



February 22, 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:

Please accept this comment which is submitted on behalf of the Mountain Watershed Association (MWA), home of the Youghiogheny Riverkeeper. We are a nonprofit citizen-led environmental organization focused on protection, preservation, and restoration of the Indian Creek and greater Youghiogheny River watersheds. We submit these comments on behalf of our organization and our over 1,600 members, many of whom live near to, or in the area around, the Max Environmental Hazardous Waste Facility in Yukon.

MWA strongly urges the EQB ("Board") to deny Max's request to reclassify the sludge generated from their treatment system as "non-hazardous". MWA opposes this rulemaking, in large part, because Max's history of egregious noncompliance indicates that Max cannot be trusted to engage in 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 chronic failure to comply with existing requirements. Allowing them to have fewer requirements does not seem like it will result in a safer site. Secondly, MWA opposes this proposed delisting because Max treats waste that may soon be classified as radioactive or hazardous waste.

1. Oil & Gas Residual Waste May Soon Be Classified As Hazardous - Altering The Sludge Cake Analysis

Max treats waste from oil and gas operations, shown to be highly radioactive. In a meeting held by MAX Environmental in 2020, company officials claimed that oil and gas wastes made up over 75% of their accepted wastes from 2014 to 2015. 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 not have included pertinent hazardous analytes in its evaluation. A new independent evaluation would be needed to verify that the sludge does not also show evidence of elevated radiation. Oil and gas wastes are



known to contain high levels of technologically enhanced naturally occurring radioactive materials (TENORM). Data from USGS studies show that oil and gas-field produced waters in the northern Appalachian Basin contain radioactive elements such as radium at levels thousands of times higher than the drinking water standard. This data suggests that the sludge would likely then evidence characteristics of a hazardous waste, and the delisting petition would be rendered incomplete and inaccurate.

2. Max's History Of Noncompliance Reflects Existing Struggles To Comply With Regulations

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, damaging the surrounding environment and community.

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 \$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.

a. NPDES Noncompliance

Because MWA is a watershed organization, we are particularly sensitive to Max's failure to comply with its NPDES permits. US EPA's ECHO site reports that between 2016 to the present the Yukon facility had 43 exceedances and spent a total of 720 days with exceedances.³ In the last year, Max had 94 days with exceedances, with the reported discharges surpassing the permitted limits by 200-300% for constituents like Phenolics and Zinc. ECHO shows Max's status as "noncompliant" for 6 of the last 12 quarters and four of them "significant[ly]" so.

DEP has cited Max numerous times for exceedances of their NPDES permit limits, and yet Max continues to regularly exceed its waste limits. DEP has also cited Max for failing to properly

¹ See chart from landfill 7 phase 1 application.

² Accessed at:

https://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2021/September%2021/03_7-566_MAX%20Delisting_Proposed%20RM/04a_7-566_MAX_Proposed_RAF.pdf

³ ECHO site



conduct its water monitoring and for failure to provide DEP with the required discharge monitoring reports. After complaints by community members and MWA staff, DEP inspectors even issued violations for having completely unpermitted discharges at the site.

3. Max's Non-Compliance Shows Inability to Comply With Delisting Monitoring & Reporting Requirements

The conditional delisting involves several steps, almost all of which - to some extent or another - Max has failed to execute in the past.

a. Failure To Follow Proper Sampling and Monitoring Procedures

Max must take samples of the waste (at a rate of one composite per every 20 cubic yards) and do so in accordance with its approved Sampling and Analysis Plan. Max has received violations for not sampling properly, specifically for “not follow[ing] [the] waste testing procedure in its waste analysis plan”. Max also failed to sample for the correct constituents in a violation where it accepted 14,114.06 tons of waste but failed to test it for the correct parameters like benzene and geochemical parameters. Max has also been cited for failing to monitor altogether. For example, DEP found that Max was “not performing a radiation source check for each day the facility is in operation.”

b. Failure To Maintain And Provide Complete & Accurate Records

If approved for delisting, Max must maintain accurate records for three years of the sludge sample analysis and those results must be available to the DEP upon request. Yet Max has received violations for failing to make records available to DEP. For example, DEP cited them for not having a waste analysis plan onsite, and for having incomplete records, such as an “operating record [that] does not contain record and results of all inspections.”

c. Failure To Report In a Timely Manner

If Max's sludge analysis were to indicate the presence of hazardous waste, then Max must report that information to the DEP within 10 days of discovery. Yet Max has been cited for failing to report similar such issues and, more broadly, has failed to provide DEP with necessary reports and records. For example, Max violated its NPDES permit “by submitting monthly eDMRs late (beyond the 28th day of the following month) and failing to comply with certain effluent limits.” Max has also been fined for: failing “to submit EPCRA Tier 2 chemical release reports in a timely manner,” and “failing to submit a complete compliance history when applying for ACT 90 Sticker renewals” and for “failing to submit a bond increase in a timely manner.” Max also has not reliably disclosed non-compliance, let alone the required record, as Max “failed to notify the PADEP by telephone of the unlawful discharge of wastewater.” None of this instills a



strong sense of trust in Max's dedication to prompt reporting, in the event sludge samples show hazardous wastes that exceed the permitted limits.

Finally, Max has a history of not alerting DEP to what it is doing on the ground, at all. For example, Max, "installed a groundwater monitoring network for proposed landfill without DEP approval." Max also, "dispos[ed] of solid waste without first obtaining a permit," and had a stormwater discharge pipe and downstream drainage pipe, not included in any permit. 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.

Thank you,

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Community Advocate
Mountain Watershed Association