

US EPA ARCHIVE DOCUMENT



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

Ms. Barbara S. Taylor, Chief
Office of Water Resources
West Virginia Division
of Environmental Protection
1201 Greenbrier St.
Charleston, WV 25311

Re: Draft NPDES Permit No. WV1017021
Hobet Mining, Inc.
Spruce No. 1 Surface Mine
Blair, Logan County, WV

Dear Ms. Taylor:

On August 4, 1998, the Environmental Protection Agency (EPA) issued a specific objection to the referenced National Pollutant Discharge Elimination System (NPDES) draft permit due to environmental concerns with valley fills, instream sedimentation ponds, and discharges associated with the proposed surface mine. Our concerns included compliance with the Clean Water Act and the West Virginia Water Quality Standards, particularly the Anti-Degradation Policy. Since that time, there has been much discussion of the issues, and a number of improvements affecting water quality have occurred. The purpose of this letter is to conditionally withdraw our objection based on our understanding with the West Virginia Division of Environmental Protection (DEP), and follow up confirmation by receipt of a revised draft NPDES permit, that the conditions listed below under "Conditions for Withdrawal of Objection" will be satisfied.

Background of Specific Objection - The draft NPDES permit to which EPA objected on August 4, 1998, and which was resubmitted to EPA on November 2, 1998 with minor revisions, was for authorization of treated discharges from an approximately five square mile, mountaintop mining project which was planned to be operated during an 11 to 13 year period. The proposed mine included five valley fills and sedimentation ponds covering a total of approximately 12 surface acres of streams. Four of the proposed fills were significant in length - three being about one mile long and one being about one and two-thirds mile long. EPA's objection letter of August 4, 1998, provided conditions for withdrawing its objection, summarized as follows: minimization of the valley fills and associated instream sedimentation ponds to the extent feasible; adequate mitigation compensation for stream impacts from any remaining instream fills and ponds; and minimization of environmental impacts. In the August 4, 1998, objection letter, EPA also indicated that it lacked sufficient information to evaluate the potential impacts of the proposed project, including downstream and cumulative impacts.

Public Hearing - Due to intense public interest and requests for a public hearing, EPA scheduled a public hearing on October 24, 1998, in Logan, West Virginia to receive comments on its objection to the draft NPDES permit for Hobet Mining's Spruce No. 1 Surface Mine, as well as its objection to a draft permit for another mountaintop mining operation. Approximately 1,000 people attended, 100 oral comments were taken, and 600 written comments were sent to EPA, including petitions with thousands of signatures. It was apparent to EPA from the many informative comments, that there were serious environmental concerns regarding proposed valley fills and landscape changes, as well as serious economic concerns in this economically depressed part of the state, particularly layoffs due to interruption of the proposed continuation of Hobet Mining's activity onto the Spruce No. 1 site from a nearby site.

Resolution

EPA determined that it could allow discharges from significantly reduced valley fills during the five-year NPDES permit life if additional permit conditions and mitigation compensation conditions were agreed upon. Hobet Mining subsequently agreed to significantly cut back the extent of its valley fills and associated ponds. The revised lengths of fills and ponds will reduce stream coverage by about 40 percent. Specific reductions in proposed fills lengths are as follows: Pigeonroost Branch fill to be reduced by 3,000 ft.; Oldhouse Branch fill to be reduced by 2,500 ft.; White Oak Branch fill to be eliminated; and the fill on the small tributary of Pigeonroost Branch to be eliminated. Hobet Mining also agreed to significant additional permit conditions and mitigation compensation conditions. This permitting approach will allow limited mining and discharging during the five-year permit period, averting pending economic hardships from layoffs, while requiring mitigation compensation for the limited stream portions filled.

An important concern to EPA is the cumulative effect of past and future mining operations on the environment, including downstream water resources. EPA determined that a comprehensive evaluation of environmental impacts of mountaintop mining and valley filling would be necessary to provide informed decisions on these type of operations. During the first two years of Hobet Mining's five-year NPDES permit, EPA will join with other federal and state agencies to undertake a comprehensive environmental evaluation of impacts and possible alternatives associated with mountaintop mining and associated valley filling in West Virginia and other mountaintop mining states. EPA will use the findings from this evaluation in review of any draft NPDES permit which may be applied for by the company for extending its valley fills and associated discharge points.

Conditions for Withdrawal of Objection

EPA withdraws its objection to the referenced draft NPDES permit to Hobet Mining under the following four conditions:

1. The discharge of all fill material in connection with the Spruce No. 1 Surface Mine, as currently proposed, and any future proposed downstream extensions of valley fills or associated sedimentation ponds must be authorized by a Clean Water Act Section 404 permit;

2. Any discharges which would result from any proposed downstream extensions of valley fills or associated sedimentation ponds must be applied for, and receive, authorization under Clean Water Act Section 402;

3. EPA must receive written assurance of the following:

(a) The Compensation Agreement between WVDEP and Hobet dated May 13, 1998 and amended November 2, 1998 will be revised to include the terms and conditions listed in Attachment A;

(b) The revised Compensation Agreement will be submitted to the U.S. Army Corps of Engineers (Corps) as the state-approved mitigation plan and will be part of the State of West Virginia's certification under Section 401 of the Clean Water Act of any authorization by the Corps pursuant to Section 404 of the Clean Water Act. It is EPA's understanding that, by incorporating the revised Compensation Agreement as part of the State's Section 401 certification, the revised Compensation Agreement will become a condition of any authorization by the Corps pursuant to Section 404 of the Clean Water Act. See 33 C.F.R. §§ 325.4(a) & 330.6(a)(i); and

4. EPA must receive a revised draft permit from DEP which includes the following NPDES permit conditions:

(a) Maintain inclusion of Conditions D. 5 (Bio-monitoring), D. 6 (Electro-fishing Surveys), and D. 7 (Quality Assurance Program), all of which are in the draft NPDES permit forwarded to EPA by DEP on November 2, 1998; and

(b) Inclusion of the following additional permit conditions:

(1) Hobet will follow the mining sequence indicated on the phase maps provided to EPA on December 18, 1998, to the extent feasible. It is understood that the mining phase maps will become part of the mining permit issued by DEP under the Surface Mining Control and Reclamation Act. The discharging of fill material in any of the mining phases must also be authorized by a Clean Water Act Section 404 permit. The company will follow, to the extent feasible, the time estimates it verbally provided to EPA on December 18, 1998 for the periods between the start of the Spruce No. 1 Surface Mine to the end of each mining phase. The proposed mining phases, subject to receiving appropriate authorizations from DEP, and the time estimates approximated by the company for the completion of the proposed mining phases, are changes from previously proposed phases and time estimates, and are listed as follows:

- The company proposes to conduct contour mining along the northern side of Pigeonroost Branch (the portion extending downstream from Sediment Control Pond No. 2I) during Phase 7 (7 years), rather than Phase 4 (3 years);

- The company proposes to conduct contour mining along the northern side of Old House Branch (the portion extending downstream from the crest of Valley Fill No. 4) during Phase 5 (4-1/2 years), rather than Phase 3 (2 years);
- The company proposes to conduct contour mining along the southern side of Old House Branch (the portion extending downstream from the crest of Valley Fill No. 4) during Phase 6 (5 years); rather than Phase 3 (2 years); and
- The company proposes to conduct contour mining along all of the northern side of White Oak Branch during Phase 6 (5 years); rather than Phase 3 (2 years).

(2) Hobet will comply, to the extent feasible, that no discharges will enter White Oak Branch from any mining activity until Phase 6 (5 years), or later, subject to receiving the appropriate authorizations. The company will accomplish its plans for diverting drainage from its planned mining area during Phase 2 in the extreme northern part of the White Oak Branch to the Pigeonroost Branch watershed for treatment;

(3) Except as specifically authorized by an individual Clean Water Act Section 404 permit following a review pursuant to the National Environmental Policy Act, the company will not place fill material in either White Oak Branch or the tributary of Pigeonroost Branch where Valley Fill No. 3 was originally planned, and it will not extend Valley Fill No. 2 in Pigeonroost Branch or Valley Fill No. 4 in Old House Branch beyond the areas indicated on the Stage 1 Drainage Map provided dated December 1998 and the phase maps provided on December 18, 1998;

(4) All discharges leaving the mining and reclamation areas, including discharges from temporary sediment control structures, must be covered by an NPDES permit and comply with effluent limitations and other appropriate permit conditions;

(5) The company will insure that the drainage ways are adequate to transport discharges from all outfalls, including those from on-bench sediment control structures, to the receiving streams without causing erosion and resulting contributions of sediment to the receiving streams. The company will provide structural or other measures which minimize erosion, provide periodic inspections to assure erosion control, and take timely steps to remedy any erosion problems which may develop; and

(6) The company will design, construct, and operate Sediment Control Pond No. 2I in Pigeonroost Branch and Sediment Control Pond No. 4I in Oldhouse Branch so that flow characteristics from these structures will approximate pre-mining conditions to the extent feasible.

If you have any questions, or if we can be of any assistance in this matter, please contact me or have your staff call Dan Sweeney at (215) 814-5731.

Sincerely,

W. Michael McCabe
Regional Administrator

cc: John McDaniel, Hobet Mining
Michael Miano, WVDEP
Ken Politan, WVDEP
Michael Gheen, COE, Huntington