To: Nygaard, Eric[eric.nygaard@epa.state.oh.us]; Brian Hall (brian.hall@epa.ohio.gov)[brian.hall@epa.ohio.gov]
Cc: Pierard, Kevin[pierard.kevin@epa.gov]; Kuefler, Patrick[kuefler.patrick@epa.gov]
From: Pellegrini, Janet
Sent: Wed 4/9/2014 8:20:12 PM
Subject: FW: AEC Bennoc permit revisions

Eric,

Attached is the March 27, 2014 email Kevin sent to your managers and our WD Director, specifying the fundamental differences between AEC Bennoc and the Rosebud permits.

This is the email I referred to at the end of today's conference call.

Thanks

Janet

From: Pierard, Kevin
Sent: Thursday, March 27, 2014 5:27 PM
To: Brian Hall (brian.hall@epa.ohio.gov)
Cc: Paul Novak; Hyde, Tinka
Subject: AEC Bennoc permit revisions

Brian – This is intended to respond to your question regarding permit specifications for AEC Bennoc and consideration of the approach that was suggested for the Rosebud KLM7 project. As described below, the circumstances associated with the AEC Bennoc permit differ significantly from the circumstances associated with the Rosebud KLM7 permit. Consequently, the types of permit provisions that we've been discussing as potentially addressing site-specific water quality concerns at issue with the KLM7 permit will not be adequate to address the site-specific water quality concerns at issue with the AEC Bennoc permit: i.e., any permit provisions that we ultimately agree to for the KLM7 permit should not be construed as a template or model for all individual permits.

AEC Bennoc discharges into a receiving stream already impacted by the AEC mine operation. AEC data indicates that the discharges from the Bennoc site would likely cause significant exceedances of water quality standards and impair designated aquatic life uses. That information was based on existing discharges from coarse refuse piles at the Century mine which will also be the source of pollutants discharged at the Bennoc facility and so are representative of the discharges proposed to be authorized by this permit. Based on that AEC submitted data, OEPA had indicated in an email their determination of reasonable potential for TDS and had previously included, in lieu of numeric TDS limits, a 2 day duration of discharge limit to prevent chronic

toxicity. In addition, OEPA's Division of Surface Water, within its' Biological and Water Quality Study of the Captina Creek Watershed (2009 OEPA Report DSW/EAS 2010-4-1) , which included Piney Creek, recommended that AEC and OVC reduce the discharge of sulfates and TDS into Piney Creek as part of the overall effort to protect the Captina Creek watershed. Finally, USFWS sent OEPA and USEPA a letter on December 16, 2013, expressing concern about the previously proposed permit's lack of numeric limits for pollutants known to adversely impact macroinvertebrates, freshwater mussels and the state listed endangered species, the Hellbender Salamander. None of these site-specific considerations were present with regard to the KLM7 permit.

Our discussions with you in January were focused on provisions necessary to assure protection of water quality and aquatic biota. The current submittal fails to incorporate those provisions.

Eric Nygaard sent an email message to EPA on March 21, 2014 stating that the "[a]ttached is a proposed permit that we intend to be the final permit for the Bennoc site." However, the document that was attached to the message appears to be incomplete, as it only contains Parts I and II. Please let us know as soon as possible whether the document attached to that March 21, 2014, message is in fact the complete permit that OEPA intends to finalize. If it is, EPA will perform its formal review of that permit in accordance with the timeframes set forth in the NPDES Memorandum of Agreement (MOA) between our agencies and 40 CFR 123.44, with EPA's reviewing period commencing on March 21, 2014. If it is not the complete permit, then EPA's formal review period under the MOA and 40 CFR 123.44 will not commence until the date that OEPA submits the complete permit to EPA and clearly indicates that such permit constitutes the "complete proposed permit that OEPA intends to finalize."

We look forward to continuing our work with you on this permit. Please call me if you have any questions.