Ohio EPA
40 years and moving forward
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

October 8, 2013

Kevin M. Pierard, Chief
NPDES Programs Branch
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Attention: WN-16J

Dear Mr. Pierard:

Re: NPDES permit for American Energy Corporation – Bennoc Refuse Area

On September 6, 2013, the Ohio Environmental Protection Agency (OEPA) submitted a draft National Pollutant Discharge Elimination System (NPDES) permit for the American Energy Corporation (AEC) Century Mine Bennoc Refuse Disposal Area. On September 24, 2013, the U.S. Environmental Protection Agency (USEPA) sent a letter to OEPA indicating that the September 6, 2013, submission was not a formal submission of a proposed permit under Section 402(d)(2) of the Clean Water Act and 40 CFR 123.44(d) in accordance Section V.C of the NPDES Memorandum of Agreement (MOA) between USEPA and OEPA. OEPA is hereby transmitting the proposed permit to U.S. EPA in accordance with Section V.C of the MOA. Please see the attached proposed permit and supporting materials. Please note that the only comments received during the public notice period were from AEC. These are included along with several accompanying attachments. The attached proposed permit is identical in content to the draft permit sent September 6, 2013 to USEPA.

The September 24, 2013 letter from USEPA requested a written explanation of why OEPA believes that the draft permit is consistent with the water quality based requirements of the Clean Water Act (CWA) and USEPA's implementing regulations. In response, the discharges from this site are primarily precipitation-induced and OEPA believes that there is not a reasonable potential to violate water quality standards (WQS) from precipitation-induced discharges if the best management practices included in the permit are complied with. In addition, the proposed permit includes biological and chemical monitoring of Piney Creek, to demonstrate compliance with WQS.

The basis for this determination is that there would be dilution in the receiving waters when the outfalls discharge as well as implementation of best management practices that would minimize the discharge of pollutants. In addition, since these discharges are precipitation induced, there would not be a discharge during critical conditions in receiving streams. It is our understanding that U.S. EPA Region III has been approving permits for precipitation-induced discharges in West Virginia without requiring numeric water quality based effluent limits (WQBELs) for TDS-related parameters. West Virginia has presented information that successfully demonstrated that precipitation-induced discharges do not have the reasonable potential to contribute to exceedances of water quality standards (WQS). This was formalized by West Virginia Department of Environmental Protection (WVDEP) in its Guidance on Coal Permitting (August 12, 2010 and revised May 11, 2012), along with the associated justification document (August 12, 2010). These are included for your review, along with correspondence between WVDEP and Region III on two coal permits.

An additional issue raised by US EPA in a letter dated July 3, 2013 concerns inconsistent monitoring frequencies between Ponds #1 and #2 for pH, TSS, chloride, sulfate, selenium, iron and manganese. The monitoring frequencies for the two ponds have been revised to be consistent with each other. Considering the discharges are primarily precipitation-induced, OEPA believes reducing the frequency of monitoring from US EPA's recommendation of twice per week is warranted.

We look forward to working with USEPA to address any questions you have on the permit. Please contact Eric Nygaard of my staff at 614-644-2024 or eric.nygaard@epa.state.oh.us or Dan Gill of my staff at 614-644-2018 or dan.gill@epa.state.oh.us.

Sincerely,

Paul Novak, P.E., Manager
Permit and Compliance Section
Division of Surface Water

Enclosure

cc: Tinka Hyde, US EPA
Daniel Gill, Ohio EPA