## Parsons, Mark J

**From:** Cruz.Francisco@epamail.epa.gov
**Sent:** Wednesday, September 22, 2010 10:14 AM
**To:** Clarke, Thomas L; Parsons, Mark J; Borth, William C.
**Cc:** Capacasa.Jon@epamail.epa.gov; MacKnight.Evelyn@epamail.epa.gov; Conway.Bette@epamail.epa.gov; Mcilwain.Jaclyn@epamail.epa.gov
**Subject:** Frasure Creek Mining, LLC - WV1024400
**Attachments:** WV1024400 Frasure Creek Mining LLC - Open Fork Surface Mine No. 2 Interim_ Objection Letter Sep 22 2010.pdf

**Follow Up Flag:** Follow up
**Flag Status:** Completed

**Categories:** Green Category

EPA's response to the above mentioned draft NPDES permit received on August 23, 2010 is attached.

Please let me know if you have any questions.

Francisco Cruz, P.E.
Hispanic Employment Program Advisory Council Manager Environmental Engineer NPDES Permits Branch (3WP41)
Office of Permits and Enforcement
Tel.: 215/814-5734
Fax: 215/814-2302

(See attached file: WV1024400 Frasure Creek Mining LLC - Open Fork Surface Mine No. 2 Interim Objection Letter Sep 22 2010.pdf)

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

SEP 2 2 2010

Mr. Jeffrey Parsons
West Virginia Department of Environmental Protection
Division of Mining & Reclamation
601 57th Street SE
Charleston, WV 25304

Re: WV NPDES No. WV1024400 – New
Frasure Creek Mining, LLC
Open Fork Surface Mine No. 2
SMCRA No. S301309
EPA Receipt Date – August 23, 2010

Dear Mr. Parsons:

Pursuant to Section 402 of the Clean Water Act, 40 CFR § 123.44, the *Memorandum of Agreement Regarding the Administration and Enforcement of the National Pollutant Discharge Elimination System (NPDES) in West Virginia (1982)* (MOA), the U.S. Environmental Protection Agency (EPA) Region III received the draft permit cited above. For the reasons described below, we consider this submittal incomplete; therefore, we are issuing an interim objection consistent with the MOA and 40 CFR § 123.44(d)(2). Once we receive the information requested and a revised draft permit, we will reinitiate our review.

On April 1, 2010, EPA released interim final guidance to the Regional offices titled: *Guidance on Improving EPA Review of Appalachian Surface Coal Mining Operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order* (SCM Guidance). The SCM Guidance provides a framework for the Regions when they review permits for discharges associated with Appalachian surface mining projects. At the same time, EPA released two Office of Research and Development (ORD) reports: *The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields* and *A Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams (Benchmark Conductivity Study)*. The ORD reports have been submitted to the EPA Science Advisory Board (SAB) for review and are also publicly available. In the interim, EPA views the reports as providing information, along with published, peer-reviewed scientific literature, that may inform permit reviews.

Based on the best information available to EPA, projects with predicted conductivity values below 300 µS/cm generally are not likely to cause water quality violations or significant

*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.*
*Customer Service Hotline: 1-800-438-2474*

degradation of the aquatic ecosystem. Discharges with levels of conductivity above 500 µS/cm generally are likely to be associated with adverse impacts that could cause or contribute to significant degradation and/or excursions from narrative water quality criteria.

Baseline water quality data reviewed included samples demonstrating levels of conductivity, Total Dissolved Solids (TDS), and sulfates in the outfall discharge that are consistent with levels potentially associated with biological impairment. Supporting water quality analyses exhibited specific conductivity levels of up to 673 umhos, TDS levels up to 630 mg/l, and sulfate levels up to 374 mg/l. The documentation provided to EPA did not include a reasonable potential analysis to determine whether specific conductivity, TDS, and total sulfates in the proposed discharges have a potential to cause or contribute to downstream biological impairment and whether limits for total dissolved solids, conductivity, and/or sulfates should be developed and included in the permit pursuant to 40 CFR § 122.44 (d)(1)(vi). We consider this information necessary for EPA to determine whether the permit is consistent with the guidelines and requirements of the CWA and NPDES regulations as described in 40 CFR § 123.44(d)(2). We request that WVDEP undertake this analysis and determine appropriate limits to be included in the permit. We consider this to be an incomplete submittal. Accordingly, this letter represents an interim objection to issuance of this permit and our review under the MOA will recommence once we have received this information.

EPA recognizes that in certain fact-specific circumstances, instream conductivity levels greater than 500 µS/cm may not cause adverse impacts to the biological community. To the extent that is believed to be the case here, characterization of the effluent should include an analysis of the ionic matrix and whether the effluent will be dominated by calcium, magnesium, bicarbonate , sulfate and chloride. Where instream background conditions are limestone-dominated, that also should be noted. In addition, analysis should be provided as to whether the native aquatic community is similar to that studied in the *Benchmark Conductivity Study* and in Pond, G.J., M. E. Passmore, F.A. Borsuk, L. Reynolds, and C. J. Rose. 2008, *Downstream effects of mountaintop coal mining: comparing biological conditions using family- and genus-level macroinvertebrate bioassessment tools*, J. N. Am. Benthol. Soc. 27(3):717–737. Any analysis based on differences of the native aquatic community should include a review of taxa (at the genus level) at applicable reference sites within the region. Therefore, we request that instream and effluent monitoring be required to evaluate at a minimum, total dissolved solids (TDS), specific conductivity (SC), calcium, magnesium, bicarbonate, chlorides and sulfates.

We also request that the permit record include baseline and annual West Virginia Stream Condition Index (WVSCI) scoring for the instream monitoring locations and that the monitoring program required by Section D, paragraph 3 include instream biological monitoring using WVSCI, EPA's Rapid Bioassessment protocols, and any other methodologies employed or accepted by WVDEP to assess attainment of biological use for purposes of Section 303(d) during the life of the permit. We recommend that the baseline information in the record and required instream biological monitoring identify taxa to the genus level.



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.*
*Customer Service Hotline: 1-800-438-2474*

Furthermore, we offer the following comments for your consideration and action. Please be advised that this evaluation is independent of any review conducted pursuant to Section 404 of the Clean Water Act.

Item #1 of the Rationale Page denotes that this facility is not a new or expanded discharge. Since this is a new facility with proposed outlets, please modify the Rationale Page to clarify that this is, in fact, a new discharge.

The Rationale Page indicates that none of the receiving streams are listed in either the Upper Kanawha TMDL or the drafted 2010 303(d) list for impairment. However, upon review of the 2005 Upper Kanawha Final Approved TMDL, it was noted that Loop Creek is impaired for fecal coliform. Furthermore, the aluminum translator documentation provided with the draft permit for unnamed tributaries of Loop Creek indicate that the stream is impaired for dissolved aluminum, which is counter to the narrative provided in the Rationale. Please include a discussion in the Rationale Page to clarify which receiving waters are impaired and for what parameters.

For those outlets which have not yet been constructed, the aluminum translator documentation explains that the 95$^{th}$ percentile has been applied due to the inability to measure the mix of discharge(s). Please include a special condition in the permit to reevaluate the aluminum translator at completion of each outlet construction.

Lastly, the draft permit contains water quality-based effluent limits for selenium. Please modify the Rationale Page to include a discussion of what treatment technology this facility will install to ensure compliance with the selenium water quality-based effluent limit, since this is a new discharge.

If you have any questions concerning this matter, please call me at 215-814-5717 or call Francisco Cruz at 215-814-5734.

Sincerely,

Brian P. Trulear

for Evelyn S. MacKnight, Chief
NPDES Permits Branch (3WP41)
Water Protection Division

cc: Thomas L. Clarke, WV DEP
Jon M. Capacasa, EPA Region 3



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.*
*Customer Service Hotline: 1-800-438-2474*

## Parsons, Mark J

**From:** Parsons, Mark J
**Sent:** Thursday, October 14, 2010 7:03 PM
**To:** MacKnight.Evelyn@epamail.epa.gov
**Cc:** Clarke, Thomas L; Mandirola, Scott G; Halstead, Lewis A; Borth, William C.; Burgess, Juddie D; Leslie Lavender (llavender@essar.com)
**Subject:** Response to Interim Objection - WV1024400 - Frasure Creek Mining
**Attachments:** WV1024400 - Frasure Creek - Response to Comments.pdf; WV1024400 - Frasure Creek - Revised Rationale.pdf

**Follow Up Flag:** Follow up
**Flag Status:** Completed

Evelyn:

Please find the attached response to the interim objection letter dated September 22, 2010 and revised permit rationale page for the Frasure Creek Mining , LLC – Open Fork Surface Mine No.2. This is a new permit NPDES# WV1024400. The West Virginia Department of Environmental Protection would greatly appreciate an expeditious review of the additional information as this permitting decision is crucial for this applicant's ability to provide continued employment for 98 company personnel as well as continued employment for an additional 28 contractor jobs.

Thank you,

Jeff Parsons
West Virginia Department of Environmental Protection
Division of Mining and Reclamation - HPU

west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street, SE
Charleston, WV 25304

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

October 14, 2010

Evelyn S. MacKnight, Chief
NPDES Permits Branch (3WP41)
Water Protection Division
U. S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Re: **WVNPDES No.** WV1024400
Re: New Permit – Frasure Creek Mining, LLC – Open Fork Surface Mine No. 2

Dear Ms. MacKnight:

Pursuant to Section 402 of the Clean Water Act, 40 CFR parts 123.74 and 123.75, *Memorandum of Agreement Regarding the Administration and Enforcement of the National Pollutant Discharge Elimination System in West Virginia* (1982) (MOA) please find the enclosed responses and additional information pursuant to your interim objection for the above referenced facility. The West Virginia Department of Environmental Protection would greatly appreciate an expeditious review of the additional information as this permitting decision is crucial for this applicant's ability to provide continued employment for 98 company personnel as well as continued employment for an additional 28 contractor jobs.

This facility contains no excess spoil fills. Open Fork No. 2 is a contour surface mine proposing to re-mine along pre-SMCRA, existing highwalls and benches. The footprint of the Open Fork No.2 Surface mine contains approximately 29,000 linear feet of exposed pre-law highwall with portions containing existing auger holes. This project will reclaim this 5 ½ miles of highwall, which would otherwise be eligible for reclamation under the Federal Abandoned mine Lands program, without utilizing public funds to do it. This permit proposes to use the mining overburden that will be created to reclaim the existing highwall which will mitigate the un-maintained drainage and material placement practices of the pre-law mining practices. This facility proposes no stream mine-throughs. All drainage ways in the surface mine permit area are being left undisturbed. Through planning, engineering and design, stream impacts have been minimized to only include crossings.

Narrative standards - Outlets 001 through 016 proposed in this application are precipitation induced discharges (i.e. associated with on-bench sediment structures that discharge in direct response to precipitation only). Precipitation induced discharges (stormwater) flow only in response to precipitation and do not have residence time with unweathered rock and therefore would not be expected to have elevated mineralization/ions in the discharge. Also, outlets that only flow during precipitation are flowing only at the time when the receiving streams have the

greatest assimilative capacity (dilution). Specifically, these outlets are designed to not discharge during critical low flow conditions of the receiving stream. For these reasons the WVDEP believes these outlets do not have reasonable potential to adversely impact the aquatic ecosystem. As stated earlier, approximately 29,000 feet of exposed pre-law highwall with numerous drainage problems will be corrected and reclaimed by this project, which may lead to an improvement of the quality of the water draining from this site. According to the Permitting Guidance for Surface Coal Mining Operations to Protect West Virginia's Narrative Water Quality Standards, 47CSR2-sections 3.2.e and 3.2.i issued August 12, 2010 and revised August 18, 2010; facilities of this type are unlikely to cause or contribute to violations of West Virginia's narrative water quality standards.

Item #1 - of the rationale page has been corrected and now denotes "new". Please see attached revised rationale page.

Rationale Page – The Upper Kanawha TMDL does include Loop Creek as impaired for fecal coliform. However, fecal coliform is not a parameter of concern for this permit application as no bathhouses or other sewage discharges are proposed for this facility. Loop Creek is listed as a trout stream (cold water) and due to the data submitted in this application, it will be treated as impaired for dissolved aluminum and effluent limitations assigned accordingly. None of the tributaries of Loop Creek receiving discharges from this permit are designated as trout streams and warm water criteria would normally apply. However due to the close proximity of this permit to Loop Creek, a trout stream, permit effluent limitations were calculated to be protective of the down-stream criteria. If these unnamed tributaries were marked warm water (750 ug/l) the impairments would not have shown up in the BWQ workbook. Designating the unnamed tributaries of Loop Creek as trout waters is the reason for some of these tributaries showing as impaired for dissolved aluminum (87 ug/l criteria) in the BWQ workbooks. The WVDEP believes this was the correct way for the permit writer to calculate the effluent limitations in order to be protective of the down-stream uses (trout).

Aluminum Translator - This permit has twenty (20) stream monitoring stations contained in it to monitor the stream conditions. Bi-monthly monitoring is required for Total and dissolved aluminum with quarterly reporting. Utilizing the BWQ data submitted in the application, the limits assigned to this permit for outlets 006 and 007 were calculated through a Tier II anti-degradation review based on cold water criteria and a default translator using 95$^{th}$ percentile. All other outlets in this permit were given criteria end of pipe effluent limitations for cold water fisheries .08 - .14 mg/l for aluminum and a default translator of 1 was applied. As per our conversation the stream monitoring stations will enable the WVDEP to monitor the streams which receive discharges from this permit. Should there be any exceedance of an established criteria the permit may be reopened and limits adjusted accordingly. Normally after the operation has commenced and the outlets are constructed, permittees choose to conduct additional translators for the purposes of obtaining a more favorable translator (geometric mean). The company may elect in the future to develop a site specific translator once the outlet(s) are constructed. However, it is not a policy or requirement for permittee's to conduct a translator when the outlet(s) are constructed. This is an option available to the permittee.

Selenium – The applicant reports: "two core holes were analyzed for the Open Fork No. 2 SMCRA permit. There were small vertical horizons within these cores which demonstrated concentrations of selenium in excess of 1 mg/kg. A materials handling plan has been developed to ensure that all potentially toxic material will be segregated, as practicable, and placed within cells which will be located in an area of the contour bench that is 20' from the nearest highwall

watercourse. The base of each cell will be constructed of a minimum of 10' of non-selenium, non-toxic, non-acidic, non-combustible material and covered with at least 4' of the most impervious material available on site. The proposed regrade will promote surface runoff and inhibit groundwater infiltration." Based on this information provided and this handling plan, which is specified in the SMCRA permit, it is not anticipated that selenium will be an issue that would require additional treatment beyond the controls proposed for this facility. Should the results of monitoring show a need for treatment, the WVDEP will order the permittee to develop and implement a treatment plan.

If you have any questions or comments, please contact me at (304) 926-0499, extension 1564, or by mail at 601 57th Street SE, Charleston, WV 25304.

Sincerely,

Jeff Parsons

Jeff Parsons
WVDEP/DMR

cc: Frasure Creek Mining

# RATIONALE PAGE

NPDES Number: **WV1024400 (NPD-1)** County: Fayette

Company Name: FRASURE CREEK MINING, LLC

Facility Name: Open Fork Surface Mine No. 2

SMA/Permit No.: S301309(SMA)

Other Apps:

Date of Draft: 08/10/2010

Permit Writer: Aaron F. Legg

Region: Oak Hill

1. New or expanded discharge? **YES**

2. Facility eligible for General Permit? **NO**

3. Basis for effluent limitation:

A. Determine uses of each receiving stream.

| Stream Uses | Stream Name |
|---|---|
| 1 | LOOP CK |
| 1 | unnamed trbutary of Loop Creek |
| 1 | unnamed trib of Loop Creek |
| 1 | unnamed tributary of Glenco Hollow |
| 1 | Unnamed Tributary of Glenco Hollow of Loop Creek of Kanawha River |
| 1 | unnamed tributary of loop creek |
| 1 | unnamed tributary of Loop Creek |

B. Parameters of concern:

| | | | | | |
|---|---|---|---|---|---|
| **YES** | pH | **YES** | Fe | **YES** | Mn |
| **YES** | Al (D) | **YES** | Al (T) | **YES** | Others |

Specify Others: Selenium

C. Justification Review:

Frasure Creek Mining, LLC submitted a joint Article 3 (SMA) and Article 11 (NPD) on October 2, 2009 for a surface mine permit.

The company is proposing to surface mine the Peerless, No.2 Gas, Powellton, Eagle "A", Big Eagle and Little Eagle seams of coal using multiple seam contour and highwall mining on steep slopes.

The proposed activity is located 14.2 miles from Oak Hill along Rt. 61 south to Kincaid, in the Valley District of Fayette County, West Virginia. The total proposed permit area is 221.40 acres with 201 acres being mineral removal.

There are no valley fills being associated with this permit. No 401 or 404 permits are required. There are four (4) stream segments that will not be mined through. The company will not be bonding for anything other than for stream crossings.

The proposed permit area will have a total of sixteen (16) discharge points that will discharge treated runoff into unnamed tributaries of/ and Loop Creek of Kanawha River. Loop Creek has been listed as a reproducing trout stream. Appropriate limits have been assigned based on trout criteria. None of the streams are listed in the Upper Kanawha Total Maximum Daily Load (TMDL) for impairment. The approved 2008 and drafted 2010 303d list does not list any of these streams as impaired.

The company collected water samples at designated BWQ reachshed points and has prepared and submitted BWQ workbook spreadsheets. A tier II anti-degradation review was conducted and the appropiate limits have been assigned based on the BWQ data collected.

Due to comments from the USEPA in an interim objection letter the following additions are added to this rationale:

Narrative standards - Outlets 001 through 016 proposed in this application are precipitation induced discharges (i.e. associated with on-bench sediment structures

that discharge in direct response to precipitation only). Precipitation induced discharges (stormwater) flow only in response to precipitation and do not have residence time with unweathered rock and therefore would not be expected to have elevated mineralization/ions in the discharge. Also, outlets that only flow during precipitation are flowing only at the time when the receiving streams have the greatest assimilative capacity (dilution). Specifically, these outlets are designed to not discharge during critical low flow conditions of the receiving stream. For these reasons the WVDEP believes these outlets do not have reasonable potential to adversely impact the aquatic ecosystem. Approximately 29,000 feet of exposed pre-law highwall with numerous drainage problems will be corrected and reclaimed by this project, which may lead to an improvement of the quality of the water draining from this site. According to the Permitting Guidance for Surface Coal Mining Operations to Protect West Virginia's Narrative Water Quality Standards, 47CSR2-sections 3.2.e and 3.2.i issued August 12, 2010 and revised August 18, 2010; facilities of this type are unlikely to cause or contribute to violations of West Virginia's narrative water quality standards.

The Upper Kanawha TMDL does include Loop Creek as impaired for fecal coliform. However, fecal coliform is not a parameter of concern for this permit application as no bathhouses are proposed for this facility. Loop Creek is listed as a trout stream (cold water) and due to the data submitted in this application, it will be treated as impaired for dissolved aluminum and effluent limitations assigned accordingly. None of the other tributaries of Loop Creek receiving discharges from this permit are designated as trout streams and warm water criteria would normally apply. However due to the close proximity of this permit to Loop Creek, a trout stream, permit effluent limitations were calculated to be protective of the down-stream criteria. The BWQ workbooks were designated trout waters for the unnamed tributaries and this is the reason for some of these tributaries showing as impaired for dissolved aluminum (87 ug/l criteria) in the BWQ workbooks. If these unnamed tributaries were marked warm water (750 ug/l) the impairments would not have shown up in the BWQ workbooks. This permit has twenty (20) stream monitoring stations contained in it to monitor the stream conditions. Bi-monthly monitoring is required for Total and dissolved aluminum with quarterly reporting. Utilizing the BWQ data submitted in the application, the limits assigned to this permit for outlets 006 and 007 were calculated through a Tier II anti-degradation review based on cold water criteria and a default translator using 95th percentile. All other outlets in this permit were given criteria end of pipe effluent limitations for cold water fisheries .08 - .14 mg/l for aluminum and a default translator of 1 was applied. As per our conversation the stream monitoring stations will enable the WVDEP to monitor the streams which receive discharges from this permit. Should there be any exceedance of an established criteria the permit may be reopened and limits adjusted accordingly. The company may elect in the future to develop a site specific translator once the outlet(s) are constructed.

Selenium - The applicant reports: "two core holes were analyzed for the Open Fork No. 2 SMCRA permit. There were small vertical horizons within these cores which demonstrated concentrations of selenium in excess of 1 mg/kg. A materials handling plan has been developed to ensure that all potentially toxic material will be segregated, as practicable, and placed within cells which will be located in an area of the contour bench that is 20' from the nearest highwall watercourse. The base of each cell will be constructed of a minimum of 10' of non-selenium, non-toxic, non-acidic, non-combustible material and covered with at least 4' of the most impervious material available on site. The proposed regrade will promote surface runoff and inhibit groundwater infiltration." Based on this information provided and this handling plan, which is specified in the SMCRA permit, it is not anticipated that selenium will be an issue that would require additional treatment beyond the controls proposed for this facility. Should the results of monitoring show a need for treatment, the WVDEP will order the permittee to develop and implement a treatment plan.

4. Types of effluent limitations:

**Technology** Based Outlets (0):

**Water Quality** Based Outlets (16): 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016

**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: DGH-1, DGH-2, DLC, DLFUTLC1, DUTGH2, DUTLC-1, DUTLC-3, DUTLC-4, DUTLC-5, ULC, ULFUTLC1, USLC2, USLC3, USLC5, USLC7, UUTGH1, UUTGH2, UUTLC-3, UUTLC-4, UUTLC-5

**Groundwater** Monitoring:

6. Does the application contain:

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

## Parsons, Mark J

**From:** MacKnight.Evelyn@epamail.epa.gov
**Sent:** Monday, November 08, 2010 4:52 PM
**To:** Parsons, Mark J; Borth, William C.
**Cc:** Cruz.Francisco@epamail.epa.gov; Conway.Bette@epamail.epa.gov
**Subject:** Checking with you on Frasure Creek

WV NPDES No. WV1024400 – New
Frasure Creek Mining, LLC
Open Fork Surface Mine
SMCRA No. S301309

Our interim objection letter asked for the following, so I am verifying where we are.

1. Modify the Rationale Page to clarify that this is a new discharge. (Looks like this was done.)

2. Evaluate the potential to exceed narrative water quality standards given that supporting water quality analyses exhibited specific conductivity levels of up to 673 umhos, TDS levels up to 630 mg/l, and sulfate levels up to 374 mg/l. (Reviewing the info submitted)

3. Require instream and effluent monitoring be required to evaluate at a minimum, total dissolved solids (TDS), specific conductivity (SC), calcium, magnesium, bicarbonate, chlorides and sulfates. (Response?)

4. Include requirements for the permittee to conduct baseline and annual instream biological monitoring. (Response?)

5. Modify the Rationale Page to include a discussion of what treatment technology this facility will install to ensure compliance with the selenium water quality-based effluent limit, since this is a new discharge. (Looking at this. Have some concerns about the language in the justification which I will call you to discuss)

We are taking a looking at the info and will get back to you by the end of the week. Unfortunately, Francisco was not here today, I am out tomorrow and we are off on Thursday, but we will be in touch.

Evelyn S. MacKnight
Chief, NPDES Permits Branch (3WP41)
Water Protection Division
Phone: 215-814-5717
Fax: 215-814-2301
email: macknight.evelyn@epa.gov

## Parsons, Mark J

| | |
|---|---|
| **From:** | MacKnight.Evelyn@epamail.epa.gov |
| **Sent:** | Friday, November 12, 2010 5:20 PM |
| **To:** | Clarke, Thomas L; Parsons, Mark J; Borth, William C. |
| **Cc:** | Cruz.Francisco@epamail.epa.gov; Conway.Bette@epamail.epa.gov; Shamet.Stefania@epamail.epa.gov; Capacasa.Jon@epamail.epa.gov; Mcilwain.Jaclyn@epamail.epa.gov; Mcguigan.David@epamail.epa.gov |
| **Subject:** | WV1024400 Frasure Creek Mining, LLC - Open Fork Surface Mine No. 2 - General Objection/Time Extension |
| **Attachments:** | WV1024400 Frasure Creek General Objection - Time Extension 11-12-10.pdf |

Attached you will find our general objection/time extension for the above permit. We had discussed this permit with you on 11/10, but need to reach closure on the conductivity and monitoring issues. Let's discuss this next week so that we can figure out a mutually agreeable way of moving ahead on this permit. Thx.

Evelyn S. MacKnight
Chief, NPDES Permits Branch (3WP41)
Water Protection Division
Phone: 215-814-5717
Fax: 215-814-2301
email: macknight.evelyn@epa.gov

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

NOV 12 2010

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

Re: WV NPDES No. WV1024400 – New
Frasure Creek Mining, LLC
Open Fork Surface Mine No. 2
SMCRA No. S301309
EPA Receipt Date – October 14, 2010

Dear Mr. Clarke:

Pursuant to Section 402 of the Clean Water Act, 40 CFR § 123.44, the *Memorandum of Agreement Regarding the Administration and Enforcement of the National Pollutant Discharge Elimination System (NPDES) in West Virginia (1982)* (MOA), the U.S. Environmental Protection Agency (EPA) Region III received the draft permit cited above. This action is for a new surface mining facility which consists of 221.40 acres with 201 acres being mineral removal, discharging through 16 outfalls to the Loop Creek of the Kanawha River watershed. This letter is notification of EPA's general objection/time extension to the referenced Draft Permit pursuant to 40 C.F.R. § 123.44(b)(1). EPA requests the full 90-day review period for this permit, which will expire on January 12, 2011. Areas under review by EPA include calculation of reasonable potential to violate water quality standards, and other issues to ensure that the Draft Permit is in compliance with applicable provisions of the Clean Water Act and 40 C.F.R §122 as well as West Virginia Water Quality Standards. Failure to ensure compliance with this requirement is a valid reason for EPA to object to the Draft Permit under 40 C.F.R. § 123.44(c)(1).

On September 22, 2010, EPA Region III issued an interim objection to this facility asking the West Virginia Department of Environmental Protection (WVDEP) to perform a reasonable potential analysis to assess compliance with West Virginia narrative criteria, to incorporate additional monitoring requirements into the permit and to provide information regarding selenium treatment methods being proposed and the aluminum translator. The baseline water quality monitoring samples submitted with the draft permit modification exhibited levels of specific conductivity, total dissolved solids and total sulfates that are likely to be associated with adverse impacts that could cause or contribute to significant degradation and/or excursions from narrative water quality criteria.

*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.*
*Customer Service Hotline: 1-800-438-2474*

Regarding specific conductivity, WVDEP's revised rationale presumes that all the outfalls proposed by this facility are precipitation-induced discharges associated with on-bench sediment structures and are not expected to have elevated mineralization/ions in the discharge. Data were provided to support that discharges from these types of outfalls are infrequent. However, no water quality data were provided to support the statement that these discharges, alone or in combination, would not cause instream impairment. In addition, WVDEP has not responded to EPA's request for additional chemical and biological monitoring.

EPA will provide an expedited review of any additional information that WVDEP is able to provide as soon as possible. However, this draft permit should not be issued until WVDEP addresses the above issues. We will either supply grounds for specific objection or will withdraw this general objection no later than January 12, 2010. If you have any questions concerning this matter, please call me at 215-814-5717 or call Francisco Cruz at 215-814-5734.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

cc: Jeffrey Parsons, WVDEP



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.*
*Customer Service Hotline: 1-800-438-2474*

2nd Response

**Parsons, Mark J**

**From:** Parsons, Mark J
**Sent:** Tuesday, November 23, 2010 1:18 PM
**To:** (Capacasa.Jon@epamail.epa.gov)
**Cc:** MacKnight.Evelyn@epamail.epa.gov; cruz.francisco@epa.gov; Clarke, Thomas L; Borth, William C.; Halstead, Lewis A; david.mcmaster@mail.house.gov; Lavender, Leslie - EMA
**Subject:** WV1024400 Frasure Creek - Open Fork #2
**Attachments:** WV1024400 - Response to General Objection.pdf; DLC-COND.pdf; DLC-TDS.pdf; DLC-SULF.pdf; DLC Data.pdf; WV1019520 - DMR data.pdf

Mr. Capacasa:

Please find the attached response and supporting documentation to the General Objection Letter received from you on November 12th, 2010.

Thank you,

Jeff Parsons
West Virginia Department of Environmental Protection
Division of Mining and Reclamation - HPU

**Tracking:**

west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street, SE
Charleston, WV 25304

Randy C. Huffman, Cabinet Secretary
www.wvdep.org

November 23, 2010

Jon M. Capacasa, Director
NPDES Permits Branch (3WP41)
Water Protection Division
U. S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Re: **WVNPDES No.** WV1024400
Re: New Permit – Frasure Creek Mining, LLC – Open Fork Surface Mine No. 2

Dear Mr. Capacasa: Jon

Pursuant to Section 402 of the Clean Water Act, 40 CFR parts 123.74 and 123.75, *Memorandum of Agreement Regarding the Administration and Enforcement of the National Pollutant Discharge Elimination System in West Virginia* (1982) (MOA) please find enclosed our second response and supplemental information pursuant to your General Objection for the above referenced facility. As stated previously, the West Virginia Department of Environmental Protection would greatly appreciate an expeditious review of the additional information as this permitting decision is crucial for this applicant's ability to provide continued employment for 98 company personnel as well as continued employment for an additional 28 contractor jobs.

As stated in our first response, Open Fork No. 2 is a contour surface mine that will not use any excess spoil fills. No stream mine-throughs are proposed. All drainage ways in the surface mine permit area are being left undisturbed. Through planning, engineering and design, stream impacts have been minimized to only include crossings.

This facility will provide environmental benefits. The plan for Open Fork No. 2 is to re-mine along pre-SMCRA, existing highwalls and benches. The footprint of the Open Fork No.2 Surface mine contains approximately 29,000 linear feet of exposed pre-law highwall with portions containing existing auger holes. This project will reclaim this 5 ½ miles of highwall, which would otherwise be eligible for reclamation under the federal Abandoned mine Lands program, using public funds. This operation will reclaim all of this existing highwall, without utilizing any public funds to do it. Mining overburden generated in the course of this operation will be used to reclaim the existing highwall. This will also result in mitigation of the un-managed, un-maintained drainage and material placement practices that are legacies of pre-law mining practices on the site.

Selenium – WVDEP responded to EPA's comments in regards to selenium in our first response. Through subsequent conversations with Ms. MacKnight of your staff, we believed this

issue to be settled. This facility has included a special materials handling plan in the SMCRA permit for materials that core drilling has identified as containing elevated levels of selenium. Based on the requirements of this handling plan, it is not anticipated that selenium will be an issue that would require additional treatment beyond the controls currently included in the design of this facility.

Aluminum - WVDEP responded to EPA's comments with regard to the aluminum translator in our first response. Through subsequent conversations with Ms. MacKnight and Mr. Cruz of EPA, the information submitted in the first response has been deemed sufficient to address EPA's comments on this issue.

Narrative standards – EPA has emphasized concern that the levels of specific conductivity, total dissolved solids and total sulfates as shown in the baseline water samples are such that would be likely to be associated with adverse impacts that could cause or contribute to significant degradation and/or cause excursions from narrative water quality criteria. EPA also requested that a reasonable potential analysis be performed to assess compliance with West Virginia's narrative criteria and to incorporate additional monitoring requirements. WVDEP recognizes EPA's concerns and has concluded that this proposed mining operation does NOT have reasonable potential to cause or contribute to a violation of the narrative water quality standard for protection of the aquatic ecosystem. WVDEP offers the following supporting information and analysis.

To address EPA's concerns with application of the State's narrative water quality standards, the West Virginia Department of Environmental Protection developed permitting guidance for surface coal mining operations to protect West Virginia's narrative water quality standards. See the Permitting Guidance for Surface Coal Mining Operations to Protect West Virginia's Narrative Water Quality Standards, 47CSR 2 - 3.2.e and -3.2.i, issued August 12, 2010 and revised August 18, 2010. Outlets 001 through 016 proposed in this application are precipitation induced discharges (i.e. associated with on-bench sediment structures that discharge in direct response to precipitation only). Outlets that rarely produce flow have very little potential to impact water quality. Because the outlets involved in this application discharge over a mountain side and not directly into waters of the United States, even on the rare occasions when they produce flow, one cannot necessarily conclude that the flow will reach waters of the United States. As outlets that are expected to flow only in direct response to precipitation, the flow from them will not have the residence time with un-weathered rock that would allow it to have the elevated mineralization or ionic content that EPA's research has associated with adverse impacts to the benthic macro-invertebrate community. In addition, outlets that only flow during precipitation events are flowing only at the time when the receiving streams have the greatest assimilative capacity (dilution). The design of these outlets is such that they will not discharge during critical low flow conditions of the receiving stream. For these reasons the WVDEP believes these outlets do not have reasonable potential to adversely impact the aquatic ecosystem or to cause or contribute to a violation of the narrative water quality standard which protects it.

Discharge Monitoring Reports (DMR) data from the on-bench outlets on the adjacent Open Fork Surface Mine (NPDES Permit No. WV1019520) support the basis for the WVDEP's determination that the outlets on this permit do not have reasonable potential. See, attachments. This adjacent operation is being conducted in a comparable manner to the proposed Open Fork No. 2 operation in the same geologic setting. Out of 385 reported sampling attempts on this adjacent permit for on-bench outlets, flow was reported on only 13 occasions. This indicates that these outlets produce flow only 3.37 % of the time and "no flow" is reported 96.63 % of the

time. Obviously, during times when an outlet produces no flow, it cannot affect water quality. Because of the similarity in the design of the on-bench outlets proposed at Open Fork no. 2 to those on the adjacent operation, the WVDEP expects the "no flow" rate at Open Fork No. 2 outlets to be comparable to the 96.63% "no flow" experienced at the adjacent operation.

As for the potential that the flow during the 3 % or so of the time flow might be expected from these outlets to affect water quality, please consider that this flow occurs either during or immediately after significant precipitation events at the same time when the flow in Loop Creek is the greatest as a result of the same precipitation events that cause the outlets to flow. Previously, the WVDEP has taken the common sense approach that during the highest, storm induced flows, receiving waters are likely to be the most dilute and have the greatest assimilative capacity. Frasure Creek Mining has supplied data to back this approach. Attached are graphs of flow versus conductivity, total dissolved solids and sulfates which depict in-stream data Frasure Creek has gathered for Loop Creek in accordance with requirements of state surface mining laws. As you can see from these graphs, Loop Creek has considerable assimilative capacity when its flows are the highest, which is the only time when there is any possibility that water from these outlets could reach it. These graphs show a substantial decrease in concentration as stream flow increases. During increased flow, conductivity drops from a range of 400 - 500 µmhos to 200 – 300 µmhos. TDS drops from a range of 300 – 400 mg/l to 100 – 200 mg/l. Data and the corresponding graph for total sulfate indicate little change in concentration verses flow, but show that out of thirty (30) data points, only two (2) exceeded 200 mg/l. In conclusion, based on this site specific water data, Loop Creek is only moderately stressed during a very low flow condition, at which time the adjacent permit's on-bench outlets have been documented not to discharge. Conversely, at the only time these outlets are capable of influencing water quality, on the rare occasions they produce flow, data shows that there is available assimilative capacity in Loop Creek.

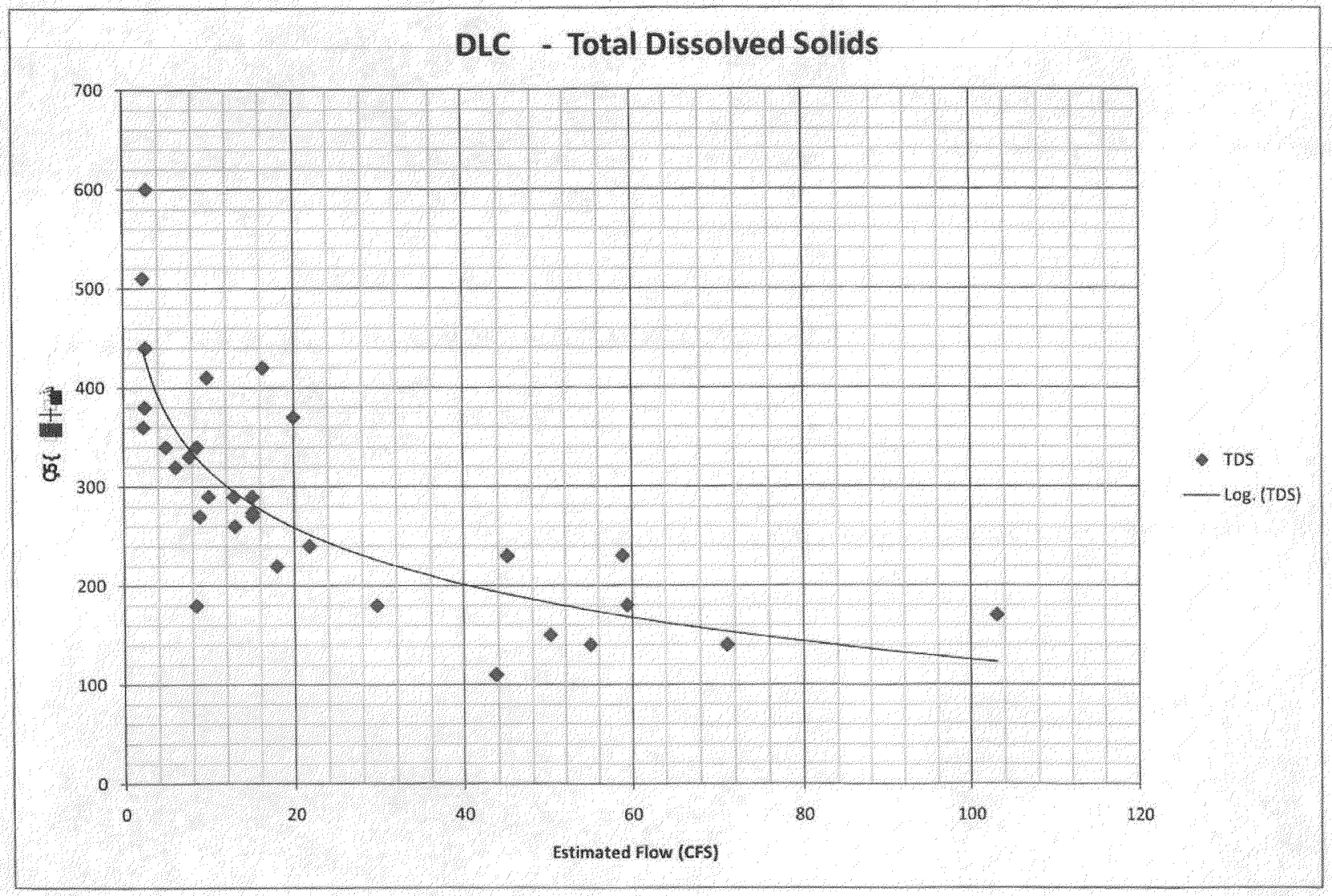
As related above, the WVDEP believes that it has a very sound basis for its conclusion that the outlets proposed for the Open Fork No.2 operation do not have reasonable potential to cause or contribute to a violation of the State's narrative water quality standard. In the absence of reasonable potential, there is no basis for requiring additional chemical and biological monitoring EPA has requested.

If you have any questions or comments, please contact me or Jeff Parsons at (304) 926-0499 Extension 1564 or by mail at 601 57th Street SE, Charleston, WV 25304.

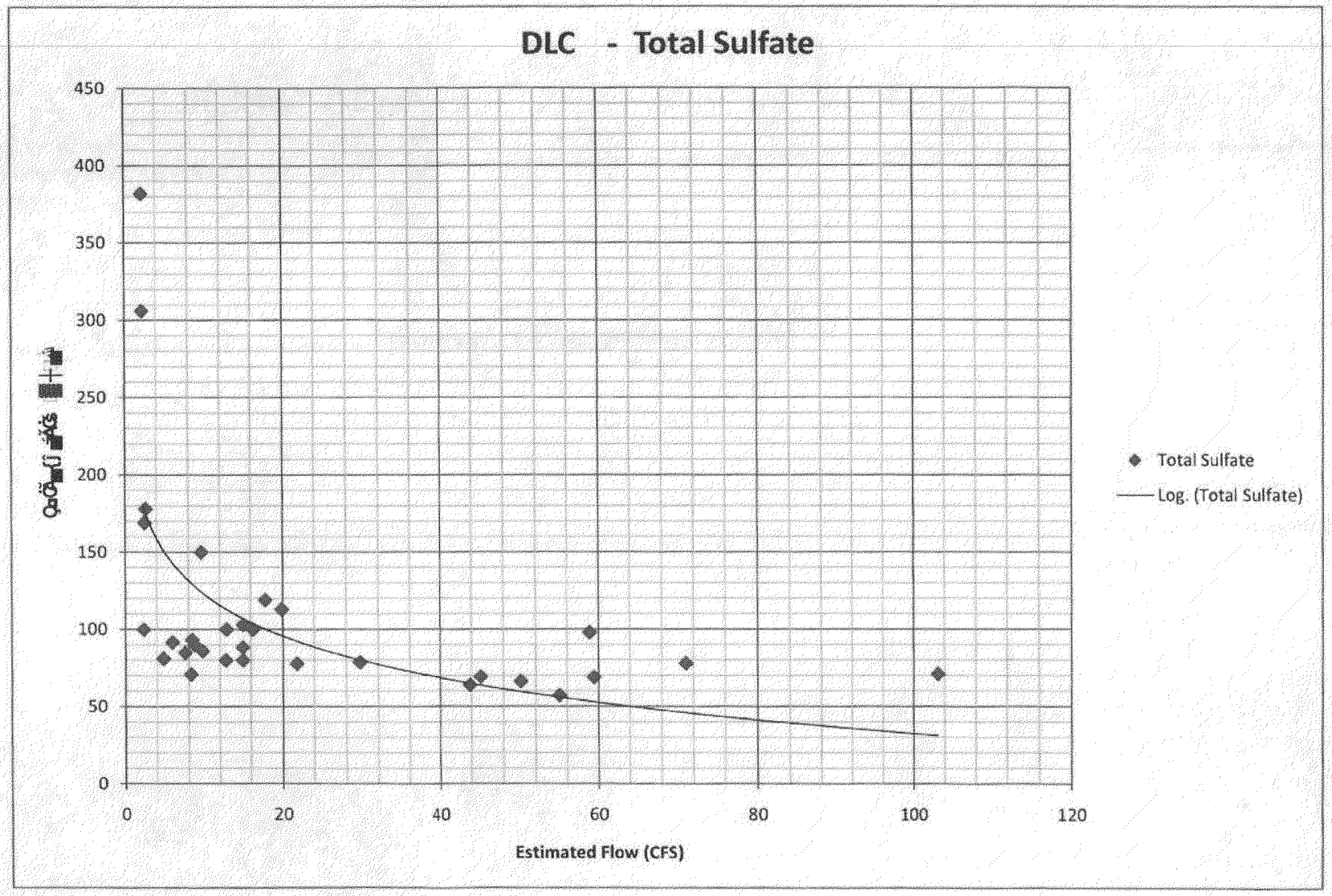
Sincerely,

Thomas L. Clarke
Director

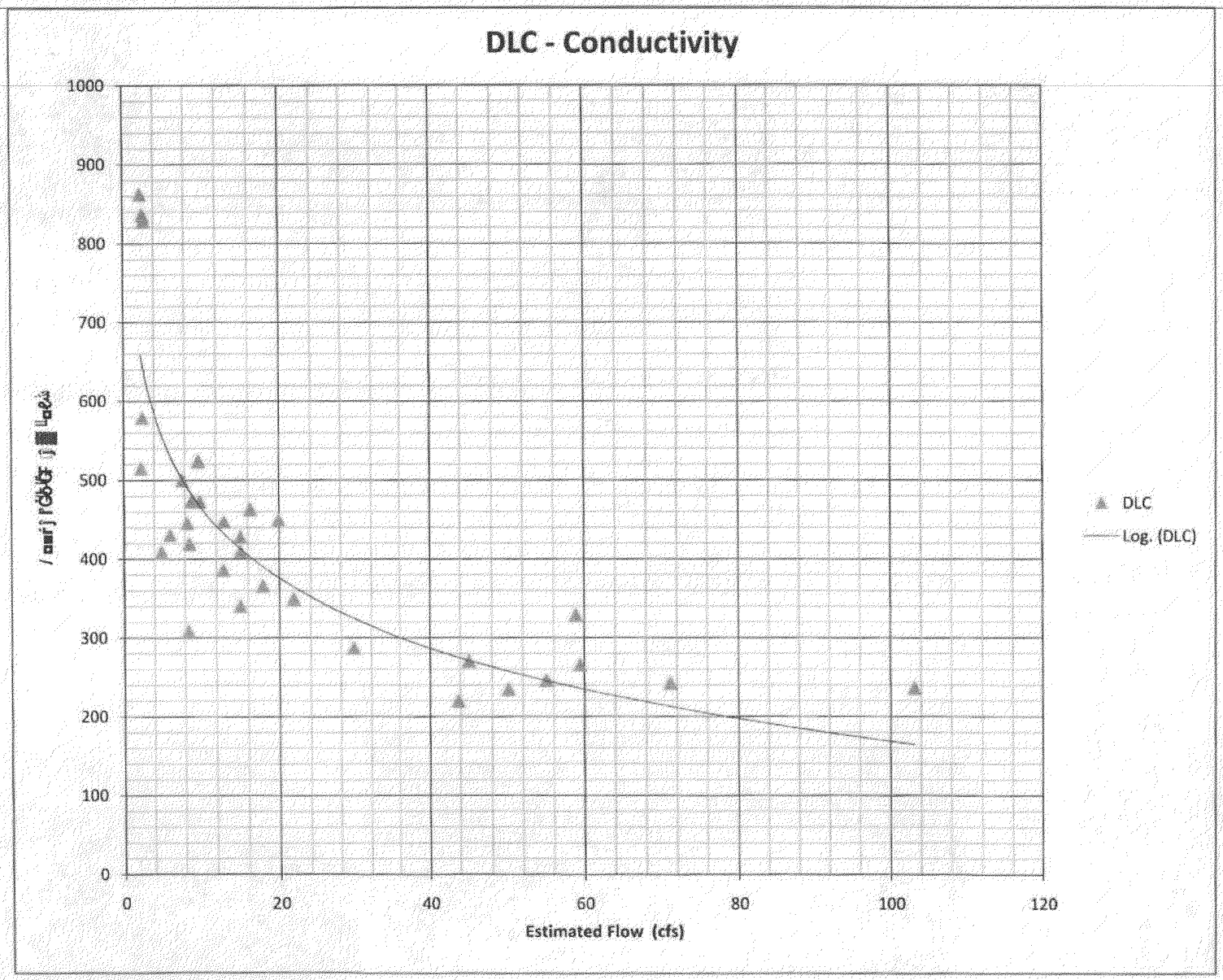
cc: Frasure Creek Mining




2014-00657200905




2014-00657200905




2014-00657200905

STANDARD LABORATORIES, INC.

147 11th Avenue
South Charleston, WV 25303

Customer Name FRASURE CREEK MINING, LLC

## 5[/ 5ĂĆĂ

| ID | DATE SAMPLED | EST. FLOW | TOTAL SULFATE mg/l | TDS mg/l | SPEC. COND. UMHOS |
|---|---|---|---|---|---|
| 9/DLC | 10/18/10 | 2.56 | 169 | 440 | 836 |
| 9/DLC | 10/11/10 | 2.25 | 382 | 510 | 862 |
| 9/DLC | 9/27/10 | 2.72 | 178 | 600 | 829 |
| 9/DLC | 9/9/10 | 2.44 | 100 | 380 | 579 |
| 9/DLC | 8/26/10 | 4.88 | 81.1 | 340 | 408.5 |
| 9/DLC | 8/13/10 | 2.27 | 306 | 360 | 515 |
| 9/DLC | 7/30/10 | 14.98 | 88.3 | 290 | 340.4 |
| 9/DLC | 7/14/10 | 19.94 | 113 | 370 | 450 |
| 9/DLC | 6/30/10 | 15.01 | 80 | 274 | 428.2 |
| 9/DLC | 6/11/10 | 16.3 | 100 | 420 | 463.4 |
| 9/DLC | 5/26/10 | 8.5 | 93.3 | 340 | 419.3 |
| 9/DLC | 5/20/10 | 45.11 | 69.3 | 230 | 270.4 |
| 9/DLC | 4/26/10 | 17.89 | 119 | 220 | 366 |
| 9/DLC | 4/9/10 | 58.88 | 97.9 | 230 | 329.3 |
| 9/DLC | 3/30/10 | 103.13 | 70.9 | 170 | 236.2 |
| 9/DLC | 3/12/10 | 71.09 | 77.8 | 140 | 242.6 |
| 9/DLC | 2/23/10 | 43.75 | 64 | 110 | 220 |
| 9/DLC | 2/12/10 | 55.03 | 57.1 | 140 | 246 |
| 9/DLC | 1/29/10 | 59.42 | 68.9 | 180 | 265.7 |
| 9/DLC | 1/12/10 | | 86.4 | 250 | 349.1 |
| 9/DLC | 12/30/09 | 50.17 | 66.3 | 150 | 234.6 |
| 9/DLC | 12/14/09 | 29.69 | 78.7 | 180 | 287.3 |
| 9/DLC | 11/19/09 | 12.83 | 80 | 290 | 386 |
| 9/DLC | 11/10/09 | 8.35 | 70.9 | 180 | 308.8 |
| 9/DLC | 10/21/09 | 21.79 | 77.8 | 240 | 349.5 |
| 9/DLC | 10/13/09 | 6 | 91.7 | 320 | 430.8 |
| 9/DLC | 9/23/09 | 7.6 | 85 | 330 | 500 |
| 9/DLC | 9/9/09 | 9.7 | 150 | 410 | 524 |
| 9/DLC | 8/26/09 | 15.02 | 103 | 270 | 409.9 |
| 9/DLC | 8/10/09 | 12.93 | 100 | 260 | 447.5 |
| 9/DLC | 7/23/09 | 9.85 | 86 | 290 | 473 |
| 9/DLC | 7/9/09 | 8.8 | 90 | 270 | 473.1 |

3rd Response

**Parsons, Mark J**

**From:** Parsons, Mark J
**Sent:** Monday, December 20, 2010 5:18 PM
**To:** (Capacasa.Jon@epamail.epa.gov)
**Cc:** MacKnight.Evelyn@epamail.epa.gov; Cruz.Francisco@epamail.epa.gov; Conway.Bette@epamail.epa.gov; Clarke, Thomas L; Borth, William C.; Lavender, Leslie - EMA; Burgess, Juddie D; david.mcmaster@mail.house.gov
**Subject:** WV1024400 - Frasure Creek Mining - Openfork Surface Mine No. 2
**Attachments:** WV1024400 - Transmittal - 3rd Response.pdf; Revised Draft 12-20-10.pdf; Rationale - 12-20-10.pdf

Mr. Capacasa:

Please find attached the transmittal letter, revised draft permit and rationale pages for the Frasure Creek Mining – Open Fork Surface Mine No.2.

Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Jeff Parsons
West Virginia Department of Environmental Protection
Division of Mining and Reclamation - HPU

west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street, SE
Charleston, WV 25304

Randy C. Huffman, Cabinet Secretary
www.wvdep.org

December 20, 2010

Jon M. Capacasa, Director
NPDES Permits Branch (3WP41)
Water Protection Division
U. S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Re: **WVNPDES No.** WV1024400
Re: New Permit – Frasure Creek Mining, LLC – Open Fork Surface Mine No. 2

Dear Mr. Capacasa:

Pursuant to Section 402 of the Clean Water Act, 40 CFR parts 123.74 and 123.75, *Memorandum of Agreement Regarding the Administration and Enforcement of the National Pollutant Discharge Elimination System in West Virginia* (1982) (MOA) please find attached the revised draft permit for the above referenced facility.

Pursuant to discussions with Ms. Evelyn MacKnight and Mr. Francisco Cruz with USEPA changes were made to the proposed draft permit. The permit now contains monitoring requirements for total dissolved solids, sulfates and specific conductivity for all on-bench outlets and stream stations associated with this permit. This draft permit also contains special conditions for sampling during specified precipitation events (the specifics of these requirements are contained in Section D, 6 of the permit).

If you have any questions or comments, please contact me at (304) 926-0499 Extension 1564 or by mail at 601 57th Street SE, Charleston, WV 25304.

Sincerely,

Jeff Parsons
DMR/ HPU

cc: Frasure Creek Mining

# RATIONALE PAGE

NPDES Number: WV1024400 (NPD-1) County: Fayette

Company Name: FRASURE CREEK MINING, LLC

Facility Name: Open Fork Surface Mine No. 2

SMA/Permit No.: S301309(SMA)

Other Apps:

Date of Draft: 08/10/2010

Permit Writer: Aaron F. Legg

Region: Oak Hill

1. New or expanded discharge? YES

2. Facility eligible for General Permit? NO

3. Basis for effluent limitation:

A. Determine uses of each receiving stream.

| Stream Uses | Stream Name |
|---|---|
| 1 | LOOP CK |
| 1 | unnamed trbutary of Loop Creek |
| 1 | unnamed trib of Loop Creek |
| 1 | unnamed tributary of Glenco Hollow |
| 1 | Unnamed Tributary of Glenco Hollow of Loop Creek of Kanawha River |
| 1 | unnamed tributary of loop creek |
| 1 | unnamed tributary of Loop Creek |

B. Parameters of concern: YES pH YES Fe YES Mn
YES Al (D) YES Al (T) YES Others

Specify Others: Selenium

C. Justification Review:
Frasure Creek Mining, LLC submitted a joint Article 3 (SMA) and Article 11 (NPD) on October 2, 2009 for a surface mine permit.

The company is proposing to surface mine the Peerless, No.2 Gas, Powellton, Eagle "A", Big Eagle and Little Eagle seams of coal using multiple seam contour and highwall mining on steep slopes.

The proposed activity is located 14.2 miles from Oak Hill along Rt. 61 south to Kincaid, in the Valley District of Fayette County, West Virginia. The total proposed permit area is 221.40 acres with 201 acres being mineral removal.

There are no valley fills being associated with this permit. No 401 or 404 permits are required. There are four (4) stream segments that will not be mined through. The company will not be bonding for anything other than for stream crossings.

The proposed permit area will have a total of sixteen (16) discharge points that will discharge treated runoff into unnamed tributaries of/ and Loop Creek of Kanawha River. Loop Creek has been listed as a reproducing trout stream. Appropriate limits have been assigned based on trout criteria. None of the streams are listed in the Upper Kanawha Total Maximum Daily Load (TMDL) for impairment. The approved 2008 and drafted 2010 303d list does not list any of these streams as impaired.

The company collected water samples at designated BWQ reachshed points and has prepared and submitted BWQ workbook spreadsheets. A tier II anti-degradation review was conducted and the appropiate limits have been assigned based on the BWQ data collected.

Due to comments from the USEPA in an interim objection letter the following additions are added to this rationale:

Narrative standards - Outlets 001 through 016 proposed in this application are precipitation induced discharges (i.e. associated with on-bench sediment structures

that discharge in direct response to precipitation only). Precipitation induced discharges (stormwater) flow only in response to precipitation and do not have residence time with unweathered rock and therefore would not be expected to have elevated mineralization/ions in the discharge. Also, outlets that only flow during precipitation are flowing only at the time when the receiving streams have the greatest assimilative capacity (dilution). Specifically, these outlets are designed to not discharge during critical low flow conditions of the receiving stream. For these reasons the WVDEP believes these outlets do not have reasonable potential to adversely impact the aquatic ecosystem. Approximately 29,000 feet of exposed pre-law highwall with numerous drainage problems will be corrected and reclaimed by this project, which may lead to an improvement of the quality of the water draining from this site. According to the Permitting Guidance for Surface Coal Mining Operations to Protect West Virginia's Narrative Water Quality Standards, 47CSR2-sections 3.2.e and 3.2.i issued August 12, 2010 and revised August 18, 2010; facilities of this type are unlikely to cause or contribute to violations of West Virginia's narrative water quality standards.

The Upper Kanawha TMDL does include Loop Creek as impaired for fecal coliform. However, fecal coliform is not a parameter of concern for this permit application as no bathhouses are proposed for this facility. Loop Creek is listed as a trout stream (cold water) and due to the data submitted in this application, it will be treated as impaired for dissolved aluminum and effluent limitations assigned accordingly. None of the other tributaries of Loop Creek receiving discharges from this permit are designated as trout streams and warm water criteria would normally apply. However due to the close proximity of this permit to Loop Creek, a trout stream, permit effluent limitations were calculated to be protective of the down-stream criteria. The BWQ workbooks were designated trout waters for the unnamed tributaries and this is the reason for some of these tributaries showing as impaired for dissolved aluminum (87 ug/l criteria) in the BWQ workbooks. If these unnamed tributaries were marked warm water (750 ug/l) the impairments would not have shown up in the BWQ workbooks. This permit has twenty (20) stream monitoring stations contained in it to monitor the stream conditions. Bi-monthly monitoring is required for Total and dissolved aluminum with quarterly reporting. Utilizing the BWQ data submitted in the application, the limits assigned to this permit for outlets 006 and 007 were calculated through a Tier II anti-degradation review based on cold water criteria and a default translator using 95th percentile. All other outlets in this permit were given criteria end of pipe effluent limitations for cold water fisheries .08 - .14 mg/l for aluminum and a default translator of 1 was applied. As per our conversation the stream monitoring stations will enable the WVDEP to monitor the streams which receive discharges from this permit. Should there be any exceedance of an established criteria the permit may be reopened and limits adjusted accordingly. The company may elect in the future to develop a site specific translator once the outlet(s) are constructed.

Selenium - The applicant reports: "two core holes were analyzed for the Open Fork No. 2 SMCRA permit. There were small vertical horizons within these cores which demonstrated concentrations of selenium in excess of 1 mg/kg. A materials handling plan has been developed to ensure that all potentially toxic material will be segregated, as practicable, and placed within cells which will be located in an area of the contour bench that is 20' from the nearest highwall watercourse. The base of each cell will be constructed of a minimum of 10' of non-selenium, non-toxic, non-acidic, non-combustible material and covered with at least 4' of the most impervious material available on site. The proposed regrade will promote surface runoff and inhibit groundwater infiltration." Based on this information provided and this handling plan, which is specified in the SMCRA permit, it is not anticipated that selenium will be an issue that would require additional treatment beyond the controls proposed for this facility. Should the results of monitoring show a need for treatment, the WVDEP will order the permittee to develop and implement a treatment plan.

The following has been added to this rationale pursuant to responses to comments received from the USEPA through an interim objection, general objection and verbal conversations:

Supplemental information has been provided to the USEPA thorugh two responses in relation to the protection of West Virginia's Narrative Water Quality Standards. In addition to the information provided in the two previous responses, monitoring requirements for total dissolved solids, specific conductivity and sulfates have been add to this permit.

Also, the following sampling condition has been added to this permit:

6. Special sampling conditions - Concurrent samples must be collected for all on-bench outlets and stream stations if a rainfall event equal to or greater than 0.3 inches occurs. These samples shall be taken within 12 - hours after cessation of the precipitation event. These samples must be analyzed for all parameters listed in Section A of the permit for each respective outlet as well as each stream station listed in Section D,3 of the permit. These sample(s) may be substituted for one or both of the required semi- monthly samples provided there is sufficient time between

samples as required by the permit in Section A, 6, (e).

4. Types of effluent limitations:

**Technology** Based Outlets (0):

**Water Quality** Based Outlets (16): 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016

**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: DGH-1, DGH-2, DLC, DLFUTLC1, DUTGH2, DUTLC-1, DUTLC-3, DUTLC-4, DUTLC-5, ULC, ULFUTLC1, USLC2, USLC3, USLC5, USLC7, UUTGH1, UUTGH2, UUTLC-3, UUTLC-4, UUTLC-5

**Groundwater** Monitoring:

6. Does the application contain:

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

## Parsons, Mark J

**From:** MacKnight.Evelyn@epamail.epa.gov
**Sent:** Tuesday, January 11, 2011 6:00 PM
**To:** Parsons, Mark J; Borth, William C.
**Cc:** Capacasa.Jon@epamail.epa.gov; Boornazian.Linda@epamail.epa.gov; Cruz.Francisco@epamail.epa.gov; Mcilwain.Jaclyn@epamail.epa.gov
**Subject:** WV NPDES No. WV1024400 – New Frasure Creek Mining, LLC Open Fork Surface Mine No. 2
**Attachments:** WV1024400 - Frasure Creek- Open Fork Surface Mine No. 2 Final EPA Comments 1-11-10.pdf

Gentleman,

Attached you will find EPA's final comments on the above named permit. Thank you for your modifications to the permit and rationale documents. Any questions, please let me know. Thx.

Evelyn S. MacKnight
Chief, NPDES Permits Branch (3WP41)
Water Protection Division
Phone: 215-814-5717
Fax: 215-814-2301
email: macknight.evelyn@epa.gov

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

JAN 1 1 2011

Mr. Jeffrey Parsons
West Virginia Department of Environmental Protection
Division of Mining & Reclamation
601 57th Street SE
Charleston, WV 25304

Re: WV NPDES No. WV1024400 – New
Frasure Creek Mining, LLC
Open Fork Surface Mine No. 2
SMCRA No. S301309
EPA Receipt Date – December 20, 2010

Dear Mr. Parsons:

Pursuant to Section 402 of the Clean Water Act, 40 CFR § 123.44, the *Memorandum of Agreement Regarding the Administration and Enforcement of the National Pollutant Discharge Elimination System (NPDES) in West Virginia (1982)* (MOA), the U.S. Environmental Protection Agency (EPA) Region III received the draft permit cited above. This action is for a new surface mining facility which consists of 221.40 acres with 201 acres being mineral removal, discharging through 16 outfalls to the Loop Creek of the Kanawha River watershed. The facility will reclaim 5-1/2 miles of abandoned highwall which would otherwise have needed funding through the Abandoned Mine Lands Program. The rationale provided states that there are no valley fills, excess spoil fills, or mine-throughs associated with this permit.

This letter provides EPA's comments in response to the latest revised draft permit submitted by the West Virginia Department of Environmental Protection (WVDEP) on December 20, 2010. On November 12, 2010, EPA requested the full 90-day review period for this permit, following up on an interim objection issued on September 22, 2010. Based on our review of the materials provided to date, EPA will not be providing a specific objection on this permit. We appreciate WVDEP's efforts to respond to our comments and requests for additional information.

As noted in WVDEP's response dated November 23, 2010, EPA's comments regarding documentation for the use of aluminum translators have been satisfied. WVDEP has revised its process to insure that data collection and statistical analyses are consistent with State and EPA guidance. Regarding selenium, the permit includes effluent limits and monitoring requirements for selenium. Regarding narrative standards and conductivity, WVDEP's revised rationale presumes that all the outlets proposed by this facility are infrequent precipitation-induced discharges associated with on-bench sediment structures and are not expected to have elevated

*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.*
*Customer Service Hotline: 1-800-438-2474*

mineralization/ions in the discharge. Data were provided from the adjacent Open Fork No. 2 Surface Mine (WV1019520) which is operated in a comparable manner and geologic setting. For Open Fork No. 2, flow was reported for only 13 out of 385 sampling attempts or 3.3 percent of the time. Frasure Creek Mining has also supplied available water quality data for Loop Creek to support the rationale that Loop Creek has assimilative capacity available when instream flows are highest and there is the possibility that these on-bench outlets will discharge. In addition, WVDEP has added semi-monthly monitoring requirements for specific conductivity, total dissolved solids and sulfates for all outlets in this permit to verify the water quality assumptions. The permit includes special sampling conditions requiring that concurrent samples must be collected for all on-bench outlets and stream stations if a rainfall equal to or greater than 0.3 inches occurs, providing additional information to verify that discharges at this facility are infrequent and occur during times when assimilative capacity is available. The permit includes reopener language authorizing WVDEP to incorporate more stringent effluent limitations by modification or upon reissuance if new information or monitoring data collected indicates that more stringent effluent limits are needed. As this is a new mine, we suggest that the monitoring data be reviewed as additional outlets are constructed.

EPA does not object to issuance of this permit as proposed and we ask that you consider our comments. If the draft permit is revised from the version reviewed by EPA, please resubmit the draft permit for reconsideration. If you have any questions concerning this matter, please call me at 215-814-5717 or call Francisco Cruz at 215-814-5734.

Sincerely,

Evelyn S. MacKnight

Evelyn S. MacKnight, Chief
NPDES Permits Branch

cc: Jon M. Capacasa, EPA
Thomas L. Clarke, WVDEP



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.*
*Customer Service Hotline: 1-800-438-2474*