



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

JUN 11 2015

Mr. John Stefanko, Deputy Secretary  
Office of Active and Abandoned Mine Operations  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17105-2063

  
Dear Mr. Stefanko:

On April 8, 2015, the Environmental Protection Agency (EPA) Region III received your request for reinstatement of EPA's waiver of review for National Pollutant Discharge Elimination System (NPDES) permits in the Monongahela River or its tributaries. EPA's limited withdrawal is provided for by 40 CFR §123.24(d) and Section III.B.1 of the 1991 NPDES Memorandum of Agreement (MOA) between EPA and the Pennsylvania Department of Environmental Protection (PADEP). Your letter references the recent removal of the Monongahela River from the list of waters impaired for sulfates as the justification for this reinstatement request. We are pleased with the efforts PADEP has undertaken to achieve the delisting of the Monongahela River for sulfates, and believe this is a meaningful step forward in improving water quality and achieving compliance with the Clean Water Act and its implementing regulations. However, due to EPA's rationale for waiver withdrawal, delisting of the Monongahela River, alone, does not justify waiver reinstatement. As your letter references, the purpose of the limited withdrawal of EPA's waiver of review is to ensure that permits consistently contain necessary effluent limits and monitoring conditions to achieve water quality standards, including narrative and numeric criteria and incorporate all applicable NPDES regulatory requirements. As identified through EPA draft permit reviews, several outstanding NPDES permitting deficiencies remain within PADEP's mining program. Because these deficiencies directly impact the Monongahela River Watershed, we will not reinstate our waiver of review at this time.

EPA and PADEP have been working constructively to improve NPDES mining permit quality, with significant success. We recognize and appreciate PADEP's dedication to coordinating with EPA and taking meaningful steps to improve the effectiveness of the NPDES program related to coal mining operations. Improvements include revision and update of PADEP's individual NPDES permit template, NPDES application, and fact sheet template, among others. While PADEP has made important progress, there are eight (8) priority issues in PADEP's NPDES mining permits that must be addressed before reduction in oversight can take place:

1. Documenting a clear process for identifying parameters of concern
2. Conducting appropriate reasonable potential analyses (RPA) for all parameters of concern

3. Appropriate use of the water quality spreadsheet (WQSS) for all constituents identified as needing a WQBEL
4. Correcting procedural defects in effluent characterization
  - i. Correct instructions on application
  - ii. Correct implementation of small business exemption
5. Appropriate evaluation of the need for WQBELs, especially for sediment ponds and parameters of concern outside of an approved TMDL
6. Appropriate application of alternate precipitation limits
7. Permit and application template corrections
  - i. Submittal of NPDES flow schematic
  - ii. Revise fact sheet to reflect decision making process
    1. Identification of parameters of concern
    2. Documentation of RPA
8. Consistently address TMDL issues
  - i. Existing facilities without a WLA in the approved TMDL
  - ii. Discharges to impaired waters without a TMDL

A permit review checklist (attached) has been developed in coordination with PADEP that details the requirements for NPDES permits described above that are not currently consistently addressed. Implementing the use of this checklist will assist in addressing the above issues. The checklist is to be completed by PADEP permit writers and submitted to EPA with the draft permit package for review. If elements of the checklist are consistently met after a defined period of implementation, EPA review will be reduced, and waiver reinstatement may be reconsidered at that time. We would like to propose the following timeline:

#### **Checklist Implementation Milestones**

<b>Milestone</b>	<b>Timeframe</b>
<b>Submit completed checklist to EPA with draft permit submittals</b>	1 year evaluation period of checklist
<b>Submit only completed checklist to EPA for review, along with additional information as requested by EPA</b>	After successful consistency determination
<b>Review a selection of draft permits from each DMO to ensure quality of checklists and draft permits is maintained</b>	After successful consistency determination



We look forward to working with you to ensure that these milestones are effective and workable, and ensure that flexibility is allowed for. In the event that checklist items are not consistently being met in PADEP's NPDES permits, this schedule may be adjusted.

Lastly, I would like to discuss findings from EPA Region III's April 1, 2015 visit to the California District Mining Office (DMO). EPA staff conducted file reviews on a number of permits, and discussed permitting and technical issues with PADEP staff. First, EPA's file review revealed that PADEP **did not issue** the permit renewal for PA0215201 (Emerald Mine Coal Refuse Disposal Area No. 2). EPA and PADEP collaborated extensively on a number of technical issues in this draft permit when submitted to EPA for review. Having negotiated several conditions and reached agreement on a sound draft permit protective of water quality, EPA expected PADEP to issue the permit without delay. Because critical monitoring conditions are not being implemented, EPA is considering issuing a CWA § 308 information request to require the monitoring in the draft permit in order to better inform our discussion of this operation and its potential water quality impacts. Furthermore, EPA's file review revealed that on January 15, 2015, PADEP issued a letter to the Renton Refuse Area facility (PA0023370) stating that the permit was "corrected to show the reversion of effluent limits to pre-transfer standards." The letter then states that "The enclosed information supersedes the original issued NPDES Permit." It appears that this letter was issued without any official permit modification. In order to modify a permit, the permit **must be reopened**, modified, public noticed, and submitted to EPA for review (if the permit is subject to EPA and PADEP's MOA). No documentation was found to demonstrate the permit was modified in the appropriate manner, and therefore, the permittee is in danger of being in violation of their permit. We would like to discuss these issues with you or your staff at your earliest convenience, in support of our continued cooperation and work toward building a high quality NPDES permitting program.

We look forward to working with you to continue to improve PADEP's NPDES permitting program, implement the checklist, and protect water quality. Thank you for your letter and inquiry; we are pleased with the notable improvements PADEP has made, including the delisting of the Monongahela River for sulfate impairment. Thank you for the opportunity to collaborate and create a path forward for achieving permitting enhancements. If you have any questions or concerns, please contact me or have your staff contact Mr. Brian Trulear at (215) 814-5723.

Sincerely,



Jon M. Capacasa, Director  
Water Protection Division



Attachment

cc: Bill Allen, PADEP Central Office  
Bill Plassio, California District Mining Office  
Rock Martin, Cambria District Mining Office  
Roger Bowman, Knox District Mining Office  
Richard Palmer, New Stanton District Mining Office  
Mike Menghini, Pottsville District Mining Office





## PADEP Mining Permit Checklist

In accordance with the MOA established between the Commonwealth of Pennsylvania and the United States Environmental Protection Agency, Region III, the Commonwealth submits the following draft National Pollutant Discharge Elimination System (NPDES) permit for Agency review and concurrence.

NPDES Permit Number:

\_\_\_\_\_

Facility Name:

\_\_\_\_\_

Permit Writer Name:

\_\_\_\_\_

Date:

\_\_\_\_\_

I. Draft permit package submittal includes:	Yes	No
1. Current NPDES permit application form	<input type="checkbox"/>	<input type="checkbox"/>
2. Complete draft permit using current template	<input type="checkbox"/>	<input type="checkbox"/>
3. Complete Fact Sheet	<input type="checkbox"/>	<input type="checkbox"/>
4. A pollutant screening to determine parameters of concern	<input type="checkbox"/>	<input type="checkbox"/>
5. NPDES flow schematic	<input type="checkbox"/>	<input type="checkbox"/>
6. Maps	<input type="checkbox"/>	<input type="checkbox"/>

II. Draft permit package identifies the following parameters of concern:	Yes	No	N/A
7. Pollutants with an applicable TBEL?	<input type="checkbox"/>	<input type="checkbox"/>	
8. Pollutants with a WLA from a TMDL?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Pollutants identified as needing WQBELs in the previous permit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Pollutants identified as present in the effluent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Pollutants otherwise expected to be present in the discharge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Is selenium historically present at levels exceeding the water quality criterion in the coal seams/location to be permitted?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Pollutants identified by adjacent mine data?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

III. Effluent characterization	Yes	No	N/A
12. Are parameters reported as believed present listed in Fact Sheet?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Are the method detection limits <b>below</b> the water quality standard for each parameter?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV. Reasonable Potential Assessment includes the following methods:	Yes	No
14. <i>Technical Support Document For Water Quality-based Toxics Control</i> statistical approach (Chapter 3)	<input type="checkbox"/>	<input type="checkbox"/>
15. <i>NPDES Permit Writer's Manual</i> method for determining RP with or without effluent data (6.3.2 and 6.3.3)	<input type="checkbox"/>	<input type="checkbox"/>
16. PENTOXSD	<input type="checkbox"/>	<input type="checkbox"/>
17. Water quality Spreadsheet/Simple mass balance	<input type="checkbox"/>	<input type="checkbox"/>
18. Does <i>Reasonable Potential Assessment</i> consider other factors to determine RP?	<input type="checkbox"/>	<input type="checkbox"/>

V. Evaluation of the need for WQBELs	Yes	No	N/A
<b>A. General</b>			
19. Does the fact sheet describe the basis of final limits in the permit?	<input type="checkbox"/>	<input type="checkbox"/>	
20. Does the fact sheet discuss whether antibacksliding provisions were met for any limits that are less stringent than those in the previous NPDES permit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. Does the permit contain numeric effluent limits for all pollutants for which reasonable potential was determined?	<input type="checkbox"/>	<input type="checkbox"/>	
22. Are WQBELs in the permit consistent with the documentation provided in the fact sheet?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23. Was an antidegradation review performed in accordance with the State's approved antidegradation policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24. Have impacts from the discharge(s) at downstream potable water supplies been evaluated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>B. Does the administrative record support the following for sediment pond discharges?</b>			
25. The Permit Writer considered the impact of every proposed surface water discharge on the quality of the receiving water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26. Are non-discharge alternatives employed?	<input type="checkbox"/>	<input type="checkbox"/>	
27. Consideration of TSD guidance on collecting monitoring data for establishing WQBELs (3.2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>C. Does the administrative record support the following for parameters outside of the TMDL?</b>			
28. WQSS evaluations screening and/or mass balance calculations include other parameters of concern besides those subject to a TMDL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

V. Evaluation of the need for WQBELs		Yes	No	N/A
29.	For pollutants with TBELs, is a WQBEL imposed because the discharge(s) may exceed applicable criteria.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VI. WQBELs were calculated using the following method(s):		Yes	No
30.	PENTOXSD	<input type="checkbox"/>	<input type="checkbox"/>
31.	Simple mass balance equation	<input type="checkbox"/>	<input type="checkbox"/>
32.	Statistical permit limit derivation procedure in Chapter 5 of TSD	<input type="checkbox"/>	<input type="checkbox"/>
33.	PADEP's Water Quality Spreadsheet (WQSS)	<input type="checkbox"/>	<input type="checkbox"/>
	39a. Was the WQSS utilized for each parameter for which a need for a WQBEL has been determined?	<input type="checkbox"/>	<input type="checkbox"/>
	39b. Is the appropriate in-stream criteria entered in the WQSS (in-stream criteria did not changed based on background concentration)?	<input type="checkbox"/>	<input type="checkbox"/>
	39c. Accurate background concentrations are entered in the WQSS?	<input type="checkbox"/>	<input type="checkbox"/>

VII. Alternate precipitation limits. Does the administrative record support the following:		Yes	No	N/A
34.	Evaluation of the need for WQBELs for sediment ponds?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
35.	Alternate precipitation limits are not applied when WQBELs are assigned	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VIII. TMDL Applicability		Yes	No	N/A
36.	Does the fact sheet or permit provide a description of the receiving water body(s) to which the facility discharges, including information on low/critical flow conditions and designated/existing uses?	<input type="checkbox"/>	<input type="checkbox"/>	
A.	Receiving water is impaired, but no TMDL applies	<input type="checkbox"/>	<input type="checkbox"/>	
37.	If this is an existing operation, is the facility capped at the existing load for impairment parameters?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
38.	If this is a new operation, are WQBELs assigned, with justification that the discharge is adding assimilative capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



VIII. TMDL Applicability	Yes	No	N/A
<b>B. Operation is subject to a TMDL, but no individual WLA is assigned</b> <input type="checkbox"/> Existing (select all that apply) <input type="checkbox"/> New (select all that apply) <div style="margin-left: 40px;"> <input type="checkbox"/> Set limits at in-stream criteria  <input type="checkbox"/> Non-discharge alternative  <input type="checkbox"/> Monitor and report provisions for TMDL parameters Transfer allocation from completed operation  <input type="checkbox"/> Future mining allocation  <input type="checkbox"/> Offset           </div>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>C. The operation is subject to a TMDL, and is assigned an individual WLA:</b>	<input type="checkbox"/>	<input type="checkbox"/>	
39. The WLA is appropriately translated into effluent limitations consistent with the TMDL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IX. Permit Characteristics	Yes	No	N/A
40. Are any WQBELs based on an interpretation of narrative criteria?	<input type="checkbox"/>	<input type="checkbox"/>	
41. Does the permit incorporate any variances or other exceptions to the State's standards or regulations?	<input type="checkbox"/>	<input type="checkbox"/>	
42. Does the permit contain a compliance schedule?	<input type="checkbox"/>	<input type="checkbox"/>	
43. Is there a potential impact to endangered/threatened species or their habitat by the facility's discharge(s)?	<input type="checkbox"/>	<input type="checkbox"/>	
44. Is there any indication that there is significant public interest in the permit action proposed for this facility?	<input type="checkbox"/>	<input type="checkbox"/>	
45. Has the previous permit, application, and fact sheet been examined?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>