Protect PT
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04/02/2025

Sent by Certified Mail and Email

Department of Environmental Protection, Clean Water Program
400 Waterfront Drive
Pittsburgh, PA 15222

Re: Comment on the Draft WSL NPDES Permit PA0285358

To the Pennsylvania Department of Environmental Protection (DEP) Clean Water Program,

Please accept this comment on behalf of Protect PT and its members who get their drinking water from the Monongahela River. Protect PT is a nonprofit citizens group dedicated to ensuring that the safety, security, and quality of life of community members are protected from the effects of unconventional gas development and the resulting pollution that fills local waste facilities and landfills in Westmoreland and Allegheny Counties. Protect PT's staff attorney can be reached at 412-254-3494 and dylan@protectpt.org. My business address is 3344 Route 130, PO Box 137, Harrison City, PA 15636. This comment addresses the draft NPDES permit PA0285358 (the "Permit") for the Westmoreland Sanitary Landfill (WSL) based on the Permit and all other accompanying documents found on the DEP's website, some of which are additionally cited in this comment.

The PA DEP must deny the permit due to the inadequacies raised in this comment and other public comments, or, in the alternative, refer the matter to the EPA for further review.

Among other issues, the Permit:

1. Applies Best Practicable Control Technology (BPT) standards to the WSL, which are inadequate, when the WSL has atypical constituents in its landfill leachate;
2. Sets BPT effluent limitations that the WSL's treated leachate demonstrably exceeds;
3. Fails to limit radiation releases despite the presence of radioactive materials in the WSL's leachate;
4. Fails to limit emissions of per- and poly- fluoroalkyl substances despite the high likelihood of the presence of these substances in the WSL's leachate, which the DEP acknowledges;
5. Inappropriately grants permission to cease monitoring for per- and poly-fluoroalkyl substances if these substances are not detected for four quarters of monitoring;
6. Ignores the abysmal compliance history of the WSL, including 27 violations, 4 consent agreements, and 1 civil penalty;

7. Does not contain overall mass limitations;
8. Inappropriately grants permission to emit treated leachate containing unregulated levels of polychlorinated biphenyls (PCBs) where the Monongahela river is already impaired due to PCBs;
9. Inappropriately grants permission to emit treated leachate upriver from 2 water intakes for consumer use in a dense urban area between the proposed Outfall 004 and the city of Pittsburgh;
10. Applies an inadequate "reasonably possible" standard for community notification of unauthorized discharges;
11. Does not account for reports of leachate quantities of up to .3 MGD, much more than the design capacity of .1 MGD and the average predicted average rate of .04 MGD given in the Permit, indicating the leachate is being and would continue to be expelled without authorization;
12. Does not account for the impact of the Supreme Court decision in *City and County of San Francisco, California v. Environmental Protection Agency* on the ability of the EPA to implement end-result limitations;
13. Must be approved by the EPA because of the pollution of the downstream Ohio River flowing into Ohio.

The Permit Applies Inadequate Best Practicable Control Technology (BPT) Standards to the WSL when the WSL Has Atypical Constituents in its Landfill Leachate

The Permit applies BPT standards to the WSL, despite the presence of hazardous waste products at the WSL, which require stricter limitations to protect the environment and public health. As discussed in the fact sheet released by the DEP, "[t]he Sanitary Landfill is a municipal solid waste landfill with no other industrial activities at the site and not subject to Federal Effluent Limitation Guidelines (ELGs) … The Best Practicable Control Technology (BPT) for RCRA Subtitle D NonHazardous Waste Landfill discharging directly to surface waters are summarized below in Table 5."[1] The BPT standards in 40 CFR § 445.21 regulate 8 substances in addition to pH: Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), Ammonia (as N), α-Terpineol, Benzoic acid, p-Cresol, Phenol, and Zinc. No other substance emissions are regulated by these standards, but Technology-Based Effluent Limitations (TBELs) for Total Dissolved Solids (TDS) and oil and grease are given separately on Table 6.[2] Combined with limitations for Toxaphene and monitoring requirements for PF substances, these limitations are given on Table 11.[3]

[1] NPDES Permit Fact Sheet Individual Industrial Waste (IW) And IW Stormwater, Pennsylvania Department of Environmental Protection, https://files.dep.state.pa.us/Water/Wastewater%20Management/eDMRPortalFiles/Permits/PA0285358_FACT_SHEET_20250203_DRAFT_V2.pdf, at 8 (last visited Mar. 31, 2025).
[2] *See id.* at 10.
[3] *See id.* at 13.

These standards are inadequate because of their failure to regulate the breadth of detectable contaminants present in the landfill leachate. Results from January 2025 testing published by the DEP indicate that the treated landfill leachate, which will be expelled from the proposed Outfall 004 under the Permit, will contain detectable but unregulated quantities of:

- Group 1 Phosphorus, Bromide, Chloride, Sulfate, Sulfide, Surfactants, and Fluoride;
- Group 2 heavy metals and suspended substances, which will only be regulated in aggregate as TSS, excluding zinc, regulated under 40 CFR § 445.21;
- Group 3 industrial chemicals, volatile organic compounds, and hydrocarbons;
- Group 4 Phenols, excluding Phenol, which is regulated under 40 CFR § 445.21;
- Group 5 Acenes, Benzenes, Methanes, Ethanes, Ethers, Phthalates, Pthalenes, Chrysene, Dienes, Pyrene, Amines, and Anthrenes, generally aromatic hydrocarbons;
- Group 6 Aldrin, Benzenehexachlorides and other various pesticides, and polychlorinated biphenyls, excluding Toxaphene, which is regulated under a Water Quality Based Effluent Limitation (WQBEL);
- Group 7 radioactive materials and radiation;
- Various additionally measured lighter metal elements, vanadium, acetone, carbon disulfide, bicarbonate, ketones, and other overall substance parameters.[4]

The DEP has stated that emissions of some of these chemicals into the Monongahela by the WSL do not need to be regulated because they are not at a maximum reported concentration, which would make them a "parameter of concern."[5] The criteria for becoming a parameter of concern for monitoring and regulation is whether the concentration of a pollutant exceeds some percentage of the WQBEL for that material entering the Monongahela, depending on the conservation status of the pollutant.[6]

While the presence of these materials in any non-zero quantity in the landfill is not inherently grounds for regulation, the fact that the WSL is likely to discharge more than the predicted 40,000 gallons of treated leachate into the Monongahela means that the total mass of these pollutants discharged even at the reported concentrations will increase beyond what the data in the fact sheet suggests.[7] Further, the poor compliance history of the WSL suggests that actual concentrations of materials may exceed the predicted outfall concentrations and instead approach the greater concentrations found in the Treatment Facility Influent Sampling Results.[8]

The DEP should therefore impose effluent limitations using the Toxics Screening Analysis process with initial data inputs of the *Influent* sampling, not the *Outfall* sampling, and assume for the purposes of these limitations that the amount of effluent will be the full 100,000 gallon

[4] Analytical Results Tables 332-839, January 2025, Pennsylvania Department of Environmental Protection, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/02-14-25/Analytical-Results-Tables-Jan27-25.pdf, at 9-16 (last visited Mar. 31, 2025).
[5] *Supra* note 2.
[6] *See id.*
[7] *See infra*, at 16.
[8] *See infra*, at 10-12; for influent sampling results, *see supra*, note 4, at 1-8.

per day design flow capacity of Outfall 004.[9] These changes will prevent the WSL from skirting around lax regulations and emitting higher than predicted levels of unregulated contaminants due to failures of leachate treatment systems and higher than predicted leachate volumes. Aside from those materials addressed by WQBELs, the DEP inexplicably gives no Water Quality Standard (WQS) for toxic and radioactive materials such as Bromide, Beryllium, Cyanide, Molybdenum, Chloroethane, 1,1-Dichloroethane, 1,4-Dioxane, Acenaphthylene, Benzo(ghi)perylene, Bis(2-Chloroethoxy)Methane, 4-Chlorophenyl Phenyl Ether, Di-n-Octyl Phthalate, delta BHC, PCB compounds, Radium 226/228, and Uranium.[10] At a minimum, the DEP should apply water quality standards to these toxic and radioactive substances measurably found in the WSL's treated leachate instead of allowing these materials to be dumped in unlimited quantities into the Monongahela River.

Here, where the WSL has a fundamentally different waste profile from the typical landfill due to accepting oil and gas waste products which have filtered into its leachate, the DEP should on its own initiative, apply more stringent limitations than BPT standards per the criteria found in 40 CFR § 125.31(d). Specifically, the nature or quality of pollutants contained in the raw waste load of the applicant's processed wastewater is different from that of a typical landfill, the volume of the discharger's processed wastewater and effluent discharged is likely to be greater than the predicted 40,000 gallons per day, and the non-water quality environmental impact of control and treatment of the discharger's raw waste load is likely to be significant as portions of the then-concentrated hazardous, radioactive pollutants extracted from the leachate during treatment will still need to be disposed of, either by placement back into the landfill or through a different, specialized treatment method.[11] Notably, even if the federal government would not impose or would not be likely to impose stricter than BPT limitations under this section, "nothing in this section shall be construed to impair the right of any State or locality under section 510 of the Act to impose more stringent limitations than those required by Federal law."[12]

With respect to the BPT standards, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Impose effluent limitations using the Toxics Screening Analysis process with initial data inputs of the Influent sampling, not the Outfall sampling;
2. Assume for the purposes of these limitations that the amount of effluent will be the full 100,000 gallon per day design capacity of Outfall 004;
3. Apply water quality standards to the toxic and radioactive substances measurably found in the WSL's treated leachate which do not currently have a WQS;

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[9] *See* National Pollutant Discharge Elimination System Application For Individual Permit to Discharge Industrial Wastewater, Westmoreland Sanitary Landfill, LLC, June 17, 2024, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/10_1_24/2024NPDESPermitApplication.pdf, at 8 (last visited Mar. 31, 2025).
[10] *See supra* note 1, at 37-40.
[11] *See* 40 CFR § 125.31(d)(1)-(3).
[12] *Id.* § 125.31(f).

4. Impose stricter than BPT limitations under the same considerations given in federal regulations for landfills subject to fundamentally different factors than the typical source of landfill leachate.

The Data on the WSL's Treated Leachate Shows that the Treated Leachate Will Exceed the BPT Effluent Limitations Set by the Permit

Even assuming that all predicted control mechanisms and effluent volumes describe the actual leachate expelled into the Monongahela from Outfall 004, the WSL's treated leachate *still* exceeds the effluent limitations imposed as drafted. Issuing this permit under these conditions would inevitably create a continuous stream of violations while the condition of the Monongahela worsens. Instead, the DEP should deny this permit application outright on these grounds.

The non-pH effluent limits for Outfall 004 given in the draft permit are summarized in the table below, with all values in mg/L, except for Toxaphene which is given in micrograms/L[13]:

Parameter	Average Monthly Effluent Limitation	Daily Maximum Effluent Limitation	Measured Concentrations
BOD	37.0	140.0	31
TSS	27.0	88.0	20
TDS	2,000.0	4,000.0	11,200 (fact sheet) 6,185 (sampling data)
Oil and Grease	15.0	30.0	4
Ammonia-Nitrogen	4.9	10.0	87
Zinc	0.11	0.20	4.73 (fact sheet) 0.170 (sampling data)
Phenol	0.015	0.026	.0069 (fact sheet) .002 (sampling data)

[13] *See* Authorization to Discharge Under the National Pollutant Discharge Elimination System Discharge Requirements For Industrial Wastewater Facilities, NPDES Permit No: PA0285358, Pennsylvania Department of Environmental Protection, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/02-14-25/Draft-Permit_PA0285358_NPDES_PERMIT_20241219_Draft_v1.pdf, at 5 (last visited Mar. 31, 2025).

a-Terpineol	0.016	0.033	No data given
Benzoic Acid	0.071	0.12	No data given
p-Cresol	0.014	0.025	No data given
Toxaphene	1.78	2.77	2.5

As an initial note, the lack of variation among the minimum and maximum daily concentrations suggests that a single sample was used to gather data on many of these pollutants. A single sample is inadequate to give an accurate profile of what a monthly average concentration of discharges might contain in practice. The WSL should be required to conduct comprehensive sampling over the course of at least one month in order to develop a monthly average concentration estimate. In the absence of any supplementary data however, Protect PT can only infer that these concentrations represent the average monthly concentration for the sole purpose of this comment.

The WSL sample data indicates that, if this permit were to be issued, WSL would immediately be in violation of the permit for TDS, ammonia (as Nitrogen), toxaphene, and possibly zinc. Separately, no data is given in the fact sheet or sample data for concentrations of α-Terpineol, Benzoic acid, or p-Cresol, so the DEP has no way of determining whether the WSL will be in compliance for these materials.[14] The DEP should require the WSL to submit sample data for concentrations of α-Terpineol, Benzoic acid, and p-Cresol before issuing any permit regarding these materials.

As to TDS, the concentration of TDS is somewhat unclear based on the provided documents, but exceeds the daily and monthly limits regardless of whether the fact sheet or the January 2025 data table is used. Per the fact sheet, the TDS concentration in the treated leachate on January 28, 2025, was 11,200 mg/L, or 2.8 times the daily maximum effluent limitation.[15] Per the sampling data listed as being from January of 2025, the TDS concentration was 6,185 mg/L, or 1.546 times the daily maximum effluent limitation.[16] The DEP should clarify when and by what method these different measurements for all of the various effluents were obtained and, if they are derived from different methods, comprehensively evaluate the sum total of the data to determine the likely concentrations of various pollutants in the landfill's treated leachate over time. It is unusual that some data points from the provided Analytical results table exactly match those data points provided in the fact sheet, though some, as discussed, differ significantly.[17] It is especially important in light of this that the DEP explains these discrepancies

[14] *See supra* notes 1, 4.
[15] *See supra* note 1, at 21.
[16] *See supra* note 4, at 9.
[17] To give a few examples among many, unlike the discordant measurements of TDS, zinc, and phenol, the measurements of gross alpha, strontium, and uranium on the DEP fact sheet and the analytical

by clarifying what methods were used to create these data sets which differ for measurements of some pollutants, but match precisely for others.

As to ammonia (as nitrogen), the concentration of ammonia is 87 mg/L, 8.7 times the daily maximum effluent limitation.[18] This is an unacceptable exceedance that will cause eutrophication and the destruction of diverse habitats in the Monongahela and Ohio rivers, including killing off fish and other species of aquatic life that local communities depend upon.[19]

As to toxaphene, the concentration of toxaphene is 2.5 micrograms/L, in excess of the monthly average concentration limitation of 1.78 micrograms/L but not the daily concentration limitation of 2.77 micrograms/L. Given the lack of multiple sampling events required to get a consistent measure of monthly average concentrations, this still leads to the necessary inference that the WSL will exceed the monthly average concentration limitation for toxaphene in its treated leachate.

As to zinc, the DEP fact sheet and the released sampling data give widely diverging answers as to the actual level of Zinc in the treated leachate. According to the fact sheet, the maximum discharge concentration is 4.73 mg/L, 23.7 times the daily maximum effluent limitation.[20] According to the January 2025 sample data however, the zinc level is only .170 mg/L, listed as 170.0 micrograms/L, exceeding the monthly effluent limitation but not the daily effluent limitation.[21] Given the lack of multiple sampling events required to get a consistent measure of monthly average concentrations, this still leads to the necessary inference that the WSL will exceed the monthly average concentration limitation for zinc in its treated leachate.

As a result of these mathematically clear deficiencies, the DEP should not issue a permit for the WSL to dump treated leachate into the Monongahela River that will immediately violate the Permit as issued. DEP will have to spend taxpayer dollars pursuing violations, the WSL will have to pay them, but this will just be the price of doing business for a landfill that demonstrably seeks to violate environmental laws by dumping leachate that it knows violates water quality regulations into the waters of the United States. With respect to the existing pollutant concentrations in the treated leachate, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Require the WSL to conduct comprehensive sampling over the course of at least one month in order to develop a monthly average concentration estimate;

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results table match exactly, with 5.76 pCi/L, 3560 micrograms/L, and 1 microgram/L, respectively. *See supra* notes 1, at 23, and 4, at 16.

[18] *See supra* note 4, at 9.

[19] *See* Ammonia, Environmental Protection Agency, Causal Analysis/Diagnosis Decision Information System (CADDIS), Feb. 7, 2025, https://www.epa.gov/caddis/ammonia#:~:text=The%20resulting%20dissolved%20oxygen%20reductions,ammonia%2C%20thereby%20reducing%20aqueous%20concentrations (last visited Mar. 31, 2025).

[20] *See supra* note 1, at 21.

[21] *See supra* note 4, at 10.

2. Require the WSL to submit sample data for concentrations of α-Terpineol, Benzoic acid, and p-Cresol before issuing any permit regarding these materials;
3. Give a thorough, reasoned explanation as to how the issuance of the permit is acceptable when the WSL's treated leachate samples indicate that the WSL will immediately violate this permit as to at least four different regulated contaminants: TDS, ammonia (as Nitrogen), toxaphene, and zinc.

The Permit Fails to Limit Radiation Releases Despite the Presence of Radioactive Material in the WSL's Leachate

Based on available sampling data, the DEP is aware that the WSL's leachate contains detectable levels of alpha radiation, strontium, and uranium.[22] Despite this, the DEP gives a WQBEL only for Strontium, concluding that the discharge concentration of 3,560 micrograms/L is below 10% of the applicable WQBEL.[23] For gross alpha and uranium, no WQS is given at all. This is troubling, given that uranium-235 has a half-life of approximately seven hundred and four million years and, as it decays, eventually turns into neurotoxic lead.[24]

The alpha radiation reading of 5.76 pCi/L is even more troubling, as the maximum contaminant level for alpha radiation set by federal regulations is 15 pCi/L.[25] This means that the WSL alone will create more than 38% of the radiation which can be added to the Monongahela river, a public drinking water source.[26] Further, the analytical results table indicates that the concentration of gross alpha radiation in the leachate has a range of uncertainty of 26.3 pCi/L, which means it could be as high as 32.06 pCi/L, or as low as -20.54 pCi/L.[27] Notwithstanding the physical meaning of negative levels of radiation of which Protect PT is unaware, the indicated possibility of radiation levels more than double the federal maximum contaminant level for gross alpha radiation requires that the DEP limit the gross alpha levels in the WSL's leachate. The DEP should impose gross alpha radiation monitoring requirements and limits given the federal maximum contaminant level of 15 pCi/L.

This radioactive pollutant profile further substantiates the widely known fact that the WSL accepts fracking waste products as landfill ground cover, which is the only reasonable source in

[22] *See supra* note 17.
[23] *See id*.
[24] *See* Uranium-235, Encyclopedia Britannica, Mar. 5, 2025, https://www.britannica.com/science/uranium-235 (last visited Mar. 31, 2025).
[25] *See supra* note 16; 40 CFR § 141.66(c).
[26] Two surface water intakes exist on the Monongahela River between the proposed Outfall 004 and the city of Pittsburgh in the Hydrologic Unit Code (HUC) 12: Fallen Timber Run-Monongahela River area and the Hydrologic Unit Code (HUC) 12: Streets Run-Monongahela River area, servicing the PA AMER WATER CO-PITTSBURGH. *See* DWMAPS, EPA, https://geopub.epa.gov/DWWidgetApp/?page=main#data_s=id%3AdataSource_5-1941864c01b-layer-46-DW_Intakes_HUC12_5941%3A3983 (last visited Mar. 31, 2025).
[27] *See supra* note 4, at 16.

the area of these detectable levels of radiation in landfill leachate. This fact emphasizes even further that the WSL should not be allowed to utilize BPT standards as its leachate has an atypical pollutant profile.[28]

With respect to the radioactive contaminants in the WSL's leachate, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Properly set and apply WQS levels for all radioactive materials and radiation pollutants in the WSL's leachate;
2. In completing (1), follow the 15 pCi/L maximum contaminant level set by federal regulations;
3. Clarify the meaning of the 5.76 ± 26.3 pCi/L measurement on page 16 of the provided analytical results table.

The Permit Fails to Limit Emissions of Per- and Poly- Fluoroalkyl Substances Despite the High Likelihood of the Presence of These Substances in the WSL's Leachate

The Permit does not limit emissions of per- and poly- fluoroalkyl substances, even though the DEP has acknowledged that these substances are likely present in the WSL's leachate. According to the DEP, "[d]ue to their durability, toxicity, persistence, and pervasiveness, PFAS have emerged as significant pollutants of concern."[29] Even though PFAS is a significant pollutant of concern, "[s]anitary Landfill's application was submitted without PFOA, PFOS, PFBS, and HFPO-DA sample data, so there are no PFAS data to evaluate. However, the potential for PFAS to be present can be estimated based on studies of various industries by EPA. The Sanitary Landfill is a facility that ostensibly operates in one of the industries EPA expects to be a source for PFAS: landfilling."[30]

Instead, the Permit only requires monitoring for the PFAS pollutants PFOA, PFOS, HFPO-DA, and PFBS. This is itself an incomplete list of hazardous PFAS chemicals, which also include perfluorononanoic acid (PFNA), perfluorohexanesulfonic acid (PFHxS), perfluorodecanoic acid (PFDA), perfluorohexanoic acid (PFHxA), and perfluorobutanoic acid (PFBA).[31] Though these chemicals were not ultimately added to the federal Hazardous Constituents list, this federal government decision should not and does not stop the DEP from treating these chemicals as hazardous, given the DEP's recognition of the dangers from PFAS chemicals in general.[32] The DEP should require testing data from the WSL for all nine PFAS chemicals which the federal

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[28] *See generally supra*, at 2-4; Westmoreland Sanitary Landfill, Noble Environmental, https://nobleenviro.com/westmoreland-sanitary-landfill/ (last visited Mar. 31, 2025); Daniel Shaler, 'Landfill tea' steeps fracking waste near suburban communities, PUBLIC SOURCE, Mar. 14, 2024, https://www.publicsource.org/fracking-waste-landfill-radioactive-westmoreland-rostraver-plum-reinjection-well/.

[29] *Supra* note 1, at 9.

[30] ***Id***.

[31] *See* Listing of Specific PFAS as Hazardous Constituents, 89 FR 8606 (Feb. 8, 2024).

[32] *See supra* note 29; 40 CFR § 261 App. VIII.

government had considered adding as hazardous constituents ahead of issuing the Permit. Based on this data provided ahead of issuing the permit, the DEP should set WQS standards and limit the concentration of all nine above-referenced PFAS chemicals in the WSL's leachate.

With respect to the presence of per- and poly-fluoroalkyl substances in the WSL's leachate, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Require testing from the WSL measuring concentrations of PFOA, PFOS, HFPO-DA, and PFBS, PFNA, PFHxS, PFDA, PFHxA, and PFBA ahead of issuing the Permit;
2. Set applicable effluent limitations on PFOA, PFOS, HFPO-DA, and PFBS, PFNA, PFHxS, PFDA, PFHxA, and PFBA in any future issued NPDES permit for the WSL's leachate.

The Permit Inappropriately Grants Permission to Cease Monitoring for Per- and Poly-fluoroalkyl Substances if These Substances are not Detected for Four Quarters of Monitoring

The DEP relies on its internal guidance in the form of SOP BCW-PMT-032 to allow that "if non-detect values at or below DEP's Target QLs are reported for four consecutive monitoring periods (i.e., four consecutive quarterly results in Sanitary Landfill's case), then the monitoring may be discontinued."[33] This means that monitoring for all PFAS chemicals could potentially be discontinued in as little as one year if the WSL does not report finding only a fraction of PFAS chemicals for a relatively short period in the life of the landfill. This is unacceptable given the potential for long term contamination and harm from PFAS chemicals and the possibility that the WSL could begin accepting wastes which leach greater levels of PFAS or could relax controls or oversight over the treatment and removal of PFAS from leachate, after the monitoring requirement is removed.

The long term health of downriver communities depends on consistent monitoring for significant pollutants of concern, regardless of whether these pollutants are detected during one or a small number of snapshots in time. With respect to monitoring for per- and poly-fluoroakyl substances, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Eliminate the limited monitoring window for PFAS chemicals, and instead require continuous monitoring for the nine above-listed PFAS pollutants consistent with ensuring compliance with effluent limitations which should be set for these pollutants.

[33] *Supra* note 1, at 9; *see also supra* note 13, at 7 ("The permittee may discontinue monitoring for PFOA, PFOS, HFPO-DA, and PFBS if the results in 4 consecutive monitoring periods indicate non-detect results at or below Quantitation Limits of 4.0 ng/L for PFOA, 3.7 ng/L for PFOS, 3.5 ng/L for PFBS and 6.4 ng/L for HFPO-DA").

Issuance of the Permit Would Ignore the Compliance History of the WSL, Which Includes 27 Violations, 4 Consent Agreements, and 1 Civil Penalty

The DEP should not issue permits for the emission of pollutants to parties who have shown time and time again that they cannot be trusted to comply with the terms of these permits. Issuing these permits only for them to be inevitably violated, as would certainly occur here if the Permit is issued, results in negotiations and fines, but does not meaningfully deter violations and harms to the natural environment which the DEP is obligated to protect for all present and future Pennsylvanians.[34] Issuing the Permit to the WSL here would be doing just that.

One reliable indicator which the DEP can and should consider in deciding whether or not to issue the Permit is the compliance history of the WSL.[35] This compliance history includes 27 violations,[36] 4 consent orders and agreements, and 1 consent assessment of civil penalty since the beginning of 2020.[37] Many of these violations relate to violations of the existing NPDES permits for outfalls 001-003, including a "[f]ailure to take necessary measures to prevent

[34] *See* Pa. Const. Art. 1, § XXVII; *supra*, at 5-7.
[35] *See generally St. Rd. Bar & Grille, Inc. v. Pa. Liquor Control Bd.*, 876 A.2d 346, 357-58 (Pa. 2005).
[36] This result is obtained from combining 9 violations found in Cedat reporting data, which appears to continue up to April of 2023, with eFacts data which continues up to the present day from April 25, 2023, which appears to contain 18 violations. *See* Pennsylvania Department of Environmental Protection, Bureau of Clean Water, Water Pollution Control Facility Inspections, Violations, and Enforcements, http://cedatareporting.pa.gov/Reportserver/Pages/ReportViewer.aspx?/Public/DEP/CW/SSRS/WMS_Inspections_ext (last visited Mar. 31, 2025) (to find violations from the WSL in the Cedat system, use permit # PAG036349, set "Inspection Begin Date" to "1/1/2020," and "Inspection End Date" to "4/3/2025."); eFACTS, Pa.gov Official App, ahs.dep.pa.gov/eFACTSWeb/searchResults_singleSite.aspx?SiteID=239963 (last visited Mar. 31, 2025) (the 18 violations can be found under "Site-Level and Primary Facility-Level Inspections (1091)", beginning from April 27, 2023).
[37] These consent orders and agreements, as well as the consent assessment of civil penalty, can be found on the DEP's website. *See* Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Feb. 13, 2020, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/WSL_COA.pdf (last visited Mar. 31, 2025); Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Oct. 7, 2020, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/Westmoreland_Sanitary_10-7-2020_Signed_COA.pdf (last visited Mar. 31, 2025); Consent Assessment of Civil Penalty, Commonwealth of Pennsylvania Department of Environmental Protection, Apr. 28, 2021, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/Westmoreland_CACP_4-28-2021.pdf (last visited Mar. 31, 2025); Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Apr. 28, 2021, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/Westmoreland_CACP_4-28-2021.pdf (last visited Mar. 31, 2025); Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Nov. 1, 2023, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/WSL_Consent_Order_and_Agreement_11.1.2023_executed.pdf (last visited Mar. 31, 2025).

pollutants from reaching waters of the Commonwealth,"[38] "NPDES - Failure to properly operate and maintain all facilities which are installed or used by the permittee to achieve compliance,"[39] "[f]ailure to immediately report a pollution incident to DEP for non-NPDES permitted activities,"[40] another two violations labeled "[f]ailure to take necessary measures to prevent pollutants from reaching waters of the Commonwealth"[41] and others which are too voluminous to list manually here, but which should be equally considered nonetheless. Many of these violations, as this list makes clear, relate explicitly to failures to prevent pollution of surrounding land and waters with leachate and violations of existing NPDES permits.

As with the violations, so too with many of the consent orders. These consent orders often relate to the WSL's failure to properly handle leachate. These include unauthorized disposal of leachate via tanker trucks,[42] leachate seeps and uncontrolled releases of leachate into the ground,[43] and multiple undisclosed, uncontrolled releases of leachate from overflowing leachate containment tanks.[44] These are not one-off issues, but instead a pattern of flagrant non-compliance with state and federal regulations. Under these circumstances, there is every reason to believe that, if the Permit is granted, it too will be violated in short order.[45]

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[38] Pennsylvania Department of Environmental Protection, Bureau of Clean Water, Water Pollution Control Facility Inspections, Violations, and Enforcements, http://cedatareporting.pa.gov/ReportServer/Pages/ReportViewer.aspx?/Public/DEP/CW/SSRS/WMS_Violations_ext&rs:Command=Render&P_INSP_ID=3561404&P_PF_STATUS=7 (last visited Mar. 31, 2025).
[39] Pennsylvania Department of Environmental Protection, Bureau of Clean Water, Water Pollution Control Facility Inspections, Violations, and Enforcements, http://cedatareporting.pa.gov/ReportServer/Pages/ReportViewer.aspx?/Public/DEP/CW/SSRS/WMS_Violations_ext&rs:Command=Render&P_INSP_ID=3418584&P_PF_STATUS=7 (last visited Mar. 31, 2025).
[40] *Id*.
[41] Pennsylvania Department of Environmental Protection, Bureau of Clean Water, Water Pollution Control Facility Inspections, Violations, and Enforcements, http://cedatareporting.pa.gov/ReportServer/Pages/ReportViewer.aspx?/Public/DEP/CW/SSRS/WMS_Violations_ext&rs:Command=Render&P_INSP_ID=3140920&P_PF_STATUS=7 (last visited Mar. 31, 2025); Pennsylvania Department of Environmental Protection, Bureau of Clean Water, Water Pollution Control Facility Inspections, Violations, and Enforcements, http://cedatareporting.pa.gov/ReportServer/Pages/ReportViewer.aspx?/Public/DEP/CW/SSRS/WMS_Violations_ext&rs:Command=Render&P_INSP_ID=3066222&P_PF_STATUS=7 (last visited Mar. 31, 2025).
[42] *See* Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Feb. 13, 2020, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/WSL_COA.pdf, at 4 (last visited Mar. 31, 2025).
[43] *See* Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Oct. 7, 2020, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/Westmoreland_Sanitary_10-7-2020_Signed_COA.pdf, at 4-5 (last visited Mar. 31, 2025).
[44] *See* Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Nov. 1, 2023, https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/WSL_Consent_Order_and_Agreement_11.1.2023_executed.pdf, at 8-14 (last visited Mar. 31, 2025).
[45] *See supra*, at 5-7.

For this reason alone, the DEP should not issue a NPDES permit to the WSL until the WSL is able to demonstrate that it can fully comply with its existing permit obligations without suffering equipment failures and letting its equipment meant to protect the environment from leachate contamination fall into disrepair. The WSL has not demonstrated this in any way at this time, and so the DEP should not issue the Permit. With respect to the WSL's continuing pattern of regulatory violations, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Detail what specific enforcement mechanisms for this permit will function differently from the enforcement mechanisms which have been used in response to the WSL's prior violations, which have not stopped the pattern of violations at the WSL.
2. Detail why the violations history of the WSL, including its ongoing violations, especially those related to the disposal of leachate, do not constitute a pattern of regulatory noncompliance.

The Permit Does not Contain Overall Mass Limitations for Effluents, Which are Necessary to Prevent Excess Pollution in the Event of Excess Leachate Flow Above 40,000 Gallons Per Day

In the "Mass Units (lbs/day)" column of the Permit's Outfall 004 Part A table, every regulated contaminant is labeled with "XXX," apparently indicating that there will be no mass limitations on the pollutants being discharged into the Monongahela River.[46] The lack of mass units is problematic. Assuming an estimated average flow volume of 40,000 gallons per day, mass limitations could be calculated by converting the average 40,000 gallons per day to approximately 151,416 liters per day, then taking the average monthly concentration limit of a given pollutant and multiplying it by this 151,416 figure to determine the average monthly number of milligrams per day of the substance permitted, and finally multiplying the number of milligrams per day by 2.2046*10^-6 to determine the number of pounds per day. Taking toxaphene as an example, this would result in an average monthly mass limitation for toxaphene of

$1.78\ \mu g/L\ *\ 3.7854\ L/G\ *\ 40,000\ G/d\ *\ 2.2046\ *\ 10^{-9}\ lbs/\mu g\ =\ 0.0005942\ lbs/day$ and a daily maximum mass limitation of

$2.77\ \mu g/L\ *\ 3.7854\ L/G\ *\ 40,000\ G/d\ *\ 2.2046\ *\ 10^{-9}\ lbs/\mu g\ =\ 0.0009247\ lbs/day.$

This is problematic given that the recommended mass load limitations for toxaphene are a monthly average of 0.0006 lbs/day and a maximum daily limit of 0.0009 lbs/day.[47] Put another way, absent explicit mass limitations WSL could emit more than the daily recommended amount of toxaphene by approximately 3% on a given day. This is a poor way of regulating mass and concentration, not only for toxaphene but for all other pollutant materials regulated

[46] *Supra* note 13, at 5-7 (although footnote 1 indicates that "sampling to determine compliance with mass effluent limitations" will be required, these limitations are not enumerated).
[47] *See supra* note 1, at 11.

by the permit. These pollutants impact the receiving water not just based on their immediate concentration around Outfall 004, but also based on overall mass dispersed into the receiving water of the Monongahela and the downstream Ohio River. In the event that Outfall 004 expels closer to its design capacity of 100,000 gallons per day, this problem becomes, mathematically, 2.5 times worse than it was already.[48] Instead of the monthly average for toxaphene being in compliance with the recommended level for example, it would be approximately 2.47 times in excess of the mass limit. This is especially concerning for toxaphene, a toxic pesticide and likely carcinogen according to the Department of Health of Human Services, the International Agency for Research on Cancer, and the Environmental Protection Agency. Mass limits therefore are demonstrably necessary to enforce safe levels of pollutant discharge into the receiving water and prevent the estimated 40,000 gallons per day value used as an assumption when calculating these limitations from becoming meaningless in practice.[49]

With respect to the control of the overall mass of effluents, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Apply best scientific methods and standards to impose daily and monthly average mass limits to all regulated pollutants on the assumption that the average monthly flow will be 40,000 gallons per day and the maximum daily flow will be 100,000 gallons per day.

The Permit Grants Permission to Emit Treated Leachate Containing Unregulated Levels of PCBs Where the Monongahela River is Already Impaired Due to PCBs

The Permit does not consider any WQS for PCBs-1016, 1221, 1232, 1242, 1248, 1254, or 1260.[50] This is despite the fact that, according to the sampling data provided by the Department, a combined 1.2 micrograms/L of these PCBs is present in the treated landfill leachate.[51] The Monongahela River is already impaired due to the presence of PCBs.[52] While this does not preclude any addition whatsoever of PCBs to the Monongahela River, it does suggest that WQS levels should be determined for PCBs and applied to determine whether limitations on PCB effluents are appropriate in light of these standards. This is especially important given the impairment status of the Monongahela for PCBs.

With respect to the emission of PCBs into a receiving water already impaired for PCBs, the DEP should reject this permit application because the Permit and accompanying documents do not:

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[48] The permit application also lists the "Maximum Flow During Production/Operation" as "TBD," suggesting a reasonable possibility that the actual value will exceed 0.04 million gallons per day. *Supra* note 9.
[49] *See supra* note 13, at 7.
[50] *See supra* note 1, at 40.
[51] *See supra* note 4, at 15.
[52] *See supra* note 1, at 4.

1. Determine WQS levels for PCBs found in the WSL's leachate in light of the impairment of the Monongahela River;
2. Apply the PCBs determined pursuant to (1) in order to determine whether any effluent limitations on PCBs may be necessary to remediate the impairment status of the Monongahela River.

The Permit Grants Permission to Emit Treated Leachate Upriver from Two Drinking Water Intakes in a Dense Urban Area Between the Proposed Outfall 004 and the City of Pittsburgh

Considering the pollutants involved, the pollutant exceedances, and all other concerns raised regarding the content of the leachate, it is especially concerning that the proposed Outfall 004 will be located upriver of two drinking water sources, even prior to any dilution by the Allegheny River, contributing to the flow of the Ohio River. The proposed Outfall 004 is located at coordinate Lat: 40, 09, 40, Long: -79, 51, 48, approximately 700 feet west-southwest of the Donora Monessen Bridge.[53] The Monongahela River flows generally north and then west from this point, taking approximately 57 hours for pollutants released from Outfall 004 to reach the city of Pittsburgh, home to over 300,000 people.[54] These pollutants taking less than three days to reach a major population center still undiluted by any other water sources pose an unacceptable health risk to local populations, even absent the accidents and violations which have characterized the WSL's operations up to this date.[55]

Even more concerning, there are two drinking water intake sources located along this 38 mile stretch of the Monongahela River.[56] These drinking water source intakes will need to deal with increased pollution levels in the river, including radioactive contaminants which were the cause of the initial refusal of the Belle Vernon Municipal Authority's refusal to accept and treat the WSL's leachate due to the impact of the radioactive contaminants on bacteria involved in the water treatment process.[57] There is no evidence that the managers of these treatment facilities have been consulted about or specifically informed of the hazards posed by the Permit to their operations. This information is necessary to allow these managers to implement facility upgrades and safeguards against the pollution from Outfall 004 in order to protect residents' drinking water. The costs of these measures are likely to be passed down to end service users

[53] *See supra* note 1, at 5.
[54] *See id.* at 43, 51 (estimating the velocity of the Monongahela River as the average of the given velocities, which is 0.977 feet per second, and taking the distance along the river between Outfall 004 and the confluence with the Allegheny River to be approximately 38 miles, the travel time for pollutants in the Monongahela River between these two points is 57.05 hours); Quickfacts, Pittsburgh City, Pennsylvania, United States Census Bureau, https://www.census.gov/quickfacts/fact/table/pittsburghcitypennsylvania/PST045224 (last visited Mar. 31, 2025).
[55] *See supra*, at 10-12.
[56] *See supra* note 26.
[57] *See supra* note 42, at 3. As to the specific motivations for the vote by the Belle Vernon Municipal Authority to stop taking the WSL's leachate, Protect PT bases its belief on discussions with Belle Vernon Mayor and Vice Chair of the Belle Vernon Municipal Authority Gerald Jackson II.

to some extent, imposing costs on local residents due to the WSL's desire to pollute a major water source.

With respect to the proximity of Outfall 004 to drinking water intakes and the city of Pittsburgh, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Require notification and consultation by Westmoreland Sanitary Landfill, LLC ("WSL, LLC") with the managers of the two drinking water treatment sources along the Monongahela River between Outfall 004 and the confluence with the Allegheny River regarding the Permit;
2. Require WSL, LLC to pay for any necessary facility upgrades and safeguards to the two drinking water treatment sources discussed in (1) which become necessary as a result of the effluents from Outfall 004;
3. Require WSL, LLC to coordinate with the county health departments of Washington, Westmoreland, and Allegheny counties to notify local residents living in municipalities adjacent to the Monongahela River downriver of Outfall 004 of the risks and hazards associated with living in the presence of the pollutants present in the WSL's leachate and how to recognize symptoms of associated illnesses.

The Permit Applies an Inadequate "Reasonably Possible" Standard for Community Notification of Unauthorized Discharges

Under condition "4. Unanticipated Noncompliance or Potential Pollution Reporting," the Permit requires that "*[i]f reasonably possible to do so*, the permittee shall immediately notify downstream users of the waters of the Commonwealth to which the substance was discharged. Such notice shall include the location and nature of the danger" (emphasis added).[58] Given the compliance history of the WSL and the current levels of pollution in treated leachate, there is a high likelihood that this noncompliance will occur immediately and continuously.[59]

Since this is the case, it is wrong to limit WSL's duty to notify downstream users of the waters of the Commonwealth to those immediate notifications which are "reasonably possible." Indeed, the following condition regarding steps necessary to prevent injury does not contain any similar reasonableness limitation. Instead, it requires that "*[t]he permittee shall* immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution…" (emphasis added).[60] This language is a better fit for a condition to ensure prompt notification of dangers to affected residents and users of water. The reasonableness condition would allow the WSL to neglect to create and maintain viable communications channels to notify affected water users, such that the task of notification would not be reasonably possible in the event of a subsequent accident. The WSL should not

[58] *See supra* note 13, at 15.
[59] *See supra*, at 5-7,10-12.
[60] *See supra* note 13, at 15.

be permitted to neglect its duties to protect the public from the dangers of its pollution in a way which reduces its obligations to the public.

With respect to the public notification requirements, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Remove the language reading "If reasonably possible to do so" found in condition III. (C)(4)(a)(ii) on page 15 of the Permit, such that the condition reads "The permittee shall immediately notify downstream users of the waters of the Commonwealth to which the substance was discharged. Such notice shall include the location and nature of the danger."

The Permit Does Not Account for Reports of Leachate Quantities of up to .3 MGD, Indicating The Leachate Is Being And Would Continue To Be Expelled Without Authorization

The Permit presumes an average flow of 40,000 gallons per day, though the permit application acknowledges that the design flow of Outflow 004 is actually 100,000 gallons per day.[61] Even beyond this though, prior reporting from the Belle Vernon Municipal Authority and associated officials, including Belle Vernon Mayor Gerald Jackson II, leads Protect PT to believe that the total volume of leachate generated by the WSL is at least 300,000 gallons per day, possibly more given the expansion of the landfill in recent years. This suggests that the Permit is inadequate to deal with the volume of leachate from the WSL, and so the remaining leachate will either continue to be trucked out of the landfill's storage tanks or disposed of illegally.

As such, the Permit will not adequately resolve the issue of leachate management at the WSL sufficient to negate the need for storage tanks and trucking operations, unless the DEP considers the possibility that the WSL is illegally disposing of some significant fraction of its leachate in order to avoid spills out of storage tanks. At a minimum, this information suggests that Outfall 004 is more likely to expel leachate at volumes closer to its maximum 100,000 gallon capacity than the estimated 40,000 gallon average flow rate used in the permit. This should inform the judgments of the DEP as to which value to use when estimating the total amount of pollutants expelled given the concentration limits in the Permit.

Therefore, the DEP should not issue this permit where it will not resolve the issue of excess leachate from the landfill, will likely result in effluents of leachate well above the predicted 40,000 gallon per day flow rate and thereby cause excess pollution of the Monongahela River, and is likely to be issued to an operator who, on credible indications based on conversations with local municipal authorities, is illegally disposing of excess leachate volumes in violation of existing permits. With respect to the overall volume of effluent emissions, the DEP should reject this permit application because the Permit and accompanying documents do not:

[61] *See supra* notes 9, 13, at 7

1. Limit monthly average leachate effluents from Outfall 004 to 0.04 MGD in order to prevent excess leachate from being expelled through Outfall 004 at an average rate of 0.10 MGD;
2. Ensure that the DEP conclusively investigates and resolves whether the DEP is engaged in illegal dumping or disposal of leachate before issuing any permit for the dumping of leachate into the Monongahela.

The Permit Does Not Account for the Impact of the Supreme Court Decision in City and County of San Francisco, California v. Environmental Protection Agency, No. 23–753 (2025) on the Ability of the EPA to Implement End-Result Limitations

On March 4, 2025, the Supreme Court issued a decision in *City and County of San Francisco, California v. Environmental Protection Agency*, No. 23–753 (2025) [hereinafter *San Francisco*]. This case addressed the scope of the powers of the EPA under 33 U.S.C. § 1311(b)(1)(C) to impose conditions in NPDES permits which require polluters to ensure that "receiving waters meet applicable water quality standards." *San Francisco*, at 9-10. The Court found that the EPA does not have the statutory authority to implement any such regulations, and must instead determine "what steps a permittee must take to ensure that water quality standards are met" on a polluter-by-polluter basis. *Id.* at 20. In essence, this means that, when the EPA reviews the Permit, it will be statutorily unable to impose conditions in the Permit on the overall quality of the Monongahela River. Instead, any EPA conditions will only be able to modify the overall effluent concentrations and quantities of leachate, similar to the existing conditions in the Permit imposed by the DEP. If the DEP was relying on the expectation that the EPA might subsequently add end-result conditions to the Permit, this hope is no longer warranted.

This decision was issued after the Permit was released for public comment, so the DEP could not have considered the impact of this decision at the time of the release of the Permit. That said, the DEP should now take the time to consider the impact of the EPA's inability to impose end-result limitations on the Permit when the EPA reviews the NPDES permit and consider what state statutory authorities the DEP may have to impose such conditions in order to protect the health of the Monongahela River. For example, the DEP could impose such conditions under 25 Pa. Code § 92a.44, which incorporates 40 CFR § 122.44(d). These conditions could impose "any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards… necessary to… [a]chieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality… conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State… [i]ncorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA… [or] [i]ncorporate alternative effluent limitations or standards where warranted by 'fundamentally different factors,' under 40 CFR part 125, subpart D." 40 CFR § 122.44(d)(1), (4), (8). Though federal court decisions may bind the EPA's authority to interpret section 301(b)(1)(C) of the

CWA, these decisions do not mean that federal regulations preempt state conditions from going further in their own state interpretation of federal regulations. *See Chevron U.S.A., Inc. v. Hammond*, 726 F.2d 483, 489-90 (9th Cir. 1984).

These end result limitations are especially important for protecting the quality of receiving waters where multiple dischargers utilize the same body of water for discharges of effluents under the CWA. Directly on the Monongahela River between Monessen and the confluence with the Allegheny River, there are 13 major sources of water pollution permitted by NPDES permits.[62] End result limitations would ensure that the cumulative impact of the effluents from these facilities and the effluents from the WSL's Outfall 004 does not excessively degrade the overall quality of the Monongahela River.

With respect to the imposition of end-result limitations under Pennsylvania law, the DEP should reject this permit application because the Permit and accompanying documents do not:

1. Consider the impact of the EPA's inability to impose end-result limitations on the Permit when the EPA reviews the Permit;
2. Consider what state law authorities the DEP may have to impose such conditions in order to protect the health of the Monongahela River, including but not limited to 25 Pa. Code § 92a.44;
3. Impose such end-result limitations as permitted by state law in order to protect the overall water quality of the Monongahela River.

The Permit Must be Approved by the EPA because of the Pollution of the Downstream Ohio River Flowing Into Ohio

If the DEP approves the Permit, the DEP must send the Permit to the EPA for final review and approval before the Permit can become effective. The DEP administers the NPDES permit program under the Clean Water Act subject to a MOA which specifies "classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment, and where applicable, objection." 40 CFR § 123.24(b)(2). Unless the EPA waives the right to review a NPDES permit in an MOA, the DEP is required to send that permit to the EPA for review. *See* 33 U.S.C. § 1342(a)(5); *see also* 40 CFR § 123.24(d).

A MOA with the EPA may not waive review of permits for "[d]ischarges which may affect the waters of a State other than the one in which the discharge originates." 40 CFR § 123.24(d)(2).

[62] To locate these major sources, Protect PT used the EPA's application for "Potential Source of Contamination" found at https://geopub.epa.gov/DWWidgetApp/?page=main, then drew a polygonal shape surrounding the portion of the Monongahela River between Monessen and the confluence of the Monongahela and Allegheny rivers, then excluded those major sources not found directly on the Monongahela River. This process located sixteen major sources, three of which did not lie directly on the Monongahela River and thirteen of which did lie directly on the Monongahela River.

This sensible regulation protects the interests of residents of other states against actions by states which expel pollution across borders, impacting out-of-state residents who are unable to hold an emitting state's agencies and government accountable. In this situation, review by the EPA is necessary to protect the interests of residents of other states, to which the EPA is accountable as a federal agency. The discharge by the WSL into the Monongahela River in Pennsylvania will flow north and then west into the Ohio River, which will flow west into the state of Ohio. It is therefore true that the discharge anticipated by the Permit may affect the waters of Ohio, and so § 123.24(d) applies.

For reasons already discussed, the DEP should not approve the Permit. However, if the DEP does approve the Permit, the DEP should send the Permit to the EPA for further review.

Conclusion

Westmoreland Sanitary Landfill, LLC has been dumping toxic, radioactive fracking waste into its landfill for well over a decade. The residents of Monessen, Rostraver, and Belle Vernon have been opposing the operation of the WSL for at least as long. This NPDES permit application is the last gasp of a landfill which has failed at every other method of dealing with the problem which it created itself through its mismanagement, negligence, and disregard for the local community in pursuit of private gain. The WSL has tried smuggling its leachate into local sewage systems, a move a judge required the WSL to stop. The WSL has tried using storage tanks and trucks, but the storage has quite literally overflowed. The WSL tried to evaporate its leachate into the air, but abandoned this plan after it could not meet federal permitting requirements to have it approved. Unable to legally pollute our wastewater treatment plants, our soil, and our air, the WSL is now trying to pollute our water. For the reasons given in this and other comments both in-person at the March 20th DEP hearing and in writing, the DEP should not allow this to happen. The DEP should, first and foremost, deny the Permit. If the DEP approves the Permit or any amended variant, the DEP must send that permit to the EPA for review.

Sincerely,

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