



WEST VIRGINIA RIVERS

December 12, 2022

Director
Technical Support Division
West Virginia Division of Highways
1334 Smith Street
Charleston, West Virginia 25301
Attention: Travis Long

Submitted by email to: travis.e.long@wv.gov and via the WV DOH google form

Re: Comments on Corridor H – Parsons to Davis

Mr. Long,

West Virginia Rivers Coalition respectfully submits the following comments on the proposed Parsons to Davis Section of the Appalachian Highway Corridor H Project.

History of Non-Compliance

The Appalachian Highway Corridor H Project has a history of non-compliance with water pollution control permits that have caused severe impacts to water resources. The current Corridor H section under construction is a 15.3-mile four-lane divided highway between Kerens and Parsons, the Kerens to Parsons Project. The most recent water pollution control permit issued for this section is WV/NPDES General Water Pollution Control Permit No. WV0115924, Registration No. WVR108594. This permit was issued to Kokosing Construction Company, Inc. on August 3rd, 2017 to permit the discharge of stormwater from 475 acres of earth disturbance for the construction of 7.5 miles of the four-lane highway in Randolph and Tucker County, as well as the US 219 Connector and several other small access roads.

As of September 3rd, 2022 there have been 52 violations of Permit No. WV0115924, documenting 336 instances of non-compliance from November 2017 to May 2022. Instances of non-compliance were compiled, grouped, and are listed below. Each bullet point includes a narrative description of the non-compliance, followed by the Code of West Virginia or permit section violated in parentheses, and finally, the number of times the non-compliance occurred. Multiple permit sections are referenced within the same non-compliance point as the WV Department of Environmental Protection (DEP) released a new version of the construction stormwater general permit in 2019.

- Failed to implement, operate and maintain all erosion control devices, in accordance with standard procedures and approved Stormwater Pollution Prevention Plan (permit sections D.1; G.4.e.2; II.F) – 47
- Failed to prevent sediment-laden water from leaving the site without going through an appropriate device (permit sections G.4.e.2.A.ii.j and I.G) - 32
- Failed to comply with compliance orders – (§22 CSR11 Section 16) – 29
- Caused conditions not allowable in waters of the state by allowing distinctly visible settleable solids in waters of the state (§47 CSR2 Section 3.2.a) – 29

- Failed to comply with the General Permit and approved Stormwater Pollution Prevention Plan (permit sections B and I.B) – 28
- Failed to modify the Stormwater Pollution Prevention Plan when there was a change in design, construction, scope of operation, or maintenance of Best Management Practices (permit sections G.4.c and III.C.2) – 27
- Caused conditions not allowable in waters of the state by sediment deposits on the bottom of waters of the state (§47 CSR2 Section 3.2.b) – 21
- Failed to protect fill slopes (permit sections G.4.e.2.A.ii.f and II.H.3.b.9) – 21
- Failed to properly operate and maintain all activities and installed Best Management Practices (permit sections Appendix B.I.1 and B.I.1) – 18
- Failed to properly operate sediment basin (permit sections G.4.e.2.A.ii.b and II.H.3.b.11) – 13
- Failed to reseed areas that failed to germinate within 30 days after seeding (permit sections G.4.e.2.A.i.c and III.A.3) – 12
- Failed to provide interim stabilization on areas where construction activities have temporarily ceased for more than 14 days (permit sections G.4.e.2.A.i; G.4.e.2.A.i.b; III.A.3) – 10
- Failed to gravel unpaved roads to reduce the tracking of sediment onto the public or private roads or inspect and clean all adjacent public and private roads of debris originating from the construction site (permit sections G.4.e.1.E; G.4.e.2.D.i; II.H.1.d; II.H.4) – 13
- Failed to provide inlet protection for sediment control structure (permit sections G.4.e.2.A.ii.c and II.H.3.b.13) – 9
- Failed to prohibit discharges of material other than stormwater (permit sections G.2 and I.G) – 6
- Failed to dispose of all solid waste/demolition material in accordance with the Code of West Virginia and Legislative Rule Title 33 Series 1, Solid Waste Management Rule (permit section III.A.2) – 5
- Failed to protect groundwater in accordance with the Code of West Virginia and Legislative Rule Title 47 Series 58, Groundwater Protection Rule (permit sections G.4.e.2.C.iii and II.I) – 4
- Facility exceeded effluent discharge limitations outlined in the Special Condition of the approval letter from the Director (permit section G.5) – 2
- Used straw bales on site which are not an acceptable Best Management Practice (permit section G.4.e.2.A.ii.k) – 2
- Failed to stabilize clean water diversions prior to becoming functional (permit section G.4.e.2.A.i.d) – 2
- Discharged pollutants from a land disturbance into Panther Run without an authorized State NPDES permit (§22 CSR11 Section 8.b.(1)) - 1
- Failed to take any and all measures necessary to clean up, remove and otherwise render such spill or discharge harmless to the waters of the state (§47 CSR11 Section 2.5.a) – 1
- Failed to apply for permit coverage while continuing an activity regulated by this permit after the expiration date (§47 CSR10 Section 5.2) – 1
- Failed to submit a Discharge Monitoring Report through the mandatory eDMR system within 20 days following the end of the reporting period (Special conditions for iron limits and monitoring requirements) – 1

- Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall immediately submit such facts or information (permit section C.9) – 1
- Failed to report noncompliance using designated spill alert telephone number (permit section I.D.2) - 1

Notable non-compliances include: failing to submit discharge monitoring reports, exceeding effluent discharge limitations, disturbing land outside the permitted limits of disturbance, filling in ephemeral tributaries outside of the permitted area, lacking secondary containment for above ground storage tanks of Ammonium Nitrate and petrochemicals, discharging concrete washout directly into streams, discharging sediment laden water from filter bags directly into streams, discharging turbid water from full sediment basins directly into streams, and violating a cease and desist order.

In the past five years, the Kerens to Parsons Project has caused 50 water quality violations, in the form of sediment pollution, in 16 streams, including 1 Tier 3 stream:

- Haddix Run - Tier 3 stream
- Baldlick Fork
- Panther Run
- Wilmoth Run
- Fools Run
- Laurel Run
- Tributary of Haddix Run
- Tributary of South Haddix Run
- Tributary of South Branch of Haddix Run
- Tributary of Panther Run
- Tributary of Wilmoth Run
- Tributary of Fools Run
- Tributary of Laurel Run
- Tributary of Laurel Fork
- Tributary of Leading Creek
- Tributary of Lazy Run

Construction of the Kerens to Parsons section of Corridor H has also caused iron pollution. For example, between June 2018 and August 2018, permit limits for total recoverable iron were exceeded eight times. The highest exceedance was 867% over the permit limit, 14.5 mg/L compared to the permit limit and water quality standard of 1.5 mg/L.

Due to repeated Legislative Rule and permit violations, the permittee has been assessed civil administrative penalties over \$640,000. The permittee was also issued multiple orders of compliance, including two that instructed the permittee to cease and desist until in compliance with the permit and pertinent laws and rules.

Given this history of non-compliance, water quality impacts, and cease and desist orders, we are seriously concerned about potential impacts to water resources from the construction of the Parsons to Davis section of Corridor H.

Protection of Trout and High-Quality Tier 3 Streams

The route proposed crosses several high-quality streams and wetlands. The section from Parsons heading up Backbone Mountain crosses the headwaters of Mill Run and its tributary Slip Hill Mill Run. These are both trout streams. Mill Run is also a designated Tier 3 or Outstanding National Resource Water (ONRW). It was included as a Tier 3 stream due to the presence of reproducing trout and high-quality aquatic life scores. From WV's Antidegradation Rule (§60 CSR 5), Section 6.1 "Tier 3 waters. ... are to be maintained, protected and improved where necessary. Any proposed new or expanded regulated activity that would degrade (result in a lowering of water quality) a water body that has been designated an ONRW, other than temporary lowering of water quality, is prohibited." In order to evaluate new or expanded regulated activities, DEP must determine that the activity is short term and would result in *temporary* water quality impacts. The construction of a large highway such as the proposed - crossing the steep slopes of its headwaters will permanently degrade the water quality in this Tier 3 stream. The conversion of intact forest to a wide paved highway, with significant cutting and filling will permanently reduce water quality in many ways; including increased temperature and altered hydrology. It is not clear to us how this permanent degradation can be allowed under current antidegradation rules.

Acid Mine Drainage / Abandoned Mine Lands / Water Treatment Plans

The proposed route crosses several areas that were previously mined that now produce acidic metal laden water. DEP's Abandoned Mine Lands (AML) has identified several problem areas that the route will cross. Tub Run, Long Run, Middle Run, North Fork Blackwater, and Pendleton Creek all have identified AML areas. DEP's Watershed Assessment Section has measured pH below 4.0 in Big Run, Tub Run, Long Run, and the North Fork of Blackwater. The pH in Long Run has been measured as low as 2.77.

WVDEP has developed TMDLs for several of the streams crossed by the proposed route. Big Run, Tub Run, Long Run, and the North Fork of Blackwater all have pH TMDLs with reductions described in terms of net acidity loading. Long Run and North Fork Blackwater also have TMDLs calling for reductions in aluminum and iron, and Tub Run has a TMDL for aluminum.

The AML Program is currently working with the Friends of Blackwater on the design for an advanced water treatment facility that is intended to treat water from some of the areas that the proposed route will cross. The facility will treat water from Long Run, Albert Highwall, and other areas in the path of the highway. We encourage WV Department of Highways (DOH) to work closely with AML staff so that the highway construction does not cause additional water quality problems by disturbing areas that have demonstrated acid bearing potential. The groups should cooperate towards a mutual benefit, potentially addressing AML highwalls that are just offsite in cases where there may be excess fill material.

Public Land Concerns

The current proposal Parsons to Davis route may impact iconic public lands. This area includes a major state park (Blackwater Falls) and other areas of historic, cultural, and scenic importance. "Avoiding" these iconic and irreplaceable sites is relatively easy – the route is either in or not in the special area. However, the impacts to public land extend beyond the actual footprint of Corridor H. Blackwater Falls State Park has Lindy Point, one of the most photographed views in West Virginia. At the public informational meeting held at Blackwater Falls, project representatives stated that visual and sound tests were conducted to assure that there were no impacts from either construction or use of Corridor H when standing at Lindy Point. We request that the report and actual data be made public, and part of the Supplemental Environmental Impact Statement (SEIS). Also, the time of year could well influence visual and sound impacts especially from late Fall to early Spring. The project proposes to bridge over the Allegheny Trail, historical coke ovens, and other historical sites. Placing a bridge immediately over or in close proximity to

such sights may avoid breaking a trail, but dramatically impacts the use and enjoyment of these important sites. The historic nature of these sites could be impacted by cars whizzing by overhead and the historic and scenic impacts must be analyzed in the SEIS.

Navigable waterways and the land underneath are owned in trust as public lands for the People of West Virginia. A total of 56 stream segments in West Virginia are listed on the Nationwide River Inventory (NRI) (<https://www.nps.gov/subjects/rivers/nationwide-rivers-inventory.htm>) as free flowing rivers and streams with outstanding remarkable features. The West Virginia waterways are listed here: <https://www.nps.gov/subjects/rivers/west-virginia.htm>. The USFS has long protected 12 of those NRI waterways in the Monongahela National Forest (USDA Forest Service. 1995. Wild and Scenic Rivers Study Report and Environmental Impact Statement on Twelve Rivers in the Monongahela National Forest.) Care must be used to assure that the free-flowing nature and outstandingly remarkable features are not impacted. The SEIS should identify all NRI rivers impacted by, or downstream from, the Parsons to Davis Corridor H project; and specify in detail exactly what safeguards, monitoring, and controls will be used during construction, maintenance, and use of Corridor H to protect these waterways and their unique features.

Conclusion

We are concerned about potential impacts to water quality and public lands from the construction of the Parsons to Davis section of Corridor H. In order to increase public transparency, we request a full public hearing and additional public comment period after the release of the draft SEIS and before the final EIS. A public hearing will allow community members to bring concerns to WVDOH personnel in a format in which all attendees will hear all questions and concerns, and be afforded the opportunity to hear all responses from WV DOH and project personnel.

Sincerely,

Angie Rosser
West Virginia Rivers Coalition