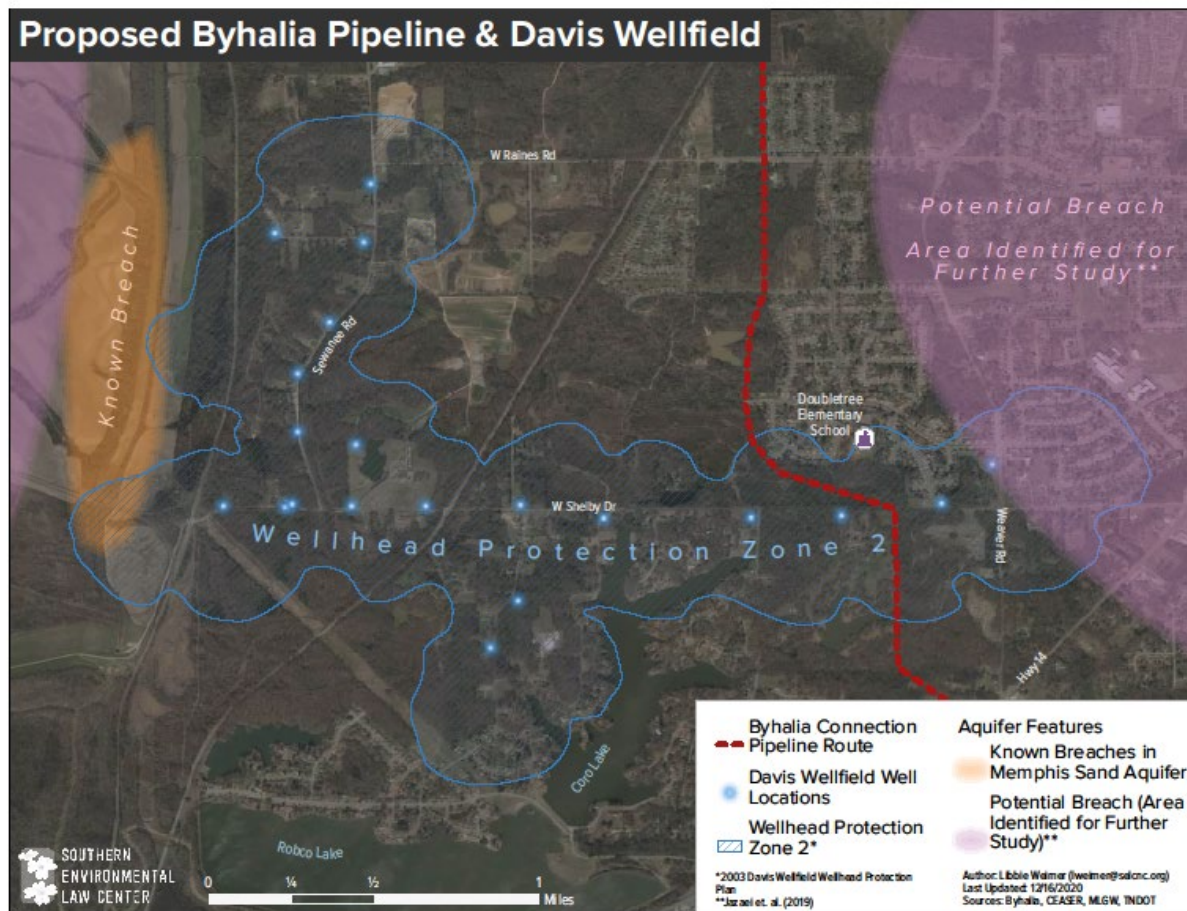
<sup>22</sup> *Id.* 69-3-103(45).

<sup>23</sup> T.C.A. § 69-3-102(a).

<sup>24</sup> *See generally*, Application, Byhalia Pipeline LLC, Permit No. NRS20.089 (submitted April 20, 2020).

<sup>25</sup> Although the attached maps are based on MLGW’s 2003 Wellhead Protection Plan maps, Protect Our Aquifer inspected the current version of MLGW’s Wellhead Protection Plan and confirmed that Zone 2 is the same or very similar in scope.





Although the applicant has the burden to fully disclose potential impacts on waters of the State,<sup>26</sup> Byhalia failed to do so. As a result of that failure, our law firm was required to retain an independent expert to prepare a report evaluating these risks. Dr. Douglas J. Cosler, Ph.D., P.E., Principal Chemical Hydrogeologist with Adaptive Groundwater Solutions LLC in Matthews, North Carolina, found that a leak from the crude oil pipeline could pollute the Memphis Sand Aquifer in the vicinity of the Davis Wellfield.<sup>27</sup> The 24-inch diameter, high-pressure crude oil pipeline would go through MLGW’s Davis Wellfield, which provides area residents with drinking water, as well as through MLGW’s Wellhead Management Zone. Further, the area around the Davis Wellfield is known to be vulnerable to contamination due to known and

<sup>26</sup> Tenn. Comp. R. & Regs. 0400-40-07-.04(6)(b) (cause to modify, suspend, or revoke a permit includes “[o]btaining a permit by misrepresentation or failure to disclose fully all relevant facts”).

<sup>27</sup> Cosler Report at 3.



suspected breaches in the clay layer above the aquifer.<sup>28</sup> Dr. Cosler's report concludes that any spill could spread crude oil contaminants into the Memphis Sand Aquifer near drinking water intakes.<sup>29</sup>

Dr. Cosler's report confirms what many Memphians already know: a pipeline leak could be catastrophic. Because of groundwater flows and the proposed pipeline's route, oil contamination could reach the Memphis Sand Aquifer and MLGW's drinking water intakes relatively quickly—years rather than decades often associated with groundwater travel times.<sup>30</sup> Operating at 1500 psi—more than twice the pressure of fire hoses that spray water 30 stories into the air—the pipeline offers no margin of error, as “hundreds of gallons of crude oil can spew out of a small opening.”<sup>31</sup> Crude oil contains known and probable carcinogens, including benzene.<sup>32</sup> Cleaning up crude oil once it reaches the groundwater is an expensive and difficult task.<sup>33</sup> Unfortunately, pipeline leaks are common: since 2010, more than 1,650 leaks have spilled more than 11.5 million gallons of oil.<sup>34</sup>

Because Byhalia failed to disclose the relevant fact that its preferred route would run through a municipal wellfield known to be vulnerable to contamination, the Department erroneously concluded there was “no reason to believe there is any possibility of affecting the deep regional aquifer.”<sup>35</sup> Yet Dr. Cosler's report supports the opposite conclusion: there is *every* reason to believe a high-pressure crude oil pipeline over breaches in the clay layer could pollute the aquifer. Byhalia's failure to disclose site-specific analysis of the pipeline's impacts on the waters of the State that serve as Memphis's drinking water source deprived the public and TDEC of the information necessary to make a reasoned decision. Any such decision must account for groundwater quality to comply with the Tennessee Water Quality Control Act.

Byhalia's failure to disclose the risk to Memphis's sole drinking water source and the existence of the Collierville Connection Pipeline prejudiced the Department's alternatives analysis. The Department should revoke or suspend the permit to re-evaluate alternatives in light of this previously undisclosed information.

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 3–12.

<sup>30</sup> *Id.* at 7–12.

<sup>31</sup> *Id.* at 4.

<sup>32</sup> *Id.* at 6.

<sup>33</sup> *Id.* at 4–7.

<sup>34</sup> *Id.* at 4.

<sup>35</sup> Permit No. NRS20.089, Notice of Determination at 6 (November 9, 2020).

### **III. Revoking the pipeline's permit would help fulfill TDEC's Safe Drinking Water Act obligations to protect drinking water.**

Revoking the pipeline's Aquatic Resources Alteration Permit will also ensure that TDEC fulfills its duties under the Tennessee Safe Drinking Water Act. The Act provides, "Recognizing that the waters of the state are the property of the state and are held in public trust of its citizens, it is declared that the people of the state are beneficiaries of this trust and have a right to both an adequate quantity and quality of drinking water."<sup>36</sup> The Act expressly prohibits the "discharge by any person of sewage or any other waste or contaminant at such proximity to the intake, well or spring serving a public water system in such manner or quantity that it will, or will likely, endanger the health or safety of customers of the system or cause damage to the system."<sup>37</sup> Violations of the Act are "public nuisances and may be abated by any means provided by law."<sup>38</sup>

It is the Commissioner's duty to exercise "general supervision over the administration and enforcement" of the Tennessee Safe Drinking Water Act.<sup>39</sup> The Commissioner has broad authority to enforce the Act, including to prevent future violations:

Whenever the commissioner has reason to believe that a violation of [the Act] or regulations pursuant thereto has occurred, is occurring, or *is about to occur*, the commissioner may cause a written complaint to be delivered to the alleged violator or violators.<sup>40</sup>

...

Whenever the commissioner finds that the public health, safety or welfare imperatively requires immediate action, the commissioner may, without prior notice, or without preceding the action with a hearing, issue an order requiring that such action be taken as the commissioner deems necessary under the circumstances.<sup>41</sup>

...

The commissioner may initiate proceedings in the chancery court of Davidson County or the county in which the activities occurred against any person who is

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<sup>36</sup> Tenn. Code Ann. § 68-221-702.

<sup>37</sup> *Id.* § 68-221-711(5).

<sup>38</sup> *Id.* § 68-221-716.

<sup>39</sup> *Id.* § 68-221-705.

<sup>40</sup> *Id.* § 68-221-712(a)(1) (emphasis added).

<sup>41</sup> *Id.* § 68-221-712(b)(1).

alleged to have violated or *is about to violate* this part, the rules and regulations of the board or orders of the commissioner.<sup>42</sup>

The Byhalia Pipeline passes through the Davis Wellfield, in close proximity to the wells MLGW operates to provide drinking water to Southwest Memphis. As discussed in Dr. Cosler’s report, pipelines often leak, and the siting of this particular pipeline poses a serious risk to the drinking water of Southwest Memphians. Because the siting of this pipeline threatens to endanger public health and deprive citizens of adequate drinking water, the pipeline threatens to violate the Tennessee Safe Drinking Water Act. The Commissioner should exercise his authority to prevent that violation. Here, revoking the Aquatic Resources Alteration Permit and evaluating practicable alternatives—independently authorized under the Water Quality Control Act—would also help to fulfill TDEC’s obligations to protect Memphis’s drinking water under the Tennessee Safe Drinking Water Act.

#### **IV. TDEC’s uninformed decision to issue Byhalia a permit disparately impacts Black residents of Southwest Memphis, raising concerns about the agency’s compliance with Title VI of the Civil Rights Act of 1964.**

Relying on Byhalia’s inadequate application, TDEC issued a permit that will disparately impact Black communities. Title VI of the Civil Rights Act of 1964 provides, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>43</sup> This provision, which applies to all Tennessee agencies,<sup>44</sup> prohibits agency decisions that have racially disparate impacts.<sup>45</sup> State permitting agencies are “responsible for minimizing the environmental impacts to local communities and ensuring that their practices and policies are implemented in a nondiscriminatory manner.”<sup>46</sup> Information is essential for TDEC to carry out that obligation. EPA guidance provides, “Understanding the existing environmental and health impacts as well as the demographics, in

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<sup>42</sup> *Id.* § 68-221-715 (emphasis added).

<sup>43</sup> 42 U.S.C. § 2000d.

<sup>44</sup> Tenn. Code Ann. § 4-21-904.

<sup>45</sup> *See Guardians Ass’n v. Civil Service Comm’n v. Civil Serv. Comm’n of City of New York*, 463 U.S. 582, 593 (1983) (“[I]t must be concluded that Title VI reaches unintentional, disparate-impact discrimination as well as deliberate racial discrimination.”).

<sup>46</sup> EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance), 71 Fed. Reg. 14207, 14214 (March 21, 2006).

the areas under consideration for the siting of new facilities, may help [permitting agencies] ensure they do not issue permits in a discriminatory manner.”<sup>47</sup>

In response to comments on environmental justice, TDEC emphasized that “Tennessee does not have an [executive order] or specific language within rule or statute that requires and/or provides TDEC the explicit authority to consider environmental justice within its environmental regulatory program actions.”<sup>48</sup> However, “striving for the equal treatment of all communities,” TDEC cited only the public notice and public hearing on the draft ARAP as sufficient to resolve environmental justice concerns.<sup>49</sup> First, even if Tennessee does not have a statute expressly requiring TDEC to consider environmental justice, such analysis is essential here for TDEC to ensure that its policies and practices do not disparately impact Black residents, as required for compliance with Title VI.<sup>50</sup> Second, the additional information presented in this letter and in Dr. Cosler’s report—released after TDEC’s initial decision—indicates that the additional environmental burdens that would be imposed by the proposed Byhalia pipeline *will* disparately impact Black residents. Notice alone does not prevent the disparate impacts, which many residents described during the public comment period when objecting to the proposed permit. As EPA observes, “compliance with environmental laws does not necessarily constitute compliance with federal civil rights laws.”<sup>51</sup> In any case, here notice was deficient and there was no compliance with environmental laws because Byhalia failed to disclose all relevant facts.

As Dr. Cosler concluded, any spill from the Byhalia Pipeline could devastate the drinking water source of Southwest Memphis, where predominately Black communities have long overburdened by industrial pollution. The proposed route cuts through the heart of Boxtown, a

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<sup>47</sup> *Id.* at 14215.

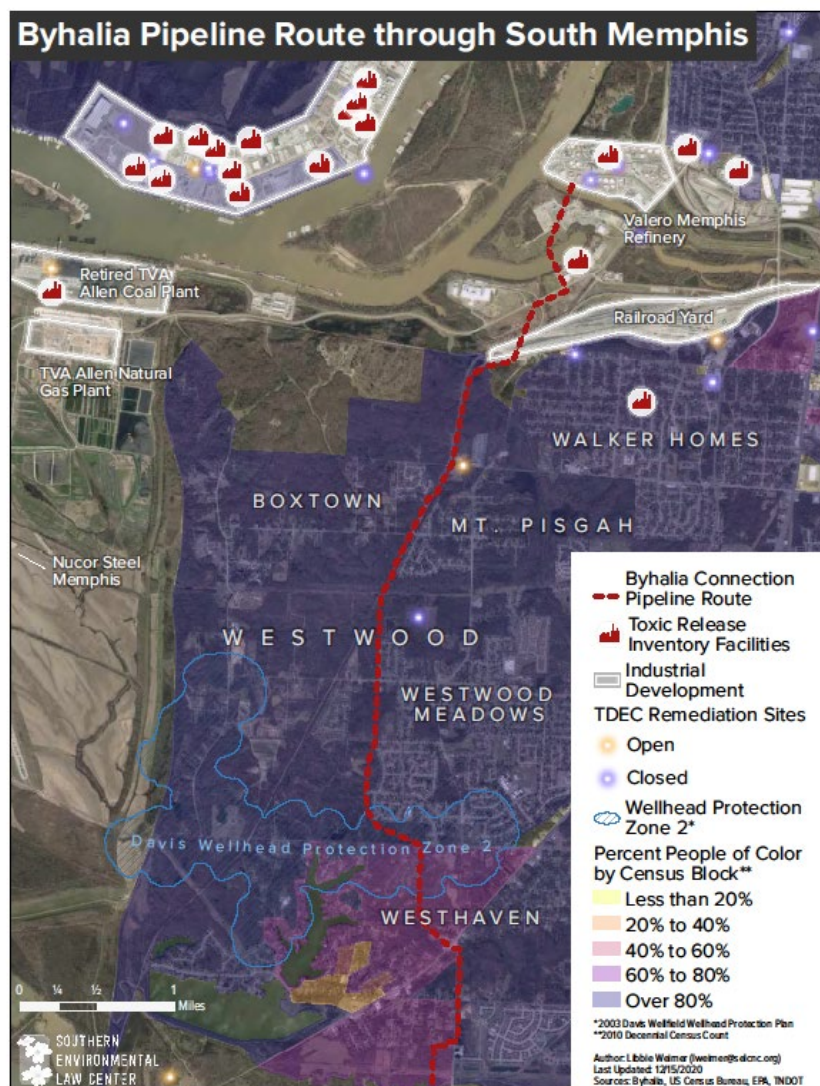
<sup>48</sup> Notice of Determination at 9.

<sup>49</sup> *Id.*

<sup>50</sup> Even a “facially neutral policy or practice” can cause disparate impact if that practice, like TDEC’s extremely limited environmental justice analysis for permit applications, causes “a sufficiently adverse (harmful) and disproportionate effect based on race, color, or national origin.” U.S. EPA External Civil Rights Compliance Office Compliance Toolkit (January 18, 2017), [https://www.epa.gov/sites/production/files/2017-01/documents/toolkit-chapter1-transmittal\\_letter-faqs.pdf](https://www.epa.gov/sites/production/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf), 8. This neutral policy need not be an official written policy; “it can also be one understood as ‘standard operating procedure.’” *Id.* at 9. Such a policy or practice “need not be affirmatively undertaken, but in some instances could be *the failure to take action, or to adopt an importance policy.*” *Id.* (emphasis added).

<sup>51</sup> *Id.* at 13.

freedmen's community established by formerly enslaved people following the Emancipation Proclamation of 1863. Residents in the neighborhood's zip code, 38109, are 97% Black, with an annual per-capita income of \$18,000.<sup>52</sup> As shown on the map below, Southwest Memphis is already home to numerous industrial facilities, including an oil refinery, a steel mill, a recently retired coal-fired power plant, and a new natural gas plant.



<sup>52</sup> <https://data.census.gov/cedsci/table?q=38109&tid=ACSDP5Y2019.DP05&hidePreview=false>.

These industrial facilities have burdened predominantly Black communities with what may be some of the nation's worst air quality. Driven by pollutants like benzene and formaldehyde, the cumulative cancer risk in Southwest Memphis is four times higher than the national average.<sup>53</sup>

Rather than lead Byhalia to look elsewhere, the environmental injustice in Southwest Memphis is precisely *why* Byhalia chose this route. Rather than taking the shortest route due east, the proposed route heads due south, through predominantly Black neighborhoods, before turning east and traversing parts of Northern Mississippi. Explaining the circuitous route to landowners, a land agent working on the pipeline company's behalf disclosed that Byhalia saw Southwest Memphis—poor, Black, already polluted—as the “point of least resistance.”<sup>54</sup> This environmental racism is morally and legally intolerable.

Byhalia failed to fully disclose information about the possible use of an existing pipeline, as well as the threat to local drinking water, a threat that disparately impacts Black residents. Without this critical information, TDEC cannot ensure that its permitting decisions are nondiscriminatory, as required by Title VI of the Civil Rights Act of 1964. TDEC must revoke or suspend Byhalia's Aquatic Resources Alteration Permit, revisiting the application if and only if Byhalia fully discloses potentially practicable alternatives and the risks its high-pressure crude oil pipeline poses to local groundwater. If the agency later reconsiders the application, TDEC must analyze the environmental justice implications of other potentially practicable alternatives, including the existing Collierville Connection Pipeline, as well as the risks to local groundwater, and it may not issue any permit that would disparately impact Black residents.

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<sup>53</sup> Chunrong Jia and Jeffrey Foran, *Air Toxics Concentrations, Source Identification, and Health Risks: An Air Pollution Hot Spot in Southwest Memphis, TN*, 81 *Atmospheric Env't* 112–116 (December 2013), <https://www.sciencedirect.com/science/article/abs/pii/S1352231013006948?via%3Dihub#>.

<sup>54</sup> Michaela A. Watts and Laura Testino, *Memphis Question Plains All American About Route for Proposed Byhalia Connection Pipeline*, *Commercial Appeal* (February 15, 2020), <https://www.commercialappeal.com/story/news/2020/02/15/memphians-question-plains-all-american-byhalia-connection-pipeline/4761549002/>.



**V. TDEC must revoke the ARAP or enforce its terms if Byhalia commences construction without all required authorizations.**

TDEC must also ensure that Byhalia does not initiate construction before obtaining all required authorizations. As a condition of Byhalia's ARAP, Byhalia must comply with the general ARAP for utility line crossings.<sup>55</sup> That general ARAP includes the following condition 10:

Work shall not commence until the permittee has obtained all necessary authorizations pursuant to applicable provisions of section 10 of The Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, section 26a of The Tennessee Valley Authority Act, section 402 of the Clean Water Act (including, but not limited to, an NPDES permit for construction stormwater), or any other federal, state, or local laws.<sup>56</sup>

To our knowledge, Byhalia has not yet secured several required authorizations, including but not limited to the following: a NPDES permit for construction stormwater<sup>57</sup>; permission from the City of Memphis to construct a crude oil pipeline under the Shelby County Uniform Development Code<sup>58</sup>; and permission from the City of Memphis to cross streets.<sup>59</sup> Until the company obtains these authorizations, Byhalia may not commence construction, and any discharges into or alterations of waters of the State would violate the Tennessee Water Quality Control Act.

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<sup>55</sup> Aquatic Resource Alteration Permit No. NRS20.089 at 8.

<sup>56</sup> TDEC, General Aquatic Resource Alteration Permit for Utility Line Crossings, effective January 6, 2021 through April 7, 2025, available at [https://www.tn.gov/content/dam/tn/environment/water/natural-resources-unit/water\\_permit\\_arap\\_gp\\_utility-line-crossing-2021-2025.pdf](https://www.tn.gov/content/dam/tn/environment/water/natural-resources-unit/water_permit_arap_gp_utility-line-crossing-2021-2025.pdf).

<sup>57</sup> See TDEC, General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, Permit No. TNR100000 (effective October 1, 2016 to September 30, 2021) (authorizing "point source discharges of stormwater from construction activities that result in soil disturbances of one or more acres").

<sup>58</sup> Because crude oil pipelines are not specifically listed in the Shelby County Uniform Development Code, the Byhalia Pipeline "is expressly prohibited unless the Planning Director determines that the use is similar to a permitted use listed in this development code." Shelby County Uniform Development Code 2.5.1.B.

<sup>59</sup> See Tenn. Code Ann. § 65-28-101 ("[N]o one of the streets, alleys, squares or highways within the corporate limits of any municipality in the state shall be entered upon or used by any corporation for laying pipelines or conductors, or otherwise, until the consent of the municipal authorities shall have been obtained, and an ordinance shall have been passed prescribing the terms on which the same may be done.").

Because Byhalia failed to disclose the existence of the Collierville Connection Pipeline as an alternative to the project as well as the threats the Byhalia Connection Pipeline poses to local drinking water, we demand that the Department revoke or suspend Byhalia's permit. Doing so will fulfill the Department's duty to protect the public's right to clean water, while ensuring that the Department's permitting decisions do not disparately impact Black residents of Southwest Memphis.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Amanda Garcia', followed by a long horizontal line.

Amanda Garcia  
Trey Bussey

Attorneys for Memphis Community Against  
Pollution, Protect Our Aquifer, and Tennessee  
Chapter Sierra Club

Attachments available via ShareFile at: <https://southernenvironment.sharefile.com/d-sad7eec506f474f5ebff24649873edd4c>

Cc (via email):

Greg Young, Deputy Commissioner for the Environment, TDEC

Jenny Howard, General Counsel, TDEC

Patrick Parker, Attorney, Office of General Counsel, TDEC

Jennifer Dodd, Director, Division of Water Resources, TDEC

Leslie M. Hill, Attorney, US Department of Justice, Environment and Natural Resources  
Division

Ann Bruck, USACE Memphis District Deputy Counsel

Col. Zachary Miller, USACE Memphis District Commander

Donny D. Davidson Jr., P.E., Deputy District Engineer for Programs and Project Management

USACE, Memphis District, Army Corps of Engineers

Radhika Fox, EPA Principal Deputy Assistant Administrator for Water

Matthew Tejada, Director of EPA's Office of Environmental Justice