

July 21, 2006

Keith A. Laslow, P.G., Chief
Permits Section
Pennsylvania Department of Environmental Protection
Pottsville District Mining Office
5 West Laurel Boulevard
Pottsville, PA 17901

**Re: City of Philadelphia, Trustee
SMP No. 19960101R2 and NPDES Permit No. PA0223719
Conyngham Township, Columbia County
Butler and Union Townships, Schuylkill County
36 Pa. Bull. 3321 (July 1, 2006)**

Total Maximum Daily Load (TMDL) for Mahanoy Creek Watershed

Dear Keith:

The July 1, 2006 Pennsylvania Bulletin contains a notice of the City of Philadelphia's application for renewal of Surface Mining Permit No. 19960101R2 and NPDES Permit No. PA0223719 for its Continental Mine east of Centralia. 36 Pa. Bull. 3321 (July 1, 2006). The Department's October 1, 2002 draft Mahanoy Creek Watershed TMDL (pp. 37-38) identifies the pumped discharge from the Continental Mine as a point source, "Centralia Treated Discharge at Centralia2." The 2002 draft of the TMDL included wasteload allocations (WLAs) to the "Centralia2" discharge for iron and manganese, but (incorrectly) did not include one for aluminum. Based on an Environmental Protection Agency (EPA) Decision Rationale document that was posted on EPA's web page, apparently prematurely, in September 2005, a revised draft of the Mahanoy Creek TMDL included a WLA of 78.4 pounds per day of aluminum for the Continental Mine/Centralia2 discharge, which was based on an assumed maximum monthly concentration limit of 2.0 milligrams per liter.

I am writing to alert you to the need to include at least one water quality based effluent limitation (WQBEL) in the NPDES permit for the City of Philadelphia's Continental Mine. Regardless whether the Mahanoy Creek TMDL has been finalized by the time the Department acts on the City of Philadelphia's renewal application, it must include a WQBEL for aluminum in the permit.

The information presented in EPA's 2005 (pre-) Decision Rationale document shows conclusively that a WQBEL for aluminum is required. Table 4 of EPA's Decision Rationale document listed a WLA of 78.4 pounds per day of aluminum to the City of Philadelphia's Continental Mine, but a total allowable load of only 18.1 pounds per day of aluminum for Mahanoy Creek at the next downstream monitoring point, "MC2." As I explained in a September 26, 2005 letter to former DEP Bureau Director Frederick Marrocco (copy enclosed),

those figures would have required the nonpoint sources of acid mine drainage in segment MC2 to remove 60.3 pounds of aluminum per day from Mahanoy Creek. Even if the entire allowable load of 18.1 pounds of aluminum per day at MC2 were allocated to the Continental Mine,¹ the monthly concentration limit for aluminum in the City of Philadelphia's NPDES Permit No. PA0223719 would have to be lowered to 0.46 mg/l. (Based on the monitoring data in the 2002 draft of the TMDL, the aluminum concentration ranges from 0.1 to 1.0 mg/l, with an average of 0.55 mg/l.)

According to the 2002 draft of the Mahanoy Creek TMDL (p. 37), the City of Philadelphia's NPDES permit for the Continental Mine currently contains no effluent limitations for aluminum. Although there are many problems with draft Mahanoy Creek Watershed TMDL,² the data presented in it clearly show that in order to alleviate the impairment of segment MC2 of Mahanoy Creek by aluminum, a stringent WQBEL for aluminum must be added to the City of Philadelphia's NPDES permit. Unless a final TMDL mandates a different result, see 40 C.F.R. § 122.44(d)(1)(vii)(B), the Department may not include a maximum monthly average concentration limit for aluminum higher than 0.46 mg/l in the City of Philadelphia's NPDES permit, and this limit should be considerably lower than that figure to allow for the inclusion in the Mahanoy Creek TMDL of a load allocation to the nonpoint sources of aluminum in segment MC2 of Mahanoy Creek.

Sincerely,

Kurt J. Weist
Senior Attorney
Harrisburg Office

cc: Cedric H. Karper, P.E., Acting Director, Bureau of Watershed Management
Michelle M. Moses, Bureau of Regulatory Counsel

¹ PennFuture believes that the Department's Equal Marginal Percent Reduction method would require the Department to allocate some of the allowable load to the nonpoint sources, thus requiring the aluminum WLA for the Continental Mine to be lower than 18.1 pounds per day and the maximum monthly aluminum concentration to be lower than 0.46 mg/l.

² One prominent problem is that the Department's Gilberton Pump was not operating on any of the days for which instream samples were collected at the next monitoring point downstream, "MC1." Thus, in addition to incorrectly classifying the Gilberton Pump as a nonpoint source, cf. 33 U.S.C. § 1362(14), the draft TMDL for "Mahanoy Creek Above MC1" entirely fails to account for the impact of the Gilberton Pump discharge, which averages about 2.5 billion gallons per year.