To: William C. Early, Acting Regional Administrator, EPA Region III
A. Stanley Meiburg, Acting Regional Administrator, EPA Region IV
Bharat Mathur, Acting Regional Administrator, EPA Region V
COL Dionysios Anninos, District Commander, USACE Norfolk District
COL Dana R. Hurst, District Commander, USACE Huntington District
COL Michael P. Crall, District Commander, USACE Pittsburg District
COL Keith A. Landry, District Commander, USACE Louisville District
LTC Bernard R. Lindstrom, District Commander, USACE Nashville District

From: Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency

Terrence "Rock" Salt,
Acting Assistant Secretary (Civil Works)
Department of the Army

Re: Enhanced Surface Coal Mining Pending Permit Coordination Procedures

The Environmental Protection Agency (EPA) and the Department of the Army have developed enhanced coordination procedures to respond to the unique challenge before us in reviewing pending surface coal mine permit applications in Appalachia. The purpose of this enhanced coordination process is to provide for timely resolution of issues for those permits about which the agencies have substantial environmental concerns, ensure effective coordination among the agencies and consistent compliance with the requirements of the Clean Water Act (CWA), its regulations and relevant policy, and to expedite review and final decisions regarding pending permits for surface coal mining operations in Appalachian states (OH, PA, WV, VA, TN, and KY). It is also important that we provide additional transparency to the public during the enhanced coordination process. The attached Enhanced Coordination Procedures should be implemented immediately.

In accordance with the attached procedures, this process will apply to those permits for which the Corps of Engineers (Corps) has issued a public notice or coordinated with EPA through the Nationwide Permit coordination process by March 31, 2009. 108 CWA section 404 permit applications for surface coal mining activities in Appalachia will be subject to review in accordance with these procedures. (List attached) The timeframes established in the procedures will ensure timely coordination among the agencies and applicants as we make decisions under the CWA and our regulations.

We understand and appreciate the significant work already undertaken by you and your staff to coordinate in the review of pending CWA permits in Appalachia. We look forward to supporting your efforts as the Enhanced Coordination Procedures are implemented. Your staff should contact Mr. Brian Frazer, EPA Regulatory Branch Chief, or Meg Smith, Corps Regulatory Community of Practice, Chief, with any questions about these procedures.

Attachments

EPA/Corps of Engineers

Enhanced Coordination Process

for

Pending Clean Water Act Permits Involving Appalachian Surface Coal Mining[1]

Issue:

The Corps of Engineers (Corps) has determined there are 108 CWA section 404 permit applications under review for surface coal mining activities proposing to discharge fill material into the waters of the U.S. These applications are being reviewed in 5 Corps Districts covering 6 states (OH, PA, WV, VA, TN, and KY) in Appalachia where the mining is proposed. Many of these permits have been pending for over a year as a result of ongoing litigation and other issues. The review and evaluation of these pending permits poses a unique challenge for EPA and the Corps requiring an enhanced coordination process.

To deal with this unique challenge, EPA and the Corps hereby establish a process for enhanced coordination that:

1. expedites review and final decisions regarding all pending permits,
2. provides for timely resolution of issues for those permits about which EPA has raised substantial environmental concerns,
3. ensures effective coordination among the agencies and consistent compliance with applicable provisions of the Clean Water Act, its regulations and relevant policy, and
4. provides additional transparency to the public during the enhanced coordination period.

The procedures below will apply to applications for individual and Nationwide general permits for which the Corps has issued a public notice or coordinated with EPA through the NWP coordination process by March 31, 2009. These procedures will apply to EPA Regions 3 (Philadelphia), 4 (Atlanta), and 5 (Chicago), and Corps Districts Pittsburgh, Huntington, Louisville, Nashville, and Norfolk. The agencies will continue to rely on existing coordination and review procedures for permit applications public noticed or coordinated after March 31, 2009.

General Review and Coordination Procedures:

- In early March 2009, the Corps districts noted above prepared a list of pending permit applications where the districts anticipated reaching a final permit decision within 60 days. Of this list of 48 permit applications, EPA identified 6 permit applications for which they had substantial environmental concerns. Additional review and coordination was undertaken for these 6 permits. EPA notified the Corps that it did not have concerns about the remaining 42 permit applications. Normal processing of these applications is continuing and permits for several of these 42 have been issued.
- There are 108 permits (List Attached) for which public notices or pre-construction notifications were issued prior to March 31, 2009 that are being reviewed by EPA Regions 3, 4, and 5 in coordination with EPA HQ. Corps Districts will provide EPA Regions with additional available information, including additional information requested from permit applicants, as necessary, regarding these

[1] "Appalachian surface coal mining" refers to mining techniques requiring permits under both the Surface Mining Control and Reclamation Act (SMCRA) and Section 404 of the Clean Water Act (CWA), in the states of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

applications in response to EPA's written request. Within 45 days[2] of receipt of the additional data requested by EPA for these of permit applications, EPA Regions 3, 4, and 5, after review by EPA headquarters, will propose an initial list of permit applications about which the Regions have concerns and permit applications with which the Corps may proceed without further action by EPA. This initial list will identify the nature of environmental concerns EPA has identified, any steps recommended to be consistent with the Section 404(b)(1) guidelines, and actions EPA is recommending to respond to its concerns. EPA's evaluation of these permit applications will be based on the factual considerations shared previously with the Corps and EPA's views concerning compliance with existing statutory, regulatory, and policy provisions.

- The initial list developed by EPA will be transmitted to the Corps and made available to the public on the Websites of the EPA Region involved. Within 14 days after the proposed list is posted on the EPA Website, each EPA Region will identify to EPA headquarters those permit applications raising concern and applications that may proceed without further action by EPA. EPA HQ will then promptly submit to Corps HQ a consolidated EPA list of these permit applications. Permit applications raising concern will be subject to additional coordination and review following the procedures and timeframes identified below. Permit applications not subject to additional review and coordination may be acted on by the Corps without further coordination with EPA.

Enhanced EPA/Corps Coordination Procedures for Permit Applications of Substantial Concern:

- In order to facilitate timely resolution, each Corps District and EPA Region is encouraged to begin discussions immediately (i.e., before the 60 day clock is triggered below) on those permit applications requiring additional review and coordination. This coordination may include phone conversations, field visits, exchange of new information, and other steps that help to reduce the total time necessary to reach agreement on each permit.
- When a permit application is ready for enhanced coordination consistent with the procedures below, each Corps District will provide written notice to the EPA Region. This Corps determination will be based on workload considerations, completeness of information available on each application, and other factors to ensure that the following 60 day coordination process will be as effective as possible. Corps' determinations that particular permits are ready for coordination will be promptly posted on the relevant EPA Regional website.
- Upon receipt of notification from the Corps, each District and Region will begin immediately to coordinate to discuss permit applications EPA has identified as having remaining concerns in an effort to reach timely resolution. Other relevant parties including state agencies, permit applicants, and involved consultants shall be encouraged to participate to facilitate resolution. Each Corps District and EPA Region will have 60 days to coordinate and resolve each permit application of concern. The 60 days begins on the date EPA receives the Corps' written notice described above. Meetings may include face to face discussions or teleconferences. The agencies will coordinate to ensure that a sufficient number of meetings are held to provide an effective opportunity for resolution. Meetings should include all relevant parties including mining companies and their consultants, other state or federal agencies, and agency HQs. EPA and the Corps will strive to adhere to the 60 day timeframe for interagency coordination; however, when workload dictates or issue resolution warrants, EPA or the Corps may seek a 15 day time extension.
- Should the Corps choose to issue a permit after the conclusion of the coordination period and where there are unresolved issues, the Corps will provide, within 10 days after the close of the 60 day period,

[2] If any timeframes in this memo fall on a weekend or Federal holiday, that timeframe is automatically extended to the next business day.

their Regional counterpart a written notice of decision to issue a permit which details how the District is responding to concerns raised by EPA. Such responses may include, for example, revisions to approved discharges, special conditions, or mitigation requirements. The Corps is encouraged to provide EPA with a draft of the permit and decision documents during this period.

- Within 10 days after receipt of the written notice of decision, the EPA Region will either (1) advise the Corps District that it does not intend to pursue further action and the Corps, therefore, is free to make a permit decision or (2) initiate action under CWA Section 404(c)

Considerations:

- These procedures and timeframes are intended to facilitate effective and timely coordination and the agencies will work to adhere to them to the maximum practical extent, recognizing that flexibility may be needed under particular circumstances. The timeframes may be shortened or extended by mutual agreement among the agencies.
- Full and open sharing of information among the agencies is necessary for efficient review of proposed projects.
- This document does not, and is not intended to, impose any legally binding requirements on Federal agencies, States, or the regulated public, and does not restrict the authority of the employees of the signatory agencies to exercise their discretion in each case to make regulatory decisions based on their judgment about the specific facts and application of relevant statutes and regulations.
- The policy and procedures contained within this document are intended solely as guidance and do not create any rights, substantive or procedural, enforceable by any party. This document does not constitute final agency action on any issue, and any actions contemplated by this document will be carried out in an appropriate administrative process by the agencies in accordance with all applicable laws and regulations.

Effective Date: June 11, 2009

Attachment: List of 108 Permits

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Huntington	200300065	S-5027-99	Hobet Mining	Hewett
Huntington	200400336	898-0715	Bear Fork	Bear Fork
Huntington	200400624	S-5025-97	Independence Coal Company	Constitution Surface Mine
Huntington	200400867	S-45014-04	Central Appal Mining	Remining No. 3
Huntington	200401152	10296	Buckingham Coal	Buckingham Wash Plant
Huntington	200401155	S-2001-05	Brooks Run Mining	Brandy St & Cove Mtn
Huntington	200401451	S-5001-02	Independence Coal Company	Glory Surface Mine
Huntington	200500167	U-3004-06	Catenary Coal Co.	Tenmile Fork Deep Mine
Huntington	200500217	S-4014-01	Bluestone	Contour Auger 1
Huntington	200500421	D-2295	Oxford	Peabody 3
Huntington	200500753	D-2290-1	Oxford Mining	Long Sears Adjacent
Huntington	200500934	898-5694 Am5	Premier Elkhorn	U/T Old Beefhide
Huntington	200501115	O-10-83IBR9	Green Valley Coal Company	Blue Branch Refuse
Huntington	200501198	S-5008-02 S-5021-01	Marrowbone Development	Taywood W & Marrowbone
Huntington	200501211	S-5020-99 AM3	Premium Energy, Inc.	Premium Mills Surface Mine
Huntington	200501275	10397	Oxford	Mizer
Huntington	200501385	10400	Oxford	Halls Knob

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Huntington	200600100	S-5009-00	ICG Eastern, LLC	Jenny Creek Surface Mine
Huntington	200600126	860-0390 Am4	Consol of KY	Area 80
Huntington	200600127	860-5260 Am1	Consol of KY	Slone Br Mine
Huntington	200600821	U-3001-98 IBR5	Catenary Coal Co.	Laurel Fork
Huntington	200602033	S-3016-06	Wildcat	No. 2 Surface
Huntington	200602256	10379	Oxford Mining	Horn
Huntington	200602290	S-7-81	Colony Bay Coal Co.	Colony Bay Surface Mine
Huntington	200700182	S-3011-07	Alex Energy, Inc.	Federal Surface Mine
Huntington	200700282	U-4012-06	Pioneer Fuel	Little Eagle
Huntington	200700285	S-3009-07	Alex Energy, Inc.	Lonestar Surface Mine
Huntington	200700286	S-3010-06	Pioneer Fuel	MT5B
Huntington	200700499	10372	Oxford Mining	Page
Huntington	200700708	10391	Surface Mining Inc	Young Property
Huntington	200701021	10405	Oxford Mining	Kaiser Mathias
Huntington	200800114	U-3016-95	Performance Coal Company	Upper Big Branch Deep Mine
Huntington	200800491	S-5002-07	CONSOL of Energy	Buffalo Mt. Surface Mine
Huntington	200800562	S-4004-07	Eastern Associated Coals	Huff Creek Surface Mine

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Huntington	200800791	S-5002-07	Hobet Mining	Surface Mine No. 45
Huntington	200800805	S-3001-08	Coyote Coal Company	Joes Creek Surface Mine
Huntington	200800830	S-5006-07	CoalMac, Inc.	Pine Creek Surface Mine
Huntington	200800935	U-5010-08	Hampden Coal	Harrys Br
Huntington	200801098	S-5018-08	Frasure Creek Mining	Spring Fork Surface Mine No. 2
Huntington	200802160	10403	B&N Coal	Whigville III
Huntington	200900427	U-5023-92	Argus Energy WV, LLC	Devils Trace No. 2 Punchout
Huntington	200900428	U-5031-08	Consol of Kentucky	Spring Branch No. 3 Deep Mine
Louisville	200301276	897-0430 A1	Candle Ridge Mining	Candle Ridge Mining
Louisville	200500851	867-0440	Cheyenne Resources	Cheyenne Resources
Louisville	200501893	895-0171	Sturgeon Mining	Sturgeon Mining
Louisville	200600756	897-0457 A2	ICG Hazard	ICG Hazard
Louisville	200601124	836-5488, 836-0317	Matt/Co	Matt/Co
Louisville	200601290	877-0167, 877-0168	Licking River Resources	Licking River Resources
Louisville	200601296	898-4150 A1	Clintwood Elkhorn	Clintwood Elkhorn
Louisville	200700069	898-0803	CAM Mining	Cane Branch
Louisville	200700193	898-0400	Premier Elkhorn Coal	Premier Elkhorn Coal

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Louisville	200700217	897-0480	Leeco, Inc.	Stacy Branch Surface Mine
Louisville	200700335	898-0607	Apex Energy	Apex Energy
Louisville	200700393	867-0456	Consol of KY	Razorblade Surface Mine
Louisville	200700400	895-0177	Candle Ridge Mining	Candle Ridge Mining
Louisville	200700400	864-0195	Argus Energy	Argus Engergy
Louisville	200700594	898-0800	Premier Elkhorn Coal	Premier Elkhorn Coal
Louisville	200700595	860-0455	Leeco, Inc.	Elk Lick
Louisville	200700669	836-0338	Miller Bros. Coal	Miller Bros. Coal
Louisville	200700706	858-0206	Johnson Floyd Coal	Johnson Floyd Coal
Louisville	200700733	880-5071	Martin County Coal	Martin County Coal
Louisville	200700815	877-0176	Licking River Resources	Licking River Resources
Louisville	200700867	898-0779	CAM Mining	CAM Mining
Louisville	200701026	836-0341 A1	Frasure Creek Mining	Frasure Creek Mining
Louisville	200701044	898-0712	Apex Energy	Apex Energy
Louisville	200701104	836-0292 A1	The Raven Co.	The Raven Co.
Louisville	200701131	836-0335 A2	Miller Bros. Coal	Miller Bros. Coal
Louisville	200701132	836-0349	Miller Bros. Coal	Frasure Branch Mine

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Louisville	200701190	897-0355 A3	Pine Branch Coal	Pine Branch Coal
Louisville	200701205	836-0307	Matt/Co	Matt/Co
Louisville	200701206	877-0782	Frasure Creek Mining	Frasure Creek Mining
Louisville	200701224	860-5304	Miller Bros. Coal	Miller Bros. Coal
Louisville	200701230	860-8012	ICG Knott Co.	ICG Knott Co.
Louisville	200701301	836-0335	CAM Mining	Tom's Branch Surface Mine
Louisville	200701397	836-0350	FCDC	FCDC
Louisville	200701406	860-0462	ICG Hazard	Bearville North
Louisville	200701445	836-0339	FCDC	FCDC
Louisville	200701504	898-0783 A3	CAM Mining	CAM Mining
Louisville	200701515	897-0456 A10	ICG Hazard	ICG Hazard
Louisville	200701518	898-0799	Clintwood Elkhorn	Clintwood Elkhorn
Louisville	200701582	813-0319	Miller Bros. Coal	Miller Bros. Coal
Louisville	200701644	877-0166	Consol of KY	Consol of KY
Louisville	200701660	880-0066	Martin County Coal	Findlay Branch Mine
Louisville	200800095	898-0817	Premier Elkhorn Coal	Premier Elkhorn Coal
Louisville	200800114	897-0445 A1	BDCC Holdings	Cherries Branch

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Louisville	200800115	836-0356	Wolverine Resources	Jake Fork and Stoney Branch Surface Mine
Louisville	200800138	807-0352	Chas Coal	Chas Coal
Louisville	200800139	898-0646 A1	Apex Energy	Apex Energy
Louisville	200800226	880-8002 A4	Czar Coal	Czar Coal
Louisville	200800239	813-0328	Frasure Creek Mining	Frasure Creek Mining
Louisville	200800408	880-0156	Czar Coal	Czar Coal
Louisville	200800525	877-0191	Middle Fork	Middle Fork
Louisville	200800654	860-0464	Enterprise Mining	Enterprise Mining
Louisville	200800727	813-0310 A1	Miller Bros. Coal	Miller Bros. Coal
Louisville	200800777	897-0455 A3	ICG Hazard	ICG Hazard
Louisville	200800781	836-0348	Wolverine Resources	Wolverine Resources
Louisville	200801368	919-0067	North Fork Collieries	Gilmore Surface Mine
Nashville	200201435	3064	Premium Coal	Refuse Area No.3
Nashville	200400062	3143	Premium Coal	Area 19
Nashville	200400609	3112	Appolo Fuels	Jellico Strip
Nashville	200401108	918-0392	Ikerd Coal	Ikerd Coal
Nashville	200401391	861-0467	CH Development	CH Development

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Nashville	200501691	3191	Appolo Fuels	Buckeye Springs Mine No. 2
Nashville	200601647	807-0342	Nally & Hamilton	Nally & Hamilton
Nashville	200700820	807-0355	Nally & Hamilton	Nally & Hamilton
Nashville	200900382	8502	Tennessee Land Reclamation	Cherry Branch Reclamation Project
Pittsburgh	200600660	10395	Ohio American Energy	Red Bird South
Pittsburgh	200701180	10399	Oxford Mining Company LLC	Ellis Area