UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

AUG 12 2014

Ms. Lynn Langer
Regional Director
Pennsylvania Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Avenue
Harrisburg, Pennsylvania 17110-8200

Re: NPDES Permit No. PA0008281
PPL Brunner Island LLC
York County, Pennsylvania

Dear Ms. Langer:

We received the draft National Pollutant Discharge Elimination System (NPDES) permit renewal for the above-referenced facility on May 14, 2014, for review pursuant to 40 Code of Federal Regulations (CFR) § 123.44 and the Memorandum of Agreement (MOA) between the U.S. Environmental Protection Agency (EPA) Region III and the Pennsylvania Department of Environmental Protection (PADEP). EPA issued a general objection on June 12, 2014.

Pursuant to 40 CFR § 123.44(b)(2) and Section III.A.2. of the MOA, this letter is a specific objection to the issuance of the above-referenced permit for the reasons set forth in 40 CFR § 123.44(c)(1), (5), and (7) and explained in more detail below.

PPL Brunner Island LLC is a major industrial facility that discharges to the Chesapeake Bay watershed, and is affected by the Chesapeake Bay Total Maximum Daily Load (hereinafter referred to as Bay TMDL or TMDL). EPA and PADEP staff have discussed EPA's concerns regarding PADEP's Chesapeake Bay trading language in Part C. of its NPDES permits and related issues. Those discussions have not yet resulted in resolution of EPA's concerns with those permits. As a result, this letter describes in detail the bases for this specific objection and identifies revisions needed for EPA to remove the objection.

Use of Credits Generated by Nonpoint Sources and Trading Ratios

PADEP NPDES permits for dischargers in the Chesapeake Bay watershed that contain the present language in Part C. of the permit, authorizing the use of credits generated by nonpoint agricultural sources, do not comply with Sections 301 and 402 of the Clean Water Act (CWA). The credit use portion in Part C. of the permit allows point sources to use credits generated by agricultural nonpoint sources according to Pennsylvania regulations; however, Pennsylvania regulations establish a

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nonpoint source agricultural baseline that is inconsistent with the TMDL allocations, and therefore inconsistent with the CWA. Pennsylvania issued its Nutrient Trading Program in December 2006 and codified it under 25 Pa Code 96.8 in 2010. Because this program was developed before the Bay TMDL, these regulations codified an agricultural baseline that did not incorporate the lower targets identified in the TMDL.

It is critical that the baseline be consistent with the Bay TMDL to ensure that water quality standards are achieved, and so that nonpoint agricultural credits can be used for NPDES reporting and compliance purposes in a manner consistent with the Bay TMDL. Therefore, the language in Part C. of the permit must prohibit the use of credits generated by agricultural nonpoint sources until such time as the agricultural baseline for credit generation has been revised to be consistent with the TMDL.

With the exception of a limited number of credit certifications, the overwhelming majority of certifications will expire in Compliance Year 2015. It is EPA's position that credit certifications that are existing should be honored; however, new agricultural certifications should not be granted until the baseline is revised to bring it into alignment with the TMDL. In order to resolve the specific objection, PADEP will need to revise the portions of its Chesapeake Bay permit language addressing the use of credits and offsets generated by agricultural nonpoint sources and the use of the uncertainty/trading ratio. We propose the following revised permit language to Part C. of the draft permit, with suggested additional language in underline font:

A. Revise Part C.I.B., paragraph 1, Use of Credits for Compliance:

   1. The permittee is authorized to apply TN and TP Credits to achieve compliance with Cap Loads when the Credits are certified, verified and registered in accordance with 25 Pa. Code 96.8 <u>subject to the following provision: Credits generated from agricultural nonpoint sources may be used for compliance with Cap Loads for the 2014 and 2015 Compliance Years. For subsequent compliance years, credits generated from agricultural nonpoint sources may be used for compliance with Cap Loads provided that the baseline for credit calculation has been revised to be consistent with the Chesapeake Bay TMDL.</u>

B. Revise Part C.I.C., paragraph 2, Use of Offsets for Compliance:

   2. Offsets that are approved under this permit are listed in Part A, Footnotes. These Offsets may be applied each Compliance Year to achieve compliance with the Cap Loads. The application of these Offsets may be reported on a monthly basis or on an annual basis, at the permittee's discretion. Additional offsets may be approved throughout the permit term <u>via a permit modification request. For Compliance Year 2016 and subsequent years, offsets generated from agricultural nonpoint sources may be used for compliance with Cap Loads provided that the baseline for offset calculation has been revised to be consistent with the Chesapeake Bay TMDL.</u>

C. Related to the calculation of credits for use in trading, PADEP should add a definition to Part C of the permit for Uncertainty/Trading Ratio:

   <u>Trading Ratio: A ratio applied to adjust a pollutant reduction when calculating credits for a pollutant reduction activity. A trading ratio is used to address uncertainty, water quality,</u>

reduction failures or other considerations. For Compliance Years 2014 and 2015, the trading ratio is 1:1 for both point source and nonpoint sources. For subsequent Compliance Years, the uncertainty ratio will be 1:1 for credits generated by point sources and 2:1 for nonpoint sources.

D. Revise the existing definitions for Credit and Offset at Part C.I.A. to include the concept of uncertainty ratio:

Credit: The tradable unit of compliance that corresponds with a unit of reduction of a pollutant as recognized by DEP which, when certified, verified and registered, may be used to comply with effluent limits contained in an NDPES permit when adjusted by the applicable trading ratio.

Offset: The pollutant load reduction measured in pounds (lbs) that is created by an action, activity, or technology which, when approved by DEP, and when adjusted by the applicable trading ratio, may be used to comply with effluent limits contained in an NPDES permit. The offset may only be used by the NPDES permittee that DEP determines is associated with the load reduction achieved by the action, activity, or technology. Offsets may be applied to meet compliance with Cap Loads, but may not be treated as Credits, and are not eligible for sale or trading.

Monitoring Frequency of Chesapeake Bay Parameters

The current monitoring frequency for Chesapeake Bay parameters in Part A.I.H. of the permit is twice per month with 24-hour composite sampling. Increasing this monitoring frequency in the NPDES permit will improve the representativeness of the data collected, thereby improving the accuracy of the effluent limit calculations and the determination of whether credits are needed for compliance and, if so, how many credits are needed. It will also improve the accuracy of the data used to generate credits, if any, by a facility. We recommend that PADEP revise the monitoring frequency for the Chesapeake Bay parameters in Part A.I.H. of the permit from twice per month to twice per week.

Additional Information Regarding Credit Generation

In order to be able to determine whether a permittee is in compliance with its effluent limitations, EPA must be able to determine that a credit has been generated properly. As a result, EPA would expect to be able to review a full record showing how the credit was generated, including a description of the project, certification documents, and proof of verification (e.g., photos, maps, or other physical evidence) showing the project was installed. This also enables transparency of information to the public. EPA suggests that the permit or Fact Sheet contain language identifying the location of this information, such as a PADEP office, and a contact person for obtaining access to that information. In addition, EPA suggests that PADEP include in the Fact Sheet for the next permit cycle a description of the credits and offsets used in the prior permit period; this is one mechanism by which PADEP can document, during permit reissuance and/or permit modification, the full record of information with respect to any credits that were used by a facility to attain compliance with its Chesapeake Bay effluent limitations.

EPA will continue to work cooperatively with PADEP to resolve these issues in a timely manner. Under the CWA, the regulations and the MOA, PADEP cannot issue the permit for this facility without written EPA confirmation that it has withdrawn the objection. A hearing may be requested pursuant to 40 CFR § 123.44(e). If you have any questions, please contact me, or Mr. Brian Trulear, of my staff, at (215) 814-5723.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

cc: Kelly Heffner, PADEP Central Office
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