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Body

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The letter with all 79 on list. Received an email from Chris Jones saying he saw letter before I received it!!!!

----- Forwarded by Wendy Melgin/R5/USEPA/US on 09/30/2009 02:52 PM -----

From: Ann Campbell/DC/USEPA/US
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Cc:	Brian Frazer/DC/USEPA/US, David Evans/DC/USEPA/US, Christopher Hunter/DC/USEPA/US, landers.timothy@epa.gov, Brian Topping/DC/USEPA/US@EPA
Date:	09/30/2009 02:47 PM
Subject:	Final Signed Letter for ECP List

Folks - here is the final signed letter. There has been much press on this already with Reuters and the AP already putting articles out. I will try to do a media roundup for tomorrow.

[Untitled].pdf

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 30 2009

OFFICE OF
WATER

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
Department of the Army
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

Dear Secretary Darcy:

Let me begin this letter by emphasizing my personal appreciation for your efforts and those of the U.S. Army Corps of Engineers as we have worked together under the June 11, 2009, Mining MOU and Enhanced Coordination Procedures (ECP) to develop information and assess the 79 pending surface coal mining permits in Appalachia. I am optimistic that the agencies have established an effective basis for proceeding under the ECP to continue our review of these projects under the Clean Water Act.

On September 11, 2009, the U.S. Environmental Protection Agency (EPA) announced its initial list of pending Appalachian surface coal mining applications for which addition review and coordination under the ECP may be necessary. Following a 14-day public availability period, EPA has prepared a final list of permits requiring additional review under the ECP to ensure consistency with the requirements of the CWA and the agencies' regulations. EPA remains concerned that all 79 applications identified in the initial list involve surface coal mining projects raising potentially significant water quality and environmental issues. EPA has reviewed the public comments submitted during the 14 day public availability and these comments either support EPA's initial determination or identify issues that EPA has fully considered in reaching our decision to elevate all 79 permits for further review.

EPA evaluated each of the proposed surface coal mining projects on the ECP list (enclosed) in light of available project data, the existing environmental condition of the watershed, and the nature of environmental and water quality impacts predicted to result from construction and operation. This review was conducted consistent with the requirements of the

CWA and the Section 404(b)(1) Guidelines (Guidelines). EPA identified environmental concerns with these proposals in four key areas;

- the potential for reduction in impacts to aquatic resources through additional avoidance and minimization,
- the potential for excursions from applicable state or Federal water quality standards,
- the potential for significant cumulative effects from historic, current, and proposed surface mines, and
- the adequacy of compensatory mitigation to offset lost aquatic functions.

Avoidance and Minimization

EPA believes that the majority of the permit applications recommended for further evaluation have not yet adequately demonstrated that anticipated adverse environmental and water quality impacts have been fully avoided and minimized as required under the Guidelines. The ECP process will allow the agencies, in coordination with mining companies, to evaluate practicable opportunities to, for example, reduce the size and number of valley fills, in order to minimize potential adverse environmental and water quality impacts.

Water Quality

Over 80% of the proposals identified on the final ECP list exhibited the potential to cause or contribute to violations of applicable water quality standards. EPA is eager to work with the Corps and companies to assess modifications to mining plans, include additional water quality and biological monitoring provisions, and take other appropriate steps to address anticipated water quality concerns associated with these projects.

Cumulative Impacts

The CWA and the National Environmental Policy Act require consideration of all direct, indirect, and cumulative environmental impacts associated with proposed surface coal mining projects seeking authorization to discharge pollutants in the waters of the United States. In order to fully assess the potential cumulative impacts on the aquatic ecosystem, this analysis should take into account environmental and water quality effects associated with past, present, and reasonably foreseeable surface coal mining activities within a watershed. EPA is concerned that additional information regarding potential cumulative impacts is needed to effectively assess the 79 permits on the ECP list. We look forward to working with the Corps and the companies as this information is developed and evaluated.

Mitigation

Headwater streams are vital components of the watershed. They provide critical ecological functions necessary for the health and productivity of downstream systems. EPA believes that additional evaluation of the 79 ECP projects is necessary to assess the effectiveness of existing mitigation plans to compensate for anticipated loss of functions associated with the proposed mining-related burial and mine through of headwater streams. Review of proposed mitigation plans will be a critical aspect of our coordinated evaluation of the ECP list of mining projects.

I look forward to working closely with the Army Corps of Engineers, with the involvement of the mining companies, to achieve a resolution of EPA's concerns that avoids

harmful environmental impacts and meets our energy and economic needs. I am optimistic that the process developed under the MOU will enhance coordination between our agencies, resulting in measurable improvements to environmental protection.

Sincerely,

Peter S. Silva
Assistant Administrator

cc: Terrence "Rock" Salt
Principal Deputy Assistant Secretary of the Army (CW)

Robert Sussman
Senior Policy Counsel, EPA

Nancy Sutley
Chair, Council on Environmental Quality

Wilma Lewis
Assistant Secretary for Land and Minerals Management, DOI

Enclosure: Final List of CWA 404 Applications for Enhanced Coordination

Permit Number Listed in ECP	Revised Permit Number	Applicant Name	Project Name	County	State
LRH-2004-00336		Bear Fork	Bear Fork S.M	Pike	KY
LRH-2005-00934		Premier Elkhorn	U/T Old Beefhide	Letcher	KY
LRH-2006-00126		Consol of KY	Area 80	Knott	KY
LRH-2006-00127		Consol of KY	Slone Br Mine	Knott	KY
LRL-2005-00851		Cheyenne Resources	Cheyenne Resources	Letcher	KY
LRL-2006-01124		Matt/Co	Matt/Co	Floyd	KY
LRL-2006-01290		Licking River Resources	Licking River Resources	Magoffin	KY
LRL-2006-01296		Clintwood Elkhorn	Clintwood Elkhorn	Pike	KY
LRL-2007-00069		CAM Mining	Cane Branch	Pike	KY
LRL-2007-00193		Premier Elkhorn Coal	Premier Elkhorn Coal	Pike	KY
LRL-2007-00217		Leeco, Inc.	Stacy Branch Surface Mine	Perry	KY
LRL-2007-00335		Apex Energy	Apex Energy	Pike	KY
LRL-2007-00400		Argus Energy	Argus Energy	Lawrence	KY
LRL-2007-00400	LRL-2007-00401	Candle Ridge Mining	Candle Ridge Mining	Owsley	KY
LRL-2007-00594		Premier Elkhorn Coal	Premier Elkhorn Coal	Pike	KY
LRL-2007-00595		Leeco, Inc.	Elk Lick	Knott	KY
LRL-2007-00706		Johnson Floyd Coal	Johnson Floyd Coal	Johnson	KY
LRL-2007-00867		CAM Mining	CAM Mining	Pike	KY
LRL-2007-01026		Frasure Creek Mining	Frasure Creek Mining	Floyd	KY
LRL-2007-01044		Apex Energy	Apex Energy	Pike	KY
LRL-2007-01104		The Raven Co.	The Raven Co.	Floyd	KY
LRL-2007-01131		Miller Bros. Coal	Miller Bros. Coal	Floyd	KY
LRL-2007-01132		Miller Bros. Coal	Frasure Branch Mine	Floyd	KY
LRL-2007-01205		Matt/Co	Matt/Co	Floyd	KY
LRL-2007-01206		Frasure Creek Mining	Frasure Creek Mining	Magoffin	KY
LRL-2007-01224		Miller Bros. Coal	Miller Bros. Coal	Knott	KY
LRL-2007-01230		ICG Knott Co.	ICG Knott Co.	Knott	KY
LRL-2007-01301		CAM Mining	Tom's Branch Surface Mine	Floyd	KY
LRL-2007-01397		FCDC	FCDC	Floyd	KY
LRL-2007-01406		ICG Hazard	Bearville North	Knott	KY
LRL-2007-01445		FCDC	FCDC	Floyd	KY
LRL-2007-01504		CAM Mining	CAM Mining	Pike	KY
LRL-2007-01515		ICG Hazard	ICG Hazard	Perry	KY

Permit Number Listed in ECP	Revised Permit Number	Applicant Name	Project Name	County	State
LRL-2007-01518		Clintwood Elkhorn	Clintwood Elkhorn	Pike	KY
LRL-2007-01582		Miller Bros. Coal	Miller Bros. Coal	Breathitt	KY
LRL-2007-01660		Martin County Coal	Findlay Branch Mine	Martin	KY
LRL-2008-00095		Premier Elkhorn Coal	Premier Elkhorn Coal	Pike	KY
LRL-2008-00114		BDCC Holdings	Cherries Branch	Perry	KY
LRL-2008-00115		Wolverine Resources	Jake Fork and Stoney Branch Surface Mine	Floyd	KY
LRL-2008-00139		Apex Energy	Apex Energy	Pike	KY
LRL-2008-00226		Czar Coal	Czar Coal	Martin	KY
LRL-2008-00239	LRL-2009-00239	Frasure Creek Mining	Frasure Creek Mining	Breathitt	KY
LRL-2008-00408		Czar Coal	Czar Coal	Martin	KY
LRL-2008-00525		Middle Fork Dev.	Middle Fork Dev.	Magoffin	KY
LRL-2008-00654		Enterprise Mining	Enterprise Mining	Knott	KY
LRL-2008-00727		Miller Bros. Coal	Miller Bros. Coal	Breathitt	KY
LRL-2008-00781		Wolverine Resources	Wolverine Resources	Floyd	KY
LRN-2006-01647		Nally & Hamilton	Nally & Hamilton	Bell	KY
LRN-2007-00820		Nally & Hamilton	Nally & Hamilton	BELL	KY
LRH-2004-01152		Buckingham Coal	Buckingham Wash Plant	Perry	OH
LRH-2005-00421		Oxford	Peabody 3	Coshocton / Muskingum / Guernsey	OH
LRH-2005-01385		Oxford	Halls Knob	Guernsey	OH
LRH-2007-01021		Oxford Mining	Kaiser Mathias	Tuscarawas	OH
LRP-2006-00660		Ohio American Energy	Red Bird South	Belmont	OH
LRP-2007-01180		Oxford Mining Company LLC	Ellis Area	Jefferson	OH
LRN-2004-00062		Premium Coal	Area 19	ANDERSON	TN
LRH-2003-00065		Hobet Mining	Hewett	Boone	WV
LRH-2004-00624		Independence Coal Company	Consitution Surface Mine	Boone	WV
LRH-2004-01155		Brooks Run Mining	Brandy St & Cove Mtn	Webster	WV
LRH-2004-01451		Independence Coal Company	Glory Surface Mine	Boone	WV
LRH-2005-00217		Bluestone	ContourAuger1	Wyoming	WV
LRH-2005-01115		Green Valley Coal Company	Blue Branch Refuse	Nicholas	WV
LRH-2005-01198		Marrowbone Development	Taywood W & Marrowbone	Mingo	WV
LRH-2005-01211		Premium Energy, Inc.	Premium Mills Surface Mine	McDowell	WV
LRH-2006-00756	LRH-2006-00100	ICG Eastern, LLC	Jenny Creek Surface Mine	Mingo	WV
LRH-2006-02033		Wildcat	#2 Surface	Kanawha	WV

Permit Number Listed in ECP	Revised Permit Number	Applicant Name	Project Name	County	State
LRH-2006-02290		Colony Bay Coal Co.	Colony Bay Surface Mine	Boone	WV
LRH-2007-00182		Alex Energy, Inc.	Federal Surface Mine	Nicholas	WV
LRH-2007-00285		Alex Energy, Inc.	Lonestar Surface Mine	Nicholas	WV
LRH-2007-00286		Pioneer Fuel	MT5B	Raleigh	WV
LRH-2008-00491		CONSOL of Energy	Buffalo Mt. Surface Mine	Mingo	WV
LRH-2008-00562		Eastern Associated Coals	Huff Creek Surface Mine	Wyoming/ Logan	WV
LRH-2008-00791		Hobet Mining	Surface Mine No. 45	Lincoln	WV
LRH-2008-00805		Coyote Coal Company	Joes Creek Surface Mine	Boone/ Kanawha	WV
LRH-2008-00830		CoalMac, Inc.	Pine Creek Surface Min	Logan	WV
LRH-2008-01098		Frasure Creek Mining	Spring Fork Surface Mine NO. 2	Mingo	WV
LRH-2009-00428		Consol of Kentucky	Spring Branch No. 3 Deep Mine	Mingo	WV
	LRH-2006-00760	Paynter Branch Mining	Paynter Branch South Surface Mine	Wyoming	WV
	LRH-2007-00134	Atlantic Leasco	Muddlety Surface Mine No. 1	Nicholas	WV