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EPA Objects To Proposed Ohio Water Permit In Broader Coal Mining Battle

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EPA is pushing back against an attempt by Ohio regulators to issue a water discharge permit without limits for key pollutants related to coal mining, the latest clash in a broad challenge by industry and states to EPA's effort to require stronger water pollution controls on Appalachian mining.

The agency Nov. 8 sent an objection letter to a draft National Pollutant Discharge Elimination System (NPDES) permit for Murray Energy Corp.'s Century Mine that was crafted by Ohio Environmental Protection Agency (OEPA).

The permit has been closely watched because it is linked to a former OEPA water regulator who says he was dismissed by Gov. John Kasich's (R) office after warning that EPA would reject a permit without limits for sulfates and total dissolved solids (TDS).

Ohio's Oct. 8 draft permit for discharges from the mine's Bennoc refuse disposal area does not include such limits. Instead, it says the discharges do not have "a reasonable potential to violate water quality standards" because they are precipitation-induced and would be managed by best management practices.

"Just because there aren't specific numbers, the permits have requirements based on best management practices and monitoring," an OEPA spokesman says. "Those are in place to reduce discharges to the streams."

The former regulator, George Elmaraghy, tells *Inside EPA* that EPA's push for stronger controls in Ohio and other Appalachian states began after the agency issued a 2010 guidance calling for inclusion of numeric conductivity limits, or salinity measures, in water permits for coal mining activities.

The guide, which included a recommended conductivity threshold at which EPA can deny permits, was vacated in July 2012 by a district court that ruled it was approved without formal notice-and-comment procedure. EPA in August urged the U.S. Court of Appeals for the District of Columbia Circuit to reinstate the guidance, arguing it is not binding and that industry is free to challenge individual permit decisions that rely on the document.

Kentucky and West Virginia had joined the National Mining Association in challenging the guidance. Several industry groups are also urging the D.C. Circuit to uphold the lower court's ruling, arguing the guidance is an example of EPA and other agencies' use of informal guides to illegally regulate a broad swath of business sectors.

Because the guidance was vacated, EPA is not citing it in its objection to Ohio's proposed permit.

"The guidance started the process, but U.S. EPA is not implementing the guidance here," Elmaraghy says. "What they are saying is, Ohio has a water quality standard for total dissolved solids [and] OEPA needs to include it in the permit. They're not asking OEPA to include the conductivity numbers from the guidance."

Approved Permits

A key argument the Ohio agency makes is that EPA Region III has approved permits without such limits in other states, such as West Virginia.

"This draft permit is similar to what U.S. EPA has approved in other regions," the OEPA spokesman says. "Our agency spent a good deal of time working with West Virginia to understand their model since they've been successful getting similar permits approved."

But in a Nov. 14 letter explaining why the agency objected, EPA Region V notes that West Virginia does not have a numeric TDS limit, and instead translates a narrative standard using a state guidance document. Ohio does have a numeric limit, 1,500 milligrams/liter (mg/L), but the standard is far weaker than the recommended limit in EPA's guide.

"It is unclear why OEPA would provide a guidance document from West Virginia for the implementation of a narrative standard as justification for not implementing its own numeric water quality standards in this Ohio permit," says the letter to OEPA from EPA Region V NPDES program branch chief Kevin Pierard.

The letter adds that the Ohio proposal did not include several permit conditions -- including whole effluent toxicity limits, stronger chemical and biological monitoring, an aquatic ecosystem protection plan and an adaptive management plan -- called for in the West Virginia guide.

Additionally, the letter says the state's argument to reduce monitoring frequency is not supported and that proposed best management practices would not reduce TDS and other pollutants below water quality standards.
In particular, the company predicted an effluent TDS concentration of 3,138 mg/L, more than twice the state's standard.

Elmaraghy says he believes EPA would accept a permit based on the state's TDS water quality standard, as well as a method to translate Ohio's narrative criteria for sulfates, which says facilities cannot discharge material in amounts toxic to aquatic life. If the state does not re-write the permit, he says, EPA will likely draft the permit itself. "My feeling is someone in the governor's office misled the coal companies by telling them [the governor's office] could get them a permit without limits."

He adds that a looming battle is the pending renewal of the state's general permit used for numerous smaller mining activities. That permit does not include limits for TDS and sulfates, and EPA will likely push to include them in a new permit.

A Murray Energy spokesman says in a statement that EPA's objection "is wholly without merit and will have no environmental benefit whatsoever. We look forward to working with the appropriate regulatory agencies to address any supposed environmental concerns." -- *Lee Logan* (llogan@iwpnews.com This e-mail address is being protected from spambots. You need JavaScript enabled to view it)

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