REMINING VARIANCE FOR DISSOLVED ALUMINUM AND pH IN UNNAMED TRIBUTARY OF SLAB FORK, AND DISSOLVED ALUMINUM IN SLAB FORK
Carbon Resources Development, Inc.

RESPONSE TO COMMENT

On December 27, 2013, the West Virginia Department of Environmental Protection (DEP), Division of Water & Waste Management (DWWM) commenced a 30-day public comment period and subsequently held a public hearing on February 6, 2014 to accept oral comments on the remining variance application for site-specific instream criteria for dissolved aluminum and pH. The site-specific pH criteria would be applicable in the Unnamed Tributary of Slab Fork and the dissolved aluminum site-specific criteria would be applicable to the Unnamed Tributary of Slab Fork and Slab Fork, which is a tributary of Guyandotte River. No oral comments were received at the public hearing. Two written comments were received and the DWWM addresses these comments below.

1. COMMENTER: John M. Wood

COMMENT A: *The Clean Water Act does not allow NPDES applicants to apply for a variance from the water quality standards for conventional pollutants. Therefore, a variance from water quality standards for pH cannot be permitted unless the permittee can meet the requirements of 40CFR 401.17*

RESPONSE A: The commenter references sections of the Clean Water Act (CWA) that do not pertain to this variance application. The area covered by this remining variance is impacted by pre-law mining (prior to 1977) and monitoring data confirms that Slab Fork and the Unnamed Tributary of Slab Fork do not meet water quality standards. As outlined in the Rahall Amendment to section 301 of the CWA (40 CFR Part 434.70), Section 6.2.d. of 47CSR30, and Section 6.1 of 46CSR6, this area is eligible for a "Remining Variance". The Rahall amendment states the following:

> *"The Administrator or the State may issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge to exceed the level being discharged from the remined area before the coal remining operation begins."*

As part of the application process, the applicant was required to submit pH data obtained from the site for a period of 12 months in order to establish baseline data. DEP will require that effluent from the site meet the above cited amendment provision by requiring a 20% increase in pH over the lowest observed baseline value at all times. Additionally, DEP will require trend analysis of pH at the site for the first 12 months and require the applicant to notify the DEP and submit a corrective action plan if at any time the 3-month average of pH exceeds the midpoint between the lowest observed pH and the 12-month average as approved by the DEP.

COMMENT B: *The scientific literature on chemical treatment of acid mine drainage provides examples of Best Available Technology (BAT) that is economically achievable. Therefore, the permittee should be required to use chemical treatment to abate the aluminum water quality violations rather than being granted a variance.*

RESPONSE B: The abatement plan provided in the remining variance application states specific Best Management Practices (BMPs) - as defined in EPA-821-B-01-010 BMP guidance manual – that will be employed at the site and the applicant stated these were the only practicable approaches for the area. At this time DEP has reviewed the abatement plan and has determined that the BMPs proposed by the applicant are appropriate for this site and will facilitate the necessary treatment to meet the proposed remining variance criteria.

COMMENT C: *The request for a variance from water quality standards is premature. The applicant has made the claim that chemical treatment of effluent at the site will not be economically feasible however the applicant has no financial records for the proposed operation upon which to substantiate this claim.*

RESPONSE C: The commenter states that the applicant's request for a variance from water quality standards is premature since the applicant has made the claim that chemical treatment of effluent at the site will not be economically feasible however the applicant has no financial records for the proposed operation. The commenter further states that the NPDES permit would need to be in operation, with all chemical controls in place, before the required financial data would be available to substantiate such a claim. The applicant cannot begin operations at the site until a permit has been issued by DEP therefore it would not be possible for the applicant to provide actual operating cost data at this time – only estimated costs. The applicant has stated that chemical treatment at the site would not be economically feasible for the proposed operation and would not be necessary to meet the remining variance criteria.

2. COMMENTER: Robin L. Blakeman

COMMENT: *Public health concern regarding contamination of municipal water supply as a result of the operation*

RESPONSE: The commenter states concern that allowing a water quality variance at this site would not be appropriate, could lead to a subsequent increase in river water pollution, and that any increase in water pollution would greatly affect residents who receive municipally-supplied water from a downstream source. The area for which this variance is being requested is a pre-law mining site that is currently negatively impacted by mining operations that occurred prior to the enactment of mining regulations. The water quality in this area does not meet current water quality standards for dissolved aluminum and pH. The variance being requested is a variance from current water quality standards not a variance from existing conditions. The proposed operation is required by the DEP to improve the water quality for these parameters in this area thereby helping to remediate existing environmental damage caused by pre-law mining.

John M. Wood
[redacted]
Cassville, WV 26527

6 February 2014

Kevin Coyne
Water Quality Standards Program
WV Department of Environmental Protection
601 57th St., SE
Charleston, WV 25304
dep.comments@wv.gov

RE: DEP Public Notice - Public hearing on variance from water quality standards

Mr. Coyne,

Please accept the following public comments regarding an application submitted by Carbon Resources Development, Inc., for a variance from water quality standards for dissolved aluminum and pH for an unnamed tributary of Slab Fork and Slab Fork River, a tributary of the Guyandotte River near Maben in Wyoming County, West Virginia.

1. **The Clean Water Act does not allow NPDES applicants to apply for a variance from the water quality standards for conventional pollutants (40 CFR §401.16). Therefore, a variance from water quality standards for pH cannot be permitted unless the permittee can meet the requirements of 40 CFR §401.17 .**

   "The Act allows variances from best available technology economically achievable based on the economic conditions of the particular facility [section 301(c) of the Clean Water Act] or based on the lack of environmental necessity of the specified limitations [section 301(g)]. Variances are allowed only from limitations on non-conventional pollutants." [1]

   "The Permits Division (OWEP) and the Regulatory Policy Division (OPPE) have developed a draft technical guidance manual to assist with the preparation and review of section 301(c) variance requests. As you know, section 301(c) of the Clean Water Act provides a method whereby a discharger may obtain a modification of the requirements of section 301(b)(2)(A), which requires the application of best available technology economically achievable (BAT). An applicant may be granted a section 301(c) variance for nonconventional pollutants… 301(c) variances are only available for nonconventionals." [2]

[1] USEPA Memorandum, September 12, 1978. Subject: Variance applications. http://www.epa.gov/npdes/pubs/owm534.pdf
[2] USEPA Memorandum, August 21, 1984. Subject: Draft Guidance for Application and Review of Section 301(c) Variance Requests. http://www.epa.gov/npdes/pubs/OWM0469.pdf

40 CFR §401.16—Conventional pollutants.

The following comprise the list of conventional pollutants designated pursuant to section 304(a)(4) of the Act:

1. Biochemical oxygen demand (BOD)

2. Total suspended solids (nonfilterable) (TSS)

3. pH

4. Fecal coliform

5. Oil and grease

[44 FR 44503, July 30, 1979; 44 FR 52685, Sept. 10, 1979]

40 CFR §401.17—pH Effluent limitations under continuous monitoring.

(a) Where a permittee continuously measures the pH of wastewater pursuant to a requirement or option in a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to section 402 of the Act, the permittee shall maintain the pH of such wastewater within the range set forth in the applicable effluent limitations guidelines, except excursions from the range are permitted subject to the following limitations:

(1) The total time during which the pH values are outside the required range of pH values shall not exceed 7 hours and 26 minutes in any calendar month; and

(2) No individual excursion from the range of pH values shall exceed 60 minutes.

(b) The Director, as defined in §122.3 of this chapter, may adjust the requirements set forth in paragraph (a) of this section with respect to the length of individual excursions from the range of pH values, if a different period of time is appropriate based upon the treatment system, plant configuration or other technical factors.

(c) For purposes of this section, an excursion is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in the applicable effluent limitations guidelines.

(Secs. 301, 304, 306 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et. seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217))

[47 FR 24537, June 4, 1982]

2. **The scientific literature on chemical treatment of acid mine drainage provides examples of Best Available Technology (BAT) that is economically achievable. Therefore, the permittee should be required to use chemical treatment to abate the aluminum water quality violations rather than being granted a variance.**

It is my understanding from recent e-mail conversations with you regarding baseline water monitoring point UTSF3 and proposed outfall 003 for NPDES permit WV1026747, that "... – *they are essentially the same point (We had the same question when this was first submitted to us – I should have requested that be clarified on the map and in the report). The Al and pH limits will essentially apply at the outfall and not at an internal monitoring point.*" Moreover, the copy of the proposal and drainage map for Carbon Resources Development, Inc., Maben Preparation Plant (O-3012-12) and Maben Refuse Disposal Area (O-3025-12), includes design plans for three sedimentation ponds at proposed outfall 003. Therefore, the infrastructure needed for chemical treatment of the acid mine drainage (AMD) from the old Westmoreland Coal Company Complex is already part of the plans for WV1026747 at outfall 003. Chemical treatment at proposed outfall 004 should also alleviate the excessive dissolved aluminum concentrations at baseline water monitoring point DSSF. Peer-reviewed data in the published literature suggest that chemical treatment of AMD is both technologically achievable and affordable.

In a review of the scientific literature on the treatment of AMD, Xinchao et al. (2005)[3] stated that, "*Physical, chemical, and biological methods have been found to be effective for metal recovery from AMD... Metal recovery via chemical treatment was thought to be advantageous for the following reasons: (a) widely used in existing AMD treatment plants; (b) suitable to large or small flows; (c) relatively inexpensive to operate; and (d) easy to implement at existing AMD treatment sites by minimum manipulation of current AMD treatment operations*." Based on laboratory analyses, the same authors concluded that, "*Simultaneous metal recovery and AMD treatment were achieved using a selective precipitation process based on solubility characteristics of the major and minor metals in the AMD. Separate iron and aluminum hydroxide products with relatively high purity were successfully recovered via iron precipitation at pH 3.5–4.0 followed by aluminum precipitation at pH 6.0–7.0, while simultaneously meeting the NPDES effluent discharge standards. The proposed metal recovery process was relatively easy to implement in the field because it only required the manipulation of the current AMD neutralization operations.*" The same authors provided reagent cost estimates for metal recovery based on an AMD flow rate of 100 gallons/minute that ranged from an annual expenditure of $13,400 for hydrated lime to $73,600 for soda ash. The applicant reported an average flow rate at UTSF3 of 0.129 cubic feet per second (approximately 58.3 gallons per minute).[4] Assuming that 2012 price estimates for North American hydrated lime ($125/short ton)[5] and soda ash ($275/short ton)[6] are indicative of current prices, and using the same consumption rate reported in Table 5 by Xinchao et al. (2005), cost estimates for metal recovery based on an AMD flow rate of

[3] Xinchao W., Viadero R.C. Jr., and Buzby K.M. 2005. Recovery of iron and aluminum from acid mine drainage by selective precipitation. Environ. Engineer. Sci. 22(6):745-755.
[4] 1 cubic foot per second = 448.83 gallons per minute
[5] http://minerals.usgs.gov/minerals/pubs/commodity/lime/myb1-2012-lime.pdf
[6] http://minerals.usgs.gov/minerals/pubs/commodity/soda_ash/myb1-2012-sodaa.pdf

58.3 gallons/minute at UTSF3 would be approximately $14,761/year for hydrated lime and $38,212/year for soda ash.

"*A Section 301(c) variance request must clearly demonstrate that the modified requirements represent the maximum use of technology within the firm's economic capability and that the modified requirements will result in reasonable further progress toward the elimination of nonconventional pollutants... Unregulated firms should calculate three financial tests to determine if they are eligible on economic grounds for a Section 301(c) variance. EPA, generally, will grant a variance only if all three tests indicate that the required pollution control is not economically achievable and the applicant makes the requisite demonstration about reasonable further progress.*" [7] Thus, it is WVDEP's responsibility to confirm the applicant's economic justifications for the variance and that these financial tests indicate that the required pollution control is not economically achievable. The financial-condition (economic capability) evaluation of Carbon Resources Development, Inc. should at the very least include financial data from all of the company's surface and underground (U-3009-12) operations associated with the proposed WV1026747 NPDES permit, including economic projections.

Regarding the control of infiltrating groundwater, the applicant states that sealing and rerouting of groundwater in the existing underground mine workings with constructed bulkheads cannot physically be accomplished and that grout curtains cannot be utilized due to the actual location of the potential acid producing material. And yet, according to WVDEP mine-map data,[8] the operator has an underground permit (U-3009-12) for mining a portion of the Pocahontas-3 coal seam that is directly underling the old Westmoreland Coal Company Complex. WVDEP permit writers should therefore determine whether Carbon Resources Development, Inc. has any means to control the infiltration of groundwater into the underground mining operation, and what effects the underground mining may have on the hydrological balance in the surface area that is to be regulated by the WV1026789 NPDES permit. Or does the WVDEP intend to grant a SMCRA variance that would allow the operator to pollute the groundwater as well as the surface water?

3. Is the applicant putting the cart before the horse?

Finally, I suggest that the applicant's request for a variance of the water quality standards for pH and aluminum is premature. I believe that the peer-reviewed literature demonstrates that chemical treatment of AMD is both technologically achievable and affordable. So, in order for the applicant to conclude that the chemical treatment is economically unfeasible, the operator must first demonstrate that the costs of the WV1026789 treatment facilities are greater than the net income from the associated mining operations. However, since the WV1026789 permit has not been approved yet, the operator does not yet have the financial records necessary to evaluate the financial tests for determining eligiblility on economic grounds for a Section 301(c) variance. The NPDES permit must be operating for three years, with all chemical treatment controls in place for pH and aluminum, before the required financial data will be available. Those financial

[7] USEPA Memorandum, August 21, 1984. Subject: Draft Guidance for Application and Review of Section 301(c) Variance Requests. http://www.epa.gov/npdes/pubs/OWM0469.pdf

[8] http://tagis.dep.wv.gov/imap/imap.php?lod=81&lom=23&los=17.0000&lad=37&lam=39&las=4.0000

data are required for the WVDEP and/or the USEPA to evaluate a request for a variance from the pH and aluminum water quality standards. The applicant has not yet accrued the financial data necessary to determine whether chemical treatment is financially unachievable.

Sincerely,

John M. Wood

Cc: Evelyn S. MacKnight, Chief
NPDES Permits Branch
USEPA REGION 3
1650 Arch Street
Mail Code: 3WP41
Philadelphia, PA 19103-2029
Macknight.evelyn@Epa.gov

Coyne, Kevin R

From: DEP Comments
Sent: Thursday, February 06, 2014 3:27 PM
To: Coyne, Kevin R
Subject: FW: Variance hearing for Carbon Resources Development, Inc

From: Robin Blakeman [mailto:rbrobinjh@gmail.com]
Sent: Thursday, February 06, 2014 11:40 AM
To: Coyne, Kevin R; DEP Comments
Subject: Re: Variance hearing for Carbon Resources Development, Inc

I am writing to express my disagreement with ANY plan to extend a water quality variance to Carbon Resources Development, Inc. Please deny their request! I am appalled that the DEP would even consider such a request at this point in time, when there are state-wide tap water quality issues, arising from a spill from a holding facility that contained coal processing chemicals. I live on the Guyandotte river, near Barboursville, and get my tap water from the Huntington intake, which is located just a short distance from where the Guyandotte flows into the Ohio river. I'm already highly concerned about the levels of MCHM & PPH that passed by the Huntington water intake with very little, if any action from WVAW or the DEP. We surely need a more regulated water supply, NOT less. Any increase in pollution is going to highly affect me and my family as well as thousands of other people. Do you really want another major public health concern to deal with related to water pollution? It's high time that the WV DEP step up and work to protect the citizens of WV, not the corporate polluters.

thanks for your time and consideration of this important matter

Robin L. Blakeman; Barboursville WV resident
32 Nedra Dr
Barboursville, Wv 25504
304-840-48[illegible]

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

COPY

HEARING ON CARBON RESOURCES' APPLICATION FOR VARIANCE

HELD FEBRUARY 6, 2014

6:00 P.M.

Donna H. Miller
Certified Court Reporter

CAPITOL CITY REPORTING
"PROFESSIONAL STENOMASK FOR THE RECORD"

POST OFFICE BOX 11394, CHARLESTON WEST VIRGINIA 25339 • (304) 344-9505 FAX (304) 344-9506

P R O C E E D I N G S

MR. ALUISE: Good evening. I am Tom Aluise with the West Virginia Department of Environmental Protection's Public Information Office, and I would like to welcome you to tonight's public hearing on Carbon Resources' application for a variance from water quality standards for pH and dissolved aluminum in the Unnamed Tributary of Slab Fork and dissolved aluminum in Slab Fork, a tributary of the Guyandotte River. The locations of these streams are near Maben in Wyoming County in West Virginia.

Also here this evening is Kevin Coin with the State Division of Water and Waste Management.

The purpose for tonight's hearing is to give you the opportunity to share your comments or information with the DEP about the application for variance.

Tonight's hearing is being recorded by a court reporter so that the comments shared can be taken into consideration and entered into the public record for this application. All submitted comments, both written and verbal, will be responded to and posted on the water quality standards webpage.

To ensure that we achieve the purpose of this hearing, we ask that everyone be respectful and considerate of each other.

Please keep your comments on the topic so that our time together is used efficiently.

Those wishing to speak, I will call you up in the order we have your name on the sign-in sheets. Please state your name and if you are with any groups or organizations.

If you have written comments that you would like to submit in addition to your spoken comments, please hand them to me after you speak or at the conclusion of the hearing. The public comment period ends at the conclusion of this meeting.

If anyone has any questions about the hearing format, we will begin the hearing with our first speaker.

There is no one to speak this evening, so this concludes the public hearing on Carbon Resources Development's application for a variance from water quality standards for pH and dissolved aluminum in the Unnamed Tributary of Slab Fork and dissolved aluminum in Slab Fork.

The agency will review all comments and take them into consideration for the application.

Thank you very much.

* * * *

CONCLUDED AT 6:05 P.M.

* * * *

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to wit:

I, Donna H. Miller, Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing was duly taken by and before me, under the West Virginia Rules of Civil Procedure, at the time and place and for the purpose specified in the caption thereof.

I do certify that the said hearing was correctly taken by me by means of the Stenomask; that the same was transcribed by me, and that the said transcript is a true record of proceedings had.

I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy.

Given under my hand this 19th day of February, 2014.

Donna H. Miller
Notary Public

My commission expires 10-1-23

OFFICIAL SEAL
Notary Public, State Of West Virginia
DONNA H MILLER
1439 Dog Fork Rd
Kenna, WV 25248
My Commission Expires October 1, 2023

Public Hearing Sign In Sheet

Carbon Resources application for a variance from water quality standards for pH and dissolved aluminum in the Unnamed Tributary of Slab Fork and dissolved aluminum in Slab Fork, a tributary of the Guyandotte River.
Feb. 6, 2014, Charleston, WV.

The Department of Environmental Protection asks for the information below so that agency staff may provide responses and information about decisions to you. The information you voluntarily provide on this sheet becomes part of the public record related to this topic and may be released if requested under the Freedom of Information Act.

Name **(please print)**	Address	Organization	Phone/Fax	E-mail	Comment Yes/No
Dennis Stottlemyer		WVDEP			No

WEST VIRGINIA REGISTER

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Administrative Law Division
Judy Cooper, Manager

Natalie E. Tennant
Secretary of State
Administrative Law Division
Bldg. 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0770

(304) 558-6000
www.wvsos.com

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NOTICE OF PUBLIC COMMENT PERIOD AND HEARING ON APPLICATION FOR VARIANCE FROM WATER QUALITY STANDARDS FOR REMINING ACTIVITY

In accordance with applicable state and federal requirements, the West Virginia Department of Environmental Protection (WVDEP) will hold a public hearing on February 6, 2014, at 6:00 p.m. in the Coopers Rock Conference Room at the WVDEP Headquarters located at 601 57th Street, SE, Charleston, WV. The purpose of the hearing is to receive comments on an application for a variance from water quality standards for dissolved aluminum and pH for an unnamed tributary of Slab Fork and Slab Fork River, a tributary of the Guyandotte River near Maben in Wyoming County West Virginia. The variance request was submitted by Carbon Resources Development, Inc.

Any person wishing to comment on the proposed remining variance is invited to be present or represented at the hearing. In addition to oral comments provided at the hearing, the agency will accept written comments at any time up to the conclusion of the public hearing. No comments will be accepted after that time. Written comments may be submitted to the following address:

Kevin Coyne
Water Quality Standards Program
WV Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Comments may also be e-mailed to dep.comments@wv.gov

Copies of all written information pertinent to the proposed variance, including the variance application and the WVDEP's information sheet summarizing the proposed variance may be reviewed by contacting the WVDEP office at 601 57th Street, SE, Charleston, WV 25304. Telephone: 304-926-0499 extension 1110; Fax: 304-926-0496. E-mail: Kevin.R.Coyne@wv.gov Information is also available on our website at www.dep.wv.gov/WWE/Programs/wqs

WEST VIRGINIA HEALTH CARE AUTHORITY
CERTIFICATE OF NEED
100 Dee Drive
Charleston, West Virginia 25311-1600

FILED
2013 DEC 27 A 8:43
OFFICE WEST VIRGINIA
SECRETARY OF STATE

December 23, 2013

LEGAL NOTICE

James L. Pitrolo, Jr., Chairman, West Virginia Health Care Authority, announces the following Certificate of Need activities for the week ending December 20, 2013.

LETTERS OF INTENT FOR EXPEDITED REVIEW RECEIVED

December 18, 2013 – Lincoln Primary Care Center, Hamlin, Lincoln County, CON File #13-3-10087-P, for the establishment of an ambulatory care center located at 1563 Sand Plant Road, South Charleston, Kanawha County; capital expenditure: $3,900,000.

December 20, 2013 – Nursing Care – Home Health Agency, Inc. d/b/a Girling Health Care, Overland Park, Kansas, CON File #13-1/2/3/4-10088-A, for stock transaction and merger; capital expenditure: less than $2,000.000.

LETTER OF INTENT FOR EXEMPTION RECEIVED FOR HOSPITAL AMBULATORY HEALTH CARE FACILITY

December 12, 2013 – Community Care of West Virginia, Inc., Rock Cave, Upshur County, CON File #13-7-10086-X, for the provision of primary care services at 149 Staunton Drive, Weston, Lewis County. Community Care of West Virginia, Inc. is a designated Federally Qualified Health Center.

The capital expenditure associated with the project is $191,000.

Any affected person may oppose this proposal by submitting a letter stating the reason for opposition within thirty (30) days of the first date of publication of the public notice to: Marianne Kapinos, General Counsel, West Virginia Health Care Authority, Certificate of Need Program, 100 Dee Drive, Charleston, West Virginia 25311-1600.

The last date upon which an affected party may file a letter of opposition to this proposal is January 24, 2014.

EXPEDITED APPLICATIONS RECEIVED

December 19, 2013 – St. Mary's Medical Center, Inc., Huntington, Cabell County, CON File #13-2-10075-P, for the development of ambulatory care facilities in Cabell, Lincoln and Wayne counties through the acquisition of Barboursville Physical Therapy, LLC's outpatient physical therapy services; capital expenditure: $550,000.