

Petitions for Withdrawal of the NPDES Program Delegation from the State of West Virginia

2009 & 2014

June 17, 2009

- Appalachian Center for the Economy & the Environment, on behalf of:
 - Sierra Club
 - West Virginia Highlands Conservancy
 - Coal River Mountain Watch
 - Ohio Valley Environmental Coalition
- “Because West Virginia fails to demonstrate sufficient ability and authority to carry out the NPDES program, EPA must withdraw its approval of the West Virginia NPDES delegation and assume administration and enforcement of the program.”

Tone of the Petition

- “...the nearly complete breakdown of West Virginia’s maintenance and enforcement of tis NPDES program...”
- “...withdrawal of the State’s NPDES program is the only remedy that will bring West Virginia into compliance with the Clean Water Act.”

Allegation: WV has failed to comply with 40 CFR Part 123

- WV has failed to permit itself for discharges from bond forfeiture mining sites
- (Comes up again in the 2014 petition)

Allegation: WV repeatedly issues permits that do not conform to federal regulations

- Assigning “report only” requirements on outfalls having RP to exceed the WQS for selenium
- WVDEP fails to require selenium core samples, effluent limits, or monitoring at all mines with traditionally Se bearing seams
- Assignment of WQBELs without an assurance those limits can be met
- Inappropriate compliance schedules (too long)

Allegation: WV's NPDES Enforcement Program is Grossly Deficient

- Selenium
 - Failure to enforce the WQS against coal operators
- Dunkard Creek Fish Kill
 - WV's deficient implementation and enforcement of its NPDES program caused a Sep 2009 catastrophic fish kill

Allegation: WV has failed to develop an adequate regulatory program for WQBELs

- Antidegradation – socioeconomic reviews
- WVDEP has failed to develop TMDLs for ionic strength impaired streams
- Failure to conduct RPA for mercury

September 3, 2014

- Same petitioners
- Not intended to be another supplement, but rather constitutes a new and separate request

Allegation: WV has failed to issue NPDES permits for discharges at bond released sites

- Bond released sites continue to produce polluted mine drainage
- Valley fills remain after reclamation and SMCRA bond release
- Once the SMCRA permit is released, the NPDES outlets are released

Allegation: WV issues permits that are not protective of the narrative WQS

- No AEPP or WET limits for substantially complete permits
- WV has not identified how the design elements and best practices included in the AEPP address adverse WQ impacts
- No reasonable expectation that an AEPP will prevent violations of the NWQS
- WET limits alone have not been shown to protect WQ from the effects of conductivity

Allegation: WV is issuing illegal bond forfeiture permits to itself

- Bond forfeiture permits are not subject to citizen challenge
- WVDEP is not conducting RPAs for these sites
- WVDEP ignores narrative WQS
- Fe and Al compliance schedules are illegal
 - Subject to tech-based limits

Remember...

- Compliance schedules
- Bond forfeiture
- Selenium
- Bond release
- Narrative WQS

Virginia NPDES Mining Program Withdraw Petition

Virginia NPDES Mining Program Petitioners

➤ **On September 3, 2014, the following environmental groups submitted a petition requesting EPA to withdraw the Commonwealth of Virginia NPDES Mining Program**

- **Sierra Club**
- **Southern Appalachian Mountain Stewards**
- **Appalachian Voices and**
- **Appalachian Mountain Advocates**

Petitioners Claims

- Virginia has failed to administer an adequate regulatory program to develop water quality-based effluent limits in NPDES permits because:
 - Division of Minerals, Mines, and Energy (DMME) routinely approves permits on the basis of incomplete permit applications, permit applications just list temperature, total iron, total manganese, TSS, and TDS.
 - DMME never considers existing water quality when approving permits because it allows permittees to submit effluent characterization six months *after* permit reissuance.
 - By issuing permits on the basis of incomplete permit applications, DMME is exposing all permit applicants to potential litigation because the permittees cannot assert a permit shield when they fail to disclose the presence of these pollutants.

Petitioners Claims

- Virginia fails to develop WQBELs based on the narrative water quality criteria.
- Use of BMPs in lieu of effluent limits as the primary control for implementation of WLAs for mining facilities.
- Sustained and gross exceedances of TMDL wasteload allocations further prove the inadequacy of the BMP approach as a means of regulating discharges of TDS and TSS from active coal mines.

Petitioners Claims

- **The petitioners question DMME capability to assess compliance with the aggregate WLAs.**
- **DMME fails to implement individual WLAs.**
- **DMME has failed to issue NPDES permits for abandoned and bond released Mines.**

Petitioners Claims

- VA State Water Control Board has failed to correct DMME deficiencies in the implementation of the NPDES program.
- VA Settlement Agreement indicates that DMME would take no action when permittees violate their permits by exceeding their TMDL wasteload allocations, instead DMME would require additional monitoring.
- WET testing is not a substitute to comply with TDS requirements.

Petitioners Claims

- No RP for the narrative water quality criteria in specific for TDS, sulfates, and conductivity
- Permits that contain requirement to comply with the TMDL, are not allowed to contain a compliance schedule when reissued.

EPA's Actions

- On October 30, 2014 EPA Region 3 issued a letter to the Petitioners acknowledging receipt of the Petition request.
- On October 30, 2014, EPA Region 3 send letter to VA DMME, VA DEQ and VA SWCB requesting the Commonwealth of Virginia response to the Petitioners claims.
- EPA would like to receive the Commonwealth of Virginia response to the Petition claims within 60 days of above request response letters.