

January 6, 2014

Missouri Department of Natural Resources
Water Protection Program
Attn: NPDES Permits and Engineering Section/Permit Comments
P.O. Box 176
Jefferson City, Missouri 65102


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Re: *Permit Number MO-0113328*

Dear Sir or Madam:

Great Rivers Environmental Law Center (“Great Rivers”) submits the following comments on behalf of residents of North St. Louis and the Missouri Coalition for the Environment (“MCE”) regarding Beelman River Terminals’ Permit Renewal for MO-0113328 (“Draft Renewal Permit”). The residents of North St. Louis and MCE (collectively “the Commenters”) request that the Missouri Department of Natural Resources (“MDNR”) consider the following comments before issuing the permit in final form.

I. The Final Permit Should Retain Recently-Incorporated Requirements

A. Whole Effluent Toxicity Testing

The Commenters applaud MDNR’s decision to include a Whole Effluent Toxicity (“WET”) testing requirement in the Draft Renewal Permit. This requirement will ensure that the pollutants discharging from Beelman’s site are not negatively affecting aquatic organisms’ ability to survive, grow and reproduce. Because of the municipal terminal’s history of transferring lead ore and other large quantities of toxic substances, there is concern that contaminated stormwater washing off the site could impair natural biological communities, particularly benthic organisms near outfalls’ initial zones of dilution. If any future WET test results indicate that acute toxicity is a problem, MDNR should reopen Beelman’s permit to include stricter requirements that will ensure aquatic life will be protected in the future.

B. Mandatory Submission of Corrective Action Reports

The Commenters support the stronger language added to the Draft Renewal Permit that requires Beelman to submit a corrective action report to MDNR each time a Benchmark effluent concentration is exceeded.

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Clarifying the facility's responsibility to proactively submit reports will provide more incentive to review Stormwater Pollution Prevention Plan ("SWPPP") and Best Management Practices ("BMPs") for further improvement. Requiring submission of reports also facilitates the public's right to file Clean Water Act citizen suits by making pertinent documents available for inspection using Missouri's Sunshine Law.

Similar clarifying language should be used in another section of the Draft Renewal Permit. Special Condition 7(b) states that brief monthly written reports and the SWPPP "must be made available to department personnel upon request." Draft Renewal Permit, p. 5. MDNR should revise the Draft Renewal Permit to require that copies of monthly reports be submitted to MDNR, at a minimum, on a quarterly basis so that citizens can access the reports through a document request. Information in the SWPPP is also important for purposes of determining permit compliance. Beelman should be required to submit a copy of its SWPPP to MDNR no later than 90 days after its permit is issued so that it can be made available for public inspection.

C. Slag Berm Maintenance

The Commenters support MDNR's addition of the BMP to the Draft Renewal Permit that requires Beelman to maintain the slag berm around its large salt piles. However, the public notice states that the berm must be maintained to divert run-off flows away from the storage piles. The berm, as it currently exists on the facility's site, was constructed to inhibit flows that come into contact with the salt piles from washing down the adjacent bank into the Mississippi River. The berm does not divert flows away from the salt piles. The piles are typically surrounded by standing pools of stormwater or snowmelt. This water likely contains high concentrations of salt. If it is possible for the facility to construct berms that would divert flows away from the piles, this should be included as an additional permit requirement so that polluted, standing pools can be avoided in the first place.

The Commenters also commend the addition of the BMP that will better protect Beelman's outside storage piles from stormwater runoff. The Draft Renewal Permit requires that the facility's outside storage piles be covered or relocated inside a storm resistant shelter when the materials are not being actively loaded or unloaded. While providing the option of using a cover or storm resistant shelter to prevent runoff would ordinarily be a sufficient proposal, history has shown that Beelman does not follow through on promises to recover its storage piles when they are not in use. In 2010, a representative of Beelman assured an MDNR official that its salt piles would be covered when not being actively loaded and unloaded. Despite this assurance, the salt piles have remained only half-covered for more than a year, and no one at the facility recovers the piles in between loading and unloading. This BMP should be revised to require only one option for the storage piles: relocation to a storm resistant shelter. If the piles were moved to a storm resistant shelter, the burden of covering and uncovering them would no longer be an issue. An added benefit to storing piles in a shelter is that Beelman would not have to repeatedly repair its berm every time it breaks down.

II. MDNR Should Revise the Draft Renewal Permit to Incorporate Enforceable, Technology-Based Effluent Limitations

The Draft Renewal Permit should be revised to include enforceable, technology-based effluent limitations as opposed to unenforceable Benchmark values. From 1997 to the present, Discharge Monitoring Reports from Beelman's previous permit were accompanied by dozens of after-the-fact justifications for effluent limitation exceedances. However, none of the justifications attributed the permit violations to the salt and coal piles at the facility's site that are frequently uncovered and exposed to rain and snowmelt. Nothing mentioned the large piles of scrap metal that were left in pools of stagnant stormwater for extended periods of time. Despite the fact that Beelman was notified its slag berm broke down nothing was done to repair it. Past effluent limitation violations were more likely a product of neglecting to implement proper BMPs in the first place, not a product of effluent limitations being unreasonable to attain. This continual disregard for compliance with water quality laws demonstrates that the facility needs not only an indicator of whether its BMPs and SWPPP are effective, but additional mechanisms for permit enforcement such as mandatory effluent limitations. As proposed, the Benchmark scheme will encourage a "wait and see later" approach to BMP implementation and give less incentive to Beelman to take the necessary steps to ensure water quality is protected in advance of engaging in daily operations. The Draft Renewal Permit should be revised to include enforceable effluent limitations.

III. Conclusion

Missouri law requires MDNR to "conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses and for the propagation of wildlife, fish and aquatic life." R.S.Mo. 644.011. It also requires MDNR to ensure that no waste will "be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters." *Id.* MDNR must issue permits that ensure compliance with all state and federal effluent regulations, limitations and standards. R.S.Mo. 644.026.1(13). Residents of North St. Louis and the Missouri Coalition for the Environment appreciate the opportunity to comment on Beelman River Terminals' Permit Renewal for MO-0113328. We request that MDNR address our concerns and revise the Draft Renewal Permit to fulfill its duty to conserve our State's waters.

Sincerely,



Brook Spear
Staff Attorney