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A new climate of fairness.

November 2, 2014

Sent via electronic mail and First Class U.S. Mail

California District Mining Office
Department of Environmental Protection, District Mining Operations
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**Re: Comment and Informal Public Conference Request
CPCC's Application for Coal Refuse Disposal Area No. 7 and
No. 8
Permit Application No. 30130701 and NPDES No. PA0236268
Richhill and Morris Township, Greene County
Noticed in 25 Pa.B. 5689 (Saturday, September 19, 2015)**

To Whom It May Concern:

On behalf of the Center for Coalfield Justice ("CCJ"), I respectfully submit the following comment on Consol Pennsylvania Coal Company, LLC's ("Applicant" or "Consol") permit application for a new combined coarse coal refuse facility and slurry impoundment at the Bailey Central Mine Complex in Morris Township, Greene County ("Application").¹ The relevant Pennsylvania Bulletin notice appeared as follows:

30130701 and NPDES No. PA0236268.
Consol Pennsylvania Coal Company LLC,
(1000 CONSOL Energy Drive, Canonsburg,
PA 15317). To operate the Bailey Coal
Refuse Disposal Areas No. 7 and No. 8 in
Morris Township, **Greene County** and
related NPDES permit to construct a coal
refuse disposal facility. Coal Refuse Disposal
Support Acres Proposed 277.0, Coal Refuse
Disposal Acres Proposed 272.0. Application
also includes a request for a Section 401
Water Quality Certification. No additional

¹ CCJ previously submitted comments on CPCC's application for CRDA Nos. 7 & 8. Since many of CCJ's previous comments are still applicable to CPCC's most recent Application, a copy of CCJ's January 3, 2014 comment letter and CCJ's February 19, 2014 comment letter are enclosed for the Department's reference.

Discharges. The application was considered administratively complete on September 1, 2015. Application received July 10, 2015.

This comment is timely filed pursuant to 25 Pa. Code § 86.32(a). On October 3, 2015 the final public notice was published in the *Washington Observer-Reporter*.

The Department should deny and return the Application because it does not meet the criteria for permit approval. There are numerous technical and procedural deficiencies; the alternatives analysis is insufficient; it fails to fully evaluate downstream impacts; the cumulative impacts analysis is incomplete; the public benefits analysis is unlawfully inadequate; and it fails to account for all adverse environmental impacts. Because it is so deficient, the Department should deny it. In the event that it is not denied, but is revised, the scope and significance of the necessary revisions merit a second public comment period. In the interim, the Department should issue the necessary deficiency letters to the Applicant.

1. The Department's notice in the Pennsylvania Bulletin regarding receipt of the Application is defective.

The Department's notice violated 25 Pa. Code § 86.31(c), which requires public notice of every complete application for surface mining activity. When the Department receives a permit application, it conducts an initial administrative screening prior to the application being formally accepted for review and public notice. Once the Department deems the application administratively complete, the Department may publish notice of the application in the Pennsylvania Bulletin. 25 Pa. Code § 86.31(c).

The Department's public notice of its receipt of the Application was published in the Pennsylvania Bulletin on September 19, 2015. The notice describes the Application as seeking a permit to operate the Bailey Central Mine Complex Coal Refuse Disposal Area Nos. 7 and 8. However, the Department's notice includes only the proposed acreage for CRDA No. 8. Moreover, it is difficult to imagine how CPCC's Application for CRDA Nos. 7 and 8 could have even been deemed administratively complete when it does not contain any substantive information about proposed CRDA No. 7. In fact, the Application does not even include the proposed coal refuse disposal acres for CRDA No. 7.

The Department's *Pennsylvania Bulletin* notice is contrary to 25 Pa. Code § 86.31(c). The Department should take immediate steps to remedy the error and provide an opportunity for public participation based on the correct notice. The Department and the Applicant are still obliged to provide adequate public notice of a complete application for Coal Refuse Disposal Area Nos. 7 and 8 pursuant to 25 Pa. Code § 86.31(c), with the relevant opportunity for public comment prior to the issuance of any permit.

2. The Applicant's notice of its pending Application in only one local newspaper does not satisfy Section 6.1(h)(5) of the Coal Refuse Disposal Act.

Public notice of a request for a variance from the 100-foot stream buffer zone restriction must appear in two local newspapers. Section 6.1(h)(5) of the Coal Refuse Disposal Act provides: "the operator shall be required to give public notice of his application for the stream

variance in two news papers of general circulation in the area once a week for two consecutive weeks. 52 P.S. §30.65a(h)(5), 25 Pa. Code § 90.49(c)(2) (“the operator shall be required to give public notice of his application for the stream variance in two newspapers of general circulation in the area once a week for two consecutive weeks.”). In approving this provision of the CRDCA as part of Pennsylvania’s regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the Office Of Surface Mining Reclamation and Enforcement (OSM) made clear that Section 6.1(h)(5)’s “two-week newspaper notice requirements is in addition to the four-week newspaper notice required by 25 Pa. Code § 86.31(a).” 63 Fed. Reg. 19801, 19814 (col. 1) (April 22, 1998). *See also* Id. at 1906-1907 (“Subjection 6.1(h)(5) also required public notice in two newspapers of general circulation in the area of the proposed variance for two successive weeks. This notice would be in addition to the public notice required by § 86.31 concerning public notice of filing permit application and is consistent with the notice required for stream buffer zone variance applications at 25 Pa. Code § 86.102(12)”).

To the best of CCJ’s knowledge, the only public notice of the pending Application that appeared in a newspaper was published once a week for four consecutive weeks during September and October in just one local newspaper, the *Observer-Reporter*. That weekly notice satisfies the general requirements for public notice of permit applications under 25 Pa. Code § 86.31(a), but it does not satisfy the additional requirement for publication in two newspapers when the Applicant requests a stream variance. Even though the public notice that appeared in the *Observer-Reporter* mentions the stream variance request, public notice for these kinds of requests requires publication in two newspapers.

The Department must insist on adherence to this unambiguous requirement, especially for a project of this magnitude. Unless the Applicant has already been published notice in a second newspaper for at least two consecutive weeks, the Department must require it do so. A failure to provide adequate public notice would implicate the Office Of Surface Mining’s oversight jurisdiction, as it would be a violation by both the Applicant *and* the Department.

3. The Application’s alternatives analysis fails to demonstrate that the site selected and the methods for disposal represent the least damaging, practicable alternatives.

A person conducting coal refuse disposal activities must “minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and achieve enhancement of resources when practicable.” 25 Pa. Code § 90.150(a)(1). One factor that affects the severity of the impacts is the location of the disposal activities, including the quality and uses of the waters to be filled. 40 C.F.R. § 230.70. If a preferred site does not exist within the search area, then the applicant is required to demonstrate to the Department that the proposed site is the “most suitable based on environmental, economic, technical, transportation and social factors.” 25 Pa. Code § 90.204(b)(3).

Section 4.1(b) of the CRDA prohibits the Department from approving a site for coal refuse disposal activities “where the adverse environmental impacts of the proposed site clearly outweigh the public benefits.” 52 P.S. § 30.54a(c), (d). The implementing regulations similarly provide that the Department cannot approve “a site proposed by the applicant for coal refuse disposal activities when the Department finds that the adverse environmental impacts of using the site for coal refuse disposal activities would clearly outweigh the public benefits.” 25 Pa.

Code § 90.202(d). This balancing test requires the Applicant to identify and adverse environmental impacts of using a particular site for coal refuse disposal activities and the public benefits of using that particular site for coal refuse disposal activities. *Id.* In this case, the site selection process is particularly troubling for a number of reasons.

A. The site selection process should be repeated to allow public participation.

One of the fundamental flaws in Pennsylvania's site selection process for coal refuse disposal areas is that the public is excluded from the process during this critical period. 52 P.S. § 30.54a; 25 Pa. Code §§ 90.201 – 90.207. Once the Department has approved the site selection, the operator may submit an application to obtain a permit to dispose of coal refuse on the selected site. *See* 25 Pa. Code § 90.202(f); Coal Refuse Disposal – Site Selection Guidance Document (Doc. No. 563-2113-660). Since there is no public notice that a mining company has initiated the site selection process, the public does not have an opportunity to provide input until after the Department approves the applicant's site selection and the applicant submits a permit application. Despite the fact that the Department is required to make a determination of whether the adverse environmental impacts of using a particular site for coal refuse disposal would clearly outweigh the public benefits, the Department has chosen not to involve the very public to whom those public benefits supposedly amass, and which is forced to experience any adverse environmental impacts. 25 Pa. Code § 90.202(d). Moreover, the Department's decision not to involve or even notify the public is particularly egregious because nothing in Section 4.1 of the CRDCA even suggests that the site selection process must be conducted without public notice or an opportunity for public comment. 52 P.S. 30.54a. The Department should err on the side of providing opportunities for public participation to promote transparency and ensure that the taxpayers that the Department serves are aware of decisions that affect them.

There is an obvious difference between having an opportunity to submit comments to the Department before it makes an initial decision and being limited to commenting on a decision that has already been made. CCJ believes that it would actually be more efficient for the Department to provide public notice and comment at the outset of the site selection process because it would eliminate the possibility that, based on public comments on the application itself, the Department would have to repeat various analyses and perhaps reconsider the sites previously found to be acceptable.

CCJ urges the Department to reconsider its approval of the Applicant's preferred alternative and require the Applicant to submit a new alternatives analysis. The Department should not make a determination on whether the environmental impacts clearly outweigh the public benefit without involving the very public that will be impacted by the activity.

B. The approved site does not represent the least damaging, practicable alternative.

The proposed project will permanently affect 83,822 linear feet of stream, 1.628 acres of open water, and 23.242 acres of wetland. The project will be completed in three phases. Phase one of the project will affect 29,100 feet of stream, 0.77 acres of open water, and 7.3 acres of wetland. Phase two of the project will permanently affect an additional 1,927 feet of stream, 0.077 acres of open water, and 0.909 acres of wetland. Finally, phase three of the project will

permanently impact 52,795 feet of stream, 0.781 acres of open water, and 15.033 acres of wetland. The Applicant evaluated alternative sites that presented less stream and wetland impacts. Unfortunately, these less environmentally damaging alternatives were dismissed by the Applicant.

On April 3, 2015, the United States Fish and Wildlife Service (“USFWS”) explained: “During the original CRDA scoping process, eight sites were identified from least to more environmentally sensitive areas (in terms of aquatic resources, forest acreage, etc.). Since development of the Bailey and Enlow longwall coal mines, six of the eight scoped sites have been developed. The remaining 2 sites, the ones proposed for development here, are by all accounts the least suitable locations for waste disposal.” CCJ agrees with USFWS and similarly urges to Applicant to “reevaluate the project to ensure that the preferred alternative reflects the LEDPA[.]”

C. The Applicant failed to consider, or rejected without sufficient analysis, alternatives that would reduce impacts on aquatic resources.

The burden of demonstrating that the site selected is the most suitable alternative falls squarely on the Applicant, and a perfunctory analysis of alternatives falls short of meeting the Applicant’s burden. The Applicant must demonstrate that the alternative is most suitable based on environmental, economic, technical, transportation and social factors. 25 Pa. Code § 90.204(b)(3).

One of the central issues in reviewing an applicant’s alternative analysis is whether the Applicant has given sufficient consideration to possible alternatives. The Applicant’s proposal to construct yet another coal refuse disposal site thereby permanently impacting 83,822 linear feet of stream, 1.628 acres of open water, and 23.242 acres of wetland stems from its proposal to expand the Bailey and Enlow Fork Mines. Because the waste is also generated in Greene County, it is especially important for the Department to evaluate whether there are practicable alternatives that would have less of an impact on aquatic ecosystems, without other significant adverse environmental consequences.

The mechanism of the alternatives analysis and the requirement to adopt the least damaging, practicable alternative are most important in a situation like this one, in which a large area of valuable aquatic resources have already been affected by longwall mining, discharges of fill material, and construction activities. Furthermore, the Applicant’s proposal would eliminate important headwater streams. Resources like these should only be affected as a last resort. Since location choice for mining activities greatly affects the siting of waste disposal facilities, the Department must be particularly exacting when performing its duty to independently analyze the Applicant’s alternatives analysis.

In order to protect the hydrologic balance, coal refuse disposal activities must be planned and conducted to minimize disturbances to the prevailing hydrologic balance in the permit and adjacent areas. 25 Pa. Code § 90.101(a). The Applicant’s alternatives analysis rejects one technique, room and pillar coal extraction, and dismisses another, underground disposal of coal refuse, which would both reduce impacts of the Bailey Mine Complex on aquatic resources by

reducing waste generation and/or surface disposal of coal refuse. The Applicant fails to present evidence demonstrating that these impact-reducing alternatives are impracticable.

An obvious alternative for recovering coal is room and pillar extraction. Use of room and pillar mining would not only reduce the amount of coal refuse generated that must be discarded in valley fills, but it would also protect streams from subsidence damage. The Applicant briefly discusses this option, but is quick to dismiss it. It is simply presumed that future mining will be longwall mining despite the fact that longwall mining generates most of the coal refuse that the Applicant now says requires a seventh and eighth disposal site. The Applicant does not adequately address the possibility of reducing the amount of coal refuse and thus reducing the number, size, and impact of the refuse disposal areas by using a different extraction method. It might be, for example, that the use of room and pillar extraction would eliminate the need for a site capable of operating for at least 10 years.

The Applicant's analysis of underground disposal is skewed from the outset by its assumption that a fast-moving longwall machine must be employed. First, the Applicant fails to truly analyze the alternative of room and pillar extraction, which creates long-lived void spaces and eliminates most of the logistical obstacles that the Applicant raises. The whole point of the requirement to analyze alternatives and adopt the most suitable one is that methods, including deviations from preferred practices, that might reduce impacts to aquatic resources must be seriously and thoroughly evaluated, not summarily tossed aside based on an implicit but unsubstantiated assertion that an alternative method is not a viable option. Accordingly, even if longwall mining is ultimately chosen, the Applicant must analyze the alternative of room and pillar mining with underground disposal. Moreover, the Applicant must do more than refer to vague and generalized risks like "increased flooding hazards" to demonstrate that room and pillar mining with underground disposal is unfeasible. In order for the Applicant to demonstrate that it has chosen the most suitable, least environmentally damaging alternative as required by 25 Pa. Code § 90.204(b)(3), it must present a thorough and site specific analysis of the potential option based on reliable data.

D. Neither the Department nor the Applicant adequately evaluated public benefits or the adverse environmental impacts during site selection.

The Department's review of the alternatives analysis is inadequate. It is clear that Section 90.202(b) is meant to be comprehensive in the sense that it requires an analysis of all potential adverse impacts. Specifically, the language of Section 90.202(b) requires that a permit applicant demonstrate that the public benefits clearly outweigh the adverse environmental impacts. Furthermore, a permit applicant must demonstrate to the Department that the proposed site is the most suitable based on environmental, economic, technical, transportation, and social factors. 25 Pa. Code § 90.204(b)(3). Examining all environmental impacts, public benefits, and public costs is the only way the Applicant can make such a demonstration and it is the only way for the Department to make the required determination that the public benefits outweigh adverse environmental impacts.

i. The Applicant's inventory of public benefits is misleading.

When balancing the public benefits against adverse environmental impacts, it appears that both the Applicant and the Department viewed this analysis through the lens of coal combustion. The Applicant started with the premise that coal refuse disposal cannot be viewed in isolation because it is an inherent part of the mining process and cannot be eliminated. The Applicant's Alternative Analysis and Site Selection Study states that it has "been prepared to document potential environmental impacts versus the public benefits of continues development of an existing energy resources and the prolongation of significant employment." Consol Pennsylvania Coal Company, LLC Bailey Central Mine Complex Alternatives Analysis and Site Selection Study for New Coal Refuse Disposal Areas No. 7 & No. 8, pg. 1.3. The Applicant emphasized that because coal is both domestically abundant and less expensive than other fields used to generate electricity, ensuring that coal continues to be a major component of America's energy portfolio is good public policy. The Applicant elaborated, stating that "coal is by far the least expensive source of power fuel per million Btu," that "fuel diversity helps protect consumers against the threat of supply disruptions or price volatility," and that "it is estimated that mining coal from the Bailey and Enlow Fork Mines generated 1,350 direct jobs and approximately 10,000 indirect jobs." *Id.* at iii. The Applicant concluded:

The public benefits associated with the development of a new coal refuse disposal area within Alternative 2 clearly outweigh the environmental impacts discussed in this report. The proposed new coal refuse disposal area represent a planned commitment by CPCC to continue operation of the Bailey and Enlow Fork Mines. The BCMC, including the Bailey and Enlow Fork mines, employees approximately 1,350 direct jobs at the mine, and average of 450 daily contractors, and many more indirect local employees. Through their employment, these workers contribute greatly to the economic health of the region. Operation of the Bailey and Enlow Fork Mines assured a continues and increased source of disposable income within the local community, which will bring about continued opportunities for growth in sales volumes, continued development, and the stability of local businesses...it is estimated that the BCMC operations provide approximately \$29 million annually in the form of federal, state and local income taxes, sales taxes, property and production taxes, and payroll taxes. Approximately \$9.0 million of this amount is for the state and local taxes.

Id. at 7.1 – 7.3. In short, when evaluating the public benefits, the Applicant viewed coal refuse disposal as one element of coal mining and energy production, which generates jobs and income for state and local government. However, the Applicant's evaluation is misleading.

First, the Applicant's account of public benefits fails to specify how many Greene County residents it employs at the Bailey Mine Central Complex. The Department must evaluate the public benefits to the community that will bear the full brunt of the adverse impacts. Moreover, these employment numbers are outdated. Given CPCC's numerous layoffs since the Alternatives Analysis and Site Selection Study was submitted, the number of employees at the

Bailey and Enlow Fork Mines has almost certainly decreased as well as the hours they work per week.

Second, the Applicant's account of the economic impact of the coal industry only presents coal's benefits. Accounting of both benefits and costs "is important particularly given coal's relatively small contribution to state revenues and employment, while the negative impacts resulting from coal industry activity will result in ongoing costs to the Commonwealth and its citizens." McIlmoil, Rory, Evan Hansen, Meghan Betcher, Anne Hereford, and Jason Clingerman, *The Impact of Coal on the Pennsylvania State Budget*, prepared for the Center for Coalfield Justice (October 3, 2012).

In 2012, the CCJ released a report entitled, *The Impact of Coal on the Pennsylvania State Budget* ("Report"). This Report found that the coal industry benefits the state budget through the payment of taxes and fees that contribute to the General Fund, either directly or indirectly. In Fiscal Year 2010-11, the coal industry provide an estimated \$10.9 million in revenues from the corporate net incomes, sales and use, and capital stock/foreign franchise taxes, while support activities for coal mining generated an additional \$15.6 million. Although these numbers look impressive on their face, it is crucial to put them into context. In total, contributions from the coal industry and support activities to the General Fund amounted to approximately 0.1% of the total state generated revenues for fiscal year 2010-11. *Id.* at 9.

The Report also analyzed state expenditures and concluded that when comparing only the on-budget expenditures to the direct revenues generated by the industry (not including support activities), it is estimated that the coal industry directly resulted in a net cost to the state budget of approximately \$5.7 million in fiscal year 2010-11. *Id.* In addition to on-budget expenditures, the Report accounted for tax expenditures. Tax expenditures are foregone revenues resulting from the provision of tax exemptions, credits, and reduced or preferential tax rates and have the same fiscal impact as direct on-budget government expenditures. They both result in a loss of tax revenue to state government, thereby reducing the funds available for other government programs and services. The report estimated that total tax expenditures provided to the coal industry amounted to \$161.9 million in Fiscal Year 2010-11. The largest expenditure is the sales and use tax exemption for the purchase of coal, which accounted for 72% of the total tax expenditure for supporting the coal industry. The tax expenditures directly supporting coal mining exceed the total direct revenue impact by approximately \$150.9 million. *Id.*

Finally, the Report examined employment revenues and expenditures from the coal industry. "A reported 8,268 Pennsylvania residents were directly employed in the coal industry in 2010. We estimate that total tax revenues related to direct employment in the coal industry amounted to \$39.4 million. However, state expenditures to support those employees amounted to approximately \$38.8 million. Therefore, we estimate that tax benefits for the state budget contributed by direct employees of the coal industry exceeded state expenditures for supporting those employees by approximately \$0.6 million." *Id.* Additionally, the Report examined indirect and induced impacts of the industry. The coal industry, like other industries, relies on other companies and generates economic activity and employment. For fiscal year 2010-11, the Report estimated that indirect employment attributable to coal industry activity amounted to 16,609 jobs and generated approximately \$64.4 million in state revenues. However, state expenditures to

support those employees amounted to approximately \$78.0 million. As a result, the Report concluded that that employment indirectly supported by the Pennsylvania coal industry resulted in a net cost of approximately \$13.6 million for fiscal year 2010-11. *Id.*

ii. The Applicant failed to account for all of the environmental impacts.

When identifying public benefits, the Applicant looked at the proposed coal refuse disposal activities in the context of coal mining more generally, counting all of the direct and indirect benefits to the public of coal mining and coal combustion associated with the coal refuse disposal. In contrast, when identifying adverse environmental impacts, the Applicant viewed the proposed coal refuse disposal activities in isolation, looking only at the disposal site.

In accounting for public benefits, the Applicant examined the entire process of coal mining and power generation in a cumulative manner. However, when it came to identifying the adverse environmental impacts, the Applicant's focus was much more narrow. Remarkably, the Applicant limited its analysis of adverse environmental impacts to the impacts of the proposed coal refuse disposal activities themselves. This is particularly troublesome given that the Applicant itself started with the basic premise that coal refuse disposal cannot be viewed in isolation. The Applicant made no attempt to account for the adverse environmental impacts of the underground mining, or coal combustion activities it had considered in identifying the public benefits associated with the coal refuse disposal sites. For example, it did not evaluate or even mention: impacts of mine subsidence on streams and other aquatic resources; air impacts resulting from the coal preparation, transportation, or combustion; or disposal of combustion wastes and the impacts of the construction and operation of coal combustion waste disposal sites.

The Department must deny the permit because the analysis of adverse impacts and public benefits is clearly inadequate. In order for the Department to fulfill its duty to balance the public benefits against the adverse environmental impacts, the scope of the activities considered on each side of the scale must be the same.

* * *

A final permit should not be issued until the Department performs an adequate assessment that takes into account site-specific conditions. The Department cannot simply adopt the Applicant's alternatives analysis and its conclusions without articulating a reasoned explanation for doing so. In order to perform an adequate assessment of the adverse environmental impacts, public benefits, and potential alternatives, Department must actually evaluate all of the relevant information and request any missing information from the Applicant.

4. Issuing the permit for proposed CRDA No. 8 without accounting for the impacts associated with proposed CRDA No. 7 would not only be imprudent, but also contrary to existing law.

The Department's regulation establishing the criteria for permit approval or denial, 25 Pa. Code § 86.37(c), prohibits the Department from issuing a permit "unless the application affirmatively demonstrates and the Department finds, in writing...that..."the assessment of the

probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance as described in § 87.69, § 88.49, § 89.36 or § 90.25 has been made by the Department and the activities proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.” 25 Pa. Code §86.37(a)(4). In order to adequately assess the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance, both the Applicant and the Department must, at the very least, account for the impacts associated with proposed CRDA No. 7.

A. The Department’s notice in the Pennsylvania Bulletin, the Applicant’s public notice in the Washington Observer Reporter, and CPCC’s recent application to revise its CRDA Nos. 1 & 2 permit make clear that CRDA Nos. 7 & 8 are not distinct projects

As explained above, the Department’s public notice of its receipt of the Application in the *Pennsylvania Bulletin* described the Application as seeking a permit to operation the Bailey Central Mine Complex Coal Refuse Disposal Areas No. 7 and No. 8. Section 86.31(c) requires the Department to provide public notice of every “complete application” for surface mining activity, which includes coal refuse disposal. 25 Pa. Code § 86.31(c). Moreover, the Applicant’s public notice in the *Washington Observer-Reporter* also stated that CPCC had submitted an application “to permit a permit a new coal combined coarse coal refuse facility and slurry impoundment and related NPDES outfall at the Bailey Coal Refuse Disposal Areas No. 7 and No. 8 Facility.”

Disregarding its duty to publically notice complete applications, the Department decided to notice the permit application for CRDA No. 7 in addition the permit application for CRDA No. 8 in the *Pennsylvania Bulletin*. See 25 Pa. Code § 86.31(c). It is unclear why the Department accepted the Applicant’s public notice, which also described the application as seeking a permit to construct and operate CRDA No. 7 and No. 8. It is even more unclear why the Department deemed the Application administratively complete without an application for CRDA No. 7 when it has decided to treat both CRDA No. 7 and CRDA No. 8 as one single project. Regardless, the Department’s public notice in the *Pennsylvania Bulletin* and the Applicant’s notice in the *Washington Observer Reporter* make clear that CRDA No. 7 and No. 8 are not two distinct projects. Therefore, the Department cannot issue the permit for CRDA No. 8 without accounting for the impacts associated with CRDA No. 7.

B. The Applicant’s Site Selection and Alternatives Analysis Study defines Alternative 2 as the combination of proposed CRDA Nos. 7 and 8. The Department cannot issue the permit in the absence of the requisite cumulative adverse impacts analysis and mitigation plan for Alternative 2.

The pending permit application contradicts the Applicant’s Alternatives Analysis and Site Selection Study. The Applicant could not have been more clear that Alternative 2 consisted of both Site 3a and Site 4: “Neither Site 3A nor Site 4 are standalone alternatives for a reasonable service life for CCR and FCR disposal. Only by combining site 3A and 4 can a reasonable service life for both CCR and FCR disposal be obtained, while averting foreseeable impacts to several more sites.” Alternatives Analysis and Site Selection Study at 7-1. Despite the fact that the Applicant was unwilling to consider each of these sites as distinct alternatives in its Alternative Analysis and Site Selection Study, it now wants to evaluate the impacts separately.

Even more alarming, it appears that the Department may be willing to issue the permits separately without requiring the Applicant to evaluate the collective hydrologic impacts of Alternative 2. The Department's regulations governing coal refuse disposal are designed to prevent such a result.

i. The Coal Refuse Disposal Control Act and associated regulations establish a two-step permitting process for coal refuse disposal activities.

According to the regulations, "The CRDCA and the proposed regulations establish a two-step process for the permitting of coal refuse disposal sites. The first step is a pre-application site selection process...with the goal of choosing the site that results in minimal adverse impacts. Following the Department's approval of the applicant's site selection, the applicant proceeds to the second step, which involves preparing and submitting a permit application for the selected site." 31 Pa.B. 3735; See Also 52 P.S. § 30.54a; 25 Pa. Code § 90.5.

The Applicant framed its entire site selection analysis, the first step in the permitting process, based on the combined capacity of CRDAs Nos. 7 and 8.² Since the Applicant's Alternatives Analysis and Site Selection Study defined the preferred Alternative 2 as sites 3a *and* 4, and the Department accepted Alternative 2 as defined, the Applicant and the Department cannot treat these sites as distinct alternatives in the second step of the permitting process. The site selection process is a mandatory first step and the Application must be based on the approved alternative. Therefore, the Department is prohibited from issuing a permit for CRDA No. 8 without fully considering the impacts of proposed CRDA No. 7. This necessarily requires more than the cursory review of impacts provided in the Alternatives Analysis and Site Selection Study.

ii. The Applicant and the Department are required to address the probable hydrologic consequences of the proposed coal refuse disposal activities on the proposed permit area and adjacent area. CRDA No. 7 is not only proposed by the Applicant in its Alternatives Analysis and Site Selection Study, it is also adjacent to CRDA No. 8.

Surface mining laws make adherence to water quality concerns integral to the permitting process. SMCRA requires that each permit application "include a description of the existing, pre-mining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted" by the proposed activities. 30 C.F.R. § 779.11. In their permit application operators must determine the "probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and groundwater...for the proposed permit and adjacent areas." 30 C.F.R. § 780.21(f)(1). The regulatory authority must then "provide an assessment of the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area" to determine "whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area." 30 C.F.R. § 780.21(g)(1).

² The Applicant's alternatives analysis concludes: "Alternative 2, consisting of sites 3A and 4, is the new disposal area recommended for development. This new disposal area will provide over 15 years of disposal capacity at the currently projected waste generation rates."

Pennsylvania coal mining regulations require the Department to evaluate potential cumulative impacts of proposed refuse disposal sites in combination with mines and other facilities in affected watersheds. Section 86.37(a)(4) requires a cumulative hydrological impact assessment. Section 86.37(a)(4) provides:

“permit application will not be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information in the application or form information otherwise available, which is documented in the approval, and made available to the applicant, that...the assessment of the probable cumulative impacts of all anticipated coal mining in the general area in the hydrologic balance as described in...§ 90.35...has been made by the Department, and the activities proposed under the application have been designed to prevent material damage to the hydrologic balance outside of the proposed permit area.

25 Pa. Code § 86.37(a)(4); 63 Fed. Reg. 19801, 19817 (col. 3) (April 22, 1998). OSM has made it clear that Section 90.35(c), concerning coal refuse disposal and protection of the hydrologic balance, “provides that an application must contain a determination of the probable hydrologic consequences of the proposed coal refuse disposal activities on the proposed permit area and adjacent area.” 25 Pa. Code § 90.35(c); 63 Fed. Reg. 19801, 19817 (col. 3) (April 22, 1998). In this case, there is no question that the analysis of the probable cumulative impacts of the proposed coal refuse disposal activity must, at an absolute minimum, include the impacts anticipated and associated with proposed CRDA No. 7. 25 Pa Code § 86.37(a)(4); 25 Pa. Code § 90.35; 63 Fed. Reg. 19801, 1917 (col. 3) (April 22, 1998).

First, since the CRDCA and the associated regulations create a two-step permitting process where the application is dependent upon the pre-application site selection and proposed CRDA No. 7 was explicitly included in the preferred Alternative 2, proposed CRDA No. 7 is part of the “proposed coal refuse disposal activities”. *Id.* Furthermore, because the Applicant included the disposal area for proposed CRDA No. 7 in the prerequisite Alternatives Analysis and Site Selection Study and the Department approved Alternative 2 as including both sites, CRDA No. 7 is part of the “proposed permit area.” *Id.*

Second, even if the Department decided not to treat proposed CRDA No. 7 as part of the proposed permit area; the required cumulative impacts analysis does not change. Section 90.35(c) requires the Applicant to submit “a determination of the probable hydrologic consequences of the proposed coal refuse disposal activities on the proposed permit area and adjacent area.” 25 Pa. Code § 90.35(c) (emphasis added); 63 Fed. Reg. 19801, 1917 (col. 3) (April 22, 1998). The regulations define the term adjacent area as “land located outside the permit area, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by this chapter may be adversely impacted by coal refuse disposal activities.” 25 Pa. Code § 90.1. Here, the Applicant is proposing to impact the area adjacent to proposed CRDA No. 8 by constructing CRDA No. 7. Furthermore, the Applicant defines Alternative 2 as “adjoining valleys designated as Sites 3A and 4 at the northeast end of the search area.” Alternatives Analysis and Site Selection Study at 5-6. “Adjacent means that objects or parcels of

land are not widely separated, though perhaps they are not actually touching; but adjoining means that they are untied so closely that no other object comes between them.” *See* West’s Encyclopedia of American Law, edition 2 (2008). Since the two sites proposed for CRDA Nos. 7 and 8 are adjoining, there is no question that they are adjacent. As a result, the Department must comply with its mandatory duty to evaluate the cumulative hydrologic impacts of CRDA No. 7 in its review of the Application for proposed CRDA No. 8. It cannot possibly complete this evaluation based on the current Application since it does not contain any information about the hydrologic impacts of constructing and operating CRDA No. 7. The current application does not even contain the proposed coal refuse disposal acres and coal refuse disposal support acres for CRDA No. 7.

* * *

The Department cannot issue a permit for CRDA No. 8 without first considering the impacts of CRDA No. 7. Since the Application does not contain any substantive information regarding CRDA No. 7, it appears the Applicant has not even attempted to submit an adequate cumulative impacts analysis as required by 25 Pa. Code § 90.35(c). The Department must fulfill its non-discretionary duty to evaluate the probable cumulative hydrologic impacts of the proposed coal refuse disposal activities on the proposed permit area and the adjacent area. 25 Pa. Code §§ 90.35(c); 25 Pa. Code § 86.37(a). The Permit cannot be issued unless the requirements of 25 Pa. Code § 90.35(c) and 25 Pa. Code § 86.37(a) are met.

5. A finding by US Fish And Wildlife Service that coal refuse disposal activities at the site would adversely affect a federally listed endangered or threatened species, including the Indiana bat and the Northern Long Eared Bat, precludes the Department from issuing a permit for CRDA Nos. 7 & 8.

The U.S. Fish and Wildlife Service (USFWS) has not concurred that the coal refuse disposal activities proposed by the Applicant are not likely to adversely affect federally listed threatened or endangered species. In approving Section 4.1(b) of the Coal Refuse Disposal Act, 52 P.S. § 30.54a(b), OSM made clear that the phrase “would not affect the continued existence of” in 25 Pa. Code § 86.37(a)(15), must be interpreted to mean “that no mining activity may be permitted by the State which may affect threatened or endangered species unless the USFWS concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the “take” of a Federally listed threatened or endangered species in violation of Section 9 of the Endangered Species Act.” 63 Fed. Reg. 19802, 19805 (April 22, 1998). Moreover, the Department’s Coal Refuse Disposal Program Guidance echoes OSM’s approval with respect to the intended implementation of Section 4.1(b) related to threatened or endangered species.³

³ The Department’s guidance document explains that with respect to preferred sites, Pennsylvania’s regulations provide that the Department will not approve, via the site selection process, *See* 25 Pa. Code § 90.202(e)(7) or permit a site that is known or likely to contain Federally listed threatened or endangered species, unless the Department concludes and the USFWS concurs that the proposed activities is not likely to adversely affect Federally listed threatened or endangered species.

In a letter dated August 6, 2015, the USFWS concluded the proposed project is likely to affect Indiana Bat and Northern Long-eared Bat. Specifically, USFWS states in part:

Based on the information submitted, suitable Indiana bat and Northern Long-Eared bat summer habitat occurs in the project area, and this habitat will be affected by mining activities. Tree-cutting and land-clearing in the project area will result in the *permanent or long-term loss of habitat for Indiana bats and Northern Long-Eared bats associated with the maternity colonies. Habitat loss is not limited to this particular project; however, past, current, and future mining activities are expected to further reduce habitat, resulting in cumulative effects on this species.* Because Indiana bats exhibit a high degree of fidelity to their summer habitat, access to this habitat is particularly important for bats upon their return to summer habitat after the long winter hibernating period. Any Indiana bats or Northern Long-Eared bats that currently forage or roost in the project area will have to shift to nearby forest areas, potentially increasing competition or displacing other resident bats. Bats that lose roost trees, roosting areas, or foraging habitat may experience a reduction in fitness sufficient to compromise their survival or reduce their reproductive potential.

Letter from Lora L. Zimmerman, Field Office Supervisor USFWS, to Jaculyn Duke dated August 6, 2015, pg. 2. (emphasis added).

In order to ensure that Federally listed species are not likely to be adversely affected by the proposed activities, the Department must receive concurrence from the USFWS. In this case, far from satisfying this requirement, the USFWS has expressly found that the proposed coal refuse disposal activities would adversely affect a federally listed endangered species, the Indiana Bat, and a federally listed threatened species, the Northern Long-eared Bat. As a result, the Department may not issue a permit for CRDA Nos. 7 & 8.

6. The Application fails to demonstrate that the adverse environmental impacts are clearly outweighed by the public benefits.

The decision to issue permit is based on an evaluation of the probable impacts including cumulative impacts of the proposed activity and its intended use on the public interest. *See* 25 Pa. Code §§ 90.35(c), 90.101(a) 90.202(a); 25 Pa. Code § 86.37(a). The Department will not approve a site proposed by the applicant for coal refuse disposal if the Department finds that the adverse environment impacts clearly outweigh the public benefits. 25 Pa. Code § 90.202(d). This

evaluation necessarily requires a general balancing process in which the benefits that reasonably may be expected to accrue from the proposal are balanced against reasonably foreseeable detriments. There are many factors that may be relevant to the Department's balancing analysis including, but not limited to, conservation, economics, environmental concerns, fish and wildlife, land use, recreation, water quality, energy needs, and the general welfare of the people. The Department must deny the permit because the Applicant has failed to demonstrate that the adverse impacts are clearly outweighed by the public benefit. The Applicant's cost-benefit analysis is unlawfully inadequate because it ignores the intended purpose of the proposed activity and the analysis of adverse impacts is insufficient.

A. The Department must consider the intended purpose of the proposed activity in its evaluation.

A critical step in this review is considering the proposed activity and its intended use. With respect to this Application, the proposed activity is disposal of coal refuse. More specifically, the Applicant is seeking authorization for the discharge of fill into waters of the United States. There are various intended uses of those fills, the most prominent being coal refuse disposal, but as a general matter, the fills will be used in the construction of infrastructure related to the extraction, processing, or transportation of coal and the disposal of coal refuse.

Unlike, for example, transportation structures, the filling activity itself provides no benefit and serves no independent purpose, but instead enables something else to happen that provides the benefit. When coal refuse is dumped into a valley, wetlands, and streams to get rid of it, the disposal has the effect of creating dry land, although that is not the purpose. Here, the overarching needs to be served are a need for electricity and a need to meet the existing and future demands of manufacturing industries. In other words, the purpose of the Bailey and Enlow Fork Mines is to extract coal for fuel, and the only need for the facilities and fills at issue, is to enable the extracted coal to be burned. But, unless coupled with coal combustion, the disposal of coal refuse in valley fills is purely detrimental.

The Applicant's cost benefit analysis is limited to direct and indirect income, employment, and energy needs associated with the operation of the Bailey Mine Complex. Although the Application refers to the need for coal in power generation and emphasizes that the operation of the Bailey Mine Complex creates jobs, the Applicant offers no rigorous quantification of the disposal of coal waste in valley fills. Moreover, far from quantifying or analyzing the detriments of coal waste disposal, the Applicant completely ignores the overall adverse impacts of the extraction, processing, transporting of coal and disposal of coal refuse.

B. In terms of aquatic resources, the extraction of coal and disposal of coal refuse is likely a net detriment.

Longwall mining is conducted through the use of large machines that extract nearly all of the coal within a rectangular area known as a "panel" without leaving pillars to support the mine roof. As the mining machine moves through the panel, the mine roof collapses behind the machine causing subsidence of the surface overlaying the panel, and often results in loss or damage to natural water resources. "The longwall method of mining is generally favored by the

industry because it results in an extremely high recovery rate at a relatively low cost. It also requires fewer employees than the room-and-pillar method and is considered to be relatively safer...however, the major drawback to the longwall method is that as practiced today, it causes subsidence of the surface.” *UMCO Energy, Inc. v. Dep’t of Env’tl. Prot.*, 938 A.2d 530, 532 (2007).

The Department has determined that the Applicant’s mining activities have resulted in permanent stream loss. In a letter dated December 27, 2012, the Department determined that “the underground mining operations of Consol’s Bailey Mine adversely affected the hydrologic balance of UT-32596 and although Consol has completed all the remediation efforts required by the September 19, 2007 COA and the Amendment of April 24, 2008, UT-32596 has not been restored to conditions that existed prior to undermining.” Furthermore, the Department determined that “any additional remediation activities on UT-32596 would be futile.”

The Applicant now proposes to permanently affect 83,822 linear feet of stream, including headwater streams, 1.628 acres of open water, and 23.242 acres of wetland. The impacts to wildlife and habitat that would occur as a result of the direct loss of vital headwater streams are unacceptable. Headwater streams perform essential functions including: providing wildlife habitat, movement of water and sediments, and transformation of organic matter such as leaves, into nutrients and energy needed by wildlife throughout the aquatic ecosystem. Headwater streams not only provide habitat for full-time resident wildlife, but also serve as refuge and spawning grounds for aquatic life. The effects on wildlife and the aquatic ecosystem would be immense in scale and lead to irreversible alterations of impacted watersheds.

C. The Application fails to adequately address adverse impacts on the water quality, aquatic ecosystems, and uses of downstream waters.

Once filled, streams are completely destroyed and those streams remaining below the filled in area are impacted significantly. *See* Palmer & Bernhardt (2009). The Applicant must determine the effects of the proposed activities on the aquatic ecosystems, including the secondary effects. *See* 25 Pa. Code § 93.4a(b). Pennsylvania’s Water Quality Standards require that existing in-stream water uses and the level of water quality necessary to support the existing use be maintained and protected. *Id.* Aquatic life is a surface water use and is therefore protected under the Pennsylvania’s water quality standards. Furthermore, the Applicant proposes to use coal refuse in the construction of dams. As a result, the Applicant must demonstrate that the “use of the waste material may not have a detrimental effect on downstream water quality or the environment.” 25 Pa. Code § 90.113(b).

The Application fails to adequately evaluate adverse impacts on the water quality, aquatic ecosystems, and the uses of downstream waters in Greene County. The EPA has repeatedly acknowledged the deleterious impacts of valley fill operations on water quality and the aquatic ecosystems of downstream waters. In the March 2011 final report, *The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems Of The Central Appalachian Coalfields*, EPA emphasizes the magnitude and longevity the elevated concentrations of dissolved solids in discharges from valley fills and highlights the adverse impacts of increased total dissolved solids, conductivity, and ionic stress downstream from valley fills. In 2008, an EPA scientist published a study finding that 93% of streams below valley fills are biologically impaired, compared with

0% of streams surveyed in un-mined watersheds. Pond, G.J., M.E. Passmore, F.A. Borsuk, L. Reynolds, and C.J. Rose. *Downstream effects of mountaintop coal mining: comparing biological conditions using family and genus-level macroinvertebrate bioassessment tools*. Journal of the North American Benthological Society (2008). In a 2010 comment letter concerning a proposed valley fill operation, EPA's Region 3 office stated that "the best scientific information available to EPA, including published, peer-reviewed studies, indicated that surface coal mining activities like those proposed by the applicant are strongly related to downstream biological impairment." Letter dated December 7, 2010 from Shawn Garvin, Regional Administrator, EPA Region 3, to Andrew W. Backus, USACE Norfolk District. In the face of growing scientific evidence regarding the adverse impacts of valley fills, the Applicant provides very little discussion of potential water quality impacts to downstream waters.

First, The Applicant concludes that the facilities are not expected to impact area water quality or uses because the facility design includes Best Management Practices ("BMPs"). However, the Applicant does not demonstrate that these measures will completely prevent contaminated drainage, and does not estimate the volume or quality of drainage that might be discharged from the disposal area.

Second, the Applicant's analysis of how the loss of essential ecosystem functions formerly performed by the headwater streams to be filled might affect the overall aquatic ecosystem, and specifically the aquatic biological community in downstream waters is summary and inadequate. The Application states: "the project may affect the aquatic community and certain aquatic functions (e.g., food chain export) in Tributary 32753; however, it is not anticipated that these alterations will negatively impact the aquatic community in a regional context." Application at Module 8.

Third and finally, as to impact on aquatic life uses, the Applicant asserts that: "the proposed stream impacts are not expected to have a significant impact on fisheries in Boothe Run due to the lack of fish that were collected at any of the biological sampling stations in this watershed." *Id.* This is flawed reasoning. The question is whether or not the proposed activity will impair a designated or existing use. The impacted streams have a designated use of Warm Water Fishes. Whether or not this designated use is currently being attained is irrelevant. Designated uses are specified in the Chapter 93 regulations for each water body, whether or not they are currently being met. 25 Pa. Code § 93.1. Thus, since the streams have a designated aquatic life use of Warm Water Fishes, the stream must be protected so that it provides suitable habitat for survival and reproduction of warm water fishes and other aquatic organisms.

* * *

The Department cannot issue the permit because the Applicant has failed to demonstrate that the benefits outweigh the adverse environmental impacts in Greene County. In a pre-combustion context, the aspects that the Applicant touts as benefits also represent a public loss. If, instead, the Applicant and the Department consider the entire process from extraction through combustion, it must take a hard look at the overall detriments and specifically, the localized detriments on Greene County.

Furthermore, with respect to the analysis of impacts on downstream aquatic resources, the Department must require the Applicant to present a thorough analysis of the impacts on downstream waters that will result from the filling of headwater streams with coal refuse. It is impossible to comment on the substance of the missing analysis. As a result, to afford CCJ and the public generally of a meaningful opportunity to comment on those important dimensions at a meaningful time, the Department must provide a second public comment period when the Applicant submits all the relevant information.

7. The cumulative hydrologic impacts analysis is unlawfully inadequate.

The Department's regulation establishing the criteria for permit approval or denial, 25 Pa. Code § 86.37, prohibits the Department from issuing a mining permit "unless the application affirmatively demonstrates and the Department finds that "the assessment of the probable and cumulative impacts of all anticipated coal mining in the general area on the hydrological balance as described in § 87.69, § 88.49, § 89.36 or § 90.35 has been made by the Department, and the activities proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area." 25 Pa. Code § 86.37(a)(4). The Application contains numerous deficiencies concerning the required cumulative hydrologic impacts analysis.

A. The Applicant's analysis of probable cumulative impacts is deficient because it does not take into account all relevant hydrologic impacts.

As noted above, the Application fails to address adverse impacts from all of the underground mining and coal refuse disposal activities associated with the Bailey and Enlow Fork Mines. The Department's regulations require the Applicant to address the probable cumulative impacts of all anticipated coal mining in the general area on the hydrological balance. 25 Pa Code § 86.37(a)(4). This necessarily requires the Applicant to go far beyond the impacts of the Bailey Mine Coal Refuse Disposal Area No 8.

The analysis must include, at a minimum, the impacts of: existing CRDAs Nos. 1-6 and all of the impacts associated with them; the existing and future impacts of the underground longwall mining operations in the Bailey and Enlow Fork Mines; any additional CRDAs that the Applicant will have to site, permit and construct in order to provide further coal refuse disposal capacity needed for the Bailey Mine and Enlow Fork Mine; and all of the impacts associated with the construction, operation, maintenance, and restoration of CRDA Nos. 7 & 8.

All of these mining operations are unquestionably anticipated and associated with the current permit Application. However, the Application fails to include any figures for future CRDA applications, including specific figures for CRDA No. 7, in its calculation of stream impacts. The permitting of CRDA No. 7 is undoubtedly a connected action because the Applicant framed its entire site selection analysis based on the capacity of CRDAs Nos. 7 and 8. Furthermore, the Application totally ignores the foreseen and inevitable impacts on streams from future mining. The permitting of the Bailey Mine East Expansions and Harvey Mine are clearly connected because without such extraction there would presumably be no need for additional waste disposal areas. The inevitable impacts, including the ecosystem impacts of eliminating

more streams and their functions and services, must be evaluated and accounted for at this time. Additionally, the mitigation for those impacts should be planned and approved now.

B. There is no determination of the probable hydrologic consequences of the proposed coal refuse disposal activities on the proposed permit area and adjacent area.

An application for Coal Refuse Disposal Activities must contain “a determination of the probable hydrologic consequences of the proposed coal refuse disposal activities on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and groundwater systems under all seasonal conditions, including total dissolved solids, total suspended solids, total iron, pH, total manganese, acidity, alkalinity, sulfates and other parameters required by the Department.” 25 Pa. Code § 90.35(c). Neither the Hydrology module, nor the alternatives analysis, nor the NPDES module adequately addresses the probable hydrologic consequences of the proposed coal refuse disposal activities on the proposed permit area and adjacent area.

The Applicant has done almost nothing to predict the probable hydrologic consequences of the proposed coal refuse activities, nor has it evaluated the hydrologic regime and the quantity and quality of water in the surface and groundwater systems under all seasonal conditions. The Applicant’s discussion of groundwater seasonal fluctuations is totally inadequate. In Module 8 § 8.1(b) the Applicant states: “Seasonal fluctuations in the groundwater flow systems are dependent upon the amount of infiltration from precipitations with more of the recharge occurring between late fall and early spring. Groundwater fluctuations are influenced by sustained periods of precipitation events and/or prolonged drought. Fluctuations of groundwater may also be dependent to a large degree on topography.” The Department’s regulations and application instructions clearly require the Applicant to do more than recite basic hydrology principals.

The Department must require the Applicant to provide an adequate determination of probable hydrologic consequences and the significantly revised Module 8 should be made available again for public review and comment.

C. There is no description of possible alteration in the site development plan or method of disposal in response to adverse impacts on hydrologic balance.

To ensure protection of the hydrologic balance, an application for Coal Refuse Disposal Activities must include a plan that contains “a description of possible alteration in the site development plan or method of disposal, in response to adverse impacts on the hydrologic balance as indicated by the groundwater monitoring system.” 25 Pa. Code § 90.35(d). This required plan is completely absent from the Application.

In Module 8 at § 8.14, the Applicant is required to provide a narrative description that addresses potential groundwater contamination resulting from treatment pond leakage or infiltration of water that has come into contact with coal refuse or coal ash. The Applicant’s narrative description simply describes the measures it plans on taking during the initial construction of the sediment pond, slurry impoundment and coarse refuse disposal areas, but

does not include any plan for responding to adverse impacts on the hydrologic balance as indicated by groundwater monitoring. Similarly, in Module 8 at § 8.15 the Applicant is required to provide a narrative description of how the proposed monitoring points relate the detection and mitigation of impacts. However, the Applicant's description falls short because it only addresses how the monitoring points relate to the detection of impacts but does not describe how the monitoring point relate to the mitigation of impacts.

The Application must be revised to include a description of possible alteration in the site development plan or method of disposal in response to adverse impacts on hydrologic balance if detected by the groundwater monitoring system.

* * *

The hydrologic impacts analysis must be entirely revised or the Application should be denied. First, the Applicant's discussion of cumulative impacts, which is limited to the impacts of Coal Refuse Disposal Area No. 8, must be expanded to include all direct and indirect impacts resulting from past activities, currently proposed activities, and foreseeable impacts from future mining activities. The analysis of cumulative impacts is a central component of the Department's evaluation of the permit Application. 25 Pa. Code § 86.37(a)(4). Therefore, the Department should issue the necessary deficiency letters and the public should be given the opportunity to review and comment on the cumulative impacts analysis that will actually inform the basis for the Department's permitting decision. Second, the Application does contain the required determination of the probable hydrologic consequences of the proposed coal refuse disposal activities on the proposed permit area and adjacent area. Finally, a plan for possible alternation in site development or method of disposal in response to adverse impacts on hydrologic balance is completely absent from the Application. Due to the scope and significance of the necessary revisions, the Department should open the revised application to a new public comment period should the Applicant decide to make revisions.

8. The Department may not issue a permit for a sedimentation pond until it issues a permit for the source of the sediment to be controlled, CRDA Nos. 7 & 8.

A statute titled "Coal Refuse Disposal Control Act" does not contemplate an application that does not actually seek authorization to dispose of coal refuse. *See e.g.*, 52 P.S. §§ 30.55(e) (application shall set forth the manner in which operation will achieve final contour of coal refuse disposal area that is compatible with surrounding area); 30.55(j) ("Permit application shall specify how the coal refuse disposal area will be maintained."); 30.55(k) ("Permit Applications shall specify how the operation shall provide for stability within the meaning of this act."); 30.53(12) (defining stability). To the extent that the Department is considering issuing a permit for a sedimentation pond without authorizing coal refuse disposal, it cannot do so under the Coal Refuse Disposal Control Act.

Practically speaking, what would happen if after CPCC constructed the proposed sedimentation pond or the conveyors and access roads the Department is currently reviewing as a revision to CPCC's Permit for CRDA Nos. 1 and 2, the Department decided not to issue a permit for CRDA Nos. 7 and 8? This is certainly not an unreasonable question since 25 Pa. Code §

90.207 makes clear that the Department's approval of site selection does not indicate that the Department will approve a permit for the site. In this scenario, the Department would have permitted unnecessary land clearing and adverse modifications for the waters of the Commonwealth for no reason at all.

Although the installation of erosion and sedimentation controls must precede the construction of the coal refuse disposal area, *see* 25 Pa. Code § 90.108(b), it is quite odd for a sedimentation pond or conveyor system to be permitted separately from the coal refuse disposal area it would be designed to serve, especially under the Coal Refuse Disposal Control Act. Ordinarily, erosion and sedimentation control measures would just be one part of the permitted activity, and even if for some reason the sedimentation pond were permitted by a different Department bureau, it should be permitted at the same time the Bureau of Mining and Reclamation issues the refuse disposal permit. *See* Policy for Permit Coordination, PADEP Document ID No. 400-2000-301, at 5-6 (January 14, 2006).

Moreover, the Department's Dam Safety and Waterway Management regulations, 25 Pa. Code Chapter 105, prevent the Department from authorizing adverse impacts to waters of the Commonwealth without authorizing the very activity the sediment pond is designed to serve. The regulations governing Dam Safety and Waterway Management declare that "[i]n reviewing a permit application, it will be the policy of the Department to encourage activities that protect the natural condition of the water sources or other body of water." 25 Pa. Code § 105.16(d). To achieve this policy, the regulations require the applicant to first attempt to avoid any adverse impact on water resources. If adverse impact cannot be avoided, then the applicant must minimize the adverse impact and compensate for any unavoidable impact. *See* 25 Pa. Code §§ 105.1 (defining mitigation); 105.13(d)(1)(viii) (alternatives analysis); 105.13(d)(1)(ix) (mitigation plan); 105.16(a). In order to demonstrate that adverse impacts on water resources are unavoidably necessary, the applicant must prove that there is a current need for the project in that particular location. Chapter 105 prevents the Department from permitting adverse impacts based on CPCC's hope that it will receive a permit for coal refuse disposal in the future. Unless CPCC can demonstrate a present and specific need, it cannot show that the proposed impacts on water resources are unavoidable, and unless the applicant can show that the adverse impacts are unavoidable, it cannot get a water obstruction and encroachment permit, even if it is willing to compensate for all of the adverse impacts.

CPCC's unusual segmenting of its Application puts itself in an impossible situation. In order to demonstrate that the sediment pond and associated adverse impacts are necessary and unavoidable, CPCC must show that CRDA Nos. 7 & 8 will be constructed in the proposed location and in a way that makes the proposed siting of the sedimentation pond appropriate. 25 Pa. Code § 90.108(b) (requiring that sedimentation ponds be "located as near as possible to the area to be disturbed.") In order to make that showing, CPCC must prove Department will definitely issue a future permit for the CRDA Nos. 7 and 8 in the proposed locations. It is obviously unlawful for the Department to make such an advance determination to issue a permit.

9. The Department cannot issue a permit for CRDA Nos. 7 and 8 because of the Applicant's ongoing violations and history of unlawful conduct at CRDA Nos. 3, & 4 and CRDA No. 5.

Under Section 609 of the Clean Streams Law, the Department may not issue a permit to anyone who has failed and continues to fail to comply with any provisions of law which are in any way connected with or related to the regulations of mining, 35 P.S. § 691.609(1), or who “has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations.” *Id.* § 691.609(2). Moreover, the Coal Refuse Disposal Control Act requires that “[a]ll new coal refuse disposal areas include a system to prevent adverse impacts to surface and ground water and to prevent precipitation from contacting the coal refuse.” 52 P.S. § 30.56a(i). *See also* 25 Pa. Code § 90.50. Unfortunately, the system used at CRDA Nos. 3 & 4 and CRDA No. 5, has failed to prevent contamination of both surface water and groundwater in the vicinity of those facilities.

As noted by the Department in a letter dated April 23, 2015, leakage through the CRDA No. 5 GCL is approximately three or more times the rates reported by the Applicant’s consultants.⁴ The Department explained:

The flow rate reported for January 28, 2015 is 600 gallons per minute. The introduction of fine coal refuse slurry to the CRDA No. 5 impoundment resulted in an abrupt three to six-fold flow rate increase and a 10-fold increase in sulfate concentration in underdrain SP-01. *The significant increase in flow rate and contaminant concentration level that occurred in the CRDA No. 5 underdrain is a direct result of leakage from the geosynthetic lines refuse area impoundment.* Therefore, a GCL is not acceptable for use in the CRDA No. 7 or No. 8 slurry impoundments. Liners must be designed to prevent adverse impacts to groundwater and surface water in accordance with § 90.50.

(emphasis added).⁵ Unfortunately, this is not the first time CPCC’s liner system has failed. While permitting CRDA No. 5 & 6, the Department insisted that the Applicant adopt a different liner system than the one used in CRDA Nos. 3 & 4 because of groundwater contamination. The Department should not allow CPCC to rely on the same or even substantially similar “groundwater and surface water protection system” that has failed at CRDA Nos. 3 & 4 and CRDA No. 5. *See* 25 Pa. Code § 90.50.

However, taking action to prevent CPCC from repeating its liner system mistakes at CRDA Nos. 3 & 4 and CRDA No. 5 is only part of what is required. In addition, the Department must address the groundwater contamination that is already occurring at CRDA Nos. 3 & 4 and

⁴ Neither Module 14 of CPCC’s Application nor the reports referenced in the Department’s April 23, 2015 letter were made available to CCJ prior to the comment deadline despite the fact that CCJ performed three file reviews.

⁵ To the best of CCJ’s knowledge, the Applicant has not yet proposed an acceptable plan to prevent adverse impacts to groundwater and surface water as required by 25 Pa. Code § 90.50. Without being able to review the Applicant’s plan, the public is deprived of the opportunity to provide meaningful input to the Department.

CRDA No. 5 by requiring the Applicant to evaluate and remediate that pollution, and must withhold any additional permits until the Applicant completes the necessary remediation activities. The coal refuse disposal regulations make clear that the Department has the authority to “require additional preventive, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented.” 25 Pa. Code § 90.101(a). Protection of the hydrologic balance outside the permit area is an enforceable performance standard. The violations of this performance standard at CRDA Nos. 3 & 4 and CRDA No. 5 constitutes an unresolved unlawful conduct as defined in the Clean Streams Law, 35 P.S. § 691.11, and the Coal Refuse Disposal Control Act, 52 P.S. § 30.57. Moreover, regardless of the location, the groundwater contamination at CRDA Nos. 3 & 4 and CRDA No. 5 constitutes pollution as refined in the Clean Streams Law. 35 P.S. § 691.1.

Until CPCC resolves its ongoing violations at CRDA Nos. 3 & 4 and CRDA No. 5, by determining the extent, severity, and impacts of the failure of its liner systems and resulting groundwater contamination, and then taking the necessary steps to remediate that contamination and prevent future contamination, the Department cannot issue a permit for CRDA Nos. 7 and 8. *See* 35 P.S. § 609(1), (2); 52 P.S. § 30.54(b)(1), (2); 25 Pa. Code §§ 90.50, 90.101(a).

10. The Department must notice for public comment a draft NPDES permit.

Pennsylvania’s NPDES program requires public notice of every complete application for a NPDES permit and draft NPDES permit be published in the *Pennsylvania Bulletin*. 25 Pa. Code §§ 92a.82(a), (b). Additionally, the Department must publish “a tentative determination to issue or deny an NPDES permit for the discharge described in the application.” 25 Pa. Code § 92a.82(b)(3). If the Department makes a tentative determination to issue a NPDES permit, it must publically notice “proposed effluent limitations for those effluents proposed to be limited, a proposed schedule of compliance including interim dates and requirements for meeting the proposed effluent limitations and a brief description of any proposed special conditions that will have a significant impact upon the discharge described in then application.” *Id.* This tentative determination must be organized into a draft NPDES permit. 25 Pa. Code § 92a.82(b). *See also* 40 C.F.R. § 124.6.

The Department has not produced a draft NPDES permit for the proposed discharge from the sedimentation pond. Without an actual draft NPDES permit and proposed effluent limitations to evaluate, the public has no idea whether the Department plans to impose any water quality-based effluent limitations to protect the waters downstream of the proposed outfall from CRDA No. 8, what those specific effluent limitations are, or how they were determined by the Department. Without being able to review a draft permit containing the proposed effluent limitations and permit conditions, the public is deprived of the opportunity to provide meaningful input to the Department about the contents of the NPDES permit for this enormous disposal facility and the impacts to downstream waters.

The public clearly cannot provide meaningful comments on a draft NPDES permit and proposed effluent limits that do not exist. In order to comply with the public notice requirements of the NPDES regulations and the minimum requirements of due process, the Department must fulfill its obligation to make a tentative determination and, if the Department tentatively determines to issue the NPDES permit, prepare a draft NPDES permit. After providing public

notice of the availability of the NDPES application and draft NPDES permit, the Department must give the public at least 30 days to comment on the draft NDPES permit and to request a public hearing. 25 Pa. Code § 92a.82.

11. The Applicant's mitigation plan is inadequate because it does not ensure that the functions and value of aquatic resources affected by the Direct loss of 83,822 linear feet of stream, 1.628 acres of open water, and 23.242 acres of wetland will be replaced, and it does not account for the cumulative hydrologic impacts resulting from underground mining and all coal refuse disposal operations at the Bailey Central Mine Complex.

The Applicant's mitigation plan for the impacts associated with CRDA No. 7 & 8 is deficient because it does not consider the cumulative impacts associated with all existing and planned underground mining and disposal activities. Moreover, the Applicant's mitigation plan does not identify any opportunities for wetland or stream mitigation within the impacted watershed that will replace the lost functions of the destroyed wetlands and streams, including headwater streams. As pointed out by the Pennsylvania Fish and Boat Commission in a letter dated January 10, 2014, the mitigation banking company that the Applicant proposes to use "has not developed any approved mitigation area of the impacts associated with this proposed CRDA." Similarly, in a deficiency letter dated January 15, 2014, the Department asked the Applicant to provide a "comprehensive stream and wetland mitigation plan to offset the function and values of streams and wetlands anticipated to be affected by the construction of the proposed coal refuse disposal area." While CCJ appreciates the Department's efforts to address this deficiency, the Applicant's mitigation plan is still inadequate.

First, based on the information provided in the Application, CPCC proposes to purchase credits from the Robinson Fork Mitigation Bank, the Enlow Fork Mitigation Bank, and potentially the North Brank Pigeon Mitigation Bank. To the best of CCJ's knowledge, these banks have not been permitted, approved for use, or built. Additionally, these mitigation banks represent additional impacts to forested habitat in the same general area. The USFWS advised the Department that it is currently in a formal Section 7 consultation under the Endangered Species Act with the Army Corps to determine the effects of the Robinson Fork Mitigation Bank on the federally listed, endangered Indiana Bat and the federally threatened Northern Long-eared Bat.

Second, as the USFWS explained in its April 3, 2015 letter to the Army Corps, the mitigation site for CRDA Nos. 5 and 6 may be near the proposed project area. If this area would be altered by the proposed coal refuse disposal activities, CPCC "will also be responsible for providing compensation to offset impacts to the existing mitigation site for CRDA Nos. 5 and 6."

Third, the Applicant's Alternatives Analysis and Site Selection Study indicated that several other sites in the area will need to be developed when additional capacity is needed. In its Alternatives Analysis and Site Section Study, the Applicant states that the combined capacity of CRDA Nos. 7 and 8 will allow for approximately 13.6 years of coarse coal refuse disposal and 15.5 years of fine coal refuse disposal at current waste production rates. *See Alternatives Analysis and Site Selection Study at 6-7 and 6-19.* The Applicant also states that the amount of coal currently available at the Bailey and Enlow Fork Mines "represents approximately 40 years of additional coal production. *Id.* at 5-6. The Applicant estimates that 16.3 million tons of coal

refuse will be produced each year. *Id.* at 3-1. If the Applicant's estimates are accurate, then approximately 654 million tons of coal refuse will require disposal over the next 40 years. Given past, present, and future mining and waste disposal activities in the area, the cumulative loss of these aquatic resources and wildlife habitat is a significant concern and must be accounted for when identifying appropriate mitigation measures.

Fourth, the small headwater streams proposed for filling by CPCC are valuable components of the downstream ecosystem. "The Consol project will require the destruction of approximately 16 miles of these headwater streams, permanently depriving Boothe Run and Enlow Fork of 16 miles worth of organic production." *See* USFWS April 3, 2015 letter to Army Corps. Nothing in CPCC's Application suggests that its mitigation plan would replace the functions of these headwater streams.

In short, the applicant's mitigation plan must be entirely revised or the Application should be denied. An adequate mitigation plan is particularly important considering the magnitude of the aquatic resource impacts from this proposed project, past impacts from the Applicant's coal refuse disposal and mining activities, and future impacts anticipated by the Applicant. The scope and significance of the necessary revisions merit a second public comment period.

12. Article 1, Section 27 of the Pennsylvania Constitution requires the Department to prevent the infringement of Pennsylvanians' environmental rights and to protect public resources held in trust for current and future generations.

Article 1, Section 27 of the Pennsylvania Constitution states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

In the recent *Robinson Township, Washington County v. Commonwealth* decision by the Pennsylvania Supreme Court, the Court made clear that Section 27 creates individual environmental rights upon which the government cannot infringe. 83 A.3d 901 (Pa. 2013). *Robinson Township* also made clear that all levels of government must act as trustees to adequately manage public natural resources through conserving and maintaining them, not for their own benefit but for the benefit of the public to whom they belong.

Government agencies like the Department have an obligation to assess whether its actions would cause an unreasonable "actual or likely degradation" of air or water quality, or of the natural or scenic values of the environment. *Id.* at 951-955. They cannot act in a way that infringes on the public's right to clean air, pure water, or the preservation of natural, scenic, historic, or aesthetic values. *Id.* at 952. As trustees of those natural resources owned by the public, local governments have a duty to ensure their proposed actions will "prevent and remedy

the degradation, diminution or depletion” of the resources now for the current generation and in the future for future generations. *Id.* at 952-959. Trustees like the Department must “deal impartially with all beneficiaries” of the trust, and must “balance the interests of present and future beneficiaries.” *Id.* at 959.

The Department must, at the very least, ensure compliance with all applicable statutes and regulations. These statutes and regulations include the Clean Streams Law, the Coal Refuse Disposal Act, Surface Mining Conservation and Reclamation Act, and the Bituminous Mine Subsidence and Land Conservation Act, and all regulations and policies promulgated pursuant to those acts. However, even if the Department determines that the application and the resulting permit comply with the applicable statutory and regulatory requirements, the Department must still ensure that the issuance of any permit will prevent the degradation, diminution or depletion of Constitutionally protected resources. There is no evidence in either the Application materials or in the correspondence file, which includes correspondence regarding the Department’s review, that the Department has considered the effects of the proposed activity on the surrounding environment.

By requiring the preservation of natural, scenic, historic, and aesthetic values, the Constitution protects Pennsylvanians from any action by the Department that unreasonably causes actual or likely deterioration of those values. *Id.* at 953. Compliance with the applicable statutes and regulations may not be enough. Article 1, Section 27 of the Pennsylvania Constitution guides the discretionary authority of the Department under the Clean Streams Law, Coal Refuse Disposal Act, SMCRA, and BMSLCA by imposing a duty to prevent the degradation, diminution or depletion of constitutionally protected resources for the current generation and future generations. *Id.* at 952-959. To the extent Section 27 requires the Department to be more protective than what is required by the applicable environmental statutes and regulations, it must comply with Section 27 and add any additional protections necessary to ensure the preservation of constitutionally protected values.

13. Environmental Justice

According to the Department, “Environmental Justice is the fair treatment and meaningful involvement of all people with respect to the identification of environmental issues, and the development, implementation, and enforcement of environmental justice policies, regulations, and laws.” Environmental Annual Report, 2002, (“Annual Report”) at 3. In 1999, then-Secretary of the Department James Seif created the Environmental Justice Work Group (EJWG) to address the important issues of both civil rights and environmental protection, and to ensure that minority and low-income residents of Environmental Justice Areas in Pennsylvania have the opportunity to live in a quality environment. Environmental Justice Work Group: http://www.portal.state.pa.us/portal/server.pt/community/environmental_justice_work_group/14052.

One of the stated objectives of the EJWG is to assess cumulative impacts on communities and to determine whether the Department’s current permitting process could adequately address environmental justice issues. In its June 2001 Report, EJWG stated, “DEP should seek additional authority where needed to make permit decisions based on cumulative impact.” Environmental

Justice Work Group, Report to the Pennsylvania Department of Environmental Protection (“EJWG Report”), June 2001 at 16, available at: <http://www.portal.state.pa.us/portal/server.pt?open=18&objID=505092&mode=2>.

After undertaking a cumulative analysis, EJWG recommends that the Department engage in “heightened scrutiny and enhanced public participation” regarding permits affecting Environmental Justice Areas. *Id.*

The EJWG Report makes clear that “[m]inority and low-income communities should be given the same access to information, consultation and accommodation by DEP at the same level historically granted to non-minority and non-low-income communities” and that “DEP needs to make fundamental changes in how it provides information, elicits input, and communicates with individuals within minority and low-income communities before, during and after the permitting process.” *Id.* The EJWG even goes so far as to provide the Department with the means to “ensure a cautionary approach throughout its permit review process” where minority and low-income communities will be impacted. *Id.*

In addition, the EJWG recommended that certain permits be treated as “Trigger Permits” that “warrant heightened scrutiny” by the Department when they will affect minority and low-income communities. *Id.* EJWG went on to define Trigger Permits as “those DEP regulated activities that may lead to significant public concern due to potential impacts on human health and the environment.” *Id.* Recognizing the “legacy of environmental impacts from abandoned mines and streams destroyed by acid mine drainage[,]” the EJWG recommended including mining permits amongst the permits that trigger an enhanced Department permitting process. *Id.* Additionally, pursuant to EJWG’s recommendations for Trigger Permits, the Department issued a policy statement in April 2004 elaborating its policy on these Trigger Permits. *See* “Environmental Justice Public Participation Policy”, Document ID 012-0501-002, April 24, 2004. Included in the list of Trigger Permits are Coal Refuse Disposal Permits and also any revisions to the listed permits. *Id.* at 8.

When evaluating Trigger Permits, the Department’s policy is to determine whether the permitted activity affects an “area of concern.” Public Participation Policy at 4. The policy document defines an area of concern as (1) “A circle defined by a radius of one-half mile from the center of a proposed permit activity or, where an activity is not centralized, an area extending one-half mile beyond the boundary of the proposed activity[;]” and (2) “Areas of impact for which DEP is authorized to require analysis, such as traffic corridors, groundwater plumes and areas of significant air impact.” *Id.* In addition, the policy document outlines the factors the Department should consider in making its determination for including Opt-in Permits, such as: “1) identified community concerns; 2) present or anticipated environmental impacts; and 3) reasonably anticipated significant adverse cumulative impacts.” *Id.* at 8.

The Department must undertake an enhanced review of the Application and account for all of the concerns that this particular Environmental Justice community faces. The EJWG expressed concerns about coalfield communities like Greene County in its initial report and that concern is reflected in the Department’s establishment of Trigger Permits that include coal refuse disposal. Greene County residents have already endured countless adverse impacts as a result of the Applicant’s mining activities. Perhaps most relevant to the Department’s review of this Application is the significant adverse impacts to aquatic resources. The Department must

undertake a comprehensive evaluation of the Applicant's extraction activities in the area and include adequate conditions in the final permit to ensure protection of public health and the environment.

14. The 30-day comment period that was triggered by the public notice does not provide the public with a meaningful opportunity to review and comment on the version of the Application upon which the Department will base its final determination.

In order for the public to have a meaningful opportunity to be heard on a permit application, it must be able to review and comment on the version of the application upon which the Department's decision to issue or deny the permit will ultimately rest. The Department cannot accept public input on one version of a permit application and base its decision on a significantly different version submitted after the public comment period has closed. As explained above, the Application and related documents currently available to the public are missing critical components.

Once the Applicant has submitted a technically adequate application, the Department should provide another public notice of the availability of these critical documents and analyses and give the public a reasonable opportunity to review and comment on the technically complete application. Furthermore, any public hearing or informal conference on the pending Application should be held only after the public has had a reasonable opportunity to review the application materials upon which the Department will base its decision to issue or deny the permit.

15. Informal Public Conference Request

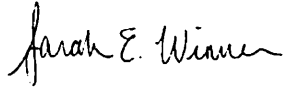
Pursuant to 25 Pa. Code § 86.34(a), CCJ respectfully requests the Department hold an informal conference regarding CPCC's Application. As detailed above, CCJ has identified numerous concerns regarding the proposed coal refuse disposal activities. A great number CCJ's members and supporters share the concerns outlined above. CCJ believes that Greene County residents deserve to have a forum to convey these objections and concerns to the Department and to have a meaningful response provided by the Department before the project moves forward. As a result, CCJ respectfully requests that the informal conference be conducted in the locality of the proposed activity, and that it be held in the evening so that working members of the community have an opportunity to attend and participate.

16. Conclusion

The Application is severely flawed. The Department should deny the permit and return the Application to the Applicant. If the Application is not returned, the Department must issue the necessary deficiency letters to the Applicant in light of this comment and its own evaluation. Due to the significant revisions that would be necessary, the Department should make available for a second public comment period the next version of the Application. CCJ would be willing to meet with the Department and the Applicant (and respective counsel if necessary) in order to discuss what more can be done to ensure the minimum level of protection required for the surrounding community, and for wildlife, and the environment.

If there are questions about this comment, please contact us anytime.

Respectfully submitted,



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