Permit # WV1023942

Doc Type 1 Modification No. 01

Doc Type 2 2011-07-13

Doc Type 3

dep

west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street, SE
Charleston, WV 25304-2345
Phone: (304) 926-0490
Fax: (304) 926-0456

JUL 13 2011

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

MID-VOL COAL SALES, INC.
640 CLOVER DEW DAIRY RD
PRINCETON, WV 24740

RE: WV/NPDES Permit No. WV1023942
NPDES Modification No. 1, Minor
Associated Permits: S400709

Letter of Addendum

Dear Permittee:

Your current request to modify the above referenced Permit is hereby approved. The Permit is hereby modified in accordance with the modification application received on May 11, 2011 that outlines the:
modification of the the Aquatic Ecosystem Protection Plan (AEPP) and adding Special Condition No. 9 to the permit.

The addition of this Special Condition (9) does not reflect the WVDEP's position as to how West Virginia's Narrative Water Quality Standards should be protected nor does it deem this as a precedent for future permitting actions. This condition is solely at the request of the company.

Be aware that all other terms and conditions of the permit shall remain in full force and effect. Attach this letter to your permit and insert any attached pages that may be provided.

Thomas L. Clarke
Director

cc: Environmental Inspector
Regional Office File
Headquarters NPDES File

Effective To **Permit No.** WV1023942

A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge from Outlet Number(s) listed below:
2. **EFFLUENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

Outlet Number	Effluent Type	Latitude Longitude	Elevation In Feet	EFFLUENT CHARACTERISTICS	Begins	Ends	Quan/ Conc	DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
								Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type

2014-00657200490

D. OTHER REQUIREMENTS

1. REPORTING SPILLS AND ACCIDENTAL DISCHARGES

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties established pursuant to Series 3, Section 1 of the Environmental Quality Boards regulations.

Attached is a copy of the West Virginia Spill Alert System for use in complying with Series 3, Section 1 of the regulations as they pertain to the reporting of spills and accidental discharges.

2. HAULAGEWAYS AND ACCESS ROADS

Haulageways and access roads shall be constructed and maintained in accordance with best management practices including, but not limited to, the performance standards contained in Title 38, Series 2, Section 4 of the West Virginia Surface Mining Reclamation Regulations.

3. RECEIVING STREAMS

The receiving streams shall be monitored by grab samples as required at the stream sampling points listed below, and the samples shall be analyzed for the parameters listed below. The flow of the stream shall also be estimated at the time of monitoring. Monitoring shall be done approximately at the same time as the discharge points are monitored as required under Section A of this permit. A quarterly report of the stream monitoring and flow shall be sent to the NPDES section in Charleston, on the enclosed forms along with the reports required under Section A. Based upon the stream monitoring flow data, water quality standards or other information, the Department may at any time modify the effluent limits in Section A of this permit for any of the discharge points if necessary, to insure compliance with water quality standards.

STREAM STATION	LATITUDE	LONGITUDE	ELEV.	PARAMETERS

4. SURFACE MINES

If the coal mining operation has been granted Phase II revegetation release and all discharge points have been eliminated during the period this permit is in effect, the discharge limitations and monitoring requirements in Section A and Section D.3 stream monitoring shall not apply. The coal mining operation shall be maintained in accordance with best management practices including, but not limited to the applicable performance standards contained in Title 38, Series 2, West Virginia Mining Reclamation Regulation until the associated performance bond has been final released.

5. STORM WATER DISCHARGES

Such discharges shall comply with the applicable Water Quality Standards in 47 CSR 2. Activities consisting of discharges of storm water runoff or snow melt composed entirely of flows which are from conveyances used for collecting and conveying precipitation runoff, in accordance with 47 CSR 30, Section 3.1.a.6 and are authorized under Chapter 22, Article 3, are authorized by this permit. Such storm water discharges shall not involve any mineral removal, pumping of storm water, or storm water runoff commingled with mine drainage, refuse drainage, coal stockpile areas, preparation plant areas, loading areas or unloading areas. The activities shall be constructed and maintained in accordance with the issued Article 3 Permit Revision including incidental boundary revisions and with the best management practices and performance standards contained in 38 CSR 2 and Chapter 22, Article 3. These storm water discharges are authorized under this Condition upon issuance of the associated Article 3 application for the life of this permit. Updated NPDES permit application information will be submitted in the next reissuance application for activities covered under this Condition. The Director reserves the right to require any permittee to submit a NPDES modification when the Director determines that such receiving stream will be better protected by an individual NPDES modification.

6. Bio Monitoring
The permittee shall conduct semi-annual benthic survey(s) at the location of each biological monitoring station listed below. The benthic survey(s) shall be conducted between the dates of April 15th to October 15th. All biological surveys should be conducted as close to the anniversary date of the original survey as possible. The benthic survey shall be in accordance with the established and accepted protocols for the collection, analysis, documentation and presentation of biological data from Standard Conditions for Environment Assessments on Wadeable Streams provided with the WVDNR Scientific Collection Permit and WVDEP's West Virginia Stream Condition Index ("WVSCI") protocol.

If the agency finds the condition of the aquatic ecosystem at the assessment stations prior to initiation of the permitted activity to be satisfactory, taking into account all potentially applicable criteria, then the acceptable future biological condition is a WVSCI score greater than or equal to the WVSCI value representing the 5th percentile of reference (currently 68.0). If the agency finds the condition of the aquatic ecosystem at the assessment stations is less than satisfactory (currently 68), taking into account all potentially applicable criteria, then the applicant shall identify existing conditions within the watershed that may be contributing to the problem. If a TMDL addressing biological impairment for ionic stress is not in effect, a WVSCI score greater than or equal to the baseline value would represent an acceptable future condition

Biological Monitoring Stations:

BAS1 Long. 81° 26' 03.1" Lat. 37° 20' 52.5"
BAS2 Long. 81° 26' 29.1" Lat. 37° 21' 35.9"
BAS3 Long. 81° 26' 26.5 Lat. 37° 21' 37.9"
BAS4□Long. 81° 25' 42.9 Lat. 37° 21' 51.1"

Within 30 days after conducting the benthic survey the permittee shall provide:

(a) The West Virginia Stream Condition Index (WVSCI) benthic score (0 to100 basis) and supporting metrics necessary for its calculation.

(b) The corresponding stream habitat assessment scores RBP Visual-Based Habitat Assessment (0 to 200 basis) for the benthic stations.

(c) Concurrent in-stream samples for specific conductivity, total dissolved solids (TDS), pH, sulfate, alkalinity, calcium, magnesium, sodium and potassium must be taken at the same locations along with the benthic samples.

(d) Representative legible photographs of the survey sites.

(e) A narrative Executive Summary / Abstract stream characterization utilizing the benthic and habitat scores, water quality, photos, field work and other applicable information such as tier level, warm-water class, stream order, major/minor basins, pre-law mining impacts, logging activities, other land uses, etc.

All information to be provided shall be sent to the WVDEP Oak Hill Regional Office - NPDES Supervisor and Environmental Resources Analyst and to WVDEP Headquarters (Attn: Jeff Parsons, Division of Mining and Reclamation, 601 57th Street SE, Charleston WV 25304).

7. WHOLE EFFLUENT TOXICITY TESTING
The permittee shall quarterly perform chronic toxicity tests as described below, on the effluent from Outlets 005, 010, 011 and 016.

a. Such testing will determine if an appropriate dilute effluent sample affects the survival or reproduction of the test species. Grab samples of the effluent, as prescribed in Section A, shall be collected for testing. Sampling must be limited to when there has been less than 0.3 inches of rain in the three days prior to sampling and less than 0.1 inches of rain in the 24 hours prior to sampling. An appropriate statistical test shall be used to determine whether differences in control and effluent data are significant.

The permittee shall conduct a three brood (6-8 days) Ceriodaphnia Dubia survival and reproduction toxicity test on the final effluent diluted by appropriate control water. Toxicity will be demonstrated if there is a statistically significant difference at the 95 percent confident level in survival of reproduction between Ceriodaphnia Dubia exposed to an appropriate control water and the final effluent. All test solutions shall be renewed using an approved renewal schedule. DEP requires TDS, conductivity, sulfate, and bicarbonate analyses for each aliquot used in WET testing. If, in any control, more than 20% of the test organisms die, or less than 60% of surviving females in controls produced their third brood, that test shall be repeated.

b. Results shall be reported in terms of chronic toxic units (TUc) and shall be submitted with the corresponding monthly Discharge Monitoring Report (DMR).

TUc= 100/NOEC or NOEL
Where NOEC (or NOEL) is No Observed Effect Concentration (or Level), which is expressed as percent (volume) effluent in dilution water.
For Example, if NOEC is 10%, TUc= 100/10=10
When the effluent demonstrates no toxicity at 100% effluent (no observed effect), the permittee may report zero TUc.

c. The monitoring required, herein, shall be conducted in accordance with the sample collection, preservation, and analytical procedures specified in 40 CFR 136.

d. In addition to the monitoring data reporting requirements of 40 CFR 136, the exact age of the test organisms at the initiation of the test shall be reported.. The range of the Ceriodaphnia Dubia used must be reported as a range in hours. All Ceriodaphnia Dubia used in the test must be less than 24 hours of age at test commencement. The age difference between the youngest and oldest Ceriodaphnia Dubia used in the test must not exceed eight (8) hours.

e. The chronic toxicity testing shall be performed on a quarterly (1/quarter) basis with at least thirty (30) days between tests. The first chronic toxicity testing shall be carried out within 3 months from the construction of the Outlet(s) 005, 010, 011 and 016.

f. If chronic effluent toxicity testing shows noncompliance with the specified limitations prescribed in Section A, the permittee shall immediately resample and test the effluent. This shall be performed within 30 days of the initial demonstration of noncompliance with the whole effluent toxicity discharge limitations prescribed herein. Copies of the retesting results shall be provided to the Director immediately upon completion of the test.

g. If the second test shows compliance, chronic effluent toxicity testing shall continue in accordance with the requirements, as prescribed herein. However, if the second test shows noncompliance, the permittee must, within 60 days, submit an adaptive management plan (AMP) identifying actions it will take to achieve compliance with the WET discharge limitations.

h. The Director may impose further requirements should the chronic effluent toxicity testing results demonstrate noncompliance.

8. REOPENER CLAUSE
This permit may be may reopened and modified, suspended, revoked and reissued or revoked at any time if information becomes available and demonstrates that the established controls do not attain and maintain the narrative water quality criteria at 47 CSR 3.2.e and 47 CSR 3.2.i.

9. PERFORMANCE MEASURES
Permittee shall take a minimum of two ambient water quality samples per calendar month at each BAS site associated with each outfall concurrently with the discharge from that outfall (for example BAS-4 for outfall 005 associated with valley fill 1; BAS-1 for outfall 016 associated with valley fill 2; BAS-2 for outfalls 010 and 011 associated with valley fill 3). If a particular outfall discharges less than two times during a calendar month, then the permittee shall sample concurrently with any discharge that does occur during the calendar month and report to WVDEP that the outfall did not discharge two times during the calendar month. Once the minimum of two samples at a particular BAS site for an outfall for a calendar month is achieved, the permittee is not required to obtain more samples at that particular BAS site

for that outfall for that calendar month. Each ambient water quality sample, in addition to the parameters identified in Part A of this permit, shall be sampled for sulfates. The permittee shall within one hundred twenty (120) days prepare and implement an Adaptive Management Plan (AMP) designed to reduce sulfate levels in the discharge for a specific outfall if three or more samples taken at a single BAS site associated with a specific outfall in a rolling six-month period exhibit sulfate levels greater than 190 mg/l. In the event that flow from an outfall becomes associated (by diversion or otherwise) with a different BAS site, samples at the new BAS site will be treated for purposes of this condition as if the samples had been taken from the BAS site originally associated with the outfall and will count toward the three or more samples in the rolling six-month period. It is the permittee's responsibility to report any sample(s) taken at the BAS sites that exceed the 190 mg/l sulfate concentration to the WVDEP within fourteen (14) days of analysis. Starting 120 days after the requirement for development and implementation of an AMP is triggered, permittee shall submit to WVDEP on the 30th of January and 30th of July each year a report on the progress of AMP implementation activities. Following full implementation of the AMP or within one hundred twenty (120) days after the requirement for development and implementation of an AMP is triggered, whichever comes first, any sample at the BAS site associated with the outfall that exhibits sulfate levels greater than 190 mg/l shall be a violation of this permit.

RIGHT TO APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this agency action as provided under West Virginia Code § 22-11-21. Pursuant to the provisions of § 22B-1-7(c), a person subject to this action (permittee) may file an appeal to the Environmental Quality Board (EQB) within 30 days of being served notice of such agency action. For other parties (citizens) adversely affected or aggrieved by this action, an appeal may be filed to the EQB within 30 days after the date upon which service was complete to the subject person "(permittee)". Such Notice of Appeal shall be sent to the EQB on the form prescribed by the Board.

West Virginia Environmental Quality Board
601 57th Street, SE
Charleston, West Virginia 25304

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUN 23 2011

Mr. Thomas L. Clarke, Director
Division of Mining and Reclamation
West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Re: NPDES Permit No. WV1023942
SMCRA No. S400709
Mid-Vol Coal Sales, Inc. - Dry Branch Surface Mine
EPA Receipt: March 23, 2011; June 7, 2011; June 23, 2011

Dear ~~Mr.~~ Tom Clarke:

On June 20, 2011, the U.S. Environmental Protection Agency (EPA) objected to the draft National Pollutant Discharge Elimination System (NPDES) permit proposed for the Mid-Vol Coal Sales, Inc. – Dry Branch Surface Mine cited above. The draft permit was submitted for EPA review pursuant to the Memorandum of Agreement between EPA and the West Virginia Department of Environmental Protection (WVDEP) and pursuant to Federal regulations at 40 CFR §123.43. Our objection was based on failure of the draft permit to comply with West Virginia Water Quality Standards including West Virginia Antidegradation Implementation Procedures and 40 CFR 122.44(d) or (k). In order to resolve our specific objection, EPA requested that Section D.9 of the draft permit be revised. The revised draft permit submitted by WVDEP on June 23, 2011 addressed the issues that we identified in our June 20, 2011, specific objection letter. Therefore, by this letter, EPA hereby lifts the specific objection to the above referenced draft permit.

If you have any questions, please do not hesitate to contact me or contact Ms. Evelyn S. MacKnight, Chief, NPDES Permits Branch at 215-814-5717.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

cc: Jeffrey Parsons, WVDEP
Mid-Vol Coal Sales, Inc

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Customer Service Hotline: 1-800-438-2474

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

June 20, 2011

Mr. Thomas Clarke, Director
Division of Mining and Reclamation
West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

Re: NPDES Permit No.WV1023942
Mid-Vol Coal Sales Inc.
Dry Branch Surface Mine
SMCRA No. S400709
EPA Receipt Date: June 7, 2011

Dear Mr. Clarke:

On April 21, 2011, we sent to you pursuant to 40 C.F.R. § 123.44(b)(1) and the Memorandum of Agreement (MOA) between the U.S. Environmental Protection Agency (EPA) and *the West Virginia Department of Environmental Protection (WVDEP),* a general objection to the above-referenced draft. The April 21, 2011general objection letter served as a time extension request for the full 90-day period to review the draft permit. For the reasons described below, at this time the draft permit does not satisfy the Clean Water Act, 40 C.F.R. Parts 122, and the applicable West Virginia Water Quality Standards, this letter serves as the U.S. Environmental Protection Agency Region III's (EPA) specific objection to the permit.

In order for EPA to remove its specific objection quickly, EPA suggests that Section D.9 of the draft permit be revised to include the language listed below to comply with West Virginia Water Quality Standards including West Virginia Antidegradation Implementation Procedures and 40 CFR 122.44(d) or (k). Please note that additions to Section D.9 are noted in *italic* and deletion in strikeout format.

> Permittee shall take a minimum of two ambient water quality samples per calendar month at each BAS site associated with *each* outfall concurrently with the discharge from that outfall *(for example BAS-4 for Outfall 005 associated with Valley Fill 1; BAS-1 for Outfall 016 associated with Valley Fill 2; BAS-2 for Outfalls 010 and 011 associated with Valley Fill 3).* If a particular outfall discharges less than two times during a calendar month, then the permittee shall sample concurrently with any discharge that does occur during the calendar month and report to WVDEP that the outfall did not discharge two

times during the calendar month. Once the minimum of two samples at a particular BAS site *for an outfall* for a calendar month is achieved, the permittee is not required to obtain more samples at that particular BAS site *for that outfall* for that calendar month. Each ambient water quality sample, in addition to the parameters identified in Part A of this permit, shall be sampled for sulfates. The permittee shall within one-hundred and twenty (120) days prepare and implement an Adaptive Management Plan (AMP) designed to reduce sulfate levels in the discharge for a specific outfall if three or more samples taken at a single BAS site associated with a specific outfall in a rolling six-month period exhibit sulfate levels greater than 190 mg/l. *In the event that flow from an outfall becomes associated (by diversion or otherwise) with a different BAS site, samples at the new BAS site will be treated for purposes of this condition as if the samples had been taken from the BAS site originally associated with the Outfall and will count toward the three or more samples in the rolling six-month period.* It is the permittee's responsibility to report any sample(s) taken at the BAS sites that exceed the 190 mg/l sulfate concentration to the WVDEP within fourteen (14) days of analysis. *Starting 120 days after the requirement for development and implementation of an AMP is triggered, permittee shall submit to WVDEP on the 30th of January and 30th of July of each year a report on the progress of AMP implementation activities.* Following full implementation of the AMP ~~and~~ *or* within one hundred twenty (120) days after the requirement for development and implementation of an AMP is triggered, *whichever comes first,* any sample at ~~any~~ the BAS site associated with the outfall that exhibits sulfate levels greater than 190 mg/l shall be a violation of this permit.

EPA considers this letter an objection within the framework of the MOA. Accordingly, this permit modification should not be issued until the above comments are addressed. If the above comments are addressed to EPA's satisfaction, EPA will withdraw this specific permit objection. If you have any questions concerning this matter, please contact Evelyn MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717 or Francisco Cruz, Mining Permit Team Leader, at (215) 814-5734.

Sincerely,

for Jon M. Capacasa, Director
Water Protection Division

cc: Mid-Vol Coal Sales, Inc.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

APR 21 2011

Mr. Thomas Clarke, Director
Division of Mining and Reclamation
West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

Re: NPDES Permit No. WV1023942 – New
Mid-Vol Coal Sales Inc.
Dry Branch Surface Mine
SMCRA No. S400709
EPA Receipt Date: March 23, 2011

Dear Mr. Clarke:

In accordance with the Memorandum of Agreement (MOA) between the U.S. Environmental Protection Agency (EPA) and *the West Virginia Department of Environmental Protection (WVDEP),* EPA received the referenced National Pollutant Discharge Elimination System (NPDES) draft permit cited above. This is a notification of EPA's general objection pursuant to 40 CFR 123.44(b)(1). EPA received a package on March 15, 2011 that included only the cover letter and two of the water quality based effluent limitations calculations pages. EPA notified WVDEP that permit submittal was incomplete during a conference call and followed up with an e-mail message on March 23, 2011. EPA received the full permit electronically on March 23, 2011. The 30-day review period allowed under the MOA expires on April 22, 2011.

EPA is concerned that the permit as drafted may be insufficient to ensure compliance with applicable water quality standards. The Mid-Vol Coal Sales, Inc. Dry Branch Surface mine is a new surface mine facility with 27 outfalls, covering a drainage area of 313.66 acres. The permit proposes to discharge to Dry Branch/Tug Fork and unnamed tributaries which exhibit high water quality pre-mining, for both biological and chemical data. The permittee submitted an Aquatic Ecosystem Protection Plan (AEPP) as part of its NPDES application. The AEPP contains the results of four benthic studies which show good stream water quality conditions based on West Virginia Stream Condition Index (WVSCI). These studies show WVSCI scores ranging from 67.1 to 82.6. The Bio Monitoring Condition in the draft permit discusses the assessment as if it were not complete. The permit condition should be revised to state that the biological data submitted in the AEPP established the baseline for each biological station.

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The draft permit addresses antidegradation for numeric criteria by limiting the water quality-based effluent limits (WQBELs) for iron, manganese, aluminum, and selenium in relation to no more than ten percent of the remaining assimilative capacity. The draft permit does not contain an antidegradation analysis for the narrative water quality criteria. The West Virginia Antidegradation Implementation Procedures (WVAIP) defines in CSR Section 60-5-2.7a parameter of concern as any parameter for which numeric water quality criteria have been adopted in 47CSR2 and any other parameter for which numeric criteria are not established but where the discharge of such parameter has a reasonable potential to either cause or contribute to a violation of the narrative criteria outlines under 47CSR2, section 3. Furthermore, the AEPP indicates that sulfate is the dominant ionic contributor of the Mill Branch waters. Section 60-5-5-5.6.c of the WVAIP specifies that degradation for Tier 2 waters will be deemed significant if the proposed activity, together with all other activities allowed after the baseline water quality is established, results in a reduction in the water segment's available assimilative capacity of 20% or more at the critical flow condition for the parameter of concern. Therefore, EPA requests that the draft permit be revised to include an antidegradation evaluation using sulfate as the parameter of concern and a numeric limit to ensure that the AEPP is effective at controlling sulfates.

As a special condition, the full AEPP submitted by Mid-Vol Coal Sales should be incorporated by reference in the permit. Good performance of the control actions described in the AEPP is critical to preventing irreparable harm to the stream. The AEPP focuses on control of sulfate-bearing materials as the means to control ionic stress. Therefore, the permit should include a specific performance requirement for sulfates to determine whether implementation of the AEPP is sufficient to ensure compliance with the requirements of 47 CSR 2 for narrative and numeric water quality standards. During our discussions with WVDEP, we suggested several options. They included:

1) Incorporating numeric effluent limits for sulfates (such as 120 mg/l) as an indicator of ionic stress in order to achieve narrative criteria;
2) Reliance on West Virginia's antidegradation procedures at 60CSR5 to derive an effluent limit based upon use of no more than ten or twenty percent of assimilative capacity based on the pollutant, using the baseline values submitted by the permittee with the application. Sulfate levels instream were in the range of 45-105 mg/l.; or
3) Use a special condition for operation and maintenance to define the specific sulfate levels at which the AEPP would be considered to be ineffective and causing a violation.

We also suggest revising Section A6. to include quarterly reporting on the performance of the AEPP.

The WVSCI is based on family-level taxonomic data. EPA recommends genus-level macroinvertebrate identifications to ensure that analysis is sufficiently sensitive to identify impacts from coal mining discharges. The applicant reported only family-level data which is also in contrast to the latest WVDEP 2009 Standard Operating Procedures. Therefore, the bio-monitoring conditions specified in page 36 of the permit should be revised to require that the permittee report both the WVSCI score and provide taxonomic data at the genus-level per WVDEP's 2009 procedures.

Regulations at 40 CFR 122.44(i) require permittees to use the test methods established at 40 CFR 136. The whole effluent toxicity requirements of the permit must be revised to specify that these tests shall be performed using the EPA Whole Effluent Toxicity Test method specified in 40 CFR 136 Table 1A. The whole effluent results must address both lethal and sublethal effects.

Section D5. Storm Water Discharges requires that such discharges shall comply with the applicable Water Quality Standards in 47 CSR 2. This condition should be applicable to all discharges and included in Section A of the permit.

EPA considers that the permit must be revised consistent with the above comments to ensure that the permit is sufficiently stringent to achieve applicable water quality standards. We will complete our review and provide additional comments, if any, no later than June 20, 2011. We are committed to working with you to resolve this objection as soon as possible. In the interim, we would be pleased to review draft or proposed permit modifications and work with you to address the foregoing comments. If you have any questions concerning this matter, please contact Ms. Evelyn MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717 or Francisco Cruz, Mining Permit Team Leader, at (215) 814-5734.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

cc: Mid-Vol Coal Sales, Inc.

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RATIONALE PAGE

NPDES Number: **WV1023942 (NPM-1-Minor)** County: Mcdowell

Company Name: MID-VOL COAL SALES, INC.

Facility Name: Dry Branch Surface Mine

SMA/Permit No.: S400709

Other Apps:

Date of Draft: 06/02/2011

Permit Writer: Brenda Cline

Region: Welch

1. New or expanded discharge? NO

2. Facility eligible for General Permit? NO

3. Basis for effluent limitation:

   A. Determine uses of each receiving stream.
   Stream Uses Stream Name

   B. Parameters of concern: **YES** pH **YES** Fe **YES** Mn
   YES Al (D) **YES** Al (T) **NO** Others

   Specify Others:

   C. Justification Review: At the request of the company the West Virginia Department of Environmental Protection is modifying this permit to add an addendum to the Aquatic Ecosystem Protection Plan (AEPP) ATTACHMENT 11-3-A of the application and add the following Special Condition (9) to this permit as part of this modification request. The addition of this Special Condition (9) does not reflect the WVDEP's position as to how West Virginia's Narrative Water Quality Standards should be protected nor does it deem this as a precedent for future permitting actions. This condition is solely at the request of the company.

In addition to incorporation of the materials handling plan and other specifications described in the AEPP, the permit includes the following Special Condition (9):

"Permittee shall take a minimum of two ambient water quality samples per calendar month at each BAS site associated with each outfall concurrently with the discharge from that outfall (for example BAS-4 for outfall 005 associated with valley fill 1; BAS-1 for outfall 016 associated with valley fill 2; BAS-2 for outfalls 010 and 011 associated with valley fill 3). If a particular outfall discharges less than two times during a calendar month, then the permittee shall sample concurrently with any discharge that does occur during the calendar month and report to WVDEP that the outfall did not discharge two times during the calendar month. Once the minimum of two samples at a particular BAS site for an outfall for a calendar month is achieved, the permittee is not required to obtain more samples at that particular BAS site for that outfall for that calendar month. Each ambient water quality sample, in addition to the parameters identified in Part A of this permit, shall be sampled for sulfates. The permittee shall within one hundred twenty (120) days prepare and implement an Adaptive Management Plan (AMP) designed to reduce sulfate levels in the discharge for a specific outfall if three or more samples taken at a single BAS site associated with a specific outfall in a rolling six-month period exhibit sulfate levels greater than 190 mg/l. In the event that flow from an outfall becomes associated (by diversion or otherwise) with a different BAS site, samples at the new BAS site will be treated for purposes of this condition as if the samples had been taken from the BAS site originally associated with the outfall and will count toward the three or more samples in the rolling six-month period. It is the permittee's responsibility to report any sample(s) taken at the BAS sites that exceed the 190 mg/l sulfate concentration to the WVDEP within fourteen (14) days of analysis. Starting 120 days after the requirement for development and implementation of an AMP is triggered, permittee shall submit to WVDEP on the 30th of January and 30th of July each year a report on the progress of AMP implementation activities. Following full implementation of the AMP or within one hundred twenty (120) days after the requirement for development and implementation of an AMP is triggered, whichever comes first, any sample at the BAS site associated with

the outfall that exhibits sulfate levels greater than 190 mg/l shall be a violation of this permit."

4. Types of effluent limitations:

Technology Based Outlets (0):

Water Quality Based Outlets (27): 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027

Best Professional Judgement Based Outlets (0):

Special Outlets (0):

Ammonia Outlets (0):

Sewage Outlets (0):

Additional Comments: /additional_comments/

5. Special Conditions or other monitoring requirements:

Stream Monitoring: DSDB, DSIG, DSMC, DSMC-6, DSUTTF, USIG, USMC

Groundwater Monitoring:

6. Does the application contain:

Valley fills/refuse?	**N/A**
In Ephemeral Streams?	**N/A**
In Intermittent/Perennial Streams?	**N/A**

dep	**Applicant: MID-VOL COAL SALES, INC.** **Reference ID: Dry Branch Surface Mine NPM#1 (04/29/2011)** **Status: New**	**Type: Modification, NPDES** **Permit ID: WV1023942** **Printed: Apr. 29, 2011 11:50 AM**

Mod 1 Part VIII: Applicant Certification

A. I certify under penalty of law that this application and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Greg Jessee — *(Name of Official)*

President — *(Title of Official)*

(Signature in accordance with Title 47, Series 30, Section 4.7.1)

Subscribed and sworn before me this 29 day of April, 2011.

My commission expires: 2-1-2016

(Signature of Notary Public)

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
JEREMY BEHELER
MID-VOL COAL SALES, INC.
P. O. BOX 1112
PRINCETON, WV 24740
My commission expires February 1, 2016

Any and all certifications pertaining to this application can be viewed at the WVDEP Regional Office.