



CENTER FOR COALFIELD JUSTICE

PO Box 4023 • 14 E. Beau Street • Washington, PA 15301 • 724.229.3550

www.coalfieldjustice.org • info@coalfieldjustice.org

February 22, 2022

Submitted via eComment

Environmental Quality Board

Attention: Patrick McDonnell, Chairperson

P.O. Box 8477

Harrisburg, PA 17105-8477

**Re: Proposed Rulemaking: Exclusion for Identification and Listing Hazardous Waste at MAX Environmental Technologies, Inc. Bulger & Yukon Facilities
Noticed in 52 Pa.B. 235 (Saturday, January 8, 2022)**

Dear Environmental Quality Board Members,

On behalf of Center for Coalfield Justice ("CCJ") and its more than 3,000 members and supporters, please accept these comments on the proposed amendments to Chapter 261a of the Pennsylvania Code to conditionally exclude the wastewater treatment sludge filter cake derived from EPA Hazardous Waste No. F039 generated at MAX Environmental Technologies, Inc. ("MAX Environmental") Bulger and Yukon facilities from the list of hazardous waste found in 40 CFR 261.31. CCJ is a 501(c)(3) non-profit organization founded in 1994. The organization's mission is to improve policy and regulations for fossil fuel extraction and use; to educate, empower, and organize coalfield residents; and protect public and environmental health.

CCJ understands that the delisting petitions were part of a Consent Order and Agreement between the Department of Environmental Protection ("Department") and MAX Environmental. CCJ also recognizes that the proposed delisting is conditional and would require MAX Environmental to test its sludge regularly to qualify for the delisting. Still, MAX Environmental's compliance history is concerning. Repeated non-compliance devalues regulatory instruments and ultimately breaks down the credibility of government agencies responsible for implementing and enforcing the law. Businesses and the public expect regulators to be able to demonstrate that regulatory provisions are designed to be effective and enforced.

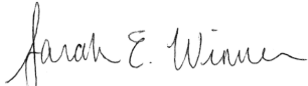
The proposed exclusion for the Max Environmental Bulger and Yukon facilities would not apply until Max Environmental completes verification sampling of the treated waste on a volume basis. The purpose of this sampling is to verify that the sludge does not exhibit any hazardous waste characteristics described in Chapter 261a. If it does, then the waste does not qualify for delisting and must be managed in accordance with Subtitle C of RCRA.

The Department should clarify the proposed rulemaking to require that MAX Environmental submit all analytical data to the Department's Southwest Regional Office

regardless of the sampling results. A conditional delisting assumes that the waste is hazardous until MAX Environmental demonstrates that it does not exhibit hazardous characteristics. Until the verification sampling is completed, sludge at the Bulger and Yukon facilities must be handled and stored as hazardous waste. Requiring MAX Environmental to submit its analytical data only if sampling reveals hazardous waste characteristics undermines the purpose and intent of a conditional delisting. It turns a fundamental assumption of the conditional delisting (that the waste is hazardous until sampling shows otherwise) on its head. MAX Environmental should be required to demonstrate that it has met the conditions for delisting by timely submitting all verification sampling results to the Department.

Thank you for your consideration.

Respectfully,



Sarah E. Winner, Esq.

Senior Attorney

Sarah@coalfieldjustice.org

Ethan Story, Esq.

Community Advocate

Ethan@coalfieldjustice.org