



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 28 2009

Colonel Dana R. Hurst
District Engineer
U.S. Army Corps of Engineers, Huntington District
502 Eighth Street
Huntington, West Virginia 25701

Re: DA Permit No. 2004-1400; Central Appalachia Mining, LLC
Pre-Construction Notification and Compensatory Mitigation Plan
KYDNR Permit No. 898-0610
Big Branch Surface Mine – Pike County, KY

Dear Colonel Hurst:

I am writing to inform you that the U.S. Environmental Protection Agency (EPA) is initiating review, under Section 404(c) of the Clean Water Act, of the proposed Big Branch Surface Mine in Pike County, Kentucky (Big Branch Mine). EPA is taking this step because we are concerned the recommended project plan could result in unacceptable adverse effects on the aquatic ecosystem, particularly to water quality and fish and wildlife resources. This letter notifies you that, pursuant to 40 CFR §231.3(a), EPA intends to issue a public notice of a proposed determination to restrict or prohibit the discharge of dredged or fill material at the Big Branch Mine, Pike County, Kentucky, project site.

EPA has expressed its longstanding concerns about this project because it would impact aquatic ecosystems on a large scale, affecting approximately 22,233 linear feet of waters of the United States. We formally shared these concerns in our letters dated July 22, 2005, August 16, 2005, and December 21, 2007, during the review of the 404 permit application. More recently, in a letter dated March 23, 2009, EPA stated that we have significant concerns regarding the proposed project, including the magnitude of the anticipated stream impacts, compliance with the Section 404(b)(1) Guidelines, and uncertainties with the proposed mitigation plans.


With the District's assistance, we had recently begun discussions with the mine operator to clarify remaining EPA concerns and options the company might reasonably pursue to address those concerns. At the April 16 meeting in Kentucky, there was a commitment to proceed with additional conversations. We now understand the company has informed the Corps that they are not prepared to participate in additional conversations about this project with EPA. As a result, EPA needs to begin this 404(c) review to complete the environmental assessment of the proposed mine.

EPA is initiating this 404(c) action based on the record to date and our assessment that efforts to avoid and minimize impacts to aquatic resources have not yet been exhausted and, as a result, the project may cause or contribute to significant degradation of the aquatic environment, including impacts to fish and wildlife. Specific concerns include the cumulative impacts of this project on the watershed, considering both the direct fill of natural stream channels and the indirect effects of such fill activities on downstream water quality across the watershed, and inadequate avoidance and minimization of impacts to aquatic resources of national importance (ARNI). EPA feels that additional measures may be available to reduce the impact of this proposal, and that all alternatives should be exhausted to ensure that this proposal does not result in an unacceptable adverse impact, either individually or cumulatively, on the aquatic environment.

EPA's regulations on Section 404(c) procedures provide for further coordination between EPA, the Corps of Engineers and the applicant, Central Appalachia Mining, LLC. Consistent with EPA regulations at 40 CFR §231.3(a)(2), EPA is providing the Corps and Central Appalachia Mining with an opportunity to submit any additional information for the record to demonstrate that no unacceptable adverse impacts would occur from this project, or that corrective action will be taken satisfactory to EPA to prevent such adverse effects. EPA is available to meet with you and the permit applicant during the next 15 days to discuss options for further reducing adverse environmental impacts associated with the proposed project. We encourage you to contact us to schedule a discussion as soon as possible.

I appreciate your prompt attention to this matter. If you have any questions or wish to arrange a meeting to discuss potential project modifications to reduce unacceptable adverse impacts, please contact me at 404-562-8357 or Jim Giattina, EPA Region 4 Director of the Water Protection Division, at 404-562-9470.

Sincerely,


A. Stanley Meiburg
Acting Regional Administrator

cc: Central Appalachia Mining, LLC
Michael H. Shapiro
Acting Assistant Administrator
Office of Water, EPA