

October 27, 2008



Citizens for Pennsylvania's Future
610 North Third Street
Harrisburg, PA 17101-1113
P 717.214.7920 / 800.321.7775
F 717.214.7927
info@pennfuture.org
www.pennfuture.org

Mr. Bill Brown
Bureau of Watershed Management
Watershed Protection Division
Pennsylvania Department of Environmental Protection
P.O. Box 8555
Harrisburg, PA 17105-8555

**Re: Draft Bennett Branch Sinnemahoning Creek Watershed TMDL
Cameron, Clearfield, and Elk Counties
38 Pa. Bull. 5227-28 (September 20, 2008)**

Dear Mr. Brown:

Citizens for Pennsylvania's Future (PennFuture) submits these comments on the draft "Bennett Branch Sinnemahoning Creek Watershed TMDL, Cameron, Clearfield and Elk Counties" dated September 1, 2008 (Draft TMDL), which was prepared for the Pennsylvania Department of Environmental Protection (PADEP). PennFuture is a public interest membership organization dedicated to creating a just future in which the environment, communities, and the economy thrive. One focus of PennFuture's work is to improve and protect water resources and water quality across Pennsylvania through public outreach and education, advocacy, and litigation. As part of that work, PennFuture has submitted comments on a number of draft TMDLs for streams in Pennsylvania that are, like the Bennett Branch of Sinnemahoning Creek and some of its tributaries, impaired by mine drainage contaminants.

1. The Waste Load Allocations for monitoring point BBSC1 in Table 3 of the Draft TMDL incorrectly include the allowable loads for monitoring point DENT 1.0.

The Draft TMDL contains the following boilerplate, placeholder statement, which presumably is supposed to be tailored to the specific facts presented by each TMDL:

This AMD TMDL document contains one or more future mining Waste Load Allocation (WLA). This (these) WLAs were requested by the (Knox, Moshannon, Greensburg, Cambria, or Pottsville) District Mining Office (DMO) to accommodate one or more future mining operations. The DMO determined the number and location of the future mining WLAs.

(Draft TMDL, p. 3) After discussing these "future mining WLAs," the Draft TMDL states: "All of the remaining discharges in the watershed are from abandoned mines and will be treated as nonpoint sources." (Draft TMDL, p. 4) The Draft TMDL, however, identifies and assigns a WLA to one other permitted discharge of iron, aluminum, and manganese in the Bennett Branch watershed, namely the filter backwash from the Jay Township Water Authority treatment plant. (Draft TMDL, pp. 11-12)

The “Watershed History” section of the Draft TMDL states that “the extraction of coal has been extensive in the watershed.” (Draft TMDL, p. 6) Although the Draft TMDL goes on to state that “[l]imited deep mining continues today,” and that “[s]urface mining began in the 1940s and continues to a lesser extent today” (*id.*), it does not identify any active coal mining operations in the Bennett Branch watershed, and does not contain any WLAs for such operations. The Draft TMDL also does not identify any pending permit applications that seek approval to conduct coal mining operations in the watershed, and does not indicate that recovery of any of the extensively-mined coal reserves remaining in the watershed is economically feasible.

Nevertheless, the Draft TMDL includes WLAs for 16 future mining operations in the Bennett Branch watershed, all of which are assumed to have two active mining pits measuring 1,500 feet by 300 feet. The Draft TMDL reserves a WLA for one such operation in the headwaters area above monitoring point BBSC6 and WLAs for three such operations in each of the five other segments modeled at monitoring points BBSC5, BBSC4, BBSC3, BBSC2, and BBSC1. (Draft TMDL, pp. 34-43)

As shown in Table 3 on page 11 of the Draft TMDL, the combined WLAs for the three future mining operations in each of the segments modeled at monitoring points BBSC5, BBSC4, and BBSC3 would allow the discharge of 1.68 pounds per day of aluminum, 6.78 pounds per day of iron, and 4.5 pounds per day of manganese. These same figures also apply to the three potential mining operations modeled at monitoring point BBSC2, for which the slightly higher total WLA figures in Table 3 reflect the addition of the modest load amounts for the Jay Township Water Authority’s filter backwash discharge.

The total WLAs shown in Table 3 for monitoring point BBSC1, however, are clearly incorrect. Based on the explanation on page 43 of the Draft TMDL and the figures presented in Table D21 on that same page, the WLA figures in Table 3 for point BBSC1 should be exactly the same as those for points BBSC5, BBSC4, and BBSC3. Instead, they are many times higher: 49.58 pounds per day of aluminum (which should be 1.68 pounds per day), 112.98 pounds per day of iron (which should be 6.78 pounds per day), and 77.5 pounds per day of manganese (which should be 4.5 pounds per day).

The problem is that Table 3 includes in the WLAs for monitoring point BBSC1 the allowable loads for the Dents Run subwatershed at monitoring point DENT 1.0, which are shown in Table D18 on page 42 of the Draft TMDL: 47.9 pounds per day of aluminum, 106.2 pounds per day of iron, and 73.0 pounds per day of manganese. As stated on page 42 of the Draft TMDL, these allowable loads require Load Allocations and load reductions for aluminum and manganese.

Table 3 should be corrected by: a) including, between monitoring points BBSC2 and BBSC1, an entry for monitoring point DENT 1.0 (Dents Run at Mouth) that presents the existing loads, allowable loads, Load Allocations, load reductions, and percent load reductions shown in or derived from Tables D17 and D18 of the Draft TMDL (pp. 41-42); and b) reducing the total WLA figures for monitoring point BBSC1 to 1.68 pounds per day of aluminum, 6.78 pounds per day of iron, and 4.5 pounds per day of manganese.

2. The TMDL must include Waste Load Allocations at monitoring point BBSC3 for the planned Hollywood AMD Abatement Project.

The Draft TMDL states that in addition to many abandoned mine reclamation projects in the Bennett Branch watershed that already have been completed or are expected to be completed in the near future, “a large active treatment plant is slated for construction in the Hollywood and Tyler area of the watershed that will collect and gravity feed 27 discharges to one centralized active treatment system that will discharge, on average, 7.2 million gallons per day (MGD) with average acidity, iron (Fe), manganese (Mn) and aluminum (Al) concentrations of 171 milligrams per liter (mg/l), 33.6 mg/l, 2.8 mg./l, and 4.5 mg/l, respectively.” (Draft TMDL, p. 7) At an average flow of 7.2 MGD, these concentrations would result in loadings of 10,268.2 pounds per day of acidity, 2,017.6 pounds per day of iron,¹ 168.1 pounds per day of manganese, and 270.2 pounds per day of aluminum. These loads currently enter the Bennett Branch between monitoring points BBSC4 and BBSC3. Point BBSC3 is the first monitoring point downstream from the proposed active treatment plant (Draft TMDL, p. 38), which is referred to as the “Hollywood AMD Abatement Project.” See www.hollywoodamd.com.

Like the potential discharge into the West Branch of the Susquehanna River from the proposed Lancashire Mine #15 treatment facility, the Hollywood AMD Abatement Project would add pollutants to the waters of the United States (the Bennett Branch) from outside the waters of the United States (the mine pool(s) contributing to the 27 discharges) through a pipe, ditch, channel, or other confined and discrete conveyance. It therefore would constitute a point source discharge. See 33 U.S.C. 1362(6), (12), (14), (16). Such a discharge must be authorized through the issuance of a NPDES permit, see 33 U.S.C. §§ 1311(a), 1342(a), and a TMDL must account for the discharge through the assignment of WLAs to it for the relevant pollutants. See 40 C.F.R. § 130.2(h).

The Draft TMDL, however, contains no WLAs for this anticipated point source discharge. The only WLAs in the Draft TMDL for monitoring point BBSC3 are the small amounts recounted in Comment 1 for the three hypothetical, future surface mining operations. The failure of the Draft TMDL to allocate allowable load to the discharge(s) from the proposed Hollywood AMD active treatment plant through WLAs is the equivalent of establishing a WLA of zero pounds per day for each relevant pollutant, which in turn would require either a future modification of the TMDL to assign WLAs to the new treatment plant, or that the NPDES permit for the new plant’s discharges contain “non-detect” effluent limitations for all of the pollutants for which the relevant segment is impaired (acidity, iron, and aluminum). See 40 C.F.R. § 122.44(d)(1)(vii)(B) (incorporated into Pennsylvania law by 25 Pa. Code § 92.2(b)(14); Mountain Watershed Association and PennFuture v. Department of Environmental Protection and Kaiser Refractories, EHB Docket No. 2004-102-R (Opinion and Order on Motion for Partial Summary Judgment dated June 23, 2005), p. 3.

¹ This figure exceeds the existing load of 1,674.67 pounds per day of iron at monitoring point BBSC3, which was determined using six monitoring events in 2003-2004. (Draft TMDL, p. 49)

There is no reason to wait for the new Hollywood AMD Abatement Project to be built before accounting for it in the Bennett Branch Sinnemahoning Creek Watershed TMDL. EPA's TMDL regulations expressly provide that WLAs may be assigned to "existing and future point sources of pollution." 40 C.F.R. 130.2(h). Just as the Draft TMDL accounts for the discharges from 16 hypothetical, future mining operations through WLAs, it should be revised to account for the anticipated discharge from the planned Hollywood AMD Abatement Project by assigning WLAs at monitoring point BBSC3 for the Project's proposed 7.2 MGD discharge into the Bennett Branch.

Assigning WLAs to the Hollywood AMD Abatement Project discharge(s) would involve re-allocation of the loadings assigned as Load Allocations (LAs) at point BBSC3 in the Draft TMDL: 301.57 pounds per day of aluminum, 629.59 pounds per day of iron, and 329.66 pounds per day of manganese. (Draft TMDL, p. 11, Table 3) Because the loading data indicate that the 27 discharges to be treated by the Hollywood AMD Abatement Project are not the only sources of mine drainage contamination in the segment of the Bennett Branch between monitoring points BBSC4 and BBSC3, the WLAs for the Hollywood AMD Project discharge(s) must be some appropriate fraction of these amounts, with the remainder allocated as LAs.

The 27 discharges mentioned in the Draft TMDL flow by gravity, and the 7.2 MGD average flow rate for those discharges reported in the Draft TMDL does not include any additional flow and loading that would result if the mine pool(s) feeding the discharges were temporarily lowered by pumping so that certain existing discharges could be sealed and redirected. The monitoring data, existing load calculations, and required load reduction and percentage load reduction figures in the Draft TMDL likewise do not account for any additional pollutant loading that would result from such pumping operations. To the extent that the Hollywood AMD Abatement Project contemplates such pumping operations, they must be carefully designed to provide sufficient treatment so that the loadings from the pumped mine drainage remain below the WLAs assigned to the project.

Even if the final TMDL (unlawfully) fails to assign WLAs to the Hollywood AMD Project discharge(s) and PADEP (unlawfully) fails to issue a NPDES permit for those discharge(s), however, any discharges from the Hollywood AMD Project – including those resulting from mine pool pumping operations – must be designed to result in daily loads no greater than the Draft TMDL's Load Allocations at point BBSC3. For TMDLs that have both WLAs to point sources (including those for future mining operations) and LAs to nonpoint sources, EPA's TMDL guidance states that "the TMDL should provide reasonable assurances that nonpoint source control measures will achieve expected load reductions in order for the TMDL to be approvable." EPA, "Guidelines for Reviewing TMDLs under Existing Regulations Issued in 1992" (May 20, 2002), p. 4 (emphasis added). Thus, even if PADEP incorrectly classifies the discharge(s) from the Hollywood AMD Abatement Project as nonpoint source discharges, it must provide reasonable assurance that the necessary load reductions at point BBSC3 will be achieved. In turn, this requires that the daily loads from the Hollywood AMD Project – during both normal operations and any mine pool pumping/lowering operations – do not exceed the LAs in the Draft TMDL at monitoring point BBSC3.

3. The TMDL contains no load allocations for monitoring point BBSC7.

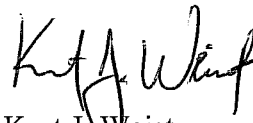
Attachment D to the Draft TMDL (“TMDLs By Segment”), begins by stating that [t]he TMDL for Bennett Branch consists of load allocations to seven sampling sites on Bennett Branch (BBSC7, BBSC6, BBSC5, BBSC4, BBSC3, BBSC2, BBSC1).” (Draft TMDL, p. 32) The only other reference to point BBSC7 in the entire document, however, appears to be in the table of sampling data in Attachment F. (*Id.*, p. 50) Neither the allocation summary in Table 3 on page 11 nor the detailed TMDLs by segment in Attachment D contains load allocation data for point BBSC7, which also is not shown on any of the maps included in the TMDL or the “Bennett Branch Sampling Diagram” on page 33. The reference to point BBSC7 should be deleted from page 32 of the Draft TMDL, but for the reasons explained in the next comment, the number of load allocations mentioned in that sentence should remain seven.

4. Addition of Dents Run information.

In Comment 1, above, PennFuture has recommended that the relevant data for monitoring point DENT 1.0 (Dents Run at Mouth) be included in Table 3 on page 11 of the Draft TMDL. Although Dents Run is clearly marked on the maps in the Draft TMDL, PennFuture also recommends that the point DENT 1.0 be identified on the maps.

Thank you for your consideration of these comments. You may reach me at 717-214-7920 if you have any questions.

Sincerely,



Kurt J. Weist
Senior Attorney

cc: Michelle M. Moses, Bureau of Regulatory Counsel, PADEP
Christopher Day, Esquire, U.S. EPA, Region 3
Elizabeth Gaige, U.S. EPA, Region 3