

September 30, 2013

ABOLITIONIST LAW CENTER COMMENTS REGARDING AIR QUALITY STATE ONLY  
OPERATING PERMIT NUMBER 26-0057 FOR THE MATT CANESTRALE CONTRACTING,  
INC. LABELLE SITE, LUZERNE TOWNSHIP, FAYETTE COUNTY

I. INTRODUCTION AND OVERVIEW

In the August 31, 2013 edition of the Pennsylvania Bulletin, the Department of Environmental Protection published a Notice of Intent to Issue Operating Permit 26-00057 for the Matt Canestrale Contracting, Inc. Labelle Site. This permit covers a barge unloading and transferring operation associated with a reclamation area in Luzerne Township, Fayette County. At this site, coal ash and FGD sludge are used as capping material on a coal refuse pile. In accordance with 25 Pa Code §§ 127.426 and 127.428, the Abolitionist Law Center (ALC) herein files a timely protest and request for public hearing within 30 days of the publication of the Notice of Intent to Issue the Operating Permit.

II. THE ABOLITIONIST LAW CENTER IS DEDICATED TO THE PROTECTION OF PRISONERS' HUMAN RIGHTS IN THE STATE OF PENNSYLVANIA. MORE THAN 2,000 PEOPLE ARE IMPRISONED AT STATE CORRECTIONAL INSTITUTION (SCI) FAYETTE, WHICH IS LOCATED ADJACENT TO THE LABELLE SITE. THESE PRISONERS FACE SERIOUS RISKS FROM THE LABELLE SITE, AND THEIR RIGHTS AND THEIR HEALTH HAVE NOT BEEN CONSIDERED IN THIS PROCESS.

The Abolitionist Law Center (ALC) is a Pennsylvania-based, not-for-profit corporation, certified by the Internal Revenue Service as a §501(c)(3) charity. ALC provides legal services to Pennsylvania prisoners and engages in educational and organizing work around injustice in the criminal legal and prison systems. We work closely with prisoners, their family members, and human rights defenders in advocating for the enforcement of international human rights standards in Pennsylvania prisons.

The State Correctional Institution (SCI) Fayette is located in LaBelle, Pennsylvania, and is within less than 500 feet from the LaBelle Site. As of August 31, 2013, SCI Fayette held 2,022 prisoners. State prisoners are by far the largest population group in the town of LaBelle, PA, and they are also the least considered. A sentence to prison does not – and should never – entail a person being subjected to carcinogenic living conditions.

The LaBelle Site is a 500 acre dump is located on top of the hill between the small community of LaBelle and SCI Fayette. SCI Fayette is practically surrounded by the dump, to the north, east, and south. Much of the prison facility lies just 500 feet from the dump boundary. The dump has been operated by Matt Canestrone Contracting LLC (MCC) since 1998, prior to the construction of SCIFayette in 2003. Previously the dump was the site of the largest coal preparation plant in the world operated by J&L Steel, which processed coal from nearby mines. Around 31.5 million tons of waste from processing coal were dumped at this site *before* it became a coal ash dump. The prep plant eventually closed in the mid-90s.

When MCC, the current operator, acquired the property it signed an agreement with the Department of Environmental Protection (DEP) to “reclaim” the site and was given permission to dump coal ash as part of it’s reclamation plan. DEP says that this is a “beneficial use” of coal ash which will improve soil and water quality at the site. Under this agreement MCC was expected to close the dump. However, MCC has continued to operate well beyond the planned closure date and recently announced plans to begin accepting coal ash from an additional power plant starting in 2017.

The dump has been routinely in violation of state laws including the Clean Streams Law, Air Pollution Control Act, and Surface Mining Control and Reclamation Act; as well as federal laws including the Resource Conservation and Recovery Act; and the Clean Air Act. Despite this history of violations, DEP is considering renewing three permits for the site: the Coal Refuse Disposal Area (CRDA) permit, the Air Quality Operating permit and the National Pollution Discharge Elimination System (NPDES) permit.

On June 13, 2013 the DEP held a hearing to take public comments on the Coal Refuse Disposal Area (CRDA) permit in which dozens of residents demanded that the site be shut down. Public comments and hearings are expected in the coming weeks and months regarding other permit renewals. Despite being much larger than the population of LaBelle, the prisoner population has never been included in the public participation process.

ALC believes that the failure to consider the impact of this site on the prisoner population represents a grave oversight that poses a threat of severe harm to an already vulnerable population. Coal ash contains many chemicals that are toxic to humans including arsenic, boron, cadmium, chromium, lead, mercury, and selenium. The most likely form of exposure to these toxins is by breathing in dust from the site. Ash is routinely seen blowing off of the dump and out of the trucks that carry it. Black dust,

presumably from the site, accumulates on houses in the town of Labelle as well as on the prison grounds. The chemicals in coal ash can cause or contribute to many serious health conditions including: skin, eye, nose and throat irritation; asthma; emphysema; hypertension; anemia; heart problems; nervous system damage; brain damage; liver damage; stomach and intestinal ulcers; and many forms of cancer including skin, stomach, lung, urinary tract, and kidney cancers

We understand that many residents of LaBelle suffer from headaches, fatigue, respiratory problems, kidney failure, and several forms of cancer. We have heard reports that some prisoners are already experiencing serious health problems potentially caused by exposure to toxic coal ash.

The ALC is aware of the human rights crisis inside of Pennsylvania prisons, which is currently the only state prison system ever to be under investigation by the Civil Rights Division of the U.S. Department of Justice. Illnesses that are handled with ease outside of the prisons can often become far more complicated and harmful inside these institutions. Prisons have limited budgets and staff to provide health care, and the antagonistic relationship between prison staff and prisoners often leads to further inadequacies in care.

During the past several years, we have learned of a consistent pattern of human rights violations inside of Pennsylvania prisons, including dozens of documented incidents at SCI Fayette. We know how readily prison authorities will hide inconvenient evidence of substandard conditions, neglect, and mistreatment.

For the above reasons, ALC has initiated a fact-gathering effort regarding this matter in collaboration with the Human Rights Coalition, a statewide organization of prisoners, their families, and human rights defenders. We are concerned that state prisoners are being ignored in regard to this issue despite their being the most impacted population in the region. This situation is intolerable and un-democratic, and has no place in a society that values health and human rights.

Given the absence of any consideration of the LaBelle Site's impact on prisoners, the preliminary reports we have received regarding serious harms to prisoners health, the history of regulatory noncompliance, and recent reports of continuing non-compliance, the ALC strongly opposes renewal of the Air Quality State Only Operating Permit.

III. ALC REQUESTS A PUBLIC HEARING FOR PERMIT 26-00057 IN ACCORDANCE WITH THE GUIDELINES FOR ENVIRONMENTAL JUSTICE AREAS.

Pursuant to 25 Pa. Code § 127.428, ALC requests a public hearing for air quality Operating Permit 26-00057. In addition, as the LaBelle Site is being treated as an Environmental Justice area, the Department must follow the lead of the Office of Environmental Advocate and require the appropriate heightened public participation requirements and permit review scrutiny. We request that the public hearing be held in a location convenient for the residents in and around LaBelle, such as the LaBelle/Luzerne Fire Hall, and at a time in the evening that enables those who work to attend and share their concerns.

IV. CONCLUSION: THE DEPARTMENT MUST DENY THE RENEWAL APPLICATION FOR OPERATING PERMIT 26-00057.

As demonstrated above and in other submissions presented in this matter, MCC has failed to follow legally-required protocol, posing an extraordinary risk to human health. We urge the Department to deny the renewal application for the reasons stated above. The ALC strongly opposes renewal of the Air Quality State Only Operating Permit, and will continue to pursue this matter to ensure that the human rights of prisoners are not ignored.

Sources

[1] Pennsylvania Department of Corrections Monthly Population Report As Of August 31, 2013, page 1, accessed at:  
[http://www.portal.state.pa.us/portal/server.pt/document/915870/monthly\\_population\\_pdf](http://www.portal.state.pa.us/portal/server.pt/document/915870/monthly_population_pdf).

[2] 25 Pa. Code §127.422.

[3] 25 Pa. Code § 123.2; 25 Pa. Code § 123.1(a)(9).

[4] 25 Pa. Code § 127.

[5] Nicholas J. Waryanka, Air Pollution Control Engineer, Air Quality Program, Pennsylvania Department of Environmental Protection, "Review of Application for Plan

Approval Coal Refuse Reprocessing Facility, Matt Canestrone Contracting, LaBelle Site, Luzerne Township, Fayette County," July 8, 1998.