Summary of Ohio EPA / U.S.EPA Conference Call on the Bennoc Site NPDES Permit

On the call – Brian Hall, Ohio EPA/DSW

Eric Nygaard, Ohio EPA/DSW

Kevin Pierard, U.S. EPA/Region V

Janet Pellegrini, U.S. EPA/Region V

Krista McKim, U.S. EPA/Region V

Rob Pepin, U.S. EPA/Region V

Gary Pritchard, U.S. EPA/Region V

Scott Wilson, U.S. EPA/HQ

General – U.S. EPA had concerns about the March draft of the permit compared with the January draft. Kevin pointed out that we had asked them for bottom-line conditions at that time, and that out January draft was close to satisfying those. They consider the March draft a step backward.

U.S. EPA pointed out that the March draft contained conditions weaker than permit conditions in other states, particularly Kentucky and West Virginia:

- Both Kentucky and West Virginia require toxicity limits, both chronic and acute;
- Both states do detailed analysis of continuous vs. intermittent discharge, and West Virginia provides justification in a statement-of-basis; West Virginia considers only on-bench outfalls and smaller refuse pile discharges to be intermittent; and
- Kentucky has agreed to the 2-day-per-week definition of intermittent.

<u>Limits and Adaptive Management triggers</u> –U.S. EPA stated that permits must contain either limits or adaptive management / violation triggers (presuming a finding of reasonable potential) - If a permit has no effluent limits, the permit must contain adaptive management triggers for all relevant WQ parameters. Simply using biological triggers is not sufficient for two reasons: (1) biology cannot be monitored frequently enough to catch temporary events that exceed Ohio EPA toxicity narrative or average chemical WQS; and (2) the independent applicability of biological, toxicity and chemical WQS requires that each be evaluated. Please note that Ohio's water quality standards give preference to the

weight of evidence concept over independent application.

U.S. EPA would require that the triggers in the January draft for TDS and acute toxicity be reinstated. They also indicated that Ohio should add a requirement that chemical sampling be done during biological monitoring periods.

U.S. EPA indicated that Ohio needs to change the adaptive management plan to remove the second biological sampling if triggering criteria are not met; adaptive management conditions would be triggered based on one of the triggering events being satisfied. This would be consistent with how Kentucky and West Virginia use biological data.

Discharges at critical flow / WQS in Piney Creek – Piney Creek has measured exceedances of the TDS criterion during summer low-flow period. Limited data indicates that concentrations decrease significantly with higher stream flows. U.S. EPA wants assurance that these new discharges will not contribute to WQS exceedances at low-flow. A prohibition on low-flow discharges is needed because there is no assimilative capacity for TDS in Piney Creek at these times. Ohio EPA suggested using the 90% exceedance flow for Captina as a low-flow value in a prohibition. U.S. EPA seemed comfortable with a 90% exceedance measure but want flow measuring to be required in Piney Creek because the Captina gage is downstream of all Murray Energy facility discharges, which could influence the flow measurements. U.S. EPA also wants the Piney Creek flow measurements to be taken upstream of the Century Mine discharges to prevent flow augmentation by higher-TDS discharge waters.

Intermittent discharges – U.S. EPA stated that discharges must be intermittent to eliminate chronic exposure (presumably to protect the unnamed tributaries of Piney Creek). A narrative statement of intermittency is not sufficient or enforceable. The permit conditions must precisely define what intermittent is. Either discharge is intermittent and can be regulated by BMPs and adaptive management, or must have limits for TDS or chronic toxicity. Ohio EPA suggested keeping the narrative statement and including adaptive management conditions to correct the situation if continuous discharges occur.

The pond structure changes required in Part II N should go into effect before permit goes final. U.S. EPA would require a control structure for Outfall 024 similar to 023 so that the facility knows when discharges occur and have some control. U.S. EPA believes that, as BMPs that are part of water quality-based controls, these must be in-place before the permit is issued. Ohio EPA can only agree to have changes in place before discharge of refuse water. A PTI action done prior to issuance would send

NPDES permit back to start under AD.

U.S. EPA stated that the adaptive management comments that they sent to us on the Rosebud KLM and Deep Mine #16 draft permits need to be included in all related permits, including Bennoc. These comments primarily have to do with triggering adaptive management on any exccedance of triggering conditions; the opportunity for biological re-testing within the same sampling year cannot be used.