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

JUN - 8 2010

Colonel Robert D. Peterson
District Engineer
U.S. Army Corps of Engineers
Huntington District
502 Eighth Street
Huntington, WV 25701

Dear Colonel Peterson:

On May 14, 2010, the U.S. Environmental Protection Agency (EPA) provided comments in response to the public notice (PN LRH-2009-17-TUG) for Meadow Fork Mining Company, LLC's proposed Powdermill Surface Mine located near Fort Gay, Wayne County, West Virginia. The project's proposal involves the placement of fill material into 9,836 linear feet of unnamed tributaries of Powdermill Branch of Tug Fork, near Fort Gay, Wayne County, West Virginia. EPA indicated in the previous letter that the project as currently proposed may not comply with the Section 404(b)(1) Guidelines, adversely affect water quality and result in significant degradation to the aquatic ecosystem, and that efforts be considered to address such impacts. Those prior comments are incorporated herein by reference. Additional information has not been provided to address the concerns described in EPA's May 14, 2010 letter. EPA continues to be concerned that this project may not satisfy the Clean Water Act Section 404(b)(1) Guidelines, 40 C.F.R. Part 230, that form the substantive environmental criteria upon which permit decisions are based.

The project is located in the Lost Creek-Tug Fork Subwatershed (HUC-12) and the Tug Fork Sub Basin (HUC 8). Aerial photography of the area indicates disturbance in the lower areas of Powdermill Branch, but the headwaters appear to be intact forest. The aerial photos also show that the subwatershed has experienced minimal disturbance from surface mining activities. The unnamed tributaries that are proposed to be impacted and the upper sections of Powdermill Branch are likely vital to maintaining the current conditions of downstream sections of the stream by providing clean, fresh water dilution to degraded downstream sections of the stream. As stated in our previous letter, the best information available to EPA, including published, peer-reviewed studies, indicate the activities proposed by the applicant, i.e., surface mining with valley fills in Central Appalachia, are strongly correlated to downstream biological impairment.

As stated in EPA's May 14, 2010 letter, EPA released interim final guidance to the Regional offices titled: *Guidance on Improving EPA Review of Appalachian Surface Coal Mining Operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order* (SCM Guidance) on April 1, 2010. The SCM Guidance

provides a framework for the Regions in reviewing permits for discharges associated with Appalachian surface mining projects. At the same time, EPA released two Office of Research and Development (ORD) reports: *The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields* and *A Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams (Benchmark Conductivity Study).* These documents inform EPA's review of proposed surface mining projects. Based on the information available to EPA, including the above documents, and in the absence of additional site-specific information in response to EPA's May 14, 2010 letter, EPA believes that the project, as proposed, will result in substantial and unacceptable impacts to aquatic resources covered in Part IV of the 1992 Clean Water Act Section 404(q) Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army.

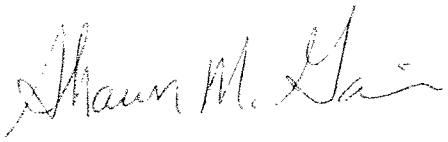
To address our concerns, EPA offers the following recommendations to the Corps and the applicant:

- Identify all appropriate and practicable alternatives to avoid and minimize impacts to waters of the United States. The concept of avoidance and minimization incorporates not only the footprint of the valley fills but also includes construction techniques or best management practices that will avoid or minimize adverse water quality impacts to downstream waters.
- Provide a detailed demonstration of the use and effectiveness of such techniques to avoid significant degradation and adverse downstream water quality impacts identified through the alternative analysis above.
- Incorporate into the mine plan "sequencing" of the construction of valley fills. In this context, the term "sequencing" refers to the construction of one valley fill at a time combined with a demonstration that construction has not caused or contributed to significant degradation and/or an excursion from applicable water quality standards before the applicant proceeds to the construction of the next valley fill.
- Develop an adaptive remedial action plan that includes a robust monitoring plan that will adequately assess the effluent and its constituents and include biological sampling. Thresholds need to be established along with a trigger for implementation of a response plan to prevent conductivity level from rising to levels that may contribute to water quality degradation. EPA expects conductivity impacts of projects with predicted conductivity values below 300 µS/cm generally are not likely to cause water quality violations or significant degradation of the aquatic ecosystem. Discharges with levels of conductivity above 500 µS/cm generally are likely to be associated with adverse impacts that could cause or contribute to significant degradation and/or excursions from narrative water quality criteria.
- The mitigation plan should include a monitoring plan that includes observable and measureable biological and chemical parameters along with the proposed physical parameters as benchmarks for success and require demonstration of success within a defined time period.

- EPA recommends that the Corps conduct a thorough cumulative effects analysis which includes a detailed presentation of past, present and reasonably foreseeable activities, fully analyzes the current state of the aquatic ecosystem and considers the affects on the human environment including impacts to the subwatershed from the filling of streams that currently provide freshwater dilution and potential impacts to private drinking water wells and other drinking water supplies.

EPA believes there are opportunities to address the concerns we have raised and look forward to working with the Corps and the applicant to explore the recommendations provided by EPA and other opportunities the Corps and applicant wish to introduce and discuss. If you have any questions or concerns, please do not hesitate to contact me or Mr. John R. Pomponio of my staff at 215-814-2702.

Sincerely,



Shawn M. Garvin
Regional Administrator