

January 19, 2022

Submitted Via eComment

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477



Re: Proposed Rulemaking: Exclusion for Identification and Listing Hazardous Waste at MAX Environmental Technologies, Inc. Bulger & Yukon Facilities (#7-566)

To Whom It May Concern:

My name is Stacey Magda I am presenting a comment on behalf of the Mountain Watershed Association and concerned community members of Yukon. Over the past year and a half I have had the opportunity to observe the operations at MAX Environmental's Yukon facility and connect with nearby residents as well as those that have long since moved away - many due to impacts from MAX.

The stories I have heard are both shocking and frightening. Many in Yukon feel widely betrayed by industry and regulatory agencies as the outfall of this facility continues to plague their daily lives - they report noxious smells, tongue numbing sensations, polluted water, and horrid air quality. Many complain of an ongoing fugitive dust that starves their ability to safely breathe in dry weather, often citing the only time they feel the air is 'safe' is when it rains.

. The Mountain Watershed Association (MWA) opposes Max's request to reclassify the sludge generated from their treatment system as "non-hazardous. We oppose this rulemaking, in large part, because Max's history of noncompliance indicates that Max cannot be trusted to undertake the monitoring and reporting activities necessary to ensure this sludge waste continues to be safely treated and stored. Max's compliance history paints a clear picture of chronically struggling to comply with existing rules. Allowing them to have fewer requirements does not seem like it will result in a safer site.

Secondly, Max treats residual waste shown to be highly radioactive from oil and gas operations. While that waste is not currently classified as radioactive or hazardous, there is pending legislation that would change that classification. If the legislation is passed and the oil and gas waste is considered to be radioactive, then the DEP's existing Delisting Evaluation would be inaccurate. A new independent evaluation would be needed to verify that the sludge does not also show evidence of elevated radiation. As it is highly unlikely that high radiation levels would not be discovered, the sludge would likely then evidence characteristics of a hazardous waste, and the delisting application materials and the DEP's evaluation would be incomplete and inaccurate.

According to the DEP's website, a conditional delisting means MAX is required to test its sludge regularly and the results should not show any characteristics of hazardous waste. As long as Max's tests show there is not a significant amount of hazardous waste, the sludge can be

treated as “non-hazardous” waste. If the results do reflect characteristics of hazardous waste, then the delisting does not apply and Max must treat the sludge as hazardous waste.

If the delisting petition is granted, Max will not be required to report the results of its sampling and monitoring of leachate sludge with DEP. Max must share their analysis only if monitoring reveals that certain hazardous wastes are present in levels that exceed the permitted limits. If that does occur, MAX must report any information relevant to that exceedance within 10 days of discovery. A review of Max’s compliance history shows a failure to monitor and report a swath of activities in the past. There is little reason to think this monitoring and reporting would be any different, and the consequences would be dire if Max incorrectly or inaccurately sampled and failed to report. If hazardous sludge is treated as non-hazardous, it would be buried on site - irrevocably leaching into the soil and water, further damaging the surrounding environment and community.

Compliance History

Max has shown either a lack of ability or intent to consistently comply with the regulatory schemes under which it operates. For example, the Bulger and Yukon facilities have incurred over 110 violations by the DEP and EPA since 2009.

The following are highlights from a long list of reasons why DEP has issued violations:

- Hazardous waste containers leaking onto the ground,
- Failure to maintain leak detection,
- Receiving and storing residual waste not permitted by the DEP,
- Open burning,
- Improperly labelling waste or failing to label it at all,
- Not properly closing containers of hazardous waste,
- Failure to monitor and service leachate system,
- Not following required waste testing procedures,
- Causing an unauthorized release of residual waste leachate,
- Failing to provide DEP with the required reporting on:
 - water pollution discharges,
 - chemical releases, and
 - compliance histories
- Allowing uncontrolled fugitive dust emissions to leave the site,
- Exceeding site capacity,
- Failing to perform weekly site inspections,
- Failing to perform radiation source checks,
- Not processing waste sufficiently to meet universal treatment standards,
- Failing to prevent offsite odors,
- Tracking mud or debris offsite,
- Using faulty equipment to measure radiation levels for 16 truckloads of incoming waste that triggered the portal radiation monitor.

Many of the violations were for issues so egregious that DEP also issued civil penalties and fines. But these penalties failed to have the desired deterrent-effect. Instead, it seems they are treated as a regular cost of doing business. Penalties have been issued at least once a year, every single year from 2012 to the present -- with the most recent one issued just one month ago for a failure to comply with NPDES effluent limitations, a fine of \$28,500. Since 2009, Max has been fined at least 25 times for a total of over \$850,000 penalties.¹ Max has stated in its Regulatory Analysis Form that, should the delisting petition be approved, it would save them an estimated \$950,000, annually in transport and disposal costs.² To reward Max by delisting hazardous waste, knowing the facility's history of non-compliance, seems counter-productive to the interest of environmental protection. Max's inability or unwillingness to regularly comply with DEP's environmental standards should not be answered with the delisting of the hazardous waste it processes, effectively loosening DEP's oversight.

Please do not further destroy this community, Sewickley Creek, or the Youghiogheny River Watershed - we urge you to deny this request.

Thank you for your time.

With Concern -
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¹ See chart from landfill 7 phase 1 application.

² Accessed at:

[https://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%](https://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20)