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April 27, 2015

California District Mining Office
Department of Environmental Protection
Commonwealth of Pennsylvania
Attention: Joel Koricich, District Mining Manager
25 Technology Dr.
California Technology Park
Coal Center, PA 15423

Re: CMAP# 30743711, Cumberland Coal Refuse Disposal Facility Permit Revision-
Monongahela River Discharge Pipeline Whiteley Township, Greene County

Dear Mr. Koricich,

The Center for Coalfield Justice and Three Rivers Waterkeeper respectfully submit the following comment on Cumberland Coal Resources, LP's ("Applicant") permit revision application to install a pipeline from Kirby, PA to the Alicia Harbor Site to discharge treated mine wastewater into the Monongahela River ("Application"). The relevant Pennsylvania Bulletin Notice appeared as follows:

30743711 and NPDES No. PA0033511. Cumberland Coal Resources, LP, (158 Portal Road, PO Box 1020, Waynesburg, PA 15370). To revise the permit for the Cumberland Mine Coal Refuse Disposal Facility in Whiteley, Greene and Monongahela Townships, **Greene County** and related NPDES permit to add 229.6 acres to install the Monongahela River discharge pipeline from Kirby, PA near the Cumberland Mine Coal Refuse Disposal Facility in Kirby, PA to the Alicia Harbor Site in Alicia, Pennsylvania. The subsurface pipeline will be approximately 14 miles long and carry mine water treated effluent for discharge to the Monongahela River via permitted Outfall 001. Coal Refuse Disposal Support Acres Proposed 229.6. The application was considered administratively complete on March 3, 2015. Application received: January 30, 2015.

This comment is timely filed pursuant to 25 Pa. Code § 86.32(a). On March 28, 2015, the final public notice was published in the *Observer-Reporter*.

The Center for Coalfield Justice is a Pennsylvania-incorporated not-for-profit organization with federal § 501(c)(3) status located at 184 S. Main Street, Washington, PA 15301. CCJ is a membership organization with a mission to "improve policy and regulations for the oversight of fossil fuel extraction and use; to educate, empower and organize

coalfield citizens; and to protect public and environmental health.” The Center for Coalfield Justice has nearly two thousand members and supporters in the area, many of which live in the immediate region of the Cumberland and Emerald Mines, their coal refuse disposal areas and other surface infrastructure.

Three Rivers Waterkeeper serves as a voice for the people and communities who depend on the Allegheny, Monongahela and Ohio Rivers. Its goal is to ensure that our waters remain safe to drink, swim, fish and enjoy for all people. Three Rivers Waterkeeper patrols the rivers with Waterkeeper boats, monitors water quality, evaluates incidents of pollution, supports community education and engagement on water issues and, when necessary, works to hold polluters accountable to the laws meant to protect the health of people and the rivers.

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: Applicant failed to comply with public notice requirements; the cumulative hydrologic impacts analysis is inadequate; there is no indication Applicant will implement necessary fish and wildlife protection measures; the Application fails to demonstrate that adverse environmental impacts will not clearly outweigh the public benefits; and the Applicant did not provide the required analysis of existing structures. Because the Application 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.

I. Applicant has failed to comply with public notice requirements

The Applicant has failed to comply with all applicable public notice requirements for a coal refuse disposal permit revision.¹ The only public notice of the pending Application that appeared in a newspaper was published once a week for four consecutive weeks.² This notice appeared in just one local newspaper, the *Observer-Reporter: Greene County Edition*, on March 7, 14, 21, and 28 of 2015. Weekly notice for four consecutive weeks only satisfies the general requirement for public notice of permit applications.³ It does not, however, satisfy the distinct and additional requirement of publication in *two* local newspapers that applies to requests for variances from the 100-foot stream buffer zone restriction.⁴

Section 6.1(h)(5) of the Coal Refuse Disposal Control Act (CRDCA) provides that “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*.”⁵ In approving this provision of the CRDCA as part of Pennsylvania’s regulatory program

¹ 25 Pa. Code § 86.54(3)(ii) requires public notice for coal refuse disposal activities where a “physical change in the coal refuse disposal configuration which is proposed. Physical changes include, but are not limited to, stream diversion structures...and acreage modifications.”

² Application at Module 2 Public Notice Attachment.

³ 52 P.S. § 30.55(i), 25 Pa. Code § 86.31(a).

⁴ 52 P.S. § 30.65a(h)(5); 25 Pa. Code 90.49(c)(2).

⁵ 52 P.S. § 30.65a(h)(5); 25 Pa. Code 90.49(c)(2) (emphasis added).

under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the Office of Surface Mining Reclamation and Enforcement (OSM) made it absolutely clear that Section 6.1(h)(5)'s "two-week newspaper notice is in addition to the four-week newspaper notices required by the approved program at § 86.31(a)."⁶

II. Impacts to Streams

The Application requests stream variances for "Whiteley Creek, the Monongahela River, and fifty-six (56) unnamed tributaries within the Whiteley Creek and the Monongahela River watersheds."⁷ Moreover, "[a]ctivities are proposed within 100 feet of all fifty-six (56) streams, however, no impacts are anticipated for fifteen (15) unnamed tributaries (UNT's) located within the Whiteley Creek and Monongahela River watersheds."⁸ Thus, impacts are anticipated for 41 unnamed tributaries. This is a significant amount of streams that will be impacted by this project. Of these 41 streams, "[t]emporary impacts are anticipated for thirty-eight (38) unnamed tributaries (UNT's) located within the proposed pipeline corridor [sic], within the Whiteley Creek (41178) watershed," and "[t]hese impacts total approximately 2,948 linear feet and are primarily associated with stream crossings for the proposed pipeline."⁹

There will be 42 total stream crossings and although most of those crossings are temporary, two UNT's within the Whiteley Creek watershed will be impacted permanently.¹⁰ These permanent impacts, due to the installation of culvert extensions, will total 130 linear feet.¹¹ The Monongahela River, Whiteley Creek, and all of their unnamed tributaries have attained or approved designated uses. All UNT's to Whiteley Creek and the Monongahela River are designated Trout Stocked Fishery or Warm Water Fishery.¹² Additionally, Whiteley Creek is stocked with trout from stream mile 15.461 to stream mile 7.871.¹³

III. Wetlands Impacts

There will be four wetlands disturbances, totaling 6,092 square feet of temporary disturbance.¹⁴ The Application states "proposed wetland impacts are a result of the construction of temporary access roads and laydown areas which will be re-graded and

⁶ 63 Fed. Reg. 19801, 19814 (col. 1) (April 22, 1998), See also *Id.* at 1906-1907 ("Subsection 6.1(h)(5) also requires 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 notices of filing of permit applications and is consistent with the notice required for stream buffer zone variance applications at 25 Pa. Code § 86.102(12)").

⁷ Application at 15-2.

⁸ Application at 15-2.

⁹ Application at 15-2.

¹⁰ Application's Chapter 105 Work Sheet Summary Table, Module 1 Attachment 1 E.

¹¹ Application at 15-2.

¹² Attachment 8.4 to Application: General Stream Inventory.

¹³ Application at 15-4.

¹⁴ Application's Chapter 105 Work Sheet Summary Table, Module 1 Attachment 1 E.

planted/ seeded with the appropriate vegetation following construction activities.”¹⁵ The impacted wetlands areas include “0.122 acres of Palustrine Emergent (PEM) wetland, 0.011 acres of Palustrine Scrub Shrub (PSS) wetland, and 0.007 acres of Palustrine Forested (PFO) wetland.”¹⁶ Accordingly, the Application proposes post-construction wetland mitigation for the loss of these higher functioning classes of wetlands, PSS and PFO, “as revegetation of these classifications is anticipated to occur slower than the revegetation of the PEM classifications.”¹⁷

Pennsylvania does not have a history of successful wetlands mitigation projects replacing the full range of functions of lost wetlands. At least three past studies of Pennsylvania wetlands mitigation projects have indicated there are significant challenges in creating functional wetlands in the Commonwealth.¹⁸ New wetlands created to offset losses “do not functionally replace the complexity and resources that were provided by the original wetlands” and it could take decades for them to develop the types of vegetation necessary to provide those functions.¹⁹

IV. The Application’s cumulative hydrologic impact analysis is unlawfully inadequate

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.”²⁰ The Applicant does not address the probable hydrologic consequences of the proposed pipeline on the proposed 229.6 acre permit area and adjacent area.

The Applicant has done nothing to predict the probable hydrologic consequences of the pipeline construction activities nor has it evaluated any potential alternatives to its stream encroachment plan and impacts on the hydrologic regime and the quantity and quality of water in the surface and groundwater systems. Instead, the Applicant declines to provide any information at all regarding Prediction of Hydrologic Consequences and Protection of

¹⁵ Application at 15-9.

¹⁶ Application at 15-10.

¹⁷ Application at 15-10.

¹⁸ *The Effects of Subsidence Resulting from Underground Bituminous Coal Mining, 2008-2013* IX-15, citing: Campbell, D.A., C.A. Cole, R.P. Brooks (2002) A comparison of created and natural wetlands in Pennsylvania, USA. *Wetlands Ecology and Management* 10:41-49.

Gebo, N.A. and R.P. Brooks (2012) Hydrogeomorphic assessments of mitigation sites compared to natural reference wetlands in Pennsylvania. *Wetlands* 32:321-331.

PADEP. (2001) “Wetlands: Program Overview”.

<https://www.dep.state.pa.us/dep/deputate/watermgt/wc/Subjects/WWEC/general/wetlands/wetlandreplacefd.htm>

¹⁹ *The Effects of Subsidence Resulting from Underground Bituminous Coal Mining, 2008-2013* IX-17

²⁰ 25 Pa. Code § 90.35(c)

Hydrologic Balance, and asserts that almost every inquiry in Module 8 is “Not applicable.”²¹ In what seems to be an explanation for not completing Module 8, Applicant states that “Per the PADEP California District Mining Office, a water resources inventory was not required for this permit revision application.”²² This statement appears without reference to a letter or email containing this alleged exemption sent by an employee at DEP. There is nothing to suggest that under applicable law, the Department can waive the requirements in coal refuse disposal regulations which set forth the affirmative requirement that each application for coal refuse disposal activities “shall” contain a determination of probably hydrological consequences the proposed activities.

Module 15 provides an opportunity for the Applicant to discuss probable hydrologic consequences, however, Applicant’s responses in Module 15 are unlawfully deficient. When prompted to “provide a narrative that demonstrates that no adverse hydrologic impacts, water quality impacts, or other environmental resources impacts will occur as the result of the variance [sic],” the Applicant merely states that “Due to the nature of the proposed Project, it is not possible to completely avoid adverse hydrologic impacts, water quality impacts, or other impacts to environmental resources. The design and layout of the pipeline was performed to reduce, to the extent practical, impacts to hydrologic resources. Haul and access roads were aligned to avoid, to the extent practical, the impacts to existing streams and wetlands.”²³

Furthermore, the alternatives analysis required in Module 15 is inadequate. Rather than providing a discussion of alternatives to implementing the encroachment plan, the Applicant simply responds that, “The alignment of the pipeline has been stratigically [sic] designed within an existing railroad corridor in order to minimize the number of impacts to stream and wetland resources. Another benefit to utilizing the existing corridor is minimizing the need for private landowner agreements and limiting construction as much as possible to land owned by Alpha Natural Resources, LLC.”²⁴ The Applicant refers back to that same statement when asked to describe alternatives to have been considered to avoid or minimize impacts on wetlands, despite the explicit request for “alternative locations, routings or designs to avoid adverse impacts on the wetlands.”²⁵ If an analysis was actually performed, beyond a consideration of the convenience of siting the project on land already owned by Alpha, to ensure the pipeline’s location and placement resulted in the least amount of impacts, neither the Department, nor the public is privy to that evaluation.

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

²¹ Application at 8-9.

²² Application at 8-1.

²³ Application at 15-2.

²⁴ Application at 15-7.

²⁵ Application at 15-9.

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.”²⁶ The Application fails to address adverse impacts from all of the underground mining and coal refuse disposal activities associated with the Cumberland and Emerald Mines.

The analysis must include, at a minimum, the impacts of: all existing Cumberland Coal Resources, LP CRDAs and all of the impacts associated with them; the existing and future impacts of the underground longwall mining operations in the Cumberland and Emerald 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 Cumberland Mine; and all of the impacts associated with the construction, operation, and maintenance of the pipeline. All of these mining operations are indisputably anticipated and associated with the current permit Application because without such extraction and disposal there would presumably be no need to treat mine wastewater and pump it through the discharge pipeline to the Monongahela River.

The scant responses with little to no supporting data provided in this Application fail to even come close to the minimum amount of information and analysis required under the law. 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.

V. The Applicant fails to state that it will implement necessary protective measures to minimize disturbances and adverse impacts to fish, wildlife and related environmental values

The Application contains correspondence with the Department of Conservation and Natural Resources (DCNR), Pennsylvania Game Commission (PGC), Pennsylvania Fish and Boat Commission (PFBC), and United States Fish and Wildlife Service (USFWS) regarding the project’s potential impacts on rare and endangered species, and species of concern. All four agencies consulted provided the Applicant with measures to be followed to minimize or eliminate adverse effects on the various species.

According to the Department of Conservation and Natural Resources (DCNR), this project could potentially impact six endangered or rare plant species.

Scientific Name	Common Name	PA Current Status	PA Proposed Status
<i>Aplectrum hyemale</i>	Puttyroot	Rare	Rare
<i>Passiflora lutea</i>	Yellow Passion- flower	Endangered	Threatened
<i>Smallanthus uvedalius</i>	Leaf-cup	Not Listed	Rare

²⁶ 25 Pa. Code § 86.37(a)(4). See also 25 Pa. Code §§ 90.35(c), 90.101(a)

<i>Spiranthes ovalis</i>	October Ladies' tresses	Endangered	Endangered
<i>Stachys cordata</i>	Nuttall's Hedge-nettle	Endangered	Endangered
<i>Tipularia discolor</i>	Crane-fly Orchid	Rare	Rare

Although DCNR ultimately concluded that no impact was anticipated on the species as long as prescribed avoidance measures were followed, we remain concerned about the potential for this project to harm the habitat of these species, during construction, after construction while the ecosystem gradually recovers from the impacts of the project and whenever maintenance is performed on the pipeline in the future.²⁷

The Pennsylvania Game Commission (PGC) also provided measures to be implemented to ensure the project would not have an impact on the great blue heron, a species of concern known to nest in the area, including completing and submitting weekly monitoring forms and contacting the PGC for further coordination if nesting great blue heron are observed within 1,000 feet of the project.²⁸ The Pennsylvania Fish and Boat Commission (PFBC) stated that fish species of concern are located in the project area that are extremely vulnerable to physical and chemical changes to their aquatic environment. PFBC went on to recommend implementation of “[m]easures to prevent the release of sediment and harmful chemicals into waterways...” as well as “construction techniques that minimize in-stream work, sedimentation, changes to water quality, and that fuel storage tanks for equipment re-fueling be located at least 100 feet away from waterways. Strict erosion and sedimentation control measures, as well as best management practices should be employed.”²⁹

The United States Fish and Wildlife Service (USFWS) was also consulted regarding the Indiana bat, a species that is federally listed as endangered and within range of the proposed project. USFWS found “[b]ased on a review of project information, including...your indication that no tree removal, tree cutting or forest clearing will be necessary to implement all aspects of this project, we have determined that the effects of the project are not likely to adversely affect the Indiana bat.”³⁰ However, there are references in the Application to the potential for tree removal and remediation efforts following tree removal.³¹ USFWS also noted that “potential exists for avian mortality from

²⁷ Application at 4-5.

²⁸ Application at 4-5.

²⁹ Application’s Module 4, Attachment 4.7d

³⁰ USFWS Review Letter (April 24, 2014) Module 4, Attachment 4.7c.

³¹ “The project area is primarily existing railroad bed, overgrown railroad embankment, and unmanaged open fields, with some minor *wooded inclusions*. Development will consist of excavating an open trench, placing the pipeline therein, and immediately backfilling the trench as the construction project progresses.” (10-1) (emphasis supplied).
“...planting of trees and shrubs within the wetland will be completed to replace those lost during construction.” (Wetlands Mitigation Plan, Attachment 15.5a).

habitat destruction and alteration within the project boundaries” and provided the Applicant with general recommendations for avoiding and minimizing impacts to migratory birds in and around the project area.³²

Despite all of the recommendations made by these four agencies, the Applicant has failed to indicate that it will employ the recommended measures. Module 10 asks the Applicant to “Describe the measures which will be taken during the development and active phases of operation to minimize disturbances and adverse impacts to fish, wildlife and related environmental values, and achieve enhancement of the resources where practical. If enhancements measures are not proposed, explain why enhancement is not practical.”³³ The Applicant states only that

No adverse effects on fish and/or wildlife are expected due to the activities associated with this permit revision application. The site will be restored to existing conditions upon completion of the pipeline installation. The site was designed to minimize the acreage necessary to install the proposed pipeline, and the design incorporates erosion and sedimentation controls to minimize adverse impacts on streams and associated aquatic life.³⁴

This response is glaringly inadequate. The Applicant failed to incorporate the recommendations of the DCNR, PGC, PFBC, and USFWS into the application and affirm that the recommended protective measures would be undertaken during the project activities. Without implementation of the recommended measures, the project will unlawfully impact fish and wildlife. Furthermore, approval of Applicant’s use of this site for the pipeline is contingent on the Department concluding that “the proposed activity is not likely to adversely affect Federally listed threatened or endangered species... in violation of section 9 of the Endangered Species Act of 1973....”³⁵ The Department cannot approve the Application as it currently stands. Merely including copies of letters with recommended protective or avoidance measures from respective agencies does not amount to a commitment to employ those measures.

“The site will be restored to existing conditions upon completion of the pipeline installation. The proposed revegetation plan includes plants and trees desirable for wildlife habitat to provide a wildlife enhancement measure.” (4-4).

³² USFWS Review Letter (April 24, 2014) Module 4, Attachment 4.7c.

³³ In accordance with the requirements in 25 Pa. Code § 90.48.

³⁴ Application at 10-7.

³⁵ “At preferred sites known to contain Federally listed threatened or endangered species, approval will be granted *only when* the Department concludes and the United States Fish and Wildlife Service concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the take of Federally listed threatened or endangered species in violation of section 9 of the Endangered Species Act of 1973 (16 U.S.C.A. § 1538).” 25 Pa. Code § 90.202 (e)(7) (emphasis supplied).

Additionally, the Applicant fails to address the enhancement of resources, neither explaining how it will enhance resources or why enhancement is not practical. This omission is a further demonstration of the inadequacy of this Application.

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

Coal refuse disposal regulations require a preferred site be used for coal refuse disposal activities and state that the “Department will not 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.”³⁶ Moreover, the burden is on the Applicant to prove that the adverse environmental impacts will not clearly outweigh the public benefits.³⁷

The Application lacks an affirmation that the railroad corridor is the preferred site and fails to prove that the adverse environment impacts will not clearly outweigh the public benefits. There are only a few statements in the Application which could be construed as addressing the adverse environmental impacts of the project, like: “The site was designed to minimize the acreage necessary to install the proposed pipeline...”³⁸ and “The proposed construction project is linear and earth disturbance will be temporary in nature. Reclamation will occur as the project progresses.”³⁹ When prompted to engage in a balancing analysis regarding stream encroachments and water obstructions by providing a “narrative giving a description and the purpose and justification of the proposed activities,” the Applicant refers to a vague project description which is repeated over and over in the Application with little to no additional details tailored to each section where it appears.⁴⁰

There is no discussion of public benefits in the Application. There is also no balancing analysis whatsoever to meet the burden of demonstrating the adverse environmental impacts will not clearly outweigh the public benefits.

VII. Applicant fails to provide the required analysis of existing structures

In Module 10, Section 10.2 of the Application, the Department requests information about existing structures which will be used in connection with or to facilitate the mining operation. According to Department regulations,

³⁶ 25 Pa. Code 90.202(a) and (d).

³⁷ 25 Pa. Code § 90.203 “If the applicant proposes to use a preferred site, the Department will approve the proposed site subject to § 90.202(c) (relating to general requirements) provided the applicant demonstrates that the attendant adverse environmental impacts will not clearly outweigh the public benefits.”

³⁸ Application at 10-7.

³⁹ Application at 10-1.

⁴⁰ Application at 15-2. (“Please refer to Module 10.1 for Project Description Narrative”) The description in 10.1 appears throughout the application with only minor variations. *See* 1-1, 6-1, 8-1, 9-1, 11-1, 12-1, and 15-1.

An application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed activities will not be approved *unless the applicant demonstrates and the Department finds*, in writing, on the basis of the information set forth in the complete application that: (1) The structure meets the standards of...Chapter 90 Subchapter D. (2) If the existing structure meets the performance standards of ... Chapter 90 Subchapter D, but does not meet the design requirements of ... Chapter 90 Subchapter D, no presumptive evidence of pollution to the environment or risk to public health or safety will result from use of the structure.⁴¹

Applicant's response regarding existing structures in Section 10.2 of the Application is:

"The pipeline will primarily follow the existing Cumberland Mine haul railroad. In some instances, the pipeline will cross public roadways and Whiteley Creek using existing railroad bridges owned by Cumberland Coal. Cumberland Coal is in the process of completing a structural evaluation of the railroad bridges relative to the proper support of the proposed pipeline. Please refer to the Operations Map included as Exhibit 9.1."

This is an unlawfully inadequate answer. Applicant has failed to include the Coal Refuse Disposal Areas, and the treatment and water conveyance systems which will treat water and transport it to the pipeline. The Applicant has utterly failed to carry its burden of demonstrating that the existing structures used in connection with the pipeline meet required standards. Additionally, the Applicant states that a structural evaluation of existing railroad bridges is in process, but provides no indication when the evaluation will be complete and whether it will be provided to the Department. At this point, it is impossible for the Department to make the required finding regarding existing structures "on the basis of the information set forth in the complete application."⁴² Yet, according to the Department this application was considered administratively complete on March 3, 2015.

VIII. Applicant's attempt to seek approval of the pipeline as a revision of its coal refuse disposal area permit does not facilitate submission of relevant information or meaningful review of the proposed project

By seeking approval of this discharge pipeline for treated mine wastewater through a permit revision to its Coal Refuse Disposal Area permit, the Applicant has created a somewhat confusing regulatory situation. Under 25 Pa. Code § 86.1, coal refuse disposal activities are defined as

Activities whereby a plot of land is used as a place for disposing, dumping or storage of coal refuse. These areas may include land thereby affected, including, but not limited to, a deposit of coal refuse on or buried in the earth

⁴¹ 25 Pa. Code § 86.38(a) (emphasis supplied).

⁴² 25 Pa. Code § 86.38(a).

and intended as permanent disposal of or long-term storage of the material, but not including coal refuse deposited within an active mine itself or coal refuse never removed from a mine. The term includes activities in which the natural land surface has been disturbed as a result of or incidental to the coal refuse disposal activities of the operator, including, but not limited to, private ways and roads appurtenant to the area, land excavations, workings, tailings, repair areas, storage areas, processing areas, shipping areas and areas in which structures, facilities, equipment, machines, tools or other materials or property which result from or are used in coal refuse disposal activities are situated.

Although a 14 mile pipeline is arguably an area in which structures which are used in coal refuse disposal activities are situated, the Applicant appears to use the nature of the CRDA permit revision application to its advantage, hiding behind the fact that a pipeline project does not seem to have been anticipated to be permitted under the CRDA permit framework. For example, in Module 10, the Applicant declines to answer any questions that would provide the Department with details regarding how it will actually construct and use the pipeline. Applicant declines to respond to prompts in the application, stating “Not applicable. This permit revision application does not involve coal refuse disposal.”⁴³

Even when asked a question undeniably relevant to its project, “Describe the nature of the material to be discharged, the system which will be used to convey the material to the point of discharge, and the means of controlling the material within the underground workings,” Applicant responded: “Not applicable. This permit revision application does not involve the discharge of coal processing waste, underground mine development waste, coal ash, mine drainage treatment sludge, flue gas desulfurization sludge, or inert stabilizing materials to underground workings.”⁴⁴ This answer is clearly not responsive to the inquiry. Rather, that answer is an identical copy of the answer provided to the previous question. This is representative of the slovenly, incomplete nature of the entire Application. The Department cannot overlook the blatant unresponsiveness in the Application and should deny it due to the numerous deficiencies.

IX. Applicant should provide information regarding the violations history of its parent company, Alpha Natural Resources, and not solely Cumberland Coal Resources, LP

The Applicant did not provide violations history information because Application instructions state that the Department will compile certain data from their records.⁴⁵ Although the Applicant is Cumberland Coal Resources, LP, that is merely a subsidiary operated by Alpha Natural Resources, Inc. In March 2014, Alpha settled a case covering seven years of egregious violations of the Clean Water Act which involved the largest penalty ever assessed under the CWA, \$27.5 million dollars, and an agreement to spend

⁴³ Application at 10-2.

⁴⁴ Application at 10-2.

⁴⁵ Application at 3-1.

\$200 million upgrading its wastewater treatment systems. The case involved four Pennsylvania mines and many of the violations came from Alpha's two longwall mine complexes in Greene County: Emerald Coal and Cumberland Coal Resources. DEP should have the full history of Alpha's violations before it when it decides whether to approve a permit for this project because Alpha will be the actual operator behind Cumberland Coal Resources, LP.

X. Additional Issues and Omissions

The Department has notice of several other serious issues with the application. In an email dated March 12, 2015, Matthew Somogyi, Surface Mine Conservation Inspector at DEP's New Stanton District Mining Office, raised eight issues with the proposed pipeline to Karen McCoy of the California District Mining Office. In the email, Somogyi highlights the fact that the Application does not provide any information on what material the pipeline will be constructed of or how treated water will enter the pipeline from refuse areas. Somogyi notes that there is no indication that pump stations are proposed for the pipeline and no information on how much earth will be disturbed at a time during construction. Somogyi suggests adding flow meters onto both ends of the pipeline and a sample point at the beginning of the pipe. He also highlights the fact that the pipeline boundary is not adjacent to CRDA #1 permit boundary and there is no information on whether it will be bonded.⁴⁶

We share in those questions and concerns raised by Mr. Somogyi and we hope that the Department is considering implementing his suggestions to require flow meters and at least one sample point to ensure compliance with the NPDES permit (PA0033511).

XI. Informal Public Conference Request

Many others in the community share the concerns outlined above. Therefore, I request the Department hold an informal conference regarding Cumberland Coal Resources, LP's proposed pipeline. Greene County residents deserve to have a forum to convey their concerns and issues to the Department and to have a meaningful response provided by the Department. Therefore, I request that the conference be conducted in the locality of the proposed activity, specifically the Whiteley Township Municipal Building, and that the conference be held in the evening so that working members of the public have an opportunity to attend and participate.

XII. Conclusion

The Application is severely flawed. The Department should deny it and return it to the Applicant. If the Application is not returned, the Department should issue the appropriate deficiency letters to the Applicant in light of this comment and its own evaluation. Due to

⁴⁶ E-mail from Matthew Somogyi, Surface Mine Conservation Inspector, Bureau of District Mining Operations New Stanton District Office, to Karen McCoy, Geologic Specialist, Bureau of District Mining Operations California District Office (March 12, 2015, 09:17 EST).

the significant revisions that would be necessary, the Department should make the revised application available for a second public comment period. The Center for Coalfield Justice would be willing to meet with the Department and the Applicant (and respective counsel if necessary) in order to discuss what can be done to ensure the minimum level of protection required for the local community, wildlife, and the environment.

Respectfully submitted by,

/s/ Caitlin McCoy

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