

## February 3, 2010 Talking Points

### JANUARY – MARCH 2009

First EPA changes -- EPA issued objection letters on three 404 permit applications between January and March of 2009.

- Caught everyone off guard.
- Objection letters stated EPA's concerns but **provided no detail regarding how those concerns should be addressed.**

### MARCH 2009 – PRESENT

**At least 12 additional objection letters** have been issued by the EPA since last March.

- All of the letters either contain the threat of veto action by EPA or have otherwise served to **indefinitely** delay issuance by the Corps of Engineers.
- The EPA has only vetoed twelve 404 permits in the history of the Clean Water Act -- nearly 40 years.

This sudden change of direction by EPA stalled numerous permit applications that were nearing the end of the review process by the Corps.

### 23 PERMITS NOW UNDER ADDITIONAL "REVIEW"

- In WV, **23 have been identified as subject to the new Enhanced Coordination Process (ECP).**
- There were only a handful of applications last year that EPA did not comment on or subject to the ECP.
- All future permits are subject to the ECP.

The Huntington District generally reviews and approves over a dozen Individual (IP) 404 permits in WV each year. **Since January 2009 only three IPs have been approved, including Hobet 45.**

## **NEW APPROVAL PROCESS LACKS CLARITY**

The most recent approval of the Hobet 45 permit was successfully negotiated between the EPA, the Corps and the company. *The state regulatory program was excluded from these negotiations.*

- Hobet 45 approval presumably would be the new model around which future permits could be structured.
- EPA said the Hobet 45 approval was not a model. From a legal, regulatory, and scientific perspective, this is difficult to understand.

## **SPRUCE MINE PERMIT DELAYS**

The Spruce Mine is a permit that was approved by the Corps of Engineers in January 2007.

- It was the most scrutinized surface mining permit in Appalachian coal mining history, **undergoing reviews, including a robust Environmental Impact Statement, for over 10 years.**
- EPA issued an objection letter for Spruce nearly two years *after permit issuance* and intends to veto the permit if changes are not made.

## **LACK OF CLARITY CREATES UNCERTAINTY IN THE INDUSTRY**

These abrupt changes and unclear regulatory process since January 2009 have created uncertainty in the mining industry.

- EPA has still not provided guidance for how the industry can alleviate any of the EPA's environmental concerns.
- **EPA has not provided guidance or standards to which the industry should be held.**
- This lack of clarity hinders investment decisions and environmental permitting processes, both of which begin years in advance of the startup of a mining operation.

## **WEST VIRGINIA IS ASKING FOR CLARITY IN THE PROCESS**

WV has been asking for clarity for over a year and has received none.

- **Clarity DOES NOT MEAN a pass on environmental protection.**
- Addressing EPA's concerns on 404 permits will require changes in other state-issued environmental permits.
- EPA holds all the cards on establishing the new culture of mining.
- WV simply wants to know what the new culture is going to look like.
- WV has never argued the position of status quo.

**EPA has chosen to engage at the end of a lengthy process without respect for the rules as they were understood during the process.**

\*all information in this document is related to activities regulated under the authority of the Huntington District Corps of Engineers.