

January 12, 2016

Virginia Water Control Board  
c/o Office of Regulatory Affairs  
Department of Environmental Quality  
P.O. Box 1105  
Richmond, VA 23218

RE: Revised Draft VPDES Permit No. VA0004138 for Bremo Power Station

Honorable Members of the State Water Control Board:

We write regarding the Revised Draft Virginia Pollution Discharge Elimination System Permit for the Bremo Power Station. The Southern Environmental Law Center submits this letter on behalf of itself and the James River Association. This letter encapsulates the legal and technical arguments in our comment letter. Please see our December 14, 2015 Comment Letter for more detail.

In short, we write to inform you that the revised draft permit still does not protect the James River as required by the Clean Water Act and implementing regulations. The following are the primary, remaining deficiencies that must be addressed before the Board approves any permit authorizing the “dewatering” of the coal ash at the Bremo Power Station.

- The revised permit does not apply the best available technology to treat coal ash wastewaters as required by law. In a case such as this, where there is not an applicable effluent limitation developed by EPA, DEQ must develop technology-based limits on a case-by-case basis. Surprisingly, DEQ takes the position that it does not have the authority to apply technology based limits here. DEQ is incorrect as a matter of law. The revised draft Bremo permit would authorize arsenic discharges at a daily maximum of 530 µg/L (micrograms per liter). This level of arsenic pollution is unacceptable. For example, in a similar draft water pollution permit, North Carolina developed technology-based limits of 14.5 µg/L arsenic as a daily maximum for discharges of coal ash water from the Riverbend Steam Station. The technology that will treat coal ash wastewaters in North Carolina will work just as well in Virginia. Correctly read, that is what the law requires.
- The permit also improperly relies on a mixing zone to dilute wastewaters down to standards when affordable technology exists to treat these wastewaters to levels that meet standards before they are discharged to the James River. The Virginia Department of Conservation and Recreation submitted comments asking that water quality standards be met at the point of discharge without any mixing zone. We agree. For example, the chronic toxicity standard to protect aquatic life in Virginia is 150 µg/L. That limit is easily achievable here. (Indeed, it is an order of magnitude higher than the standard set by North Carolina in the draft Riverbend permit.)

- The permit also does not comply with Virginia’s Antidegradation Policy, which mandates the protection of the high quality waters of the James River. DEQ may only allow lowering of the quality of the James River where the discharge of pollution “is necessary to accommodate important economic or social development in the area in which the waters are located.” 9VAC25-260-30.A.2. Here the degradation of the James River that would be allowed by the revised draft permit is unnecessary given the practicable and affordable treatment options. Nor will the discharge of untreated or inadequately treated wastewater here accommodate any important economic or social development in the area. Nevertheless, DEQ’s own analysis shows that these discharges of coal ash wastewater will degrade the water quality of the James River for many miles downstream.
- Finally, Virginia regulations require that certain information, including the total quantity of wastewaters to be discharged, be included in the fact sheet accompanying draft permits. The public has a right to this information in time to consider it in formulating comments. Here such information respecting the volume of the coal ash wastewaters to be discharged to the James River was not provided until DEQ issued a revised draft permit on Monday, January 4, 2016, well after the comment period had closed.

Therefore, we respectfully request that the State Water Control Board not approve the draft permit at its January 14 meeting. We further request that the Board direct DEQ to revise the permit to apply the best available treatment technology and to meet or exceed water quality criteria at the point of discharge. The DEQ should then issue the revised draft permit for public comment together with all of the required supporting information.

Thank you for your service and for your consideration of these comments.

Sincerely,



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