

**BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION
OF THE STATE OF OHIO**

FRIENDS OF PERRY STATE FOREST)

P.O. Box 584)

New Lexington, Ohio 43764)

OHIO ENVIRONMENTAL COUNCIL)

1145 Chesapeake Ave., Suite I)

Columbus, Ohio 43212)

(614) 487-7506)

ERAC CASE NO._____

Appellants,)

NOTICE OF APPEAL

vs.)

CRAIG BUTLER)

DIRECTOR)

OHIO ENVIRONMENTAL PROTECTION AGENCY)

50 W. Town Street, Suite 700)

Columbus, Ohio 43215)

OXFORD MINING APV AREA)

P.O. Box 427)

Coshocton, Ohio 43812)

Appellees.)

INTRODUCTION

Pursuant to Ohio Revised Code Sections 3745.04 and 3745.07, notice is hereby given that the Friends of Perry State Forest (“Friends”) and the Ohio Environmental Council (“OEC”) (collectively the “Citizen Groups”), as organizations and on behalf of their members who will be aggrieved and adversely affected, appeal to the Environmental Review Appeals Commission (“ERAC” or the “Commission”) from the Ohio Environmental Protection Agency’s Director’s

issuance on December 20, 2018 of the Final NPDES Permit No. 0IL00172*AD (“Permit”) to Appellee, Oxford Mining Company (“Oxford”). The Permit allows Oxford, under the Oxford Mining APV Area, to discharge mine-related wastewater into a tributary of Rush Creek, which flows into the Hocking River, with additional discharges into Buckeye Fork and ultimately Moxahala Creek. A true and accurate copy of the final action is attached.

The permit, however, lacks the fundamental requirements to protect the receiving waters and the people who use said waters. While the permit, the public notice, and Appellants’ statements suggest that water quality will improve due to the remaining activity, nothing in the permit ensures improved water quality or demonstrates to what extent the water quality will benefit. The Director’s failure to perform background pollutant loading analysis, his approval of non-numeric effluent limitations, and his abdication of the Ohio EPA’s Clean Water Act authority to the Department of Natural Resources, exacerbates the Permit’s failure to ensure improved water quality.

The Citizen Groups are each environmental organizations with numerous members in Ohio and in the area affected by the Oxford APV Area mine. Friends of Perry State Forest is an unincorporated, community based organization made up of approximately 77 members, who are local Perry County residents and businesses as well as APV riders—from both Perry County and across Ohio—who frequent Perry State Forest for hiking, fishing, horseback riding, and APV riding, among other recreational pursuits. Friends of Perry State Forest’s mission is to advocate for protection of the Forest and maintenance of the APV trails and to ensure that the Forest remains open and accessible to the public, generally, and to the people of Perry County, particularly. OEC is a statewide non-profit environmental advocacy organization with thousands

of individual and group members throughout Ohio. The mission of the OEC is to secure healthy air, land, and water for all who call Ohio home.

The Citizen Groups have members who live, work, and/or recreate in and around Perry State Forest and areas downstream from the permitted site. These members will be aggrieved and adversely affected by the proposed discharges of pollutants permitted by Permit No. 0IL00172*AD into waters they use and otherwise enjoy. Potential impacts from the Applicant's discharges to members of the Citizen Groups include impacts to home and business through the lowering of downstream water quality for families, farm animals, and crops, and loss of recreational opportunities in the Forest's lakes and streams.

Furthermore, the Friends of Perry State Forest and the OEC were parties to the proceeding before the Director regarding the Permit, each filing comments on the draft Permit. In addition, members and/or representatives of each organization appeared and made statements at the public hearing regarding the draft Permit held in New Lexington, Ohio on October 2, 2018. For the foregoing reasons, the Citizens Groups each have standing to file this appeal before the Commission.

ASSIGNMENTS OF ERROR

The action of the Director in approving and issuing the Permit for Oxford Mining was unreasonable and unlawful for a number of reasons, including, but not limited to, the following:

1. The Director of the Ohio Environmental Protection Agency unlawfully and unreasonably failed to include the Applicant's Pollution Abatement Plan within Permit No.

0IL00172*AD as an effluent limitation, as required by 40 CFR §434.72(a).

2. The Director of the Ohio EPA unlawfully and unreasonably issued Permit No. 0IL00172*AD without approving a Pollution Abatement Plan of the Applicant as required under 40 CFR §434.72(a).
3. The Director of Ohio EPA unlawfully and unreasonably issued Permit No. 0IL00172*AD because the applicable Pollution Abatement Plan was incomplete, lacking elements required under 40 CFR §434.72(a) and OAC 1501:13-4-15(C)(4)(b).
4. As the Permitting Authority under 40 CFR §434.72, the Director of the Ohio EPA unlawfully and unreasonably issued non-numeric effluent limitations without making a determination regarding the infeasibility of establishing baseline pollutant loads.
5. As the Permitting Authority under 40 CFR §434.72, the Director of the Ohio EPA unlawfully and unreasonably issued non-numeric effluent limitations without determining that reminging will result in significant improvement to water quality that would not otherwise occur.
6. As the Permitting Authority under 40 CFR §434.72, the Director of the Ohio EPA unlawfully and unreasonably issued non-numeric effluent limitations in reliance on the

determinations of a non-Permitting Authority, the Chief of the Division of Mineral Resources Management (DMRM).

7. In the alternative, the Director of Ohio EPA's reliance on the Chief of DMRM's determinations in issuing non-numeric effluent limitations in Permit No. 0IL00172*AD was unlawful and unreasonable because the Chief of DMRM did not provide sufficient and necessary information for the Director to determine that "it is infeasible to collect samples for establishing the baseline pollutant levels . . . and that reminging will result in significant improvement that would not otherwise occur."
8. In the alternative, the Director of Ohio EPA unlawfully and unreasonably determined, independent of the Chief's determinations, that establishing baseline pollutant levels was infeasible.
9. The Director of Ohio EPA unlawfully and unreasonably failed to consider the Applicant's lengthy history of failed mitigation when determining that reminging will result in a significant improvement to water quality that would not otherwise occur.
10. The Director of Ohio EPA unlawfully and unreasonably failed to consider the Applicant's future financial ability when determining that reminging will result in a significant improvement to water quality that would not otherwise occur.

11. The Director of Ohio EPA unlawfully and unreasonably issued Permit No.0IL00172*AD without including numeric effluent discharge limitations on several pollutants, including but not limited to: Conductivity, Total Dissolved Solids (TDS), Selenium, Chloride, and Sulfate.

12. The Director of Ohio EPA unlawfully and unreasonably issued Permit No. 0IL00172*AD without including sufficient monitoring requirements for pollutants that exist in coal mining discharges.

13. The Director of Ohio EPA unlawfully and unreasonably failed to account for the impairments of Buckeye Fork for nickel, manganese, total dissolved solids, aluminum, sulfates, and acidity, and for the applicable TMDL for the Moxahala Creek Watershed, within Permit No. 0IL00172*AD.

14. The Director unlawfully and unreasonably failed to meaningfully consider or respond to public comments regarding the draft Permit.

REQUEST FOR RELIEF

Based upon the above, Appellants OEC and Friends of Perry State Forest respectfully request that the Commission find that the action of the Director in issuing Permit No. 0IL00172*AD to Oxford was unlawful and unreasonable and, as a result, vacate the Permit and remand the matter to the Director for further action as required by law and for such other relief as appropriate and just.

Respectfully submitted,

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Certificate Of Service

I hereby certify that, on January 22, 2019 I served by first class certified U.S. mail a copy of this notice of appeal upon the Director of Environmental Protection, Ohio EPA, P.O. Box 1049, Columbus, Ohio, 43216-1049 and Oxford Mining APV Area, P.O. Box 427, Coshocton, OH 43812.

Trent A. Dougherty