I. High Priority Areas: Mining Implementation in Virginia

II. Problem Description

Mining activities are one of the leading causes of water impairment in the Mid-Atlantic Region. For example, in Virginia's Tennessee-Big Sandy Basin, which includes most of the mines in Virginia, 16% of streams have been impaired by mining. Parameters of concern include iron, aluminum, manganese, chloride, Total Dissolved Solids (TDS), Total Dissolved Solids (TSS) and biological impairment. The office of NPDES Permits and Enforcement will work closely with VA DMME to ensure a strong NPDES regulatory program is in place to protect human health and the environment. This will be accomplished by coordinating with the state NPDES mining program to ensure that NPDES permits are issued in accordance with governing laws and regulations. Oversight and coordination with the mining enforcement program will reduce the noncompliance rate and identify opportunities for enforcement actions to address widespread noncompliance and multi-state mining operations.

III. Virginia Mining Program Status

Virginia administers the NPDES mining permitting and enforcement program in Region III. A 2015 state review framework (SRF) review confirmed DMME's progress implementing compliance and enforcement recommendations from a 2010 mining enforcement program review, although DMME does not document gravity and economic benefit considerations in enforcement penalty calculations. DMME continues work to enhance their NPDES data management capacity to meet the requirements of the NPDES Electronic Reporting Rule.

While Virginia's NPDES Mining program is small, their permits include valley fills and involve the narrative criterion and TMDL implementation, where TDS and TSS have been identified as the cause of water quality impairment. VA is attempting to implement watershed-wide wasteload allocations using the VA DMME TMDL Wasteload Evaluation Database . In 2010, EPA conducted a Mining NPDES PQR, which identified 5 areas for improvement, which have been included in section IV- Issues to be addressed.

IV. Issue to be Addressed

- Ensure VA DMME is implementing a strong NPDES permitting and enforcement program that meets Federal requirements.
- NPDES permitting of discharges from bond released mining activities and Outstanding Red River Coal specific objection.
- Penalty calculation methodology to incorporate economic benefit.
- Incorporation of the following considerations when developing mining permits:
    - Reasonable potential analysis (RP).
    - Inclusion of background water quality data in RP and water quality based effluent limit (WQBEL) development.
    - All parameters of concern identified as having RP have an assigned WQBEL.

  - Use of EPA criteria where the State lacks relevant water quality criteria, i.e., aluminum and chloride.
  - Where TMDLs identify specific waste load allocations for TDS, TSS or other parameter then the NPDES permits shall include WQBELs for those parameters consistent with the TMDL.
- VA's approach to addressing removal of instream outfalls should be evaluated.
- Resolve the VA Withdrawal petition.
- Ensure VA meets its obligations under the E-reporting Rule.

V. Activity Plan

- EPA will work with the VA DMME mining program to the remaining area of improvement identified in in the Round 3 SRF report, namely incorporation of economic benefit in the penalty calculation.
- Coordinate with VADMME to develop for federal fiscal year 2019 a strategy to address NPDES individually permitted major and non-major facilities in significant non-compliance and category 1 non-compliance. For those sources that are currently in significant noncompliance (SNC) or (category 1) CAT 1, EPA will work with VADMME to bring them into compliance in accordance with the expectations of the Enforcement Management System and if necessary use its inspection and enforcement authorities.
- EPA will conduct compliance assurance activities in consultation with VADMME where necessary.
- EPA will conduct quarterly enforcement calls to discuss facilities in Significant Non-Compliance/Category I Non-Compliance, SRF recommendations, State enforcement activities, areas where federal enforcement presence may be warranted and NPDES Electronic Reporting Rule implementation.
- If necessary, EPA will work with VA DMME on the development of an NPDES permit for the valley fill facilities where Virginia has removed instream ponds where discharges occur through man-made conveyances following consultation with EPA Headquarters.
- EPA will initiate monthly permit calls to address the following issues:
  - Explore options to development and implementation of processes to streamline and minimize realtime permit review.
  - Resolved the outstanding Red River Coal Mine Specific Objection.
  - Resolve Outstanding withdraw petition.
  - Development of an NPDES permit for the valley fill facilities where Virginia has removed instream ponds.
- EPA will develop, in consultation with DMME and other mining states, a mining permit and compliance assurance assessment program in 2018. EPA will conduct an assessment of the DMME mining program in 2019.
- Provide assistance to VADMME for NPDES Electronic Reporting Rule implementation activities through monthly conference calls with EPA Region 3.
- EPA will draft a response to the Petition to withdraw NPDES authorization in FY 2020
- EPA will continue to coordinate with VA DMME to monitor the following cases:

Case	*Action*	*Status*
Alpha Natural Resources	Consent Decree	Consent Decree Monitoring, Quarterly Reports. Considering consent decree modification and termination of certain facilities.
Arch Coal (ICG)	Consent Decree	Consent Decree Monitoring, Quarterly Reports
Southern Coal Corporation (Justice)	Consent Decree	Consent Decree Monitoring, Quarterly Reports. Considering consent decree modification. Recent demand letter sent for unpaid stipulated penalties.

VI. Resources Needs

Resource needs.

VII. Measures

The following measures will be tracked to determine success of this effort:

- Significant Non-Compliance and Category I violation rate.
- Complete Petition Response for NPDES Program Withdraw.
- Improvements in data metrics.
- Outstanding PQR/SRF/Mining Assessment Actions Addressed.
- Time for EPA review of permits.
- Permit Backlog.