



Division of Mining & Reclamation

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EPA Update – March 2012

- March 2012 – WV Legislature Adopts SB 562
- Codifies Previous HCR 111 as State Law
- Narrative WQS Requires Evaluation of Holistic Health of the Whole of the Aquatic Ecosystem
- DEP to Propose Rules to Implement
- Internal Goal for Proposed Rules: 2014 Legislative Session

EPA Update – March 2012

- **Sackett v. EPA** – US Supreme Court 3/21/12
Unanimous
 - CWA Administrative Enforcement Orders may be Contested under Administrative Procedure Act
 - Sacketts placed Fill w/o a 404 Permit on a 2/3 acre lot, several lots away from a lake in Idaho
 - Some skepticism about whether this involved waters of the US – Issue to be Decided Later

EPA Update – March 2012

- **NMA (WV, KY & Others) v. Jackson**
 - 10/11 - EC Process Declared Illegal
 - 2nd Phase – Legality of 7/21/11 EPA Guidance
 - 3/22/12 - Briefing Complete
 - 6/1/12 Arguments
 - Recommended Standard ???

EPA Update – March 2012

■ **Mingo Logan Coal Company v. EPA**

- Challenge of EPA Veto of Spruce 404 Permit
- 3/23/12 Summary Judgment for Mingo Logan
- EPA Exceeded its 404(c) Veto Authority by vetoing a previously issued 404 permit
- First 404(c) Veto Challenge EPA Has Lost

EPA Update – March 2012

- 1/20/12 Specific Objection – Consol of Ky Buffalo Mountain Project
- 3/26/12 Revised Draft Permit Submitted to EPA
- 3/29/12 Meeting with Region 3

EPA Update – March 2012

- Buffalo Mountain – Specific Objection Enclosure I
- Specific Objection IA
 - WET Limits Are Not Enforceable Based on Boilerplate on WET Permit Condition
- Specific Objection IB
 - No Chemical-Specific Limits to Protect the Narrative Water Quality Standard
 - Conductivity, TDS or Sulfate + Bicarbonate

EPA Update – March 2012

- Buffalo Mountain – Specific Objection
Enclosure 1
- Specific Objection 2
 - Tier 2 **Anti-Degradation Analysis Required for Selenium**
- Specific Objection 3
 - Issues with SEJ for Iron and Aluminum on Certain Outlets

EPA Update – March 2012

- Buffalo Mountain – Specific Objection Enclosure 2
- Concern 1 - Scope of the Authorization
 - Do Not Authorize All Outlets Now
 - **Sequencing is Now an NPDES Issue**
- Concern 2 - Biologic Monitoring
 - **Anti-Degradation Applied to WVSCI Scores**
 - **Anti-Degradation Applied to Conductivity**
 - Make it Clear that a Bad WVSCI is a Violation

EPA Update – March 2012

- Buffalo Mountain – Specific Objection
Enclosure 2
- Concern 3 - Location ID Nos. for Biologic Sampling Locations are Truncated
- Concern 4 - Submission of Biologic Data
 - Twice Per Year – Spring and Fall
 - In Electronic Format
 - Genus Level Data

EPA Update – March 2012

- Buffalo Mountain – Specific Objection
Enclosure 2
- Concern 5 - Additional Chemical Monitoring
 - 13 Additional Chemical Parameters
 - On-Bench Outlets – Sample Interstitial Flow
- Concern 6 - Inclusion of Tech-Based Alternate Storm Limits for Water Quality-Based Parameters

EPA Update – March 2012

- Buffalo Mountain – Specific Objection
Enclosure 2
- Concern 7 - Include SMCRA BMP's in NPDES Permit – See Materials Handling Plan
- Concern 8 - Reasonable Potential of On-Bench Outlets (Narrative Standard)
 - Cumulative RP for Many Outlets
 - RP of Down Dip Outlets

EPA Update – March 2012

- Buffalo Mountain – Specific Objection
Enclosure 2
- Concern 9 - Insufficient Alternatives Analysis
in SEJ
 - Elements to be Analyzed Include Reduction in
Scope of the Project
 - ? - NPDES Permitting With 404(b)(1) Analysis

EPA Update – March 2012

- Buffalo Mountain – Specific Objection Enclosure 2
- Concern 10 - Classify the Permit as a Discretionary Major
 - Reporting DMR Results in EPA's ISIS Database
 - Beefed Up Permit Rationales from DEP
 - All Permit Modifications/Reissuances Go to EPA

EPA Update – March 2012

- March 19, 2012 – Specific Objections
 - Meadow Fork Mining, WV1019813 (New Permit)
 - Southern Minerals, WV1023969 (Amendment 1)

- March 19, 2012 – “Strong Comment Letter”
 - New Land Leasing, WV1012487 (Reissuance)

- All have Fills or In Stream Outlets

EPA Update – March 2012

- March 19, 2012 – EPA Letters
 - WET Limits Are Not Enforceable – Same Issue as with Buffalo Mountain
 - Chemical-Specific Effluent Limits Must be Included for the Narrative Standard
 - Conductivity
 - TDS and/or
 - Sulfate + Bicarbonate

EPA Update – March 2012

- March 19, 2012 – EPA Letters
 - Where $WVSCI < 68$ - Effluent Limits Necessary to Achieve Narrative WQS (**68 on WVSCI**) Must Be Imposed
 - Where $WVSCI > 68$ – Anti-Degradation Policy Should be Applied
 - Question Enforceability of Biologic Permit Condition