

US EPA ARCHIVE DOCUMENT



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

28 APR 2009

Colonel Dana R. Hurst  
District Engineer  
Huntington District  
U.S. Army Corps of Engineers  
502 Eighth Street  
Huntington, West Virginia 25701-2070

Re: PN 2007-000099-GUY; Highland Mining Company, Reylas Surface Mine

Dear Colonel Hurst:

On April 16, 2009 the Environmental Protection Agency met with members of your staff, the West Virginia Department of Environmental Protection (WVDEP), and representatives of Massey and Highland Mining Companies. At this meeting we discussed EPA's concerns regarding this proposed project and addressed questions raised by the applicant. EPA reiterated our concerns regarding the direct impacts associated with the footprint of the mine area and valley fills, the potential for downstream aquatic life use impairment, the potential cumulative impacts to the watershed, NEPA related issues including post mining land use, and mitigation. EPA committed to providing the Corps and the applicant specific recommendations to address and adequately resolve these concerns. The recommendations provided herein are intended to address our concerns regarding the proposed Reylas Surface Mine, based on the information currently available to EPA and taking into consideration factors that may be specific to that proposed project.

As you are aware, a section 404 permit may be issued only after the applicant has taken all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States. EPA does not believe that it has been demonstrated that all practicable avoidance and minimization has been incorporated into the project as currently proposed, nor have cumulative impacts been adequately addressed. Based on the available information, it is our understanding that there is no agreement in place with FEMA regarding the proposed postmining land use of emergency housing for residents affected by flooding events. Given that understanding, the record would need to demonstrate that there is a potential need for such a use in the future. If it is demonstrated that there is in fact such a need, the applicant should submit an analysis of alternatives for locating the emergency housing and demonstrate the area needed for this postmining use. Absent such a demonstration, alternatives must be evaluated which would avoid and minimize stream impacts from construction of the valley fill. Options that should be



considered to maximize avoidance include returning overburden to the approximate original contour (AOC) or AOC+, and further backfill of overburden onto the proposed valley fill (VF) or other existing VFs constructed by the company elsewhere where appropriate from a mining safety and stability standpoint.

As set forth in our letter dated March 23, 2008, the Section 404(b)(1) Guidelines also require consideration of water quality issues. Accordingly, the permit should include the following condition: "The discharge of dredged and/or fill material to waters of the United States and any other discharge associated with the discharge of dredged and/or fill material shall not cause or contribute to violations of any applicable State water quality standard, including applicable designated uses, narrative criteria, and antidegradation. The discharge of dredged and/or fill material to waters of the United States and any other discharge associated with the discharge of dredged and/or fill material shall not cause or contribute to the significant degradation of waters of the United States as that term is defined in the Section 404(b)(1) Guidelines, 40 C.F.R. Part 230." EPA also requests that the Corps incorporate monitoring conditions into the permit which require the applicant to conduct appropriate instream monitoring, effluent characterization of the discharge below the valley fills and monitoring of the effluent, to ensure that discharges associated with the project do not cause excursions from applicable water quality standards at points downstream of the valley fills, and thus are not inconsistent with that requirement in the Section 404(b)(1) Guidelines. This monitoring data should be provided to both the Corps and EPA consistent with the reporting requirements and sampling locations that EPA will provide to the Corps by May 31, 2009. EPA also recommends that the applicant develop an adaptive management plan that includes best management practices (BMPs) or best available technologies (BATs) to address potential site specific and cumulative impacts to water quality to address any adverse findings in the monitoring reports. We further recommend that the Corps include the development and approval of the adaptive management plan as a condition in the Section 404 permit.

Lastly, EPA requests that the applicant submit a revised mitigation plan. EPA disagrees with the use of groin ditches as compensatory mitigation for the loss of natural stream channels due to a lack of evidence demonstrating that these artificial, rock lined structures effectively replace lost stream functions or provide fresh, clean water dilution to downstream receiving waters. As such, the applicant's revised plan should ensure the replacement of the lost functions and services of the impacted streams within 12-digit HUC watershed in which the project will be located. The plan should be designed to ensure that created stream channels will match the lost flow regime (frequency, duration and seasonality of flow annually), provide the same structural habitat (riffle/pool, step/pool, shading, etc.), and meet the same water chemistry characteristics (hardness, pH, conductance), and also support the same biologic communities (macroinvertebrates, fish, etc). The mitigation should be conducted at a 2:1 ratio and incorporate performance standards which include observable or measureable physical (including hydrological), chemical, and biological measures to determine if the compensatory mitigation project meets its objectives.



Thank you for the opportunity to discuss these issues and consider these recommendations to facilitate the issuance of the permit for the Highland Mining Company's Reylas Surface Mine. Should you have any questions or concerns please contact me at 215-814-2702.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Pomponio". The signature is fluid and cursive, with the first name "John" and last name "Pomponio" clearly distinguishable.

John R. Pomponio, Director  
Environmental Assessment and Innovation Division

