

Application No. OH0144983

Issue Date: April 27, 2020

Effective Date: June 1, 2020

Expiration Date: May 31, 2025

Ohio Environmental Protection Agency  
Authorization to Discharge Under the  
National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq., hereinafter referred to as the "Act"), and the Ohio Water Pollution Control Act (Ohio Revised Code Section 6111),

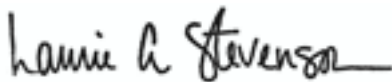
CCU Coal and Construction, LLC-Johnson Run Mine

is authorized by the Ohio Environmental Protection Agency, hereinafter referred to as "Ohio EPA," to discharge from the Johnson Run mine ponds located at Section 18 and Section 24 of Trimble Township of Athens County, Ohio and discharging to Johnson Run in accordance with the conditions specified in Parts I, II and III of this permit.

I have determined that a lowering of water quality in Johnson Run and subsequently West Branch Sunday Creek is necessary. In accordance with OAC 3745-1-05, this decision was reached only after examining a series of technical alternatives, reviewing social and economic issues related to the degradation, and considering all public and appropriate intergovernmental comments.

This permit is conditioned upon payment of applicable fees as required by Section 3745.11 of the Ohio Revised Code.

This permit and the authorization to discharge shall expire at midnight on the expiration date shown above. In order to receive authorization to discharge beyond the above date of expiration, the permittee shall submit such information and forms as are required by the Ohio EPA no later than 180 days prior to the above date of expiration.



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Laurie A. Stevenson  
Director

Total Pages: 29

Part I, A. - FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall 0IL00168001. See Part II, OTHER REQUIREMENTS, for locations of effluent sampling.

Table - Final Outfall - 001 - Final

Effluent Characteristic Parameter	Discharge Limitations						Monitoring Requirements			
	Concentration Specified Units		Loading* kg/day				Measuring Frequency	Sampling Type	Monitoring Months	
Maximum	Minimum	Weekly	Monthly	Daily	Weekly	Monthly				
00045 - Total Precipitation - Inches	-	-	-	-	-	-	-	1/Day	Total	All
00400 - pH - S.U.	9.0	6.5	-	-	-	-	-	1/Week	Grab	All
00410 - Alkalinity, Total (CaCO3) - mg/l	-	-	-	-	-	-	-	1/Month	Grab	All
00530 - Total Suspended Solids - mg/l	70	-	-	35	239	-	120	1 / 2 Weeks	Grab	All
00545 - Residue, Settleable (Volume) - mL/L	-	-	-	-	-	-	-	When Disch.	Grab	All
00900 - Hardness, Total (CaCO3) - mg/l	-	-	-	-	-	-	-	1/Month	Grab	All
00940 - Chloride, Total - mg/l	-	-	-	-	-	-	-	1/Month	Grab	All
00945 - Sulfate, (SO4) - mg/l	-	-	-	-	-	-	-	1/Month	Grab	All
00978 - Arsenic, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
00979 - Cobalt, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
00981 - Selenium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
00982 - Thallium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
00998 - Beryllium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01045 - Iron, Total (Fe) - ug/l	6000	-	-	3000	20.5	-	10.3	1 / 2 Weeks	Grab	All
01055 - Manganese, Total (Mn) - ug/l	4000	-	-	2000	13.7	-	6.82	1 / 2 Weeks	Grab	All
01074 - Nickel, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01079 - Silver, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01094 - Zinc, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All

Effluent Characteristic  Parameter	Discharge Limitations							Monitoring Requirements		
	Concentration Specified Units				Loading* kg/day			Measuring Frequency	Sampling Type	Monitoring Months
	Maximum	Minimum	Weekly	Monthly	Daily	Weekly	Monthly			
01104 - Aluminum, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01113 - Cadmium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01114 - Lead, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01118 - Chromium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01119 - Copper, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
01268 - Antimony, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Month	Grab	All
32730 - Phenolic 4AAP, Total - ug/l	-	-	-	-	-	-	-	1/Year	Grab	April
50050 - Flow Rate - MGD	-	-	-	-	-	-	-	1/Day	24hr Total Estimate	All
50092 - Mercury, Total (Low Level) - ng/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
51173 - Cyanide, Free (Low-Level) - ug/l	-	-	-	-	-	-	-	1/Year	Grab	April
70300 - Residue, Total Filterable - mg/l	-	-	-	1500	-	-	-	1/Month	Grab	All

\*Loading limits based on flow of 0.9 MGD.

Notes for Station Number 0IL00168001:

a. Monitoring and sampling shall be performed as required in the above table. If no sample is collected or data is not reported, see Part II, Item C for the appropriate instructions and codes to use on the monthly eDMR.

b. Monitoring for arsenic, cobalt, selenium, thallium, beryllium, nickel, silver, zinc, aluminum, cadmium, lead, chromium, copper, antimony, phenolics, mercury and free cyanide is required for 18 months after the discharge begins. After this time, report "AH" for these parameters on the monthly discharge monitoring report.

c. Sampling shall be performed when discharging. If the pond discharges at anytime during the week, a sample must be taken for that week. Checking the pond one day in the week and finding no discharge does not mean "no discharge". "No discharge" can only be reported when the permittee knows that no discharge has occurred any day that week. The same applies to other sampling frequencies, e.g. for quarterly sampling, a sample must be taken when there is any discharge during the monitoring month.

d. Samples taken in compliance with effluent monitoring requirements shall be collected following treatment if provided and prior to entering the receiving stream.

e. These requirements apply to discharges from the following:

i. controlled surface drainage unless caused by a precipitation event greater than a 10-year, 24-hour event (3.70 inches); and

ii. non-controlled surface drainage unless caused by a precipitation event greater than a 1-year, 24-hour event (0.75 inches ).

f. Aluminum, cobalt, selenium, cadmium, copper, mercury, silver, thallium and cyanide monitoring - See Part II, Item H.

g. See Part II, Item G (grab samples) and E (alternative effluent limits).

h. Settleable residue is required in months when the alternative limits of Part II, Item E are invoked.

i. See Part II, item K for Pond Maintenance

Part I, B. - INFLUENT MONITORING REQUIREMENTS

1. Influent Monitoring. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee shall monitor the treatment works' influent wastewater at Station Number 0IL00168601, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of influent sampling.

Table - Influent Monitoring - 601 - Final

Effluent Characteristic  Parameter	Discharge Limitations							Monitoring Requirements		
	Concentration Specified Units				Loading* kg/day			Measuring Frequency	Sampling Type	Monitoring Months
	Maximum	Minimum	Weekly	Monthly	Daily	Weekly	Monthly			
50050 - Flow Rate - MGD	-	-	-	-	-	-	-	1/Day	24hr Total Estimate	All

Notes for Station Number 0IL00168601:

- a. Flow rate from the mining pits to the treatment ponds shall be calculated using the pumping rate and reported in the above table.

Part I, B. - UPSTREAM MONITORING REQUIREMENTS

2. Upstream Far Field Monitoring. During the period beginning when construction of the first pit is initiated and lasting until the expiration date, the permittee shall monitor the receiving stream at a suitable monitoring site near the upstream boundary of the SMCRA permit at Station Number 0IL00168801, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sampling.

Table - Upstream Monitoring - 801 - Final

Effluent Characteristic  Parameter	Discharge Limitations							Monitoring Requirements		
	Concentration Specified Units				Loading* kg/day			Measuring Frequency	Sampling Type	Monitoring Months
	Maximum	Minimum	Weekly	Monthly	Daily	Weekly	Monthly			
00060 - Flow Rate - CFS	-	-	-	-	-	-	-	1/Day	Estimate	All
00065 - Stream Stage - feet	-	-	-	-	-	-	-	1/Day	Estimate	All

Notes for Station Number 0IL00168801:

a. MONITORING - Monitoring and sampling shall be performed as required in the above table. If no sample is collected or data is not reported because there is no discharge or for any other reason, see Part II, Item C for the appropriate instructions and codes to use on the monthly discharge monitoring report (DMR or eDMR)

b. Monitoring Location-See Part II, Item L.

Part I, B. - UPSTREAM MONITORING REQUIREMENTS

3. Upstream Near Field Monitoring. During the period beginning when construction of the first pit is initiated and lasting until the expiration date, the permittee shall monitor the receiving stream at a suitable monitoring site upstream of outfall 0IL00168001 but downstream of all mining pits at Station Number 0IL00168802, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sampling.

Table - Upstream Monitoring - 802 - Final

Effluent Characteristic  Parameter	Discharge Limitations						Monitoring Requirements			
	Concentration Specified Units				Loading* kg/day		Measuring Frequency	Sampling Type	Monitoring Months	
	Maximum	Minimum	Weekly	Monthly	Daily	Weekly				Monthly
00060 - Flow Rate - CFS	-	-	-	-	-	-	-	1/Day	Estimate	All
00065 - Stream Stage - feet	-	-	-	-	-	-	-	1/Day	Estimate	All

Notes for Station Number 0IL00168802:

a. MONITORING - Monitoring and sampling shall be performed as required in the above table. If no sample is collected or data is not reported because there is no discharge or for any other reason, see Part II, Item C for the appropriate instructions and codes to use on the monthly discharge monitoring report (DMR or eDMR)

b. Monitoring Location-See Part II, Item L.

Part I, B. - DOWNSTREAM-NEARFIELD MONITORING REQUIREMENTS

4. Downstream-Nearfield Monitoring. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee shall monitor the receiving stream, downstream of the point of discharge, at Station Number 0IL00168901 and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sampling.

Table - Downstream-Nearfield Monitoring - 901 - Final

Effluent Characteristic  Parameter	Discharge Limitations							Monitoring Requirements		
	Concentration Specified Units				Loading* kg/day			Measuring Frequency	Sampling Type	Monitoring Months
	Maximum	Minimum	Weekly	Monthly	Daily	Weekly	Monthly			
00900 - Hardness, Total (CaCO3) - mg/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
70300 - Residue, Total Filterable - mg/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly



Part II, OTHER REQUIREMENTS

A Descriptions and location of the permitted/authorized discharges and outfalls and sampling/monitoring stations are as follows:

Authorized Discharges,  
Permitted Outfalls,  
or Other Sampling and  
Monitoring Stations

Description of Location

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0IL00168001	Discharge from the treatment pond system to Johnson Run. (Lat: 39 deg N 32 ' 40.85"; Long: 82 deg W 06 ' 12.96 " )
0IL00168601	Influent, water being pumped from the mining pits to the pond system.
0IL00168801	Far Field Upstream Monitoring, a suitable monitoring site at the upstream boundary of the SMCRA permit.
0IL00168802	Near Field Upstream Monitoring, at a suitable monitoring site upstream of outfall 0IL00168001 but downstream of all mining pits.
0IL00168901	Downstream Monitoring

B. Water quality based permit limitations in this permit may be revised based on updated wasteload allocations or use designation rules. This permit may be modified, or revoked and reissued, to include new water quality based effluent limits or other conditions that are necessary to comply with a revised wasteload allocation, or an approved total maximum daily loads (TMDL) report as required under Section 303 (d) of the Clean Water Act.

### C. Monitoring/Reporting Requirements and Reporting Codes for Monitoring/Sampling Stations

1) precipitation and flow, need not be monitored on days when the plant is not normally staffed (Saturdays, Sundays, and Holidays). On those days when the plant is not normally staffed, report "AN" on the monthly report form. The use of this code is limited to unstaffed Saturdays, Sundays, and officially recognized municipal holidays, if the treatment plant is not normally staffed on those days. For other parameters, the sampling date should be moved to a date when the plant is staffed.

2) If there is no discharge during the entire month, report as follows:

a) If using e-DMR, DO NOT USE THE "AL" CODE or any other code or report "0" for flow. If no discharge occurred for the full monitoring period, select the "No Discharge" check box at the top of the e-DMR form and enter "No discharge during the month" in the Remarks Section.

Sign or PIN the DMR.

3) If there are no discharges on one or more required monitoring days during the month, report as follows:

a) Enter the required monitoring data for the days when a discharge occurred;

b) For each required monitoring day there was no discharge, do not enter "0" for flow. Enter code "AC" for each parameter including the parameter for flow for each monitoring day the facility was not discharging.

c) Information about other data Substitution Codes (a.k.a. "A Codes") that can be used on the Monthly Discharge Monitoring Report form is on page 13 at:

<http://www.epa.ohio.gov/portals/35/edmr/doc/e-DMRAll-In-One.pdf>

4) More information about eDMR is at:

<http://epa.ohio.gov/dsw/ebs.aspx#170645011-edmr>

5) Note that even if a code is used, not reporting as required by the NPDES permit, may in some cases still be considered a violation of the permit's conditions which may result in a notice of violation letter from Ohio EPA.

D. A Permit to Install ( PTI) application must be submitted to Ohio EPA before installation/construction of any improvements to the treatment equipment.

E. Alternative Effluent Limits

The discharge from outfall 0IL00168001 is eligible for the alternative effluent limits listed in section 1.a., 1.b, and 1.c below provided the applicability and submission requirements listed in section (2) below are met. All other monitoring requirements and limitations listed in the tables of Part 1, A for the respective outfalls remain unchanged.

1. Alternative Effluent Limits for precipitation events

a. These requirements apply to discharges from controlled surface drainage that are caused by a precipitation event greater than 1-year, 24-hour event (0.75 inches) and less than or equal to a 2-year, 24-hour event (2.58 inches).

Reporting Code	Units	Parameter	Concentration		Measurement Frequency	Sample Type
			30 Day	Daily Limit		
00530	mg/L	Total Suspended Solids	-	-	1/Month	Grab
00545	mL/L	Settleable Residue	-	0.5	1/Month	Grab
74010	mg/L	Total Iron	-	7.0	1/Month	Grab
74013	mg/L	Total Manganese	-	-	1/Month	Grab

b. These requirements apply to discharges from the following:

i. Non-controlled surface drainage that are caused by a precipitation event greater than 2-year, 24-hour event (2.58 inches) and less than or equal to a 10-year, 24-hour event 3.70 inches).

Reporting Code	Units	Parameter	Concentration		Measurement Frequency	Sample Type
			30 Day	Daily Limit		
00530	mg/L	Total Suspended Solids	-	-	1/Month	Grab
00545	mL/L	Settleable Residue	-	0.5	1/Month	Grab
74010	mg/L	Total Iron	-	-	1/Month	Grab
74013	mg/L	Total Manganese	-	-	1/Month	Grab

c. These requirements apply to discharges caused by precipitation events greater than a 10-year, 24-hour event (3.70 inches) from the following:

i. Controlled surface drainage.

ii. Non-controlled surface drainage.

Reporting Code	Units	Parameter	Concentration		Measurement Frequency	Sample Type
			30 Day	Daily Limit		
00530	mg/L	Total Suspended Solids	-	-	1/Month	Grab
00545	mL/L	Settleable Residue	-	-	1/Month	Grab
74010	mg/L	Total Iron	-	-	1/Month	Grab
74013	mg/L	Total Manganese	-	-	1/Month	Grab

## 2. Applicability and Submission Requirements

For any day alternative effluent limitations and monitoring requirements are being sought note those days and the associated alternative tables above in the remarks section of the monthly report form.

When seeking alternative effluent limitations the operator shall prove that the discharge or increase in the discharge was caused by the applicable precipitation event, and that the samples of the discharge for all parameters were collected during, or within 24 hours after, the applicable precipitation event.

The following information must be submitted by the permittee as proof to qualify for the alternative effluent limitations:

a. Date, Duration (Time Begin/Time End), and total 24-hour accumulation (inches) of the precipitation event that caused the discharge or increase in volume of the discharge.

b. Date and time that grab samples were collected.

Precipitation events are defined by the National Weather Service and can be accessed at:

[https://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html?bkmrk=oh](https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=oh)

This information shall be submitted in the remarks section or as an addendum with the discharge monitoring reports where the alternative requirements are being requested.

F. BEST MANAGEMENT PRACTICES (BMPs)

BMPs to Minimize Discharges of Dissolved Solids

The permittee shall:

- a. Disturb the smallest practicable area at any time;
- b. Avoid runoff of coal mine-impacted water into locations other than mine pits and treatment ponds;
- c. Stabilize and compact fill material to promote a reduction in the rate and volume of runoff, and to minimize the penetration of precipitation into the fill;
- d. To the extent practicable, divert runoff and uncontaminated ground water away from disturbed areas; and
- e. Reclaim filled areas as soon as practicable following filling.

G. Grab samples shall be collected at such times and locations, and in such fashion, as to be representative of the facility's performance.

H. 1. The permittee shall use either EPA Method 1631 or EPA Method 245.7 promulgated under 40 CFR 136 to comply with the mercury monitoring requirements of this permit.

2. The permittee shall use analytical procedures approved under 40 CFR 136 with MDLs (method detection limits) less than or equal to those listed below to comply with the monitoring requirements in this permit:

MDL (ug/l)	
Selenium	2
Cadmium	0.1
Copper	1
Silver	0.2
Thallium	1
Cyanide	5
Cobalt	10
Aluminum	100

I. Before commencing discharge, the permittee shall post a permanent marker on the stream bank at each outfall that is regulated under this NPDES permit and discharges to Johnson Run. The marker shall consist at a minimum of the name of the establishment to which the permit was issued, the Ohio EPA permit number, and the outfall number and a contact telephone number. The information shall be printed in letters not less than two inches in height. The marker shall be a minimum of 2 feet by 2 feet and shall be a minimum of 3 feet above ground level. The sign shall be not be obstructed such that persons in boats or persons swimming on the river or someone fishing or walking along the shore cannot read the sign. Vegetation shall be periodically removed to keep the sign visible. If the outfall is normally submerged the sign shall indicate that.

J. Upon completion of the 18 month period of discharge effluent sampling noted in Part I. A. b. page 3 of the permit, but no later than 3 months from that completion, the permittee shall evaluate all of the sampling data acquired for this NPDES permit and file a report with the Ohio EPA Southeast District Office. At that time, the Ohio EPA will evaluate the data and determine if an NPDES permit modification is necessary, such as to add limits to the parameters which cannot meet water quality based effluent limits. Also, a construction schedule with the requirement of a permit to install (PTI) to implement construction and installation of facilities to meet water quality based effluent limits may be added to the NPDES permit at that time. (Event Code 0799)

K. Treatment Pond Maintenance, Inspection and Monitoring:

1. Maintenance

Treatment ponds shall be operated and maintained to have sufficient volume for:

- a. Normal precipitation (less evaporation) on the surface of the structures;
- b. Normal runoff from the working and storage areas;
- c. Residuals that remain after materials are removed from the storage areas and structure;
- d. Direct precipitation on the surface of the structure and runoff to the structure from at least a 10-year, 24-hour event;
- e. For treatment ponds other than those equipped with an engineered stable overflow point such that structural failure will not occur during an overflow, calculate and maintain the feet of freeboard, viewed as optimum operational level to reduce risk of damaging pond containment structures, above the capacity necessary to contain the direct precipitation and runoff from a 10-year, 24-hour rain event.
- f. Treatment ponds shall be operated to ensure any water entering the pond system will have at least 24 hours of detention time prior to discharge.

2. Inspection and Monitoring

- a. Conduct weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the containment structures;
- b. Conduct weekly inspections of the pond storage structures;
- c. Keep records of structure inspections and any maintenance actions; cleaning of structures or repair of structures and storm water devices. Maintain records of volume of materials removed from the structure (pond) and method of disposal.
- d. Establish capacity depth markers in each pond.
- e. Conduct weekly determinations of the depth of the water, the amount of freeboard necessary to meet 10-year, 24-hour storage capacity requirements and the actual freeboard in all pond storage structures as indicated by the capacity depth markers required by this permit. The permittee shall maintain a logbook recording these measurements.

## L. Flow and Level Monitoring

### 1. Flow and Level Monitoring Plan

No later than 6 months from the effective date of this permit but before pond construction begins, the permittee shall submit a Flow and Level Monitoring Plan to Ohio EPA for acceptance (Event Code 22099). The Stream Flow and Level Monitoring Plan shall include, at a minimum, all of the following:

- a. The specific methods to be used to measure stream flow, stream depth and effluent flow.
- b. The materials that will be used.
- c. Locations of 0IL00168801 and 0IL00168802 and the site characteristics that will be used to select final sites.
- d. Calibration method.
- e. Standard Operating Procedure for operation and maintenance of materials and equipment used to measure stream flow and stream level.
- f. Backup flow measurement method in case the standard method is not useable.

### 2. Active Pit

Evaluation of Johnson Run streamflow levels along the active mine pit and monitoring of pit pumping intervals shall occur per the daily inspections that the foreman performs to determine if potential dewatering of the stream is occurring. A daily log of stream evaluations and pumping intervals shall be maintained and available for Ohio EPA review upon request.

### 3. Dewatering

If flow in Johnson Run at outfall 0IL00168801 is less than flow at outfall 0IL00168802, or the visual monitoring or pump records indicate dewatering of Johnson Run may be occurring, the permittee shall implement mitigative actions to stop the dewatering as soon as possible and will notify the OEPA SEDO within 48 hours of discovery.

### 4. Pond System

Treatment ponds and pumps shall be operated to ensure any water entering the pond system will have at least 24 hours of detention time prior to discharge.

### 5. 0IL00168001 Discharge

Discharge from 0IL00168001 shall be managed to ensure a downstream total filterable residue target concentration of 700 mg/L. This shall be achieved by utilizing one or more of the following options:

- a. Discharging to Johnson Run only when flow at 0IL00168001 is less than 1.5 times the flow at 0IL00168802. In lieu of discharging to Johnson Run during low flow periods, the permittee could discharge directly to West Branch of Sunday Creek.
- b. Demonstrating through daily monitoring and reporting that the concentration of total filterable residue or specific conductance at 0IL00168802 is at or below the target of 700 mg/L (or specific conductance equivalent).

#### M. Stormwater Pollution Prevention

A plan shall be developed to address discharges to surface waters of the state that contain storm water associated with industrial activity and construction activity. Plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the facility. The plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the plan required under this part as a condition of this permit. The plan is intended to document the selection, design, and installation of control measures

Most active coal mining-related areas are subject to sediment and erosion control regulations of the U.S. Office of Surface Mining (OSM) that enforces the Surface Mining Control and Reclamation Act (SMCRA). OSM has granted authority to the Ohio Department of Natural Resources to implement SMCRA through the State SMCRA regulations found in OAC 1501:13 and 1513. The erosion, sediment and storm water management practices used to satisfy the conditions of SMCRA shall be deemed acceptable. Where applicable, such documented practices shall be made available to Ohio EPA upon request.

N. All SOPs required by this permit must be followed. Any revisions to these SOPs must be submitted to Ohio EPA for acceptance prior to enacting them.



## PART III - GENERAL CONDITIONS

### 1. DEFINITIONS

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

"Average weekly" discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week. Each of the following 7-day periods is defined as a calendar week: Week 1 is Days 1 - 7 of the month; Week 2 is Days 8 - 14; Week 3 is Days 15 - 21; and Week 4 is Days 22 - 28. If the "daily discharge" on days 29, 30 or 31 exceeds the "average weekly" discharge limitation, Ohio EPA may elect to evaluate the last 7 days of the month as Week 4 instead of Days 22 - 28. Compliance with fecal coliform bacteria or E coli bacteria limitations shall be determined using the geometric mean.

"Average monthly" discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month. Compliance with fecal coliform bacteria or E coli bacteria limitations shall be determined using the geometric mean.

"85 percent removal" means the arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period.

"Absolute Limitations" Compliance with limitations having descriptions of "shall not be less than," "not greater than," "shall not exceed," "minimum," or "maximum" shall be determined from any single value for effluent samples and/or measurements collected.

"Net concentration" shall mean the difference between the concentration of a given substance in a sample taken of the discharge and the concentration of the same substances in a sample taken at the intake which supplies water to the given process. For the purpose of this definition, samples that are taken to determine the net concentration shall always be 24-hour composite samples made up of at least six increments taken at regular intervals throughout the plant day.

"Net Load" shall mean the difference between the load of a given substance as calculated from a sample taken of the discharge and the load of the same substance in a sample taken at the intake which supplies water to given process. For purposes of this definition, samples that are taken to determine the net loading shall always be 24-hour composite samples made up of at least six increments taken at regular intervals throughout the plant day.

"MGD" means million gallons per day.

"mg/l" means milligrams per liter.

"ug/l" means micrograms per liter.

"ng/l" means nanograms per liter.

"S.U." means standard pH unit.

"kg/day" means kilograms per day.

"Reporting Code" is a five digit number used by the Ohio EPA in processing reported data. The reporting code does not imply the type of analysis used nor the sampling techniques employed.

"Quarterly (1/Quarter) sampling frequency" means the sampling shall be done in the months of March, June, August, and December, unless specifically identified otherwise in the Effluent Limitations and Monitoring Requirements table.

"Yearly (1/Year) sampling frequency" means the sampling shall be done in the month of September, unless specifically identified otherwise in the effluent limitations and monitoring requirements table.

"Semi-annual (2/Year) sampling frequency" means the sampling shall be done during the months of June and December, unless specifically identified otherwise.

"Winter" shall be considered to be the period from November 1 through April 30.

"Bypass" means the intentional diversion of waste streams from any portion of the treatment facility.

"Summer" shall be considered to be the period from May 1 through October 31.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Sewage sludge" means a solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works as defined in section 6111.01 of the Revised Code. "Sewage sludge" includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator, grit and screenings generated during preliminary treatment of domestic sewage in a treatment works, animal manure, residue generated during treatment of animal manure, or domestic septage.

"Sewage sludge weight" means the weight of sewage sludge, in dry U.S. tons, including admixtures such as liming materials or bulking agents. Monitoring frequencies for sewage sludge parameters are based on the reported sludge weight generated in a calendar year (use the most recent calendar year data when the NPDES permit is up for renewal).

"Sewage sludge fee weight" means the weight of sewage sludge, in dry U.S. tons, excluding admixtures such as liming materials or bulking agents. Annual sewage sludge fees, as per section 3745.11(Y) of the Ohio Revised Code, are based on the reported sludge fee weight for the most recent calendar year.

## 2. GENERAL EFFLUENT LIMITATIONS

The effluent shall, at all times, be free of substances:

- A. In amounts that will settle to form putrescent, or otherwise objectionable, sludge deposits; or that will adversely affect aquatic life or water fowl;
- B. Of an oily, greasy, or surface-active nature, and of other floating debris, in amounts that will form noticeable accumulations of scum, foam or sheen;
- C. In amounts that will alter the natural color or odor of the receiving water to such degree as to create a nuisance;
- D. In amounts that either singly or in combination with other substances are toxic to human, animal, or aquatic life;
- E. In amounts that are conducive to the growth of aquatic weeds or algae to the extent that such growths become inimical to more desirable forms of aquatic life, or create conditions that are unsightly, or constitute a nuisance in any other fashion;
- F. In amounts that will impair designated instream or downstream water uses.

## 3. FACILITY OPERATION AND QUALITY CONTROL

All wastewater treatment works shall be operated in a manner consistent with the following:

- A. At all times, the permittee shall maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee necessary to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with conditions of the permit.
- B. The permittee shall effectively monitor the operation and efficiency of treatment and control facilities and the quantity and quality of the treated discharge.
- C. Maintenance of wastewater treatment works that results in degradation of effluent quality shall be scheduled during non-critical water quality periods and shall be carried out in a manner approved by Ohio EPA as specified in the Paragraph in the PART III entitled, "UNAUTHORIZED DISCHARGES".

#### 4. REPORTING

A. Monitoring data required by this permit shall be submitted monthly on Ohio EPA 4500 Discharge Monitoring Report (DMR) forms using the electronic DMR (e-DMR) internet application. e-DMR allows permitted facilities to enter, sign, and submit DMRs on the internet. e-DMR information is found on the following web page:

<http://www.epa.ohio.gov/dsw/edmr/eDMR.aspx>

Alternatively, if you are unable to use e-DMR due to a demonstrated hardship, monitoring data may be submitted on paper DMR forms provided by Ohio EPA. Monitoring data shall be typed on the forms. Please contact Ohio EPA, Division of Surface Water at (614) 644-2050 if you wish to receive paper DMR forms.

B. DMRs shall be signed by a facility's Responsible Official or a Delegated Responsible Official (i.e. a person delegated by the Responsible Official). The Responsible Official of a facility is defined as:

1. For corporations - a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
2. For partnerships - a general partner;
3. For a sole proprietorship - the proprietor; or,
4. For a municipality, state or other public facility - a principal executive officer, a ranking elected official or other duly authorized employee.

For e-DMR, the person signing and submitting the DMR will need to obtain an eBusiness Center account and Personal Identification Number (PIN). Additionally, Delegated Responsible Officials must be delegated by the Responsible Official, either on-line using the eBusiness Center's delegation function, or on a paper delegation form provided by Ohio EPA. For more information on the PIN and delegation processes, please view the following web page:

<http://epa.ohio.gov/dsw/edmr/eDMR.aspx>

C. DMRs submitted using e-DMR shall be submitted to Ohio EPA by the 20th day of the month following the month-of-interest. DMRs submitted on paper must include the original signed DMR form and shall be mailed to Ohio EPA at the following address so that they are received no later than the 15th day of the month following the month-of-interest:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Surface Water - PCU  
P.O. Box 1049  
Columbus, Ohio 43216-1049

D. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified in Section 5. SAMPLING AND ANALYTICAL METHODS, the results of such monitoring shall be included in the calculation and reporting of the values required in the reports specified above.

E. Analyses of pollutants not required by this permit, except as noted in the preceding paragraph, shall not be reported to the Ohio EPA, but records shall be retained as specified in Section 7. RECORDS RETENTION.

#### 5. SAMPLING AND ANALYTICAL METHOD

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored flow. Test procedures for the analysis of pollutants shall conform to regulation 40 CFR 136, "Test Procedures For The Analysis of Pollutants" unless other test procedures have been specified in this permit. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to insure accuracy of measurements.

#### 6. RECORDING OF RESULTS

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- A. The exact place and date of sampling; (time of sampling not required on EPA 4500)
- B. The person(s) who performed the sampling or measurements;
- C. The date the analyses were performed on those samples;
- D. The person(s) who performed the analyses;
- E. The analytical techniques or methods used; and
- F. The results of all analyses and measurements.

#### 7. RECORDS RETENTION

The permittee shall retain all of the following records for the wastewater treatment works for a minimum of three years except those records that pertain to sewage sludge disposal, use, storage, or treatment, which shall be kept for a minimum of five years, including:

- A. All sampling and analytical records (including internal sampling data not reported);
- B. All original recordings for any continuous monitoring instrumentation;
- C. All instrumentation, calibration and maintenance records;
- D. All plant operation and maintenance records;
- E. All reports required by this permit; and
- F. Records of all data used to complete the application for this permit for a period of at least three years, or five years for sewage sludge, from the date of the sample, measurement, report, or application.

These periods will be extended during the course of any unresolved litigation, or when requested by the Regional Administrator or the Ohio EPA. The three year period, or five year period for sewage sludge, for retention of records shall start from the date of sample, measurement, report, or application.

#### 8. AVAILABILITY OF REPORTS

Except for data determined by the Ohio EPA to be entitled to confidential status, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the appropriate district offices of the Ohio EPA. Both the Clean Water Act and Section 6111.05 Ohio Revised Code state that effluent data and receiving water quality data shall not be considered confidential.

#### 9. DUTY TO PROVIDE INFORMATION

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating the permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

#### 10. RIGHT OF ENTRY

The permittee shall allow the Director or an authorized representative upon presentation of credentials and other documents as may be required by law to:

- A. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit.
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit.
- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit.
- D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

## 11. UNAUTHORIZED DISCHARGES

A. Bypass Not Exceeding Limitations - The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 11.B and 11.C.

### B. Notice

1. Anticipated Bypass - If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

2. Unanticipated Bypass - The permittee shall submit notice of an unanticipated bypass as required in paragraph 12.B (24 hour notice).

### C. Prohibition of Bypass

1. Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

- a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c. The permittee submitted notices as required under paragraph 11.B.

2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 11.C.1.

## 12. NONCOMPLIANCE NOTIFICATION

### A. Exceedance of a Daily Maximum Discharge Limit

1. The permittee shall report noncompliance that is the result of any violation of a daily maximum discharge limit for any of the pollutants listed by the Director in the permit by e-mail or telephone within twenty-four (24) hours of discovery.

The permittee may report to the appropriate Ohio EPA district office e-mail account as follows (this method is preferred):

Southeast District Office: sedo24hournpdes@epa.state.oh.us  
Southwest District Office: swdo24hournpdes@epa.state.oh.us  
Northwest District Office: nwdo24hournpdes@epa.state.oh.us  
Northeast District Office: nedo24hournpdes@epa.state.oh.us  
Central District Office: cdo24hournpdes@epa.state.oh.us  
Central Office: co24hournpdes@epa.state.oh.us

The permittee shall attach a noncompliance report to the e-mail. A noncompliance report form is available on the following web site under the Monitoring and Reporting - Non-Compliance Notification section:

<http://epa.ohio.gov/dsw/permits/individuals.aspx>

Or, the permittee may report to the appropriate Ohio EPA district office by telephone toll-free between 8:00 AM and 5:00 PM as follows:

Southeast District Office: (800) 686-7330  
Southwest District Office: (800) 686-8930  
Northwest District Office: (800) 686-6930  
Northeast District Office: (800) 686-6330  
Central District Office: (800) 686-2330  
Central Office: (614) 644-2001

The permittee shall include the following information in the telephone noncompliance report:

- a. The name of the permittee, and a contact name and telephone number;
- b. The limit(s) that has been exceeded;
- c. The extent of the exceedance(s);
- d. The cause of the exceedance(s);
- e. The period of the exceedance(s) including exact dates and times;
- f. If uncorrected, the anticipated time the exceedance(s) is expected to continue; and,
- g. Steps taken to reduce, eliminate or prevent occurrence of the exceedance(s).

**B. Other Permit Violations**

1. The permittee shall report noncompliance that is the result of any unanticipated bypass resulting in an exceedance of any effluent limit in the permit or any upset resulting in an exceedance of any effluent limit in the permit by e-mail or telephone within twenty-four (24) hours of discovery.

The permittee may report to the appropriate Ohio EPA district office e-mail account as follows (this method is preferred):

Southeast District Office: sedo24hournpdes@epa.state.oh.us  
Southwest District Office: swdo24hournpdes@epa.state.oh.us  
Northwest District Office: nwdo24hournpdes@epa.state.oh.us  
Northeast District Office: nedo24hournpdes@epa.state.oh.us  
Central District Office: cdo24hournpdes@epa.state.oh.us  
Central Office: co24hournpdes@epa.state.oh.us

The permittee shall attach a noncompliance report to the e-mail. A noncompliance report form is available on the following web site:

<http://www.epa.ohio.gov/dsw/permits/permits.aspx>

Or, the permittee may report to the appropriate Ohio EPA district office by telephone toll-free between 8:00 AM and 5:00 PM as follows:

Southeast District Office: (800) 686-7330  
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Northwest District Office: (800) 686-6930  
Northeast District Office: (800) 686-6330  
Central District Office: (800) 686-2330  
Central Office: (614) 644-2001



The permittee shall include the following information in the telephone noncompliance report:

- a. The name of the permittee, and a contact name and telephone number;
  - b. The time(s) at which the discharge occurred, and was discovered;
  - c. The approximate amount and the characteristics of the discharge;
  - d. The stream(s) affected by the discharge;
  - e. The circumstances which created the discharge;
  - f. The name and telephone number of the person(s) who have knowledge of these circumstances;
  - g. What remedial steps are being taken; and,
  - h. The name and telephone number of the person(s) responsible for such remedial steps.
2. The permittee shall report noncompliance that is the result of any spill or discharge which may endanger human health or the environment within thirty (30) minutes of discovery by calling the 24-Hour Emergency Hotline toll-free at (800) 282-9378. The permittee shall also report the spill or discharge by e-mail or telephone within twenty-four (24) hours of discovery in accordance with B.1 above.
- C. When the telephone option is used for the noncompliance reports required by A and B, the permittee shall submit to the appropriate Ohio EPA district office a confirmation letter and a completed noncompliance report within five (5) days of the discovery of the noncompliance. This follow up report is not necessary for the e-mail option which already includes a completed noncompliance report.
- D. If the permittee is unable to meet any date for achieving an event, as specified in a schedule of compliance in their permit, the permittee shall submit a written report to the appropriate Ohio EPA district office within fourteen (14) days of becoming aware of such a situation. The report shall include the following:
1. The compliance event which has been or will be violated;
  2. The cause of the violation;
  3. The remedial action being taken;
  4. The probable date by which compliance will occur; and,
  5. The probability of complying with subsequent and final events as scheduled.
- E. The permittee shall report all other instances of permit noncompliance not reported under paragraphs A or B of this section on their monthly DMR submission. The DMR shall contain comments that include the information listed in paragraphs A or B as appropriate.
- F. If the permittee becomes aware that it failed to submit an application, or submitted incorrect information in an application or in any report to the director, it shall promptly submit such facts or information.

13. RESERVED

14. DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

## 15. AUTHORIZED DISCHARGES

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than, or at a level in excess of, that authorized by this permit shall constitute a violation of the terms and conditions of this permit. Such violations may result in the imposition of civil and/or criminal penalties as provided for in Section 309 of the Act and Ohio Revised Code Sections 6111.09 and 6111.99.

## 16. DISCHARGE CHANGES

The following changes must be reported to the appropriate Ohio EPA district office as soon as practicable:

A. For all treatment works, any significant change in character of the discharge which the permittee knows or has reason to believe has occurred or will occur which would constitute cause for modification or revocation and reissuance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. Notification of permit changes or anticipated noncompliance does not stay any permit condition.

B. For publicly owned treatment works:

1. Any proposed plant modification, addition, and/or expansion that will change the capacity or efficiency of the plant;
2. The addition of any new significant industrial discharge; and
3. Changes in the quantity or quality of the wastes from existing tributary industrial discharges which will result in significant new or increased discharges of pollutants.

C. For non-publicly owned treatment works, any proposed facility expansions, production increases, or process modifications, which will result in new, different, or increased discharges of pollutants.

Following this notice, modifications to the permit may be made to reflect any necessary changes in permit conditions, including any necessary effluent limitations for any pollutants not identified and limited herein. A determination will also be made as to whether a National Environmental Policy Act (NEPA) review will be required. Sections 6111.44 and 6111.45, Ohio Revised Code, require that plans for treatment works or improvements to such works be approved by the Director of the Ohio EPA prior to initiation of construction.

D. In addition to the reporting requirements under 40 CFR 122.41(l) and per 40 CFR 122.42(a), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit. If that discharge will exceed the highest of the "notification levels" specified in 40 CFR Sections 122.42(a)(1)(i) through 122.42(a)(1)(iv).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" specified in 122.42(a)(2)(i) through 122.42(a)(2)(iv).

## 17. TOXIC POLLUTANTS

The permittee shall comply with effluent standards or prohibitions established under Section 307 (a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement. Following establishment of such standards or prohibitions, the Director shall modify this permit and so notify the permittee.

#### 18. PERMIT MODIFICATION OR REVOCATION

A. After notice and opportunity for a hearing, this permit may be modified or revoked, by the Ohio EPA, in whole or in part during its term for cause including, but not limited to, the following:

1. Violation of any terms or conditions of this permit;
2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
3. Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

B. Pursuant to rule 3745-33-04, Ohio Administrative Code, the permittee may at any time apply to the Ohio EPA for modification of any part of this permit. The filing of a request by the permittee for a permit modification or revocation does not stay any permit condition. The application for modification should be received by the appropriate Ohio EPA district office at least ninety days before the date on which it is desired that the modification become effective. The application shall be made only on forms approved by the Ohio EPA.

#### 19. TRANSFER OF OWNERSHIP OR CONTROL

This permit may be transferred or assigned and a new owner or successor can be authorized to discharge from this facility, provided the following requirements are met:

A. The permittee shall notify the succeeding owner or successor of the existence of this permit by a letter, a copy of which shall be forwarded to the appropriate Ohio EPA district office. The copy of that letter will serve as the permittee's notice to the Director of the proposed transfer. The copy of that letter shall be received by the appropriate Ohio EPA district office sixty (60) days prior to the proposed date of transfer;

B. A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittee (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) shall be submitted to the appropriate Ohio EPA district office within sixty days after receipt by the district office of the copy of the letter from the permittee to the succeeding owner;

At anytime during the sixty (60) day period between notification of the proposed transfer and the effective date of the transfer, the Director may prevent the transfer if he concludes that such transfer will jeopardize compliance with the terms and conditions of the permit. If the Director does not prevent transfer, he will modify the permit to reflect the new owner.

#### 20. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

#### 21. SOLIDS DISPOSAL

Collected grit and screenings, and other solids other than sewage sludge, shall be disposed of in such a manner as to prevent entry of those wastes into waters of the state, and in accordance with all applicable laws and rules.

#### 22. CONSTRUCTION AFFECTING NAVIGABLE WATERS

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

23. CIVIL AND CRIMINAL LIABILITY

Except as exempted in the permit conditions on UNAUTHORIZED DISCHARGES or UPSETS, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

24. STATE LAWS AND REGULATIONS

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Clean Water Act.

25. PROPERTY RIGHTS

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

26. UPSET

The provisions of 40 CFR Section 122.41(n), relating to "Upset," are specifically incorporated herein by reference in their entirety. For definition of "upset," see Part III, Paragraph 1, DEFINITIONS.

27. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

28. SIGNATORY REQUIREMENTS

All applications submitted to the Director shall be signed and certified in accordance with the requirements of 40 CFR 122.22.

All reports submitted to the Director shall be signed and certified in accordance with the requirements of 40 CFR Section 122.22.

29. OTHER INFORMATION

A. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

B. ORC 6111.99 provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$25,000 per violation.

C. ORC 6111.99 states that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$25,000 per violation.

D. ORC 6111.99 provides that any person who violates Sections 6111.04, 6111.042, 6111.05, or division (A) of Section 6111.07 of the Revised Code shall be fined not more than \$25,000 or imprisoned not more than one year, or both.

30. NEED TO HALT OR REDUCE ACTIVITY

40 CFR 122.41(c) states that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with conditions of this permit.

31. APPLICABLE FEDERAL RULES

All references to 40 CFR in this permit mean the version of 40 CFR which is effective as of the effective date of this permit.

32. AVAILABILITY OF PUBLIC SEWERS

Notwithstanding the issuance or non-issuance of an NPDES permit to a semi-public disposal system, whenever the sewage system of a publicly owned treatment works becomes available and accessible, the permittee operating any semi-public disposal system shall abandon the semi-public disposal system and connect it into the publicly owned treatment works.

Rationale Sheet: Permit # OIL00168\*AD-OH0144983  
Facility Name: CCU Coal & Construction, LLC - Johnson Run Mine  
Facility Address: Johnson Run Road, Section 18 and 24 of Trimble Township  
Athens County, Ohio

For additional information about this rationale sheet or the draft permit, contact Scott Foster at (740)380-5277 ([scott.foster@epa.ohio.gov](mailto:scott.foster@epa.ohio.gov)).

#### Discharge Description

The CCU Coal - Johnson Run Mine is an initial application for a new surface mine. The company currently has a SMCRA application for the site submitted to ODNR/DMRM.

This facility is proposing to have one discharge point at Outfall 001 which will discharge to Johnson Run at stream mile 0.15. Form 2D of the NPDES application states the flow discharged through this outfall is from a series of sediment ponds which collect the runoff from the strip mine area, spoil piles, topsoil piles, haul road and the water pumped from the mine pits. The surface runoff and seepage is based on a 299.3 acre mining area of which 36.1 acres are proposed to be surface affected.

#### Receiving Water/Use Classification

Johnson Run is in the Sunday Creek drainage basin and has the following use designations as listed in the Ohio Water Quality Standards: warmwater habitat, agricultural and industrial water supply, and primary contact for recreation. It flows to the West Branch of Sunday Creek which is designated a Warmwater Habitat. Johnson Run enters the West Branch of Sunday Creek at RM 4.92. Data collected in 2017 and 2018 as part of the 401 water quality certification process indicate a coldwater and exceptional macroinvertebrate community at river mile 0.75, but the data was insufficient to support a definitive CWH designation due to it being non-credible or collected outside the biological index period. The downstream site (site D3, river mile 0.1) had fewer sensitive and coldwater species, and the IBI fish evaluation metric was significantly lower as well. The company adjusted its discharge plan to discharge only at river mile 0.15 in order to avoid discharge to the most sensitive portion of Johnson Run.

#### Assessment of Receiving Water Quality and Discharge Impacts

Both Johnson Run and the West Branch of Sunday Creek are listed as impaired waters based on 2001 data; however, the 2018 biological sampling performed by a consultant indicate that Johnson Run has improved. Aquatic life use for West Branch is impaired by acid mine drainage. Johnson Run was habitat impaired from naturally occurring intermittent flow. The Total Maximum Daily Load (TMDL) for the Sunday Creek watershed specified acidity allocations, and corrective actions for the possible issues in the West Branch of Sunday Creek. The TMDL report is at:

[http://epa.ohio.gov/portals/35/tmdl/SundayCreekTMDL\\_aug05.pdf](http://epa.ohio.gov/portals/35/tmdl/SundayCreekTMDL_aug05.pdf) .

In this TMDL, more stringent wasteload allocations were not given to point sources because the existing pH controls on the discharges ensure that the point source discharges are not contributing significant

acidity to the stream. The TMDL states “Any water entering the study area with pH greater than or equal to 6.5 is beneficial in buffering acidity” (TMDL Report P23). Because these discharges will meet this pH requirement, Johnson Run and West Branch are judged to have sufficient capacity to assimilate these discharges at the draft limits. In addition, post-TMDL sampling of West Branch shows that downstream fish communities have improved to the point where they now meet WWH biological criteria.

<b>Ohio EPA Biological Data</b>					
WWH Designated	RM	IBI	MIwb	ICI	Attainment
<i>Johnson Run 2001</i>					
	2.4	44	NA	MG <sup>ns</sup>	FULL
	0.1	26*	NA	F*	NON
<i>Johnson Run 2018</i>					
	0.75	46	--	E	FULL <sup>^</sup>
	0.1	40	--	G	PARTIAL <sup>^</sup>
<i>West Branch Sunday Creek 2001</i>					
	6.2	38*	7.1*	42	PARTIAL
	1.8	38*	8.2 <sup>ns</sup>	48	PARTIAL
	0.1	38*	8.1 <sup>ns</sup>	36	PARTIAL
<i>West Branch Sunday Creek 2010</i>					
	6.2	42 <sup>ns</sup>	8 <sup>ns</sup>	--	(FULL)
	1.8	48	8.4	--	(FULL)
	0.1	34*	8 <sup>ns</sup>	--	(PARTIAL)
Ohio EPA Biological Criteria for Headwaters		44	--	36	
Ohio EPA Biological Criteria for Wading Sites:		44	8.4	36	

\* = significant departure from criteria

ns = nonsignificant departure from criteria

*Narrative macroinvertebrate criteria used instead of ICI:*

E = Exceptional

G = Good

MG = marginally good

F = Fair

VP = Very Poor

P = Poor

<sup>^</sup> = Assessment of biological attainment by an Ohio EPA biologist not available at the time of this report; RM 0.75 appears to be in FULL attainment of WWH and RM 0.1 PARTIALLY attains WWH for the Western Allegheny Plateau.

The Agency has conducted modeling to allocate the allowable discharge of pollutant parameters for the outfall at this facility. The conclusions and details of the analysis are described below.

#### Effluent Limits/Reasonable Potential Analysis

The effluent limits and monitoring requirements are shown in Table 1. The TMDL study identifies Johnson Run as being an intermittent stream. This causes WLAs to be set at the applicable WQS

because critical flows in the stream are zero. The use of zero as the upstream flow is the most protective assumption for the stream for the purposes of establishing water quality based permit limits. This assumption is not a factor in determining the existing or designated biological use of Johnson Run.

After appropriate effluent limits are calculated, the reasonable potential of the discharger to violate the WLA (and the WQS) must be determined. The concentration of each parameter from the application (or other representative data) is compared to the WLA to determine if reasonable potential exists. Any parameter that is judged to have reasonable potential must have limits and monitoring in the permit. Each parameter is examined and placed in a defined "group". Parameters that do not have a WQS or do not require a WLA based on the initial screening are assigned to either group 1 or 2. Group 3 parameters do not need to be included in the permit; monitoring for these pollutants is optional. Group 4 pollutants must have a monitoring requirement in the permit, according to OAC 3745-1-07(A)(2). Group 5 pollutants must have limits and monitoring in the permit. Total Dissolved Solids (TDS) aka Total Filterable Residue (TFR) is a group 5 parameter.

The limits for total dissolved solids are water quality-based limits and were determined by the wasteload allocation Ohio EPA performed using proposed discharge data supplied by the company included on Form 2D.

The outfall tables include monitoring requirements for metals which are normally associated with coal mining and cyanide, hardness- total, and phenolics based on 40 CFR 122.21(k)(5)(vi) and 40 CFR 122 Appendix D-Table III. These rules require monitoring data for these pollutants be collected within the first two years of discharge. An evaluation of the discharge monitoring reports (DMRs) will be conducted to assess the performance of the sediment ponds and reassess whether priority pollutants have the reasonable potential to contribute to WQS exceedances. The permit may be modified, if necessary, to include metals monitoring with limits on the discharge. A compliance milestone has been added to Part II-J of the permit which requires the permittee to file a report and evaluate discharge monitoring reports at the end of 36 months and report to Ohio EPA. The permit contains the precipitation exceptions and the specific language is in Part II, Item E.

The limits for total suspended solids, iron and manganese are treatment technology-based standards from the Federal Effluent Guidelines for the Coal Mining Point Source Category (40 CFR 434). Specifically, the New Source Performance Standards (NSPS) regulations found in 40 CFR 434.35 for Subpart C- Acid and Ferruginous Mine Drainage except as provided in 40 CFR 401.17, and 434.61, 434.62 and 434.63 of this part apply to Outfalls 001-005.

While NSPS rules also apply to pH, for the initial and final tables, limits proposed for pH are based on Water Quality Standards (OAC 3745-1-07) because Ohio WQS are more restrictive than NSPS.

Flow values were calculated using the USGS *Stream Stats* program. The flows, water quality criteria and background conditions are shown in Tables 3 and 4.



In addition to the other requirements, the permit contains storm water pollution prevention requirements in Part II of the permit. These conditions are a mandatory requirement for NPDES permits authorizing the discharge of storm water.

Ohio Administrative Code 3745-1-05 requires that new sources may only be approved if the existing use of the receiving stream can be protected. An analysis of site and regional specific biology and chemistry indicate that an instream average target concentration of 700 mg/l TDS is necessary to comply with this requirement for Johnson Run at stream mile 0.1. Permit conditions are included to support this by either controlling the discharge flow to ensure at least 1.5 times more upstream flow than discharge flow is available; or by monitoring the instream TDS after the stream and discharge mix to demonstrate the target is complied with.

#### *Toxicity Reasonable Potential*

The draft permit does not include monitoring requirements or limits for acute toxicity because TDS and sulfate concentrations are expected to be present in levels that are not acutely toxic. The upper bound of TDS concentrations associated with acute toxicity is 3000 mg/l; the TDS limit for Outfall 001 is 1500 mg/l, which is the water quality standard. Sulfate concentrations of 312 mg/l reported for Outfall 001 indicate that sulfate is likely to be below concentrations associated with acute toxicity (1200-2200 mg/l). Monitoring for sulfate is proposed to verify this. The values submitted for all parameters were from a similar pond believed to be identical and have the same effluent characteristics as the proposed ponds. Based on the evaluation procedures of OAC 3745-33-07(B), Outfall 001 is placed in Category 4 with respect to whole effluent toxicity, with monitoring not necessary at this time.

#### Information Regarding Certain Water Quality Based Effluent Limits

This draft permit contains proposed water quality based effluent limitations for parameters that **are not** priority pollutants other than pH. The following paragraphs explain how the limits may be implemented and any relief that may be applied for during the 30-day Public Notice period to the Ohio EPA explaining the technical and economically feasibility of the proposed limits (See the following link for a list of the priority pollutants:

[http://epa.ohio.gov/portals/35/pretreatment/Pretreatment\\_Program\\_Priority\\_Pollutant\\_Detection\\_Limits.pdf](http://epa.ohio.gov/portals/35/pretreatment/Pretreatment_Program_Priority_Pollutant_Detection_Limits.pdf) . ) In accordance with Ohio Revised Code Section 6111.03(J)(3), the Director established these water quality based effluent limits after considering, to the extent consistent with the Federal Water Pollution Control Act, evidence relating to the technical feasibility and economic reasonableness of removing the polluting properties from those wastes and to evidence relating to conditions calculated to result from that action and their relation to benefits to the people of the state and to accomplishment of the purposes of this chapter. This determination was made based on data and information available at the time the permit was drafted, which included the contents of the timely submitted National Pollutant Discharge Elimination System (NPDES) permit renewal application, along with any and all pertinent information available to the Director.

This public notice allows the permittee to provide to the Director for consideration during this public comment period additional site-specific pertinent and factual information with respect to the technical feasibility and economic reasonableness for achieving compliance with the proposed final effluent limitations for these parameters. The permittee shall deliver or mail this information to:

**Ohio Environmental Protection Agency  
Attention: Division of Surface Water  
Permits Processing Unit  
P.O. Box 1049  
Columbus, Ohio 43216-1049**

Should the applicant need additional time to review, obtain or develop site-specific pertinent and factual information with respect to the technical feasibility and economic reasonableness of achieving compliance with these limitations, written notification for any additional time shall be sent to the above address no later than 30 days after the Public Notice Date on the Public Notice document.

Should the applicant determine that compliance with the proposed water quality based effluent limitations for parameters other than the priority pollutants is technically and/or economically unattainable, the permittee may submit an application for a variance to the applicable water quality standard(s) used to develop the proposed effluent limitation in accordance with the terms and conditions set forth in Ohio Administrative Code (OAC) Rule 3745-33-07(D). The permittee shall submit this application to the above address no later than 30 days after the Public Notice Date.

Alternately, the applicant may propose the development of site-specific water quality standard(s) pursuant to OAC Rule 3745-1-35. The permittee shall submit written notification regarding their intent to develop site specific water quality standards for parameters that are not priority pollutants to the above address no later than 30 days after the Public Notice Date.

#### *Upstream and Downstream Monitoring*

Monitoring for depth of water and flow is required upstream and downstream (but upstream of outfall 001) of the proposed mine pits. Daily visual monitoring of the stream along the active mine pit and daily reporting of pump volumes has been added to the permit to monitor for stream de-watering.

**Table 1. Initial effluent limits and monitoring requirements for outfalls OIL00168001-OIL00168005 and the basis for their recommendation.**

Parameter	Units	Effluent Limits				Basis <sup>b</sup>
		Concentration		Loading (kg/day)		
		30 Day Average	Daily Maximum	30 Day Average	Daily Maximum	
Flow	MGD	-----	Monitor	-----		M <sup>c</sup>
Precipitation	inches	-----	Monitor	-----		M <sup>c</sup>
Dissolved Solids	mg/l	1500	--	--	--	WQS
Suspended Solids	mg/l	35	70	120	239	NSPS
Settleable Residue	ml/l	-----	Monitor	-----		M <sup>c</sup>
pH	S.U.	-----	6.5 to 9.0	-----		WQS
Alkalinity	mg/l	-----	Monitor	-----		M <sup>c</sup>
Chloride	mg/l	-----	Monitor	-----		M <sup>c</sup>
Sulfate	mg/l	-----	Monitor	-----		M <sup>c</sup>
Hardness	mg/l	-----	Monitor	-----		M <sup>c,d</sup>
Cyanide, free	ug/l	-----	Monitor	-----		M <sup>,d</sup>
Aluminum, T. R.	ug/l	-----	Monitor	-----		M <sup>c,d</sup>
Cobalt, T.R.	ug/l	-----	Monitor	-----		M <sup>c,d</sup>
Arsenic, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Selenium, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Thallium, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Beryllium, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Silver, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Zinc, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Cadmium, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Lead, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Chromium, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Copper, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Antimony, T.R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Phenolic, 4AAP, T.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>
Iron, T. R.	µg/l	3000	6000	10.3	20.5	NSPS
Manganese, T. R.	µg/l	2000	4000	6.82	13.7	NSPS
Mercury, T.	ng/l	-----	Monitor	-----		M <sup>c,d</sup>
Nickel, T. R.	µg/l	-----	Monitor	-----		M <sup>c,d</sup>

<sup>b</sup> Definitions: **M** = Monitoring needed to characterize the effluent  
**NSPS**-New Source Performance Standards-40 CFR Part 434.35 Subpart-C Acid and Ferruginous Mine Drainage

**RP** = Reasonable Potential for requiring water quality-based effluent limits and monitoring requirements in NPDES permits (3745-33-07(A))  
**WQS** = Ohio Water Quality Standards (OAC 3745-1)

- <sup>c</sup> Monitoring of flow and other indicator parameters is specified to assist in the evaluation of effluent quality and treatment pond performance.
- <sup>d</sup> Monitoring for these parameters is required for 18 months after each discharge. After that time, the monitoring requirement ceases.

**Table 2. Effluent Characterization Based on Form 2D Data-1 data point (mg/l unless specified)**

Parameter	Avg.	Daily
	Conc	Conc
Total Suspended Solids	35	75
pH S.U.	6.5 to 9.0	
Iron	3.0	6.0
Manganese	2.0	4.0
Aluminum	2.0	4.0
Sulfate	312	1142
Flow Rate	0.025	0.050

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**Table 3. Water Quality Criteria in the Study Area**

Parameter	Units	Outside Mixing Zone Criteria				Maximum Aquatic Life	Inside Mixing Zone Maximum
		Average					
		Human Health	Agri-culture	Aquatic Life			
Aluminum	ug/l	--	--	--	--	--	
Dissolved solids (ave)	mg/l	--	--	1500	--	--	
Sulfates	mg/l	--	--	--	--	--	

**Table 4.**

**Instream Conditions and Discharger Flow**

<u>Parameter</u>	<u>Units</u>	<u>Season</u>	<u>Value</u>	<u>Basis</u>
<i>Stream Flows</i>				
1Q10	cfs	annual	0	USGS Stream Stats
7Q10	cfs	annual	0	USGS Stream Stats
Harmonic Mean	cfs	annual	0.37	USGS Stream Stats
Mixing Assumption	%	average	100	
	%	maximum	100	
<i>Hardness, OMZ</i>	mg/l	annual	129	ODNR samples upstream Johnson Run
<i>Hardness, IMZ</i>	mg/l	annual	129	ODNR samples upstream Johnson Run
<i>Johnson Run Mine flow</i>	cfs	annual	0.0557	Outfalls 1-5 combined flow permit app.
<i>Background Water Quality</i>				
Aluminum	ug/l		10	ODNR; 10/5/16; n=1; 0<MDL; ODNR Mine Sampling Sunday; 2002; n=1; 0<MDL; Sunday Creek Watershed Group
Dissolved solids (ave)	mg/l		147	
Sulfates	mg/l		67	ODNR; 10/5/16; n=1; 0<MDL; ODNR Mine Sampling



## Division of Surface Water Response to Comments

**CCU Coal & Construction, LLC  
Johnson Run Mine NPDES Permit  
Ohio EPA ID #: 0IL00168\*AD**

### **Agency Contacts for this Project**

Division Contact: Scott Foster, (740) 380-5277, [scott.foster@epa.ohio.gov](mailto:scott.foster@epa.ohio.gov)  
Public Involvement Coordinator: Mary McCarron, (614) 644-2160,  
[mary.mccarron@epa.ohio.gov](mailto:mary.mccarron@epa.ohio.gov)

Ohio EPA held a public hearing on October 7, 2019 regarding a draft National Pollutant Discharge Elimination System (NPDES) permit for the proposed Johnson Run surface coal mine. This document summarizes the comments and questions received at the public hearing and/or during the associated comment period, which ended on October 14, 2019.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health. Often, public concerns fall outside the scope of that authority. For example, concerns about zoning issues are addressed at the local level. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

To assist review of this document, the comments received have been grouped and summarized by topic and organized in a consistent format.

### **Comment 1: Compliance with Antidegradation Requirements – Protection of Existing Use**

Numerous commenters stated that the issuance of a permit would violate both the Ohio and federal antidegradation requirements, because Johnson Run is not a warm water habitat existing use, as indicated by Ohio EPA in the permit decision making process, but rather an exceptional warm water habitat or cold water habitat as demonstrated by the documented taxa, species and water temperature. Comments were submitted indicating confusion over what the existing use is and what various related statements in the public record meant. The comments related to the existing use are simplified and summarized below.

***What is the existing use of Johnson Run?***

The existing use of Johnson Run is Warmwater Habitat (WWH) with Exceptional Warmwater Habitat (EWH) and Coldwater Habitat (CWH) indicators. Data collected in 2018 at a midpoint site of the proposed mining area (site D3-A, river mile 0.75) indicate a Coldwater and exceptional macroinvertebrate community but was insufficient to support a definitive CWH designation. The downstream site (site D3, river mile 0.1) had fewer sensitive and Coldwater species, and the IBI fish evaluation metric was significantly lower as well. The company modified their site plan to eliminate discharge to the most sensitive portion of Johnson Run and will have one outfall at the most downstream site near river mile 0.1.

***Why has the presence of key macro-invertebrate species not resulted in a Coldwater Habitat classification?***

The 2017/18 data was insufficient for a use determination. The 2017 data was collected in March, outside of the biological index period. The 2018 data is not level 3 credible data and cannot be used for designating an aquatic life use. However, the data does indicate exceptional and Coldwater populations. The revised mine plan and NPDES permit conditions are protective of these populations and the existing use.

***The water quality of Johnson Run cannot be allowed to be lowered to warm water habitat as that will be below the attainable and existing use of the stream. This would violate federal antidegradation policy under 40 CFR 131.12.***

The revised mine plan avoids any discharge to Johnson Run upstream of approximately river mile 0.1. The NPDES permit only authorizes a discharge to Johnson Run at approximately river mile 0.1 and only when there is at 1.5 times more flow in the stream than in the discharge. These revisions were done to protect the upstream Coldwater and exceptional community the 2017/2018 data indicated was present and the existing use.

**Comment 2: Compliance with Antidegradation Requirements –  
Consideration of Economic and Social Factors**

Numerous commenters stated that the issuance of a permit would have negative economic, environmental, and social effects. One commenter was in support of the permit in order to get money and jobs into Athens county.

***Given coal powered plant closures, the lack of a market for Ohio coal, bankruptcies and major downsizing of coal companies in Ohio, it is unclear what widespread societal benefits this mine would provide.***

The Public Utilities Commission of Ohio states that approximately 47% of the electricity produced in 2018 for Ohio was generated by coal (<https://www.puco.ohio.gov/be-informed/consumer-topics/how-does-ohio-generate-electricity/>). The US Energy Information Administration (EIA) states that 27.5% of the electric energy produced in the



US is from coal <https://www.eia.gov/tools/faqs/faq.php?id=427&t=3>. Coal continues to be a significant source of electrical energy in both Ohio and the US.

According to the Ohio State Energy Profile last updated by the EIA in May 2019 (<https://www.eia.gov/state/print.php?sid=OH>) almost three times as much coal is consumed in Ohio as is produced there. To meet the state's needs, coal is brought in from several surrounding states. Ohio coal is also shipped to other nearby states. CCU expects to sell coal produced at the Johnson Run Mine to an electric power plant in Kentucky as well as non-utility customers in Ohio.

The application for the Johnson Run Mine NPDES permit states that approximately \$44 million dollars in coal could be recovered as a result of this surface mining operation. This revenue would be directly invested in the local and state economies for salaries, fuel, equipment and other materials and shipping and indirectly support the state and local economies by purchase of ancillary services. Taxes generated as a result of this operation would provide revenue to schools, roads, and other public services.

Based on the above, Ohio EPA concludes this operation would provide widespread societal benefits.

***Permitting the degradation of water quality of Johnson Run does nothing to encourage the investment our region disparately needs, such as decent, affordable housing and quality education. It will harm the tourism industry and will eliminate new economic options that depend on Appalachia's beautiful hills, clean water, and healthy communities. The few jobs that would be provided are temporary.***

The NPDES permit establishes the amount of pollutants that can be discharged to the stream while still protecting water quality. Because concentrations of these pollutants will increase in Johnson Run downstream of Johnson Road, the water quality will be lowered (degraded) but not to a level that would cause an exceedance of water quality standards. Tourism should not be negatively impacted.

The tax revenue generated by the mine operation will benefit local and regional services including schools. It is unclear how the mine would discourage new economic options in the region if the stream is protected as required in the NPDES permit. Ohio EPA acknowledges the local jobs generated by this mining operation would be temporary. However, temporary jobs would still provide economic benefit to the area.

***CCU has failed to provide a complete estimate of important social, economic, and environmental benefits to be lost due to discharges from the proposed mine. Millions of dollars have been spent on restoration in the lower third of West Branch. Ohio EPA acknowledges that the remediation has resulted in "significant improvements," but dismisses the remediation as irrelevant to the current mining application because it occurred upstream of the proposed Johnson mine. In other***

**words, because the proposed mine will not impact West Branch, the time and resources spent to remediate West Branch are not at issue. However, improved water quality in Johnson Run over the past several years was very likely achieved, at least in part, due to the remediation project in West Branch. As a result, allowing the lowering of water quality in Johnson Run directly undermines the value of investing remediation projects throughout the region. CCU's application makes no effort to evaluate or quantify the social, economic, and environmental benefits that will be lost as a result of degrading Johnson Run, particularly in light of the investments that have already been made in the same watershed to clean up prior coal mining activities. Rather, the application merely describes current water quality, without estimating or analyzing anticipated impacts. The failure to include such an analysis renders the application deficient.**

Ohio EPA commends and supports the watershed restoration efforts that have occurred in the West Branch due the negative impact of pre-law mining. Ohio EPA is not clear, however, on how lowering water quality but still protecting water quality downstream of the restoration areas undermines the value of remediation projects throughout the region. Rather, the improvements to Johnson Run that have been documented as a result of the permitting process validate the success of such watershed restoration projects thereby providing encouragement for continuing such efforts. Ohio EPA does not agree the application is deficient.

### **Comment 3: Compliance with Antidegradation Requirements – Consideration of Alternative Treatment Options**

Commenters stated that the Applicant has not provided an adequate description and analysis of the utilization of a central or regional treatment facility.

**CCU has failed to demonstrate that connection to the Glouster Wastewater Treatment Plant is not available, cost effective, or technologically feasible as a viable non-discharge alternative...Ohio EPA must then exercise its independent judgment to determine whether authorization of a new point-source discharge that will lower water quality in Johnson Run – rather than avoiding the discharge altogether through connection to local treatment facility – is justified.**

**Because CCU failed to seriously consider transport of wastewater to the WWTP, it further failed to include an adequate description of non-degradation alternatives. CCU did not include a cost estimate for utilizing the WWTP or compare that to its preferred alternative, making any meaningful evaluation by Ohio EPA impossible. As it is technologically feasible to avoid a new discharge to Johnson Run, Ohio EPA must require an actual evaluation of utilizing that alternative to comply with Ohio's antidegradation requirements. Otherwise, Ohio EPA's determination that "a lowering of water quality in Johnson Run and subsequently West Branch Sunday Creek is necessary" is arbitrary, capricious, and an abuse of discretion.**

Glouster, Ohio is served by the Trimble Township Wastewater District WWTP NPDES #0PB00086. This WWTP does not have capacity to accept additional waste streams as

it is already above its design flow. The WWTP is designed to treat 0.283 million gallons per day (MGD); the average daily flow in 2018 was 0.398 MGD. Because this WWTP is overcapacity and working to address the issue, Ohio EPA did not require the applicant to pursue this option further. There are no WWTPs in the area that could accept this much flow.

#### **Comment 4: Suitability of Applicant to Receive a Permit**

Numerous comments were received that questioned the compliance history of the applicant and the company's viability going forward. The following two comments capture the main points raised by the comments received on this issue.

- ***The owner of the mine has a history of violations, a lack of attention to detail, and a lack of a commitment to protecting those and the community.***
- ***Why approve an additional coal mine when this company's future is hardly stable.***

The permit application and supplemental materials developed during the application process coupled with requirements contained in the NPDES permit satisfy the approval criteria for permit issuance. Notably, none the criteria for NPDES permit denial contained in Ohio's regulations are applicable to this application. If there is noncompliance with the NPDES permit, that would be a legal basis for the Director to revoke the permit.

Ohio EPA is pursuing resolution of 401 mitigation obligations in a number of historical 401 water quality certifications where environmental performance standards have not been achieved after the prescribed monitoring periods.

#### **Comment 5: The permit decision making process was flawed.**

Comments were received alleging Ohio EPA's deliberate manipulation and suppression of existing use information, that the permit was based on a faulty existing use, and that the permit documents are inaccurate and deceptive.

#### ***Ohio EPA suppressed the existing use of Johnson Run.***

As noted, there are biological indicators within Johnson Run that would suggest it may be capable of supporting Exceptional Warm Water and Cold Water Habitats, but the data is not adequate at this point to make a formal determination. Notwithstanding this, the permit conditions are designed to protect those communities.

#### ***The permitting procedure is flawed because it does not support the existing use.***

See the responses to Comment 1.

**By lowering the water quality of Johnson Run, it seems clear that the Ohio EPA is clearly trying to avoid requiring protections. Doing so is illegal, as it will not protect the existing use of the stream, and it is blatantly corrupt.**

Ohio Rule OAC 3745-1-05 allows the lowering of water quality (in the sense of additional pollutants discharged) in certain cases. The additional pollutants can be added if existing and designated stream uses are still met, and if the lowering is necessary for important social and economic development. See also the responses to Comments 1 and 2.

**The Rationale accompanying the Draft Permit is not only inadequate for the protection of the cold water species in Johnson Run, which are the existing use of the stream, it is highly inaccurate and deceptive. For example, the writer claims Johnson Run is impaired because the stream is intermittent at a location downstream from the property. Within the proposed mining area, however, the stream is perennial. USACE Jurisdictional Waters Determination. Even Oxford Mining and CCU refer to the waters as perennial. The following statement in the Rationale is inaccurate: "The TMDL study identifies Johnson Run as being an intermittent stream. This causes WLAs to be set at the applicable WQS because critical flows in the stream are zero." The second of these statements not only is inaccurate, it appears to be blatantly false. Ohio EPA most certainly can calculate WLAs and LAs. OAC 3745-2-05 sets forth the method for calculating wasteloads. Generally, WLAs and LAs for intermittent streams can be calculated so long as adequate information is available, such as that from USGS's StreamStats. Within the proposed mining area, however, the stream is perennial.**

The permit Rational document has been updated to include the changes to the permit in response to public comment. The critical upstream flow is still assumed to be zero because this is the most conservative streamflow assumption when calculating wasteload allocations. Because there is no upstream flow assumed in the calculation, the discharge must meet water quality criteria at the point of discharge. In other words, the permit limit for total dissolved solids would increase if an upstream flow was used to establish the limit. Chronic water quality criteria must be met in the stream after the discharge mixes with upstream water; therefore, upstream flow provides dilution allowing water quality-based permit limits to be higher than the criteria itself. Assuming zero upstream flow provides the most protective permit limits for Johnson Run. The flow statistic used in developing permit limits is not considered when determining an aquatic life use designation.

**"Existing designated use" pertains only to attainment and nonattainment of a designated use. OAC 3745-1-07(C)(2). The Director's use of that term for the standard to apply when determining whether water quality should be degraded is improper and misleading.**

The public notice language for Johnson Run included the following paragraph which is the standard paragraph used in public notices of permits where antidegradation provisions apply:

The Director has, after evaluation of pertinent technical, social, and economic information, determined that the discharge specified in this permit will result in a change from ambient in water quality of the receiving stream. This change will not interfere with or become injurious to the existing designated use.

Ohio EPA agrees the correct term is “existing use” and will incorporate this change in future public notices.

### **Comment 6: Additional Public Meeting or Hearing is Needed / Sufficiency of Application**

Commenters requested another public meeting or hearing to discuss the existing use of Johnson Run, how this use would be protected, any revisions made to the permit as a result of public comments, and generally answer any unanswered questions asked during the October 9, 2019, public hearing. One commenter stated the application was legally inadequate and another public hearing should be held on a revised application; an additional commenter was unclear how many ponds were proposed to discharge.

***Why is there not another meeting explaining the lowering of water quality to WWH and its legality and the disregard of the biologic information the Ohio EPA biologists identified in their review of all the data presented by CEC?***

***I ask that we have another hearing to have our questions totally answered that were not answered here tonight.***

Responses to Comment 1 explain that the data collected by CEC is not Level 3 Credible Data and cannot, by regulation, be considered in use determinations. If the commenters have additional questions on this issue, please contact Audrey Rush, manager of the Water Quality Standards, Risk Assessment and Technical Support section, at (614) 644-2035 or [Audrey.Rush@epa.ohio.gov](mailto:Audrey.Rush@epa.ohio.gov). Ohio EPA will not hold a fourth public event to further discuss questions on this issue.

***CCU has submitted a legally inadequate application which should be denied and returned to the applicant for revisions. In light of the substantial changes needed and significant public concern, Ohio EPA should reopen the public comment period and hold a second public hearing on the revised application and to address public comments received during this comment period.***

The applicant amended the application in response to public comments and to support a more protective NPDES permit. An additional public hearing will not be held.

***I went to the Athens County Recorder's Office on September 14 and found no Sixth, but I found seemingly partial 7th and 8th Revisions. These referred to 5 ponds. What you seem to be looking at lists 3 ponds.***

The draft permit the public hearing was held for included 5 individual ponds and 5 outfalls. The revised permit now includes only one outfall for a pond system.

## **Comment 7: Concerns with Flooding and Pond Design**

Responses are provided to each group of individual comments which are organized by topic.

Comments related to topics outside of Ohio EPA's jurisdiction:

- ***Since 1968 there have been five 100-year incidence of flooding -- a 500-year incidence of flooding. The 24-hour 4.5 inches allowable is not sufficient enough to protect the detention ponds and the sediment and all of the other conditions.***
- ***The mine in a flood zone should have an alarm system to prevent any overflow that might disrupt the area or cause contamination***
- ***Designing the detention pond for a 25 year rain event is gross irresponsible.***
- ***Currently Athens County is doing a hazard mitigation plan, which it has to do with FEMA every five years. There's no reference in the hazard mitigation plan to these elements that might be in play. Without those being written into the hazard mitigation plan that would develop and set prevention criteria, then the area would not be sufficiently prepared to deal with this issue. Granting a conditional mining permit to CCU before a flood plan has been approved by the County seems rash and, in my opinion, unacceptable.***
- ***They're mining through and underneath these streams. Lots of these tiny streams come down over the hill. All this water that gets into the mine, all the porous rock that they're mining through, all seeps water into the floor of that mine pit which will have to be treated before they can put it back into the river. And there is going to be a lot of it. A lot more than they're counting on because of the strata they are mining through.***
- ***Ohio EPA is unable to raise the level required for flood event limits. If true, this fact gives Ohio EPA the authority to deny this permit based on the wholly inadequate flood event limits another agency is allowing the mining company to plan for and construct ponds within. We are already experiencing frequent local microbursts of rain events that far exceed historic flooding events.***
- ***What would be the protocol in the event of a flood that surpasses the 4 ½ inch provision, potentially allowing contaminated water to flow into the stream?***
- ***CCU admits that the proposed mining poses a flooding risk and the Athens County Commissioners have not yet signed off on their plans due to this.***

The ability of the ponds to handle the volume of water within the watershed, as well as contingency plans for pond failure, is a design criterion that is reviewed and addressed by ODNR-DMRM.

The applicant received a permit from the Athens Regional Planning Commission to conduct the proposed project in the floodplain. The floodplain permit expired in July of

2017. It is the responsibility of CCU to ensure all necessary permits to perform the work are received from other agencies prior to the commencement of mining. The potential impacts on flooding is considered by ODNR-DMRM during their technical review of the application.

Comments related to flooded mine pits:

- ***What happens when that whole mine pit is full of water? They can't pump this to the quality standards because of the employment that's going to be lost. They are just going to pitch it right into the stream.***
- ***Will the pit hold actual contemporary 2019 flood waters and flood events?***
- ***When the pits are half dug there are still minerals being exposed and there are still a lot of sedimentation that might be contributed to our watershed. What is in place to protect us from that?***
- ***The river basin is highly susceptible to flooding of more than four and a half inches, and mining could bring detrimental toxins and sediments into this valuable habitat. What would the Ohio EPA do to prevent this degradation or to clean up the damage if you look past this risk?***
- ***What would be the protocol in the event of a flood that surpasses the 4 ½ inch provision, potentially allowing contaminated water to flow into the stream?***

The permit requires CCU to operate the mine pump to ensure at least 24 hours of detention is achieved even if the mine pit is flooded. Additional monitoring to report daily inflow to the pond system is included in the revised permit. In addition, CCU has revised its mine plan to create a series of ponds with only one discharge point. This change will allow for increased detention times from the previous proposal.

The pits are not designed or required to contain a particular flood event per se. Therefore, an analysis has not been performed to determine what specific flood event they would contain. However, the pits are very large and provide an additional assurance to control flood water beyond what the treatment ponds are designed to contain. If the pits are flooded, it is likely that the majority of the water in the pit would remain in the pit and additional flood water would flow over top without intermingling significantly with the pit water. The contaminated pit water would then be held in the pit until pumped to the ponds when at least 24 hours of detention could be assured.

The detention ponds must be in place prior to construction of the pits. Any discharge from the mine pit construction area is required to be direct to and treated in the treatment ponds prior to discharge.

***What happens when these treatment ponds get overrun by the flood water? All this pollution control technology is supposed to clean up this water and leave it as sediment on the bottom of the ponds, but the flood comes and washes all that sediment downstream into our houses and land.***

The applicant has proposed to construct a berm between Johnson Run and the mine pit to prevent floodwaters from entering the mine pit.

**Is Ohio EPA aware of the 5 sedimentation ponds, within the floodplain with several as close as 8 feet from Johnson Run as outlined in Oxford's February 5, 2018 Fifth Revision?**

Ohio EPA is aware of the buffer variance granted to this project by ODNR.

#### **Comment 8: Investment in Johnson Run and the West Branch Sunday Creek**

- ***The Sunday Creek watershed was previously polluted by mining activities. So much investment in money, time and effort has been funneled into this watershed over the past 20 years by state, federal and local agencies, including funds from the Ohio EPA's 319 grant program. Risking the biological and stream recovery that has resulted in that investment is not in our region's best interest. 10 reclamation, restoration and AMD treatment projects have been constructed in the watershed. Eight of these projects are upstream of the confluence of Johnson Run and the West Branch of Sunday Creek. Approximately \$2.5 million has been spent in the West Branch sub-watershed alone.***

***Johnson Run discharges into the West Branch of Sunday Creek downstream of several AMD treatment projects. In the last five years since treatment began there has been significant improvement of water quality and biological population in the West Branch.***

***Monitoring stations up and down the stream from Johnson Run confluence with the West Branch show improvements in pH, decreases in the concentration of metals including iron and aluminum and now earn high biological scores during monitoring, indicating the presence of a high quality macroinvertebrate and fish community. One of the sites upstream in the West Branch went from having zero fish species before treatment to 17 species of native fish that now live there. Monitoring shows the presence of cold water taxa and Southern Redbelly Dace in the proposed mining impacted area and indicated Johnson Run is of exceptional water quality.***

***These small tributaries play a very important role in our stream ecosystem on the watershed level. We hope that the Ohio EPA and CCU Mining and Construction Company will take into account the tremendous investment and resulting water quality improvements that have occurred in the Sunday Creek Watershed and take the necessary precautions to not endanger the biological communities and quality habitat downstream from this proposed mining operation and address our questions concerning direct impacts to the mining area and Johnson Run.***

- ***Approving the CCU permit would waste resources used and repeat the loss of water quality in the area again. New mining won't just impact Johnson Run; it will jeopardize all of the progress in the West Branch.***



Ohio EPA appreciates and supports the historic and current remediation work done to address acid mine damage due to pre-law mining. The submitted comments are noted. The requirements established in the 401 Water Quality Certification, the ODNR Mining Permit and the NPDES discharge permit work in tandem to protect the water quality and biology in the watershed.

### **Comment 9: Monitoring**

Commenters requested information on the type of monitoring that would be done to assess the impact of the mine on the biology, expressed concerns about the self-monitoring program given past compliance issues associated with members of CCU, and requested Ohio EPA have a daily presence at the mine site.

***The monitoring of the mine should never be done by a company with such an unprofessional and non-forthcoming record. If Ohio EPA cannot be on site and monitor on a daily basis then the mine should not happen.***

A key component of the NPDES program is the monitoring data reported by the permittee (self-monitoring data). All Ohio NPDES permit holders are required to perform and report monitoring. Monitoring reports are required to be submitted to Ohio EPA on a monthly basis and are automatically reviewed by a computer system to determine if any of the data reported exceed the associated permit limit. If an exceedance is detected, the facility and the Ohio EPA inspector are notified.

A more thorough review of the reported data as well as compliance inspections of facilities are done by agency staff for all permittees. The frequency these occur is based on many factors including past compliance history. Compliance sampling and audits of laboratories that analyze the data are additional checks of the self-monitoring program.

Ohio EPA does not have the resources to perform daily inspections of this, or any, facility. Instead, compliance inspections and data audits determine the reliability of the data reported and permit compliance by the permit holder.

***What monitoring will be done to assess the impacts of the mines on the macro-invertebrates and species found in the stream?***

Stream monitoring is required in the Section 401 water quality certification, the NPDES permit, and the mining permit for this project.

The Section 401 water quality certification No. 165100 requires pre- and post-mining monitoring and performance standards to ensure that water quality has returned to pre-mining quality. Biological, chemical and habitat sampling is required for Johnson Run downstream of all proposed impacts. Specifically, the 401 requires:

## Biological Performance Standards

### i. Fish

Post-mining fish sampling at the downstream site (D-3) shall demonstrate that the stream is meeting pre-mining water quality conditions. A post-mining 181 score must demonstrate a non-significant departure from meeting Warmwater Habitat within the Western Allegheny Plateau ecoregion, as determined by the results of pre-mining sampling. In addition, if the pre-mining biological sampling includes the presence of cold water fish species, post mining evaluations must demonstrate the Coldwater species are present at the end of the monitoring period.

### ii. Macroinvertebrates

Post-mining macroinvertebrate sampling at the downstream site (D-3) shall demonstrate that the stream is meeting pre-mining water quality conditions. Post-mining qualitative macroinvertebrate sampling at the downstream site (D-3) shall contain, at a minimum, 50 percent of the EPT Taxa as determined by pre-mining sampling. In the event Coldwater indicator macroinvertebrate species are identified in the pre-mining sampling, 50 percent of the Coldwater macroinvertebrate species must be maintained.

The NPDES permit requires the discharge to Johnson Run be monitored for various chemical parameters and for flow. This data is reported to Ohio EPA each month, and the data is automatically reviewed by the system to determine if any permit limits are exceeded. Should an exceedance be determined, the company and the Ohio EPA inspector are notified. The NPDES permit also requires daily monitoring of the flow in Johnson Run at sites upstream of the mining area, and upstream of the final discharge. The ODNR issued mining permit will also require monitoring of Johnson Run in conformance with ODNR regulations.

### ***How will we know if biology is being impacted during mining?***

The chemical monitoring of the discharge and of Johnson Run provides an initial check on how the biology is likely performing during mining. Should the chemistry exceed permit limits or water quality criteria, the Ohio EPA will evaluate if biological monitoring or other action is warranted.

### ***There should be onsite monitoring of water quality, like there is for air quality.***

Onsite monitoring of water quality is required in the NPDES permit.

## **Comment 10: Responsible Parties**

### ***Who fixes this when it goes wrong? How do penalties replace the loss of life and the ecosystem?***

The permittee is required to ensure Johnson Run achieves post mining performance standards, including meeting biology metrics, that were based on data collected prior to mining. See the response to Comment 10 for additional information.

Monetary penalties are typically pursued in civil enforcement actions, not to replace the loss of aquatic life, but rather as an incentive to comply with environmental permits and regulations. The penalty amount is typically designed to recover the economic benefit of noncompliance and to compensate for the seriousness of the violation. Enforcement actions typically also require “injunctive relief” which are actions imposed to correct, abate, or mitigate the non-compliant action.

#### **Comment 11: Auger mining**

***The problem is auger mining. It's extremely uneconomical, as it leaves most of the coal in the ground. They leave the coal pulverized and all these channels for water that will infiltrate underground.***

Noted.

***Auger mining creates long tubular channels into the coal seam. It is highly likely that, like the nearby abandoned mines in Corning and Truetown, millions of gallons of acid mine drainage will flow into and from shafts and pits for years after the coal has been removed. How will this be monitored and treated after CCU is long gone? Who will pay for this?***

ODNR-DMRM is the regulatory authority on auger mining. The plugging of auger voids with suitable material is a design criterion that is reviewed and addressed by ODNR-DMRM. After mining is completed, CCU is required to meet habitat and biology benchmarks that are based on pre-mining conditions.

#### **Comment 12: Total Dissolved Solids (TDS)**

Commenters expressed concerns that the sensitive biology would not be protected if the in-stream concentration of TDS increased up to the discharge permit limit of 1500 mg/l.

***Total Dissolved Solids should not increase up to 1500 ppm, this is a death permit with a promise that life will be restored once the coal mining is complete. A Total Dissolved Solids level of 1500 ppm is not protective of sensitive species in the creek.***

In response to this concern, CCU revised its plan to discharge from each of the five previously proposed treatment ponds. Instead, CCU will link treatment ponds in series to provide longer detention times and will discharge only at one outfall located near the downstream edge of the mining area. This change will avoid discharges to the most sensitive portions of Johnson Run and will improve treatment. In addition, permit conditions have been added to limit the amount of flow discharged so as to achieve a downstream target concentration of 700 mg/l TDS in Johnson Run. Monitoring requirements of stream and effluent flow have been increased, and downstream monitoring of TDS has been added to the permit.

### **Comment 13: Rulemaking**

Two comments related to rulemaking were received and are provided below.

- ***Ohio EPA claims that consideration of stream as exceptional warm water habitat or cold water habitat has to go through rulemaking. It is not true that rulemaking must be done to establish designated use before maintaining and protecting the existing use of Johnson Run. EWH is the EXISTING use of the stream ever since the stream was tested and species recorded.***
- ***It was implied that even though the superior high quality water classification for existing use was evident and documented, rulemaking (or lack of rulemaking) would prevent this higher classification.***

Ohio EPA does not agree it has claimed an existing use must go through rulemaking in order to maintain and protect that use under anti-degradation provisions. However, the categorization of a stream as defined in Ohio Administrative Code (OAC) 3745-1-05(A)(10) must be promulgated in rule before the protections associated with the category can be utilized. A stream category is different than a stream use. Specific designated uses are defined in OAC 3745-1-07. Existing uses are defined at OAC 3745-1-05(A)(8).

The response to Comment 1 discusses the existing use of Johnson Run.

### **14. Ohio EPA appreciates the public submitting the following compliments:**

- *Kristopher Weiss was kind enough to return a call to me on your [Director's] behalf. Thank you for having him contact me. He informed me if I had additional information for your review regarding the Johnson Run draft NPDES permit he would make sure you would receive my concerns*
- *Jessica Johnson [hearing officer] did an excellent job of informing the attendees on the procedures for the evening.*

### **15. Ohio EPA appreciates and notes the following statements submitted during the public comment period.**

The topics identified in the following statements have either been addressed in previous comments or are on issues outside of Ohio EPA's NPDES authority.

- *I am not in favor of issuing any additional permits to discharge without a clear establishment of an escrow account to cover any damages or cleanup in the event of a discharge in excess of the permitted amounts.*
- *Nobody's talking about the air quality that all the trucks and all the dust is going to create. It's going to bring down property values. It's going to make the quality*

*of life for anybody that lives around this diminished. Very few local people are going to make any money from this.*

- It seems to me that if this stream is clean enough to have a "rare" fish in it then it must be as we think it is, precious enough to keep safe from harm. We all know in these parts, that the mine will destroy Johnson Run. The flooding in this valley gets worse every year and it is not possible to believe that any kind of pond or pit will keep that stream safe, and the acid mine water from auguring will surely destroy the rest of my land.*
- The fact that the EPA is still looking at the permit to allow the mine must mean you are taking another look at the facts. Please look harder and realize that there are no restrictions on a strip mine operation that will ever keep this stream safe. I always thought that the EPA was to protect our water, not destroy it.*
- The layoffs at CCU's mines clearly have had a negative impact on Perry and Athens counties and this proposed surface mine will not have positive economic impacts to outweigh the uncertainty of CCU's future. The very likely pollution impacts to Johnson Run and the West Branch of Sunday Creek will definitely have negative impact on the social gains made by the restoration and remediation projects conducted by the Sunday Creek Watershed Group over the past 20 years. These facts, the history of Oxford and its inability to restore streams in previous mining operations reviewed by DMRM and OEPA, and the fact that CCU (formerly Oxford Coal) has no history in operating a mine in a highly sensitive area in a flood plain give you the power to enforce the antidegradation rules to deny the permit sought by CCU.*
- The engineer for CCU admitted that flooding will occur and impact pond #5 and possibly #4, causing discharges into Johnson Run that will definitely impact the highly sensitive Coldwater Macroinvertebrate community and the Southern Redbelly Dace, which according to ODNR, is "an indicator of healthy headwater streams because they [Redbelly Dace] are very sensitive to alterations in the habitat of such streams."*
- David Holmes and his family expressed their grave concerns to you about this mine. The sale of the family's mineral rights happened decades ago when Jim Graham, owner of Buckingham Coal Company made the solemn promise there would never be a surface mine on any lands where he owned the mineral rights in the Johnson Run Valley. Jim Graham died and so did his promise of no surfacing mining.*
- A major concern is that during heavy rainfall periods an open pit mine may not be able to contain runoff that would carry acids, minerals and other materials into Johnson Run which empties into the West Branch of Sunday Creek. It is well known by the neighboring families and public officials that*

*Athens County Rd.31 is flooded making it impassable at the junction of Johnson Run and Sunday Creek several times a year.*

**16. Comments submitted by U.S. EPA on July 26, 2019:**

- i) ***Ohio needs to either issue a fresh public notice of a new draft permit and comment period naming CCU as the permittee or issue a final permit to Oxford Mining and subsequently transfer the permit to CCU pursuant to 40 C.F.R. § 122.61.***

Ohio public noticed and provided a comment period on a new draft permit naming CCU as the permittee.

- ii) ***The company stated that "although technologically feasible to connect to [the Glouster] WWTP, it is not cost effective, nor practical," adding that the facility "will not be in operation long enough (less than 5 years) to justify the expense." Since the applicant states that the alternative to connect to the Glouster WWTP (Glouster) is feasible, additional information such as a simple cost estimate should be provided as the response lacked any economic analysis or figures.***

***EPA notes that the company's response under Preferred Design Alternative remains the same as the one that Oxford submitted in 2016. The Minimal Degradation Design Alternative section discusses and summarily dismisses transporting or piping to the closest WWTP (Glouster) as well as the construction and use of an Underground Injection Control (UIC) well. While EPA acknowledges a Class V UIC well is not appropriate for this waste disposal, the company acknowledges the feasibility of connection to the Glouster WWTP, and we find the company's response lacks an economic analysis and cost estimates for the use of a Class I UIC well and the use of the Glouster WWTP.***

Glouster, Ohio is served by the Trimble Township Wastewater District WWTP NPDES #0PB00086. This WWTP does not have capacity to accept additional waste streams as it is already above its design flow. The WWTP is designed to treat 0.283 million gallons per day (MGD); the average daily flow in 2018 was 0.398 MGD. Because this WWTP is overcapacity and working to address the issue, Ohio EPA did not require the applicant to pursue this option further. There are no WWTPs in the area that could accept this much flow.

Only three facilities in Ohio currently operate a total of 10 Class I injection wells regulated by Ohio EPA. The use of these types of wells in Ohio are often

precluded by the lack of appropriate available citing locations. Therefore, the agency does not typically require an applicant provide cost estimates for their use as a minimal degradation design alternative.

- iii) ***Antidegradation Addendum Attachment 1, page 6-7, section C.4.g. and C.4.k. asks the applicant to consider impacts on water quality and effects on human health, aquatic life, wildlife, threatened or endangered species, and OAC 3745-1-05(B)(3)(g) requires an estimate of important social, economic and environmental benefits to be lost if water quality is lowered. The applicant must describe the impact from proposed mining, not solely current water quality, but a comparison between current and projected water quality based on coal wastewater effluent.***

Ohio EPA relied on its own evaluation of the projected water quality and did not feel it was necessary for the applicant to provide further such information on in its application.

- iv) ***Permit language, Part II. M, page 26, Stormwater Pollution Prevention. The storm water language present in this section of the Johnson Run proposed permit is identical to the storm water language in the recently withdrawn Ohio Coal General permit OHM000004 submitted on March 19, 2019. Currently OEPA and EPA NPDES stormwater staff experts are coordinating a resolution to this language in the context of the general permit. EPA understands that the experts have reached a tentative agreement on language. Ohio should replace the current language in the instant permit with final, agreed upon language developed for the general permit.***

Ohio EPA incorporated the final, agreed upon language in this permit.

- v) Responses to comments made in Attachment B were discussed verbally. Ohio EPA's changes to the draft permit are summarized below
- a. Outfall footnote d. - "Samples taken in compliance with effluent monitoring requirements shall be collected following treatment if provided and prior to entering **the** receiving streams."
  - b. Up and downstream monitoring station headers – "During the period beginning ~~on the effective date of this permit~~ **when construction of the initial pit is initiated** and lasting until the expiration date..."
  - c. Part II E. – Fix typo by replacing outfall numbers "OIL0016500X" with "OIL0016800X".

**End of Response to Comments**