



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

# Congressionally Requested Information on the Status and Length of Review for Appalachian Surface Mining Permit Applications

Report No. 12-P-0083

November 21, 2011



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## Abbreviations

CWA	Clean Water Act
ECP	Enhanced Coordination Procedures
EPA	U.S. Environmental Protection Agency
FY	Fiscal year
GAO	U.S. Government Accountability Office
IP	Individual permit
NWP	Nationwide permit
OIG	Office of Inspector General
OW	Office of Water
PCN	Preconstruction notification
SMCRA	Surface Mining Control and Reclamation Act

**Cover photos:** A mountainous landscape in Central Appalachia before (top) and after (bottom) the mountaintop mine/valley fill process. (EPA photos)

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# At a Glance

## Why We Did This Review

This review responds to a request from the Ranking Member of the Senate Committee on Environment and Public Works. The senator asked us to determine: (1) the status of a list of 237 mountaintop mining permit applications and the length of review time for each permit; (2) reasons for the length of review for each permit; and (3) the number of permits that the U.S. Environmental Protection Agency (EPA) has processed according to “enhanced review” and “conductivity” procedures, and the average length of time to process a permit under these procedures.

## Background

The U.S. Army Corps of Engineers issues permits for surface coal mining under Section 404 of the Clean Water Act. EPA assesses the environmental and water quality impacts of proposed Section 404 permits.

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:  
[www.epa.gov/oig/reports/2012/20111121-12-P-0083.pdf](http://www.epa.gov/oig/reports/2012/20111121-12-P-0083.pdf)

## ***Congressionally Requested Information on the Status and Length of Review for Appalachian Surface Mining Permit Applications***

### What We Found

After reconciling discrepancies and vetting information, we identified 185 surface mining permit applications to review from the list of 237 that we received from the senator. In response to the senator’s first request, we found that over half of all permit activities—whether permitted, withdrawn, or pending—have taken a year or longer, with approximately 40 percent exceeding 2 years. Of our vetted universe of 185 projects, the Corps reviewed and issued 25 permits within 144 days from the notification/application date. (According to EPA, this is historically the average length of review for all individual permits, not simply those for surface coal mining.) Of the 25, the Corps reviewed and issued 20 permits within 90 days and another 3 by 120 days (the Corps’ goal). More than one-third of issued permits took a year or longer to process.

In response to the senator’s second request, we found that several reasons account for the length of time associated with processing permit applications:

- Complex reviews based on new scientific evidence
- Applicant factors
- Involvement of EPA headquarters
- Corps procedural change

In response to the senator’s third request, we found that EPA identified 79 permit applications for enhanced review and, to date, has issued 8 permits. (The United States District Court for the District of Columbia recently held that the EPA operated beyond the scope of its authority under the Clean Water Act when it instituted the enhanced coordination process, and the court ordered it to be set aside.) In April 2010, EPA issued interim guidance that included conductivity benchmarks for Appalachian projects. Conductivity is a measure of a stream’s ability to conduct an electrical current, and an EPA study observed an association between high conductivities in streams below surface coal mining operations and impairment of aquatic life. We found that, to date, EPA has commented on 24 projects in light of its April 1, 2010, interim guidance. EPA issued its final guidance on July 21, 2011, which replaced the interim guidance. EPA said that regions should begin consulting the final guidance immediately.

This report makes no recommendations to EPA. We plan to report separately to EPA on one observation pertaining to recordkeeping.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

November 21, 2011

**MEMORANDUM**

**SUBJECT:** Congressionally Requested Information on the Status and Length of Review for Appalachian Surface Mining Permit Applications  
Report No. 12-P-0083

**FROM:** Arthur A. Elkins, Jr  
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name.

**TO:** Nancy K. Stoner  
Acting Assistant Administrator for Water

This is a final report by the Office of Inspector General of the U.S. Environmental Protection Agency. We conducted the assignment based on a request from the Ranking Member of the Senate Committee on Environment and Public Works. The senator requested information regarding a list of mountaintop mining permit applications. We do not make any recommendations in this report.

**Action Required**

We provided you a copy of the draft report for comment on September 20, 2011. Your office provided us with comments on October 13, 2011, and we met to discuss the report on October 19, 2011. We made changes to the report as appropriate to address your comments, and we will close this final report upon issuance.

If you or your staff have any questions regarding this report, please contact Melissa Heist at (202) 566-0899 or [Heist.Melissa@epa.gov](mailto:Heist.Melissa@epa.gov), or Patrick Gilbride at (303) 312-6969 or [Gilbride.Patrick@epa.gov](mailto:Gilbride.Patrick@epa.gov).

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# Chapter 1

## Introduction

### Purpose

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), received a letter of inquiry from the Ranking Member of the Senate Committee on Environment and Public Works on October 15, 2010, requesting:

1. The status of a list of 237 mountaintop mining permit applications<sup>1</sup> and the length of time to review each permit
2. The reasons for the length of review for each permit
3. The number of permits from the list of 237 that EPA has processed according to the “enhanced review” and “conductivity” procedures, as well as the average length of time to process a permit under these procedures

All of the permit applications on the senator’s list were for projects in the Appalachian region, but not all the permit applications were for surface coal mining. This report responds to the senator’s request.

### Background

#### *Coal Mining in the Appalachian Region*

The United States produced 1.1 billion tons of coal in 2009 and used it to generate almost half of the electricity consumed nationwide. U.S. coal production from Appalachian Basin states (figure 1) amounts to 40 percent of all U.S. coal production. According to the U.S. Geological Survey, the northern and central parts of the Appalachian Basin produce 93 percent of coal mined in the region.

In a July 15, 2009, Federal Register notice on surface coal mining,<sup>2</sup> the U.S. Army Corps of Engineers stated that, since 1982,<sup>3</sup> surface coal mining activities in the Appalachian region have become more prevalent and have resulted in greater environmental impacts. Additionally, the Corps stated that, since the late 1990s, “there have been increases in concerns regarding the individual and

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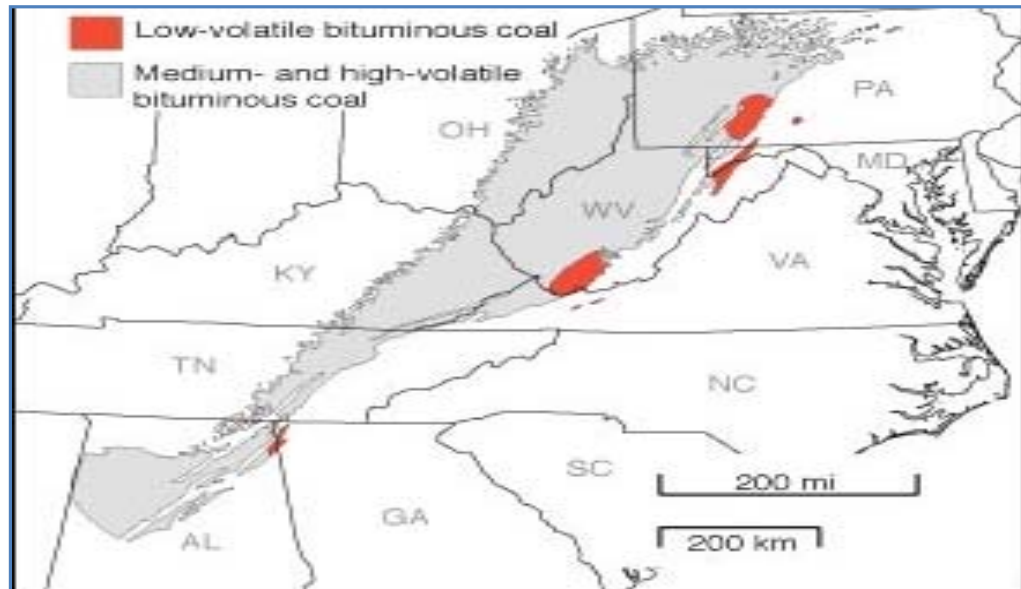
<sup>1</sup> Since we found that not all of the applications on the senator’s list were mountaintop mining permit applications, as some pertained to other forms of coal mining, throughout our report, we generally refer to all applications as surface coal mining permit applications.

<sup>2</sup> Federal Register, Vol. 74, No. 134, Wednesday, July 15, 2009, Notices, p. 34311, “Proposed Suspension and Modification of Nationwide Permit 21.”

<sup>3</sup> The U.S. Army Corps of Engineers first issued general permits for surface coal mining operations in 1982.

cumulative adverse effects of those activities on the human environment and the natural resources in this region, including streams and other aquatic resources.”<sup>4</sup>

**Figure 1: Coal reserves in the Appalachian region of the United States**

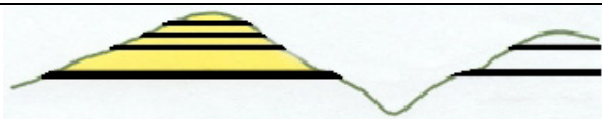
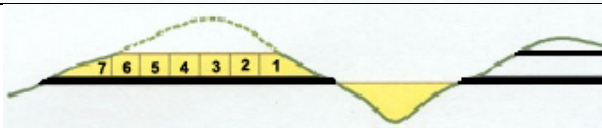
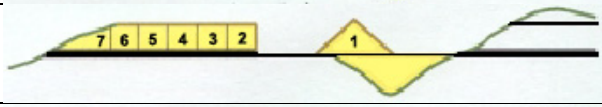

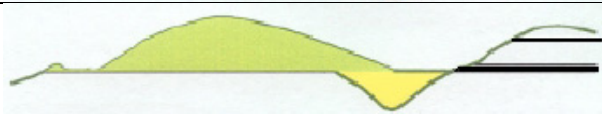


Source: U.S. Geological Survey.

Coal seams in the Appalachian region are difficult to access, which has led to an increase in mountaintop coal mining, a type of surface mining. This type of mining involves the removal of mountaintops (layers of rock and dirt above the coal, called “overburden”) to expose and extract coal seams. Companies dispose of overburden into adjacent valleys, creating “valley fills.” Figure 2 depicts the mining and valley fill process. Since 1992, valley fill construction in the Appalachian region has filled nearly 2,000 miles of Appalachian streams at a rate of 120 miles per year.

<sup>4</sup> Federal Register, Vol. 74, No. 134, Wednesday, July 15, 2009, Notices, p. 34311, “Proposed Suspension and Modification of Nationwide Permit 21.”

**Figure 2: Mountaintop mining and valley fill process**

	<p><i>Layers of rock and dirt above the coal (called overburden) are removed.</i></p>
	<p><i>The upper seams of coal are removed with spoils placed in an adjacent valley.</i></p>
	<p><i>Draglines excavate lower layers of coal with spoils placed in spoil piles.</i></p>
	<p><i>Regrading begins as coal excavation continues.</i></p>
	<p><i>Once coal removal is complete, final regrading takes place and the area is revegetated.</i></p>

Source: EPA Mid-Atlantic Mountaintop Mining web page.

### **Regulation of Surface Coal Mining**

Congress passed the Federal Water Pollution Control Act (hereafter the Clean Water Act, or CWA) in 1972 as the principal federal statute protecting waters of the United States<sup>5</sup> from pollution. CWA Section 404 regulates the placement of dredged or fill material into waters of the United States, including wetlands.

Surface coal mining activities, including those that impact waters of the United States, are complex processes subject to several key statutory provisions, and may require the following permits: (1) a Corps-issued CWA Section 404 permit; (2) a U.S. Department of the Interior-issued Surface Mining Control and Reclamation Act (SMCRA)<sup>6</sup> permit; (3) a state-issued CWA Section 401<sup>7</sup> water quality certification; and (4) a state-issued CWA Section 402 permit.

Although the Corps has responsibility for issuing CWA Section 404 permits, EPA, in conjunction with the Corps, is responsible for developing and executing guidelines for environmental evaluation of applications. EPA and the Corps jointly developed CWA Section 404(b)(1), *Guidelines for Specification of Disposal Sites for Dredged or Fill Material*, to outline environmental criteria used to evaluate permit applications. In summary, the guidelines specify:

<sup>5</sup> Waters of the United States are defined in 40 Code of Federal Regulations 230.3, and include tributaries and wetlands.

<sup>6</sup> Congress passed SMCRA in August 1977 to establish a program for the regulation of surface coal mining activities and the reclamation of abandoned mines.

<sup>7</sup> States and tribes use CWA Section 401 to deny, certify, or condition federal permits and licenses by ensuring that activities will comply with state water quality standards and other appropriate provisions of state law.



1. Discharge of dredged or fill material shall not be permitted if there is a practicable alternative that would have less adverse impact on the aquatic ecosystem.
2. Discharge of dredged or fill material shall not be permitted if it causes or contributes to violation of any applicable state water quality standards, violates any applicable toxic effluent standard, or jeopardizes the existence of endangered or threatened species.
3. No discharge of dredged or fill material shall be permitted that will cause or contribute to significant degradation of waters of the United States.
4. With exceptions, no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken to minimize potential adverse impacts on the aquatic ecosystem.
5. Compensatory mitigation is required for unavoidable impacts to aquatic resources.

EPA reviews and comments on permit notifications under CWA Section 404(b)(1) to ensure protection of water quality and the environment. Table 1 depicts the specific roles and responsibilities of the Corps and EPA in the permitting process.

**Table 1: U.S. Army Corps of Engineers and EPA roles and responsibilities under CWA Section 404**

Corps
<ul style="list-style-type: none"> <li>• Receives permit applications</li> <li>• Conducts or verifies jurisdictional determination</li> <li>• Develops policy and guidance</li> <li>• Enforces CWA Section 404 provisions</li> <li>• Administers the day-to-day program, including requesting and evaluating information on permit applications and making final permit decisions</li> <li>• Considers comments when determining whether to issue the permit, to issue the permit with conditions, or to deny the permit</li> </ul>
EPA
<ul style="list-style-type: none"> <li>• Develops and interprets policy, guidance, and environmental criteria used to evaluate permit applications</li> <li>• Reviews and comments on individual permit notifications, the development of general/nationwide permits, and general/nationwide permit preconstruction notifications where applicable</li> <li>• Determines scope of geographic jurisdiction and applicability of exemptions</li> <li>• Approves state and tribal permitting programs, and oversees assumed programs</li> <li>• Enforces CWA Section 404 provisions</li> </ul>

Source: Information collected by the OIG based on a variety of sources.

The Corps may issue a permit only if it determines that the project represents the least damaging practicable alternative. According to the 404(b)(1) guidelines, the Corps must also ensure that the project proponent has taken “all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States.” EPA may choose to provide comments to the Corps within the prescribed comment period or request a time extension. Under CWA Section 404(c), EPA has the authority to veto or restrict the use of a disposal site if it determines that a discharge of dredged or fill material is having or will have an unacceptable adverse effect on, among other things, municipal water supplies, wildlife, or recreational areas.<sup>8</sup> EPA Regional Administrators can also elevate specific permit decisions to EPA headquarters with a recommendation to request higher level review within the Department of Army under CWA Section 404(q).

EPA’s Office of Water (OW) in headquarters oversees national program implementation for EPA’s CWA Section 404 activities, and staff in EPA Regions 3, 4, and 5 work with local Corps districts and applicants to review surface coal mining permit notifications and provide comments. In fiscal year (FY) 2010, the Agency had 30 full-time equivalents (staff) involved in reviewing surface coal mining projects, including CWA Section 404 permit reviews.<sup>9</sup> The Agency decreased staff to 23 full-time equivalents in FY 2011. EPA’s total resources for this work were a little over \$600,000 in FY 2009; resources increased to \$4.2 million in FY 2010 and decreased to \$2 million in FY 2011.

### ***Surface Mining Applications and Permitting Process***

The Corps can issue two types of permits under CWA Section 404: individual permits (IPs) and general permits (including nationwide permits (NWP)).

#### **Individual Permits**

IPs are issued for projects with potentially significant impacts. In FY 2009, the Corps issued approximately 4,200 IPs. Once the Corps receives a completed application from the applicant, the Corps issues a public notification for comment. After issuing public notice, EPA and other stakeholders have 15–30 days to comment on the notification. The Corps’ goal is to decide on all IP applications no later than 60 days after receipt of a complete application, and the Corps may extend the 60-day period.

The Corps evaluates applications under a public interest review, as well as the environmental regulations (404(b)(1) guidelines) promulgated by EPA

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<sup>8</sup> EPA has issued 13 final veto actions since 1972. One final action was for the Spruce No. 1 Surface Mine. According to EPA’s website (<http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/bigbranch.cfm>), the Agency has also initiated a CWA Section 404(c) review of another proposed surface coal mine in Kentucky.

<sup>9</sup> We learned that this FY 2010 staffing level is an increase over the FY 2009 level; however, we only received FY 2009 data on full-time equivalents for headquarters, not regional, staff.

in conjunction with the Corps. A public interest review considers factors such as conservation, economics, aesthetics, wetlands, navigation, fish and wildlife values, water supply, and water quality.

## General Permits

The Corps issues general permits (including NWP, which authorize activities on a nationwide basis unless specifically limited), for projects with discharges that will have minimal adverse effects. In FY 2009, the Corps issued approximately 45,000 general permits for all types of activities, including NWP verifications. Nationwide permittees may, and in some cases must, request from the Corps confirmation that an activity complies with the terms and conditions of an NWP.

The general permit process allows certain activities with minimal individual or cumulative impact to proceed with little delay or paperwork. While an IP has a 15–30 day comment period, the comment period for the NWP discussed in this report is 10 days. To obtain an NWP verification, a project must satisfy the specific terms and conditions of the applicable NWP, as well as the general NWP conditions, as appropriate, including:

- Maintaining open waters and causing no more than minimal adverse effect on navigation, to the maximum extent practicable
- Avoiding impact to spawning and breeding locations for shellfish and other aquatic life
- Protecting endangered species, wild and scenic rivers, and historic properties
- Maintaining appropriate soil erosion and sediment controls
- Protecting critical resource waters, such as National Estuarine Research Reserves
- Ensuring that projects comply with water quality certification (CWA Section 401), unless waived

NWP 21—Surface Coal Mining Operations is a general permit that authorizes discharges of dredged or fill materials into waters of the United States associated with surface coal mining activities. From 1997 to 2010, 22 Corps districts issued 1,473 NWP 21 verifications, with approximately 1,204 (82 percent) of these for the Appalachian region.

On June 18, 2010, the Corps suspended NWP 21 in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. This decision was based on the Corps' concerns that continued use of this permit in Appalachia may result in more than minimal individual and cumulative adverse effects to aquatic resources. The Corps took this action to ensure appropriate evaluation of these complex mining activities. Currently, mining companies cannot apply for permits under

NWP 21 in Appalachia. Instead, companies must apply for IPs, which entail additional steps in the permitting process, and afford more time and opportunity for public comment and examination of possible adverse environmental effects on aquatic resources.

The Corps reviews and considers all CWA Section 404 permit applications in accordance with its procedures<sup>10</sup> and completes tasks shown in table 2 (italicized tasks common to all applications).

**Table 2: Corps CWA Section 404 application review procedures**

Individual permit applications	Nationwide permit applications
<ul style="list-style-type: none"> <li><i>Assign an application a number upon receipt. This number may exist prior to the application submission, as the Corps may have issued it during a jurisdictional determination action or upon first contact by the applicant.</i></li> </ul>	
<ul style="list-style-type: none"> <li>Determine application completeness within 15 days of receipt. If the application is incomplete, the Corps requests additional information for further processing.</li> </ul>	<ul style="list-style-type: none"> <li>Determine application completeness within 30 days where applicants submit a preconstruction notification (PCN). If the application is incomplete, the Corps requests additional information for further processing.</li> </ul>
<ul style="list-style-type: none"> <li>If complete, the Corps will publish a public notice to appropriate federal agencies and the public, and initiate the comment period. IPs have a minimum of 15 and maximum of 30 days for comment.</li> </ul>	<ul style="list-style-type: none"> <li>If complete and if required, the Corps will provide a copy of the PCN to appropriate federal agencies. NWPs have a comment period of 10 days.</li> </ul>
<ul style="list-style-type: none"> <li><i>Consider all comments received in response to the public notice or PCN.</i></li> </ul>	
<ul style="list-style-type: none"> <li>After the applicant takes all necessary actions, the Corps will determine whether to issue the permit.</li> </ul>	<ul style="list-style-type: none"> <li>After the applicant takes all necessary actions, the Corps will determine whether to issue the verification.</li> </ul>

Source: Information collected by the OIG based on a variety of sources.

The Corps may assign application numbers when it receives correspondence of any type for a proposed project, such as when a company requests a jurisdictional determination. Thus, the year listed as the first part of the application number does not necessarily indicate the age of the completed application, but instead reflects the first interaction the company had with the Corps on the project (see, for example, application numbers listed in the second column of appendix A). We noted that some permit applications had multiple public notices or PCNs. This could result from applicants withdrawing and resubmitting a permit application or substantially revising their project. Thus, the notification dates listed in appendix A may not be the first notification date for the permit application.

<sup>10</sup> Title 33 Code of Federal Regulations Part 325, “Processing of Department of the Army Permits.”

## **Enhanced Coordination Procedures**

From 2005 to 2009, CWA Section 404 permits were the subject of litigation in West Virginia. While companies and agencies waited for the outcome of the case,<sup>11</sup> injunctions issued by the court during litigation limited the processing of permit applications and created a backlog. On February 13, 2009, the United States Court of Appeals for the 4th Circuit reversed a district court opinion that rescinded four permits in West Virginia. To efficiently process pending applications, some of which were several years old, EPA and the Corps issued Enhanced Coordination Procedures (ECP) on June 11, 2009, to address the backlog of permit decisions. EPA and the Corps developed the ECP to process outstanding applications and to:

- Provide for timely resolution of issues for permits for which the agencies have substantial environmental concerns
- Ensure effective coordination among the agencies and consistent compliance with CWA requirements, regulations, and relevant policy
- Expedite review and final decisions regarding pending permits for surface coal mining operations in the Appalachian region
- Provide additional transparency to the public

The Corps and EPA applied the ECP to surface coal mining permit applications in the Appalachian region for which the Corps had issued a public notice or coordinated with EPA through the NWP coordination process by March 31, 2009. There were initially 108 CWA Section 404 permit applications included on the June 11, 2009, list subject to the ECP.

EPA narrowed the list to 79 CWA Section 404 permit applications in a memorandum on September 30, 2009.<sup>12</sup> This was the final ECP list. Permit applications submitted to the Corps after March 31, 2009, are not subject to the ECP, and EPA and the Corps process them according to the Corps' standard permitting process. The senator's list of 237 permit applications included 77 of the 79 permit applications on the final ECP list.

EPA identified these 79 permit applications for the ECP due to environmental concerns in four key areas:

1. The potential for reduction in impacts to aquatic resources through additional avoidance and minimization

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<sup>11</sup> *Ohio Valley Environmental Coalition v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009).

<sup>12</sup> From the initial list of 108, EPA and the Corps removed 31 projects and added 2 projects, resulting in a total of 79 projects remaining on the ECP list. Of the 31 projects removed, 13 were withdrawn, 8 already had permits, 3 had ongoing enforcement actions that precluded a permit decision, 1 permit application was not complete, 1 project was for work that did not require a permit, and 5 were for underground mining projects determined not appropriate for the ECP.

2. The potential for excursions from applicable state or federal water quality standards
3. The potential for significant cumulative effects from historic, current, and proposed surface mines
4. The adequacy of compensatory mitigation to offset lost aquatic functions

Chapter 3 provides the status of ECP permit applications as of our review cut-off date of May 27, 2011. Subsequent to our review, on October 6, 2011, the United States District Court for the District of Columbia<sup>13</sup> ruled that, with the adoption of the ECP, EPA exceeded its statutory authority afforded by the CWA. The court also ruled that the ECP are legislative rules not exempt from the Administrative Procedure Act's notice and comment rulemaking requirements. The court ordered the ECP be set aside as an unlawful agency action.

## Scope and Methodology

We conducted our work from October 2010 to September 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

To address the senator's first question, we reviewed relevant laws, regulations, policies, procedures, and guidance governing the CWA Section 404 permit application process. We analyzed information from OW, the Corps, and the U.S. Government Accountability Office (GAO). We conducted interviews with EPA (OW and Regions 3, 4, and 5), GAO, and the Corps to understand and document CWA Section 404 roles and responsibilities, and to determine time frames for the process. We conducted site visits to Regions 3, 4, and 5 to review documents and determine the status of the 237 permit applications on the senator's list.

To address the senator's second question, we received information from the Corps on reasons for delay. We conducted interviews with EPA staff in Regions 3, 4, and 5, and reviewed documentation, to determine and verify reasons for various lengths of review for the 237 permit applications. We also interviewed personnel from five mining companies to ascertain any impacts from permit application time frames.

To address the senator's third question, we reviewed the June 11, 2009, memorandum of understanding among the U.S. Department of the Army, U.S. Department of the Interior, and EPA implementing the Interagency Action Plan on Appalachian Surface Coal Mining. We reviewed the ECP memorandum and all related documents. We also reviewed EPA's *Detailed Guidance: Improving*

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<sup>13</sup> National Mining Ass'n v. Environmental Protection Agency, 1:10-cv-01220-RBW (D.C. District Court, Oct. 6, 2011) (Doc. #96, Memorandum Opinion and Order).

*EPA Review of Appalachian Surface Coal Mining Operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order*, dated April 1, 2010 (hereafter the April 1, 2010, interim guidance). We reviewed documents provided by Regions 3, 4, and 5, and interviewed EPA staff in OW and Regions 3, 4, and 5. We interviewed personnel from five mining companies to understand their viewpoint on the ECP process. We determined the status of permit applications for which EPA considered its April 1, 2010, interim guidance by tallying comment letters written by EPA subsequent to April 1, 2010, and by looking at issued or withdrawn dates and pending permits.

### **Limitations**

We were unable to retrieve complete records for the timeline and events of each application because the Corps administers the permit application process and maintains official records for each application, and we do not have jurisdiction over the Corps. We received some information from the Corps that augmented what we obtained from EPA. However, we did not receive source documents from the Corps, and we did not independently verify information we received from the Corps. Instead, we relied on testimonial evidence for some components of our work (i.e., reasons for the length of review of IP applications). However, we believe that our additional work steps provided sufficient and appropriate evidence to support our findings and conclusions.

We selected May 27, 2011, as the cut-off date for our analysis because that is the date the Corps provided project status information to the senator's staff, who then provided it to our team. Appendix A includes project-specific information we obtained from EPA and the Corps.

### **Prior Audit Coverage**

GAO issued a briefing report on October 19, 2010, in response to a congressional request on CWA Section 404 permit reviews under the ECP in Appalachia.<sup>14</sup> GAO focused its briefing on ECP coordination efforts in West Virginia and, as such, included EPA Region 3 and the Corps' Huntington District in its scope. GAO's briefing provided the status of all 79 ECP projects as of August 11, 2010. GAO made several observations, including:

- Agencies did not establish time limits for coordination that occurs prior to the start of the ECP 60-day review process.
- EPA did not send decision makers to coordination meetings.
- EPA officials believe CWA Section 404 reviews require a detailed, case-by-case look.

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<sup>14</sup> GAO's briefing report, *EPA and the Corps' CWA Section 404 Permit Reviews Under Enhanced Coordination Procedures*, GAO-11-101R, was requested by the Chairman of the House Committee on Natural Resources. The briefing was given on September 16, 2010, and the report was issued on October 19, 2010.

- While some applicants resisted opportunities to coordinate with the agencies about reducing project impacts and complying with the law, other applicants effectively collaborated with EPA and the Corps to achieve positive permit outcomes.

GAO could not evaluate the extent to which EPA Region 3 and the Corps' Huntington District had coordinated throughout the process because of limited and varied documentation. We made similar observations in our review with regard to documentation.



## Chapter 2

### Status and Length of Review for List of 237 Permit Applications

After reconciling discrepancies and vetting information, we identified 185 surface mining permit applications to review from the list of 237 that we received from the senator. The other 52 were not permit applications for surface coal mining, were already permitted or withdrawn, or were a duplicate application. Of these 185, the Corps reviewed and issued 25 permits within 144 days from the application/notification date, which is historically the average length of review for all IPs (all activities, not simply surface coal mining) according to EPA. Of those 25 permits, the Corps issued 20 within 90 days, and another 3 by 120 days, which is the Corps' goal. More than one-third of issued permits took a year or longer to process, and 110 permit activities (59 percent)—whether issued, withdrawn, or pending—have taken a year or longer to process. Over 40 percent of the 185 applications exceeded 2 years. We found that several reasons account for length of time in processing permit applications:

- Complex reviews based on new scientific evidence
- Applicant factors
- Involvement of EPA headquarters
- Corps of Engineers procedural change

#### Vetting the List of Permit Applications

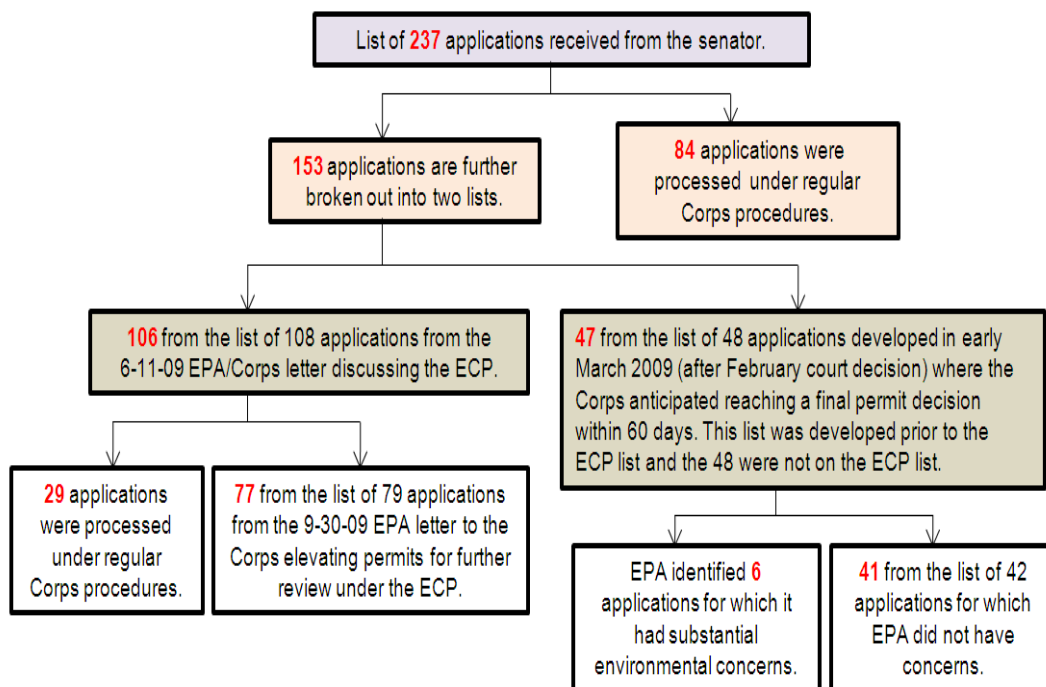
Litigation in 2009 between an environmental organization and a coal company resulted in a backlog of CWA Section 404 permit applications. The 4th Circuit Court of Appeals reached a decision<sup>15</sup> in early 2009 validating the Corps' permit actions. Following the court decision, the Corps developed a list of pending permit applications and continually reworked its list, in consultation with EPA, to arrive at the final list of applications for review under the ECP. EPA announced the final list on September 30, 2009.

We analyzed the Corps' list to account for all 237 permit applications listed in the senator's request. Figure 3 breaks down the 237 permit applications on the list that we received from the senator, which was based on Corps data dated May 12, 2009.

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<sup>15</sup> *Ohio Valley Environmental Coalition v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009).

**Figure 3: Breakdown of the senator’s list of 237 permit applications**



Source: OIG analysis of Corps and EPA lists, and interviews with Corps and EPA staff.

Our analysis of the Corps’ list of 237 applications revealed inaccuracies based on data from our file reviews at EPA Regions 3, 4 and 5, and information we received from the Corps. For example, we noted that many permit applications on the list we received from the senator were not surface mining projects but underground mines, jurisdictional determinations, or other types of projects. The Corps regional coal expert explained that many of the lists developed after the 4th Circuit decision were put together quickly and that he would have preferred more time to verify the information. Examples of inaccuracies on the list of 237 include 28 applications that had been permitted or withdrawn prior to May 12, 2009, and one duplicate; yet, the list included them as pending applications. Table 3 shows what we were able to ascertain about the list of 237 permit applications.

**Table 3: Vetted information for applications on the senator’s list of 237**

Description	Number
<b>List total</b>	<b>237</b>
Less applications that should not be included and inaccuracies:	
Duplicate	<1>
Applications that were permitted or withdrawn before May 12, 2009	<28>
Applications that are not surface mines	<23>
<b>Applications remaining from the list of 237</b>	<b>185</b>
Permits issued	56
Withdrawn applications	63
Pending applications	66

Source: OIG analysis of Corps and EPA data based on a cut-off date of May 27, 2011.

Table 3 shows that 185 surface mining permit applications remained<sup>16</sup> after analyzing data on the 237 applications listed in the request from the senator.<sup>17</sup> As of May 27, 2011, 66 surface mining applications out of 185 were pending.

## Status and Length of Review

Corps regulations govern the permit application process and allow 60–90 days for IP application review and processing. However, the Corps stated that it has an internal goal to process permit applications within 120 days. In contrast, EPA informed us that, on average, review and processing of an IP application for all types of activities (not specific to surface coal mining) takes 144 days.<sup>18</sup> Table 4 shows the status and length of review for the 185 surface mining applications.

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<sup>16</sup> One permit application included in the 185 surface mining permit applications was for an NWP 50—Underground Coal Mining Activities. We included this permit application as it was part of the list of 79 permit applications subject to the ECP.

<sup>17</sup> Applications for IPs and NWP 49 permits on the list could be for mining activities other than surface mining.

<sup>18</sup> Corps regulations allow additional time for extensions and exceptions.

**Table 4: Status and length of review of vetted 185 permit applications from the senator’s list of 237 as of May 27, 2011**

Length of time	Issued	Withdrawn	Pending	Total applications
0–90 days	20	8	13	41
91–120 days	3	0	1	4
121–144 days	2	0	0	2
145–365 days	12	5	11	28
366–730 days	13	16	6	35
>731 days	6	34	35	75
<b>Total applications</b>	<b>56</b>	<b>63</b>	<b>66</b>	<b>185</b>

Source: OIG analysis of Corps and EPA data.

Note: For the length of review, we counted the days from the application/notification date to the action (issued or withdrawn) or, for pending permits, to our cut-off date of May 27, 2011.

Table 4 shows that, out of a universe of 185 projects, the Corps issued 56 permits (or 30 percent). Of these 56 issued permits, the Corps reviewed and processed 23 within its stated goal of 120 days. Table 4 also shows that 31 of the 56 took longer than the IP average review time of 144 days. Of the 66 pending applications, 41 applications (62 percent) have been in process for over 1 year. In fact, table 4 shows that 110 permit activities (59 percent)—whether issued, withdrawn, or pending—have taken a year or longer to process, with 75 out of 185 activities (or 41 percent) exceeding 2 years.

Chapter 3 describes the status of a subset of these 185 permit applications—those 79 that EPA and the Corps identified for enhanced review. Appendix A provides additional detail on all projects.

## Reasons for Review Length

The senator’s office provided us the project status information as of May 27, 2011, that it received from the Corps. The Corps provided the information to the senator’s office in spreadsheet/summary format. The spreadsheet included the reasons for delays that Corps project managers denote in an internal Corps database. The Corps provided the following general reasons for delays:

- Applicant (e.g., the Corps noted instances in which it waited for responses from applicant to requests for information)
- Other approvals (CWA Section 401, CWA Section 402, SMCRA)
- Resolution of comments
- Issues related to final mitigation plan
- Endangered Species Act consultation
- Issues related to historic property

We observed these and other reasons for the length of review based on our document reviews and site visits with Regions 3, 4, and 5. The following summarizes reasons that we identified.

### ***More Complex Reviews***

EPA said that the most significant contributor to the time required to review CWA Section 404 projects is the complexity of these projects, which necessitates careful evaluation by the agencies to ensure that permits comply with the CWA and reflect best-available science. EPA staff also said that the Agency and the Corps are conducting more comprehensive reviews of Appalachian surface mining applications due to new scientific evidence and enhanced interagency coordination. According to EPA, recent scientific studies have pointed to a substantial body of evidence of significant environmental consequences associated with Appalachian surface coal mining activities, including harmful biological effects of increased conductivity levels exhibited downstream of surface mines. According to EPA, many of its comment letters over the past several years show that conductivity concerns have existed for some time, but that the emerging science and the change in Administration provided renewed focus on these issues. As we noted in chapter 1, EPA increased staff and budget in FY 2010 to conduct these complex reviews.

### ***Applicant Factors***

Similar to the first reason given by the Corps, regional staff told us that, at times, an applicant does not provide all material necessary for the Corps to complete the process or for EPA to conduct its review. In these cases, regional staff said the Corps requests additional information from the applicant and waits for a response. Absent a timely response from the applicant, the Corps will administratively withdraw an application.

Some mining companies submit permit applications for multiple projects. When the Corps requests additional information, the applicant may prioritize its pending applications and place some on hold.

Regional staff also stated that delays may occur when one mining company purchases another company. Ownership changes result in changes to mine plans, which often delay processing.

### ***Involvement of EPA Headquarters***

As part of reviewing applications and submitting comment letters, EPA regional staff may work with the applicant directly or, more often, through the Corps, to resolve concerns as part of reviewing notifications and submitting comment letters that identify outstanding issues and minimize environmental impact. We heard from both the Corps and EPA that it takes time to resolve permit issues, and

that visits to the field are vital to aid understanding.<sup>19</sup> We noted examples in which EPA headquarters staff reworked agreements made in the field between EPA regional personnel, the Corps, and mining companies. We also noted an instance in which EPA headquarters revised comment letters written by regional staff. This instance required EPA regional personnel to meet again with the Corps and the applicant to resolve issues that stakeholders thought they addressed through earlier meetings and correspondence.

GAO reported stakeholders' frustration that EPA decision makers did not attend meetings to clearly communicate what might be needed to satisfy EPA's concerns. Interviewees made similar comments to us during our review. One EPA official said the Section 404 program has a unique relationship with headquarters, as some decisions (e.g., elevations and vetoes) are made in Washington, DC, which is different from other Clean Water actions in which the Regional Administrator has primary responsibility. An EPA staff person said that headquarters is typically involved on issues of such high significance and priority for the Agency.

### ***Procedural Change***

The Corps suspended NWP 21 on June 18, 2010, requiring applications that the Corps would have approved under NWP 21 to undergo the more rigorous IP review process. An IP requires additional time for public comment and examination for possible adverse environmental effects. IPs often entail complex reviews and detailed comment letters from EPA, other federal agencies, and other stakeholders.<sup>20</sup>

## **Documentation and Recordkeeping Issues**

We might have been able to clarify the numbers of permit applications in our review more quickly if EPA had better documentation and recordkeeping. We have drafted a separate report to EPA on recommendations to improve its recordkeeping. We noted that EPA and the Corps share limited information on permit applications. EPA did not, at the time of our review, have an information system to track data for permit applications. Rather, regional personnel maintained individual records to document their evaluations, and documentation varied by individual reviewer. EPA staff said the Agency is not the official recordkeeper for the surface mining application process (the Corps is the agency of record); however, we found that EPA did not consistently document actions it took on permit notifications.

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<sup>19</sup> EPA regional staff said that the Agency's current budget/travel cuts will limit planned travel for site visits and field meetings.

<sup>20</sup> At the time of the suspension of NWP 21, there were five NWP 21 applications pending in the Appalachian region that were affected. We are unsure how many of these 5 appear on the list of 237. However, the suspension of NWP 21 could affect the 66 pending applications on the list, as well as all future permit applications, because the applicant will be required to apply for an IP, which results in a longer processing time.

# Chapter 3

## Status and Length of Review Under ECP and April 1, 2010, Interim Guidance

EPA and the Corps developed the ECP process to expedite review of permit applications backlogged due to litigation. (As noted above, the ECP process was set aside by the court.) The 79 ECP projects identified by EPA on September 30, 2009, will not increase. In contrast, EPA applied its April 1, 2010, interim guidance (which referenced studies on the impact of conductivity) to all permit applications submitted after that date, or submitted prior to that date but on which EPA has yet to comment. As of our cut-off date of May 27, 2011, EPA has commented on 24 projects in light of the April 1, 2010, interim guidance, and the universe of notifications reviewed in light of the guidance will grow to include permit applications for new mining operations and applications under review from the now set aside ECP process. The April 1, 2010, interim guidance did not set a timetable for conductivity analysis. Conductivity is one of many environmental and water quality factors EPA considers when it reviews permit notifications per CWA Section 404.

### Enhanced Review Process and Status of Projects<sup>21</sup>

According to EPA and the Corps, the ECP gave EPA another chance to comment on projects that it did not comment on during the previous notification period. EPA also explained that the ECP provided EPA and the Corps opportunity to more closely evaluate pending surface coal mining projects on which there were remaining water quality and/or regulatory compliance issues. The 79 ECP applications followed the same process as other permit applications, with the following additional coordination as outlined in the now set aside EPA-Corps enhanced procedures, dated June 11, 2009:

1. The Corps, EPA, and applicant/stakeholders work to resolve permit issues before the ECP 60-day review period begins.
2. The Corps must provide EPA written notice of the start of the 60-day review period.

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<sup>21</sup> As noted, we reviewed the status of ECP projects as of our cut-off date of May 27, 2011. In light of the district court's decision setting aside the ECP (National Mining Ass'n (Oct. 6, 2011 Memorandum Opinion and Order)), EPA indicated that pending ECP projects will be evaluated by the Corps and EPA under existing regulatory and statutory procedures. EPA has 60 days to appeal the district court's decisions, which it has not yet done. EPA indicated that it is currently working with the Corps and the U.S. Department of Justice to make that decision.

3. The Corps can extend the 60-day clock for 15 days or beyond if agreement on outstanding issues has not been reached. EPA can request a 15-day extension if permit concerns are not resolved within the 60-day period.
4. The Corps can issue a permit with outstanding EPA concerns, but must inform the appropriate EPA region of its decision to issue a permit, and of plans for resolution of EPA's concerns, within 10 days. If this happens, EPA must respond to the Corps within 10 days on whether EPA will pursue issues via veto authority under CWA Section 404(c) or whether EPA will not take further action.

Table 5 shows the status, as of May 27, 2011, of the 77 ECP permit applications on the list of 237. The list of 237 did not include 2 ECP projects, thus resulting in 77 ECP projects instead of the 79 projects identified by EPA in the final ECP memorandum on September 30, 2009.

**Table 5: Status of ECP permit applications on the senator's list of 237**

Status of permit applications	Number
<b>Total</b>	<b>77</b>
Issued	8
Withdrawn	40
Withdrawn and resubmitted outside ECP	6
Pending	23

Source: OIG analysis of Corps and EPA data based on a cut-off date of May 27, 2011.

Table 5 shows that, of the 77 ECP permit applications on the list of 237, 54 (or 70 percent) have been issued, withdrawn, or withdrawn and resubmitted outside the ECP.<sup>22</sup> For the eight permits issued, once the Corps started the 60-day clock, it took on average approximately 112 days for permit issuance. Our review also identified two ECP projects for which the Corps started the 60-day clock but then applicants withdrew their applications. From when EPA and the Corps issued the final ECP list on September 30, 2009, to our cut-off date of May 27, 2011, 604 days had elapsed. Appendix A provides additional detail on individual projects and denotes ECP projects in gray highlighting.

For projects that remain from the now set aside ECP process, those will be evaluated by the Corps and EPA under existing regulatory and statutory procedures. Regarding those projects, Corps staff explained that the Corps awaited either additional information from the applicant or sufficient status information on a state CWA Section 401 certification or state SMCRA permit. The Corps explained that before initiating the ECP 60-day coordination period, at a minimum the Corps district should have sufficient information regarding:

<sup>22</sup> Of the six ECP projects that were withdrawn and resubmitted outside of ECP, one was issued and five were pending when the district court set aside the ECP. The 2 projects included on the ECP list of 79 that were not included on the senator's list were both outstanding as of our cut-off date of May 27, 2011.



- Avoidance and minimization
- Mitigation
- Cumulative impacts
- Status of SMCRA permit
- Status of CWA 401 certification
- Status of CWA 402 permit
- Endangered Species Act consultation complete (if necessary)
- Coordination complete under Section 106 of the National Historic Preservation Act (if necessary)

To facilitate timely resolution, the ECP encouraged each Corps district and EPA region to begin discussions immediately, before triggering the 60-day clock, on those permit applications requiring additional review and coordination. EPA staff explained that EPA worked to coordinate with the Corps and applicants prior to the start of the ECP 60-day clock. In addition, EPA staff said regions hold regular meetings to discuss permit applications.

As table 5 shows, the majority of permit applications on the ECP list have been withdrawn. Should applicants decide to resubmit these withdrawn applications, the Corps and EPA would review resubmitted proposals outside of the ECP process. However, both Corps and EPA staff said that the level of review would be the same outside of the ECP as within the ECP. The ECP was intended to provide an expedited review and established additional time frames as described above. Corps staff said they try to explain to applicants that there is no benefit to withdrawing and resubmitting because EPA has assured the Corps that it will look at all other projects with the same criteria as an ECP project. According to EPA, this includes reviewing for compliance with existing regulations (the 404(b)(1) guidelines).

### ***ECP in Practice***

During our review, we noted varying levels of success with the ECP. One area of success was in EPA Region 5, which had 6 of the 79 projects on the ECP list and worked with the Corps to resolve issues related to these within 10 months of issuance of the final ECP list (in some cases, these permits were withdrawn). Also, to provide additional transparency, EPA created a website for the 79 projects on the ECP list.<sup>23</sup> The website includes project status and links to other information, such as copies of comment letters (where applicable).

The ECP did not expedite the review process on every project. For example, one project's ECP 60-day clock started in mid-September 2010 and, as of May 27, 2011, the project had yet to receive a permit. Both EPA and the Corps described the back and forth between the agencies and applicant throughout the process.

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<sup>23</sup> See <http://water.epa.gov/lawsregs/guidance/wetlands/mining-projects.cfm>.

Although a decision on the application seemed to be forthcoming, EPA said that headquarters and Region 4 recently worked with the permit applicant to evaluate a new plan for the project that, according to EPA, would further reduce environmental impacts and allow mining to proceed.

### ***Industry Perspective***

We spoke with five mining companies to get an industry perspective on the ECP. All of the companies with whom we spoke said that the increased coordination between agencies slowed the permitting process and increased review time. Many believe that EPA has overstepped its role in the CWA Section 404 review process, and company representatives seemed frustrated with what they perceived as EPA's increased role. Some said that EPA was responsive to requests and questions, and worked with the companies to resolve issues.

## **April 1, 2010, Interim Guidance**

### ***Conductivity Description and Impetus for April 1, 2010, Interim Guidance***

Conductivity is a measure (in units known as microSiemens per centimeter ( $\mu\text{S}/\text{cm}$ )) of a stream's ability to conduct an electrical current. It measures the salt content of water because saltier water more readily conducts electricity. A study by EPA scientists observed an association between high conductivities in streams below surface coal mining operations and impairment of aquatic life.<sup>24</sup>

On April 1, 2010, EPA issued *Detailed Guidance: Improving EPA Review of Appalachian Surface Coal Mining Operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order*. EPA stated that it issued this interim guidance to clarify its expectations of the Agency's review of Appalachian surface coal mining operations with respect to existing provisions of the CWA, National Environmental Policy Act, and Environmental Justice Executive Order (Executive Order 12898). As such, this guidance applied to EPA's review of all CWA Section 402 and 404 applications for Appalachian surface coal mining operations, including those Section 404 permit applications subject to the ECP. EPA issued its final guidance, which replaced the interim guidance, on July 21, 2011. EPA said that regions should begin consulting the final guidance immediately.

EPA cited three key considerations for the issuance of the interim guidance:

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<sup>24</sup> Pond, G.J., M.E. Passmore, F.A. Borsuk, L. Reynolds, and C.J. Rose. 2008. Downstream effects of mountaintop coal mining: comparing biological conditions using family- and genus-level macroinvertebrate bioassessment tools. *J. N. Am. Benthol. Soc.* 2008, 27(3):717–737.

1. Publication of technical information documenting the scope and significance of adverse environmental and water quality effects associated with surface coal mining practices.
2. Recent reviews of permitting actions under CWA Sections 402 and 404 for Appalachian surface coal mining that demonstrate how current permitting practices can be more effective in addressing adverse environmental and water quality effects associated with coal mining by more robustly conducting analyses required by the CWA.
3. Extensive work done by EPA's scientific offices evaluating the relationship between pollutants in streams associated with surface coal mining and impacts from these pollutants on aquatic ecosystems.

EPA's interim guidance cited scientific studies on the impact of conductivity on aquatic life.<sup>25</sup> The interim guidance included conductivity benchmarks of 300 and 500  $\mu\text{S}/\text{cm}$ .<sup>26</sup> Below 300  $\mu\text{S}/\text{cm}$ , EPA anticipates that the conductivity impacts of projects will not cause a water quality standard violation or significant degradation of the aquatic ecosystem. EPA believes that projects projected to increase conductivity levels above the 300 level should include permit conditions requiring adaptive remedial action to prevent conductivity levels from rising to levels that may contribute to water quality degradation. At the 500 or greater level, EPA believes the scientific data demonstrate that water quality may be adversely affected and aquatic life impacted. EPA believes that if a proposed Section 404 permit allows for increases above the 500 level, the administrative record for the permit should demonstrate how the permit is consistent with the CWA and the CWA Section 404(b)(1) guidelines.

EPA's interim guidance also lists as a best management practice the sequencing of valley fills. Sequencing generally means that only one valley fill should be authorized and demonstrated to be protecting water quality before constructing

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<sup>25</sup> Pond, G.J., M.E. Passmore, F.A. Borsuk, L. Reynolds, and C.J. Rose. 2008. Downstream effects of mountaintop coal mining: comparing biological conditions using family- and genus-level macroinvertebrate bioassessment tools. *J. N. Am. Benthol. Soc.* 27(3):717–37. Kennedy, A.J., D.S. Cherry, and R.J. Currie. Field and laboratory assessment of a coal processing effluent in the Leading Creek Watershed, Meigs County, Ohio. *Archives of environmental contamination and toxicology* 44:324–31. Kentucky Department for Environmental Protection, Division of Water, Water Quality Branch. Effects of Surface Mining and Residential Land Use on Headwater Stream Biotic Integrity in the Eastern Kentucky Coalfield Region. Kennedy A. J., D.S. Cherry, and C.E. Zipper. Evaluation of Ionic Contribution to the Toxicity of a Coal-Mine Effluent Using *Ceriodaphnia dubia*. *Archives of environmental contamination and toxicology* 49.2:155–62. Pond, G.J. Patterns of *Ephemeroptera* taxa loss in Appalachian headwater streams (Kentucky, USA). *Hydrobiologia* 641(1):185–201. U.S. EPA. 2011. A Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams. Office of Research and Development, National Center for Environmental Assessment, Washington, DC. EPA/600/R-10/023F.

<sup>26</sup> The microSiemens level is based on Pond, G.J., M.E. Passmore, F.A. Borsuk, L. Reynolds, and C.J. Rose. 2008. Downstream effects of mountaintop coal mining: comparing biological conditions using family- and genus-level macroinvertebrate bioassessment tools. *J. N. Am. Benthol. Soc.* 27(3):717–37; and U.S. EPA. 2011 (draft). A Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams. Office of Research and Development, National Center for Environmental Assessment, Washington, DC. EPA/600/R-10/023F.

subsequent fills. If the permittee demonstrates compliance with applicable water quality standards and there is no significant degradation associated with the first valley fill, the permittee may begin construction of subsequent valley fills. EPA prefers that applicants use sequencing when the potential exists for water quality impacts to occur. The interim guidance allows EPA to reevaluate this approach if data suggest that constructing concurrent valley fills would not lead to water quality concerns, and EPA said it will evaluate multiple valley fills on a case-by-case basis.

The April 1, 2010, interim guidance had no set a timetable for conductivity analysis, as conductivity is one of many environmental and water quality factors EPA considers when it reviews permit notifications per CWA Section 404. Industry groups and some Appalachian states have filed lawsuits against EPA, alleging that its interim guidance exceeded the Agency's authority and amounted to a rulemaking without required notice and comment under the Administrative Procedure Act.

### ***Number of Permits Reviewed After Issuance of April 1, 2010, Interim Guidance***

EPA applied its April 1, 2010, interim guidance in a future sense to all permit notifications submitted after that date or submitted prior to that date but on which EPA has yet to comment. EPA said it has consistently articulated, even before the date of its interim guidance, concerns regarding the impacts of conductivity on aquatic life following the publication of peer-reviewed scientific literature documenting impacts.

Of the remaining 185 permit applications on the list, there were 24 surface mining permit notifications on which EPA issued comments after it issued its April 1, 2010, interim guidance. To assess how many permit applications on the list of 185 EPA potentially reviewed or will review according to the April 1, 2010, interim guidance, we looked at issued or withdrawn dates and pending permits. Of those:

- There were 49 surface mining permit applications/notifications that were issued or withdrawn after April 1, 2010, that did not have EPA comments issued after April 1, 2010, but, as the final action occurred after the guidance, they could have potentially been reviewed using the guidance.
- There are 49 surface mining permit applications still pending on which EPA has not yet commented since April 1, 2010.<sup>27</sup> As these permit applications are still pending, they could potentially be reviewed using the guidance.

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<sup>27</sup> EPA did provide comments before April 1, 2010, on six of these applications, but since they are still pending, any EPA comments after April 1, 2010, would consider the guidance.

Appendix A provides additional detail on projects and denotes in blue font the 24 permit applications on which EPA commented.

### ***Industry Perspective***

Mining companies we interviewed said that the April 1, 2010, interim guidance and conductivity benchmarks slowed and complicated the review process. Companies also shared a concern that the benchmarks were arbitrary and not a good way to measure water quality. Companies added that the best management practice of sequencing valley fills created uncertainty for companies given the difficulties of investing in projects that may not be completed as planned. One company said that it was working on a new sequencing technique and that testing has provided favorable conductivity results. This company gave EPA a presentation on this new approach.

## **Status of Recommendations and Potential Monetary Benefits**

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
No recommendations							

<sup>1</sup> O = recommendation is open with agreed-to corrective actions pending  
 C = recommendation is closed with all agreed-to actions completed  
 U = recommendation is unresolved with resolution efforts in progress

## ***Detailed Permit Application Information***

### **Table Notes:**

- Gray highlighted entries denote ECP projects.
- Blue font denotes surface coal mining projects reviewed in light of EPA's April 1, 2010, interim guidance.
- If a public notification date was unknown, the application date was used and denoted in red font.
- For the section where actions were completed prior to May 12, 2009, green font denotes where we used withdrawn dates.
- The table lists 236 projects from the list of 237 we received from the senator because one project was duplicated/listed twice in the senator's list.

### **Table Acronyms:**

JD—Jurisdictional determination

NWP 14—Linear Transportation Projects

NWP 21—Surface Coal Mining Operations

NWP 32—Completed Enforcement Actions

NWP 49—Coal Remining Activities

NWP 50—Underground Coal Mining Activities

### **Permits Issued:**

Company name <i>Project name</i>	Application number	Notification or <b>application</b> date	EPA comment letter date(s)	Permit-issued date	Notes
Candle Ridge Mining <i>Candle Ridge Mining</i>	2003-1276	04/17/04	None	04/22/10	Length of time from notification date to permit-issued date was 2,195 days. Enforcement case due to unauthorized activity. Corps issued cease and desist order 05/18/04. Referred to EPA 07/01/04. EPA issued consent agreement and final order 11/20/09. After-the-fact NWP 21 verified 04/22/10.
CONCO <i>Mill Creek Mine</i>	2003-468	06/01/07	None	06/02/09	Length of time from notification date to permit-issued date was 731 days. Corps requested additional information from applicant.

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Permit-issued date	Notes
Oxford Mining Company LLC <i>Lafferty Adjacent Area</i>	2003-98	08/19/09	None	05/13/10	Length of time from notification date to permit-issued date was 268 days.
Buckingham Coal <i>Buckingham Wash Plant</i>	2004-1152	02/26/07	07/23/09 and 10/23/09	10/26/09	Permit issued 39 days before end of 60-day review period. Length of time from notification date to permit-issued date was 973 days. Application processed through ECP, started 10/05/09 with 60-day clock ending 12/04/09.
Premium Coal <i>Area 19</i>	2004-62	05/30/08	03/22/10	05/18/10	Permit issued 57 days after end of 60-day review period. Length of time from notification date to permit-issued date was 718 days. Application processed through ECP, started 01/19/10 with 60-day clock ending 03/22/10.
Jeffco Resources <i>North Barnesville</i>	2005-1057	03/17/08	04/10/08	02/12/10	Length of time from notification date to permit-issued date was 695 days.
A&G Coal <i>A&amp;G Coal</i>	2005-11	03/11/09	None	09/17/09	Length of time from notification date to permit-issued date was 189 days. Also had notification date of 06/27/08. Applicant resubmitted plans that minimized proposed impacts and updated mitigation.
Oxford <i>Halls Knob</i>	2005-1385	03/20/09	05/27/10	07/12/10	Permit issued 47 days after end of 60-day review period. Length of time from notification date to permit-issued date was 479 days. Application processed through ECP, started 03/05/10 with 60-day clock ending 05/04/10.
Oxford <i>Peabody 3</i>	2005-421	12/23/09	04/09/10	06/09/10	Length of time from notification date to permit-issued date was 168 days. Corps said IP application submitted 02/10/09 had notification 03/20/09 (we documented this). Application withdrawn from ECP 11/20/09 to be redesigned; resubmitted 11/30/09.



Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Permit-issued date	Notes
Oxford Mining Long Sears Adj	2005-723	08/18/09	09/08/09	01/19/10	Length of time from notification date to permit-issued date was 153 days. We also documented previous public notification dated 01/16/09 and withdrawal dated 07/30/09. List of 237 listed application number as 2005-753.
Hope Coal Co. Trey Mine	2006-1375	07/22/08	None	11/13/09	Length of time from application date to permit-issued date was 478 days. Corps said internal administrative delay. Coordination not required; impacts to waters less than 0.5 acres.
Sands Hill Big Rock	2006-2247	01/20/09	01/25/10	02/02/10	Length of time from notification date to permit-issued date was 377 days.
CONSOL of Ky Peg Fork	2006-2294	04/24/08	06/11/09, 05/17/10, 09/14/10, and 02/28/11	08/06/09	Length of time from notification date to permit-issued date was 468 days. Initial permit approved two valley fills.
Maple Coal Co Sycamore North	2006-2394	07/06/07	None	07/02/09	Length of time from notification date to permit-issued date was 726 days.
Tunnel Ridge, LLC Tunnel Ridge Prep Plant/Refuse Area	2006-427	04/10/09	None	04/12/10	Length of time from notification date to permit-issued date was 367 days.
Sandlick Coal Company Foresters Creek	2006-66	08/31/09	None	09/14/09	Length of time from notification date to permit-issued date was 14 days. Resolution of Endangered Species Act concerns from U.S. Fish and Wildlife Service required. Notification dated 05/06/09 submitted for NWP 49, later resubmitted to change application to NWP 21.

Company name <i>Project name</i>	Application number	Notification or <b>application</b> date	EPA comment letter date(s)	Permit-issued date	Notes
Highland Mining <i>Reylas</i>	2006-663 / 2007-99	03/25/08	03/23/09, 04/28/09, and 09/30/09	03/04/11	Length of time from notification date to permit-issued date was 1,074 days. Court granted temporary restraining order 03/08/11 and prohibited filling stream under CWA Section 404 permit. Court remanded decision back to Corps district 04/15/11.
Cloverfork Mining & Excavation <i>Cloverfork Mining &amp; Excavation</i>	2006-838	03/16/10	None	05/05/10	Length of time from notification date to permit-issued date was 50 days. Applicant originally submitted IP 05/01/08 but withdrew 03/10/10 and resubmitted as NWP 49, which was verified. (We documented 03/12/10 public notification.) List of 237 listed application number as 2004-1836.
Gatliff Coal <i>Jamieson Construction</i>	2006-917	<b>05/08/09</b>	None	07/10/09	Length of time from application date to permit-issued date was 63 days. Additional notification dated 03/23/07 because applicant changed proposed impacts and mitigation from original submittals.
Oxford Mining <i>Kaiser Mathias</i>	2007-1021	01/20/09	03/05/10	03/08/10	Permit issued within 60-day review period. Length of time from notification date to permit-issued date was 414 days. There was a delay in obtaining SMCRA permit. We documented notification dated 01/26/09. Application processed through ECP, started 01/06/10 with 60-day clock ending 03/08/10.
EME Homer City Generation L.P. <i>EME Refuse Disposal Site</i>	2007-1079	07/28/09	None	09/02/09	Length of time from notification date to permit-issued date was 34 days.
Davis Creek Energy <i>Area #4</i>	2007-1767	06/26/09	None	04/20/10	Length of time from notification date to permit-issued date was 298 days.

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Permit-issued date	Notes
New Yellow Ck. Coal New Yellow Creek Mine	2007-2162	08/24/09	None	10/29/09	Length of time from application date to permit-issued date was 66 days. Corps said internal administrative delay. Coordination not required; impacts to waters less than 0.5 acres.
Ohio American Energy Salt Run North	2007-323	09/11/09	None	01/26/10	Length of time from notification date to permit-issued date was 137 days.
DRC Coal White Oak Surface	2007-345	03/31/10	05/17/10	06/25/10	Length of time from notification date to permit-issued date was 86 days. Applicant performed unauthorized work. Cease and desist order issued 03/03/10. IP application withdrawn 03/22/10 (this application submitted 09/02/08) and after-the-fact NWP 49 verified.
Consolidated Coal Company Bailey Mine	2007-463	03/16/09	06/30/09	06/11/10	Length of time from notification date to permit-issued date was 451 days. Corps cited CWA Section 401 delays. We documented permit issue date 06/16/10.
Argus Energy, LLC Wiley Branch Surface Mine Amendment No. 3	2007-89	05/15/09	06/12/09 and 03/05/10	03/08/10	Length of time from notification date to permit-issued date was 297 days. However, documentation indicates permit issued 05/13/10.
Nally & Hamilton Nally & Hamilton	2007-946	04/23/09	None	04/23/10	Length of time from notification date to permit-issued date was 365 days. Also included notification for NWP 21 dated 12/17/07.
M&B Excavating Thompson South Mine	2008-1313	09/02/08	None	08/24/09	Length of time from application date to permit-issued date was 357 days. Corps internal administrative delay. Coordination not required; impacts to waters less than 0.5 acres.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Permit-issued date</b>	<b>Notes</b>
North Fork Collieries <i>Gilmore Surface Mine</i>	2008-1358	03/23/09	None	05/22/09	Length of time from notification date to permit-issued date was 60 days. Corps said internal administrative delay. List of 237 had application number as 2008-1368.
Hope Coal Co. - <i>Piper Mine</i>	2008-1445	09/23/08	None	05/29/09	Length of time from application date to permit-issued date was 249 days. Coordination not required; impacts to waters less than 0.5 acres. Application also listed as number 2006-1375.
Martin County C <i>Martin County</i>	2008-1457	04/30/09	None	07/27/09	Length of time from application date to permit-issued date was 88 days. Corps said internal administrative delay. After-the-fact permit. Also had notification date of 12/23/08.
Martin County C <i>Martin County</i>	2008-1458	04/28/09	None	07/27/09	Length of time from application date to permit-issued date was 90 days. Corps said internal administrative delay. After-the-fact permit. Also had notification date of 12/23/08.
Martin County C <i>Martin County</i>	2008-1459	04/30/09	None	07/27/09	Length of time from application date to permit-issued date was 88 days. Corps said internal administrative delay. After-the-fact permit. Also had notification date of 12/23/08.
Consolidated Coal Company <i>Oak Spring Slope and Supply Yard</i>	2008-1782	08/03/09	09/01/09	08/20/10	Length of time from notification date to permit-issued date was 382 days.
B'ham Coal & Coke <i>Powhatan Mine</i>	2008-1809	04/28/09	None	06/12/09	Length of time from notification date to permit-issued date was 45 days.
Apex Mining <i>Apex Mining</i>	2008-212	04/08/09	None	06/06/09	Length of time from notification date to permit-issued date was 59 days. Corps said internal administrative delay.

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Permit-issued date	Notes
Czar Coal <i>Czar Coal</i>	2008-226	04/22/08	05/19/10 and 06/23/10	03/03/11	Permit issued 262 days after end of 60-day review period. Length of time from notification date to permit-issued date was 1,045 days. Permit proffered 07/23/10 (documented) but applicant objected to proffered permit (documented letter dated 08/24/10). Application processed through ECP, started 04/13/10 with 60-day clock ending 06/14/10.
B&N Coal <i>Whigville III</i>	2008-260	03/16/09	None	06/01/09	Length of time from notification date to permit-issued date was 76 days.
McElroy Coal Company <i>McElroy Refuse Area</i>	2008-563	04/10/09	None	04/01/10	Length of time from notification date to permit-issued date was 356 days. Documentation indicates public notification dated 04/22/09 replaced one dated 04/10/09, and that permit signed 04/08/10.
ICG Hazard <i>ICG Hazard</i>	2008-666	03/04/09	04/08/09	06/03/09	Length of time from notification date to permit-issued date was 90 days. Corps said internal administrative delay.
Hobet Mining <i>Surface Mine No. 45</i>	2008-791	09/10/08	01/04/10	01/06/10	Permit issued 5 days after end of 60-day review period. Length of time from notification date to permit-issued date was 483 days. Application processed through ECP, started 11/02/09 with 60-day clock ending 01/10/10.
New Acton Mining <i>Slate Creek Mine</i>	2008-823	07/08/09	None	07/23/09	Length of time from notification date to permit-issued date was 15 days.
CoalMac, Inc. <i>Pine Creek Surface Mine</i>	2008-830	09/16/08	06/21/10	07/27/10	Permit issued 72 days after end of 60-day review period. Length of time from notification date to permit-issued date was 680 days. Application processed through ECP, started 04/06/10 with 60-day clock ending 06/05/10.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Permit-issued date</b>	<b>Notes</b>
Cambrian Coal Group <i>Cambrian Coal Group</i>	2008-93	04/13/09	None	07/01/09	Length of time from notification date to permit-issued date was 79 days. Corps said internal administrative delay.
Pine Branch C <i>Pine Branch C</i>	2009-198	03/02/09	04/08/09	09/04/09	Length of time from notification date and to permit-issued date was 185 days. Corps said internal administrative delay.
Travis Creek Mining <i>Trafford Mine</i>	2009-275	04/29/09	None	08/04/09	Length of time from notification date to permit-issued date was 96 days.
Coresco, LLC <i>Coresco Overland Conveyor Belt</i>	2009-288	04/29/09	08/18/09	09/04/09	Length of time from notification date to permit-issued date was 127 days. EPA's response noted no comments or objections. We documented 08/12/09 public notification.
Black Warrior Minerals <i>Manchester East</i>	2009-323	06/03/09	None	06/30/09	Length of time from application date to permit-issued date was 27 days. Coordination not required; impacts to waters less than 0.5 acres. Modified permit 01/07/11.
Enterprise Mining <i>Trace Fork Surface Mine</i>	2009-422	05/19/09	03/17/10	08/27/09	Length of time from notification date to permit-issued date was 99 days. Corps said internal administrative delay. We documented EPA letter to Corps dated 03/17/10 in which EPA recommended application be considered under IP rather than NWP 21. Recommendation based on potential for additional avoidance and minimization, potential for water quality degradation, and compensatory mitigation plan that may not compensate for unavoidable impacts. Water quality concerns included conductivity discussion with EPA, explaining concern that existing water quality conditions may not currently support Kentucky's existing standards.

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Permit-issued date	Notes
Consol of Kentucky Spring Branch No. 3 Deep Mine	2009-428	02/06/09	02/14/11	02/14/11	Permit issued within 60-day review period. Length of time from notification date to permit-issued date was 738 days. Corps said this was NWP 50. Application processed through ECP, started 12/17/10 with 60-day clock ending 02/15/11.
Miller Bros. Coal Miller Bros. Coal	2009-463	09/08/09	None	12/15/09	Length of time from notification date to permit-issued date was 98 days. Application also listed as 2007-669.
Twin Pines Coal Co. Lick Creek Mine	2009-467	04/03/09	04/06/09	05/20/09	Length of time from notification date to permit-issued date was 48 days.
Reed Minerals Inc. No. 5 Mine	2009-470	06/11/09	None	07/23/09	Length of time from notification date to permit-issued date was 43 days.
Aldwych, LLC Four Oaks Mine #2	2009-572	06/25/09	None	07/27/09	Length of time from notification date to permit-issued date was 32 days.
Paramount Coal Dry Fork	2009-815	03/02/10	03/03/10	09/14/10	Length of time from notification date to permit-issued date was 195 days.

**Applications Withdrawn:**

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Withdrawn date</b>	<b>Notes</b>
Hobet Mining <i>Hewett</i>	2003-65	05/02/06	None	07/02/09	Length of time from notification date to withdrawn date was 1,156 days. According to public notice document we reviewed (dated 05/02/06), Corps issued NWP 21 verification 02/04/04 but then revoked verification 09/24/04 due to litigation. Company applied for IP in 2006 (public notice 05/02/06) then completed construction under revoked NWP. This is a possible unauthorized discharge. Corps said IP administratively withdrawn due to lack of applicant response to request for additional information. Application withdrawn from ECP.
Alden Resources <i>Alden Resources</i>	2004-1108	07/03/06	None	04/12/10	No completed application received. Administratively withdrawn because applicant did not respond to request for additional information. Subsequently, Alden Resources submitted preapplication consultation for same site, but no application has been received. List of 237 listed company name and project name both as Ikerd Coal.
Brooks Run Mining <i>Brandy St &amp; Cove Mtn.</i>	2004-1155	03/22/06	None	08/17/09	Length of time from notification date to withdrawn date was 1,242 days. Application withdrawn from ECP. We documented withdrawal date 08/13/09.
Nally & Hamilton <i>Nally &amp; Hamilton</i>	2004-1254	02/11/08	None	07/10/09	No completed application received. Administratively withdrawn because applicant did not respond to request for additional information.



<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Withdrawn date</b>	<b>Notes</b>
CH Development <i>CH Development</i>	2004-1391	09/12/08	None	01/21/10	No completed application received. Applicant requested reverification of NWP previously verified in 2006. Application not complete and administratively withdrawn because applicant did not respond to request for additional information.
Independence Coal Company <i>Glory Surface Mine</i>	2004-145	12/13/05	None	02/19/10	Length of time from notification date to withdrawn date was 1,527 days. We documented EPA comment letter dated 04/01/04 and 09/19/10 withdrawal notification. Application withdrawn from ECP. List of 237 listed application number as 2004-1451.
Appollo Fuels <i>Fonde-Highwall</i>	2004-2228	12/14/07	None	10/30/09	No completed application received. Application administratively withdrawn after applicant performed unauthorized work. Corps worked with applicant to resolve enforcement action; resolution agreement pending signature.
Bear Fork <i>Bear Fork S.M.</i>	2004-336	02/08/06	None	01/18/11	Length of time from notification date to withdrawn date was 1,805 days. Transferred between Corps districts during boundary realignment. File sent to EPA for enforcement action 05/25/10 and administratively withdrawn.
Independence Coal Company <i>Constitution Surface Mine</i>	2004-624	07/15/04	08/31/04	02/19/10	Length of time from notification date to withdrawn date was 2,042 days. Application withdrawn from ECP.
Premium Energy, Inc. <i>Premium Mills Surface Mine</i>	2005-1211	06/10/08	None	04/26/09	Length of time from application date to withdrawn date was 320 days. We documented public notice dated 07/09/08 and withdrawn date of 08/26/09. Application withdrawn from ECP.
Catenary Coal Co. <i>Tenmile Fork Deep Mine</i>	2005-167	08/24/06	None	02/22/11	Length of time from notification date to withdrawn date was 1,640 days.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Withdrawn date</b>	<b>Notes</b>
Consol of KY <i>Area 80</i>	2006-126	04/16/06	None	05/20/10	Length of time from notification date to withdrawn date was 1,494 days. Administratively withdrawn because applicant did not respond to request for additional information.
Consol of KY <i>Slone Br Mine</i>	2006-127	03/16/06	None	09/09/09	Length of time from notification date to withdrawn date was 1,270 days.
Licking River Resources <i>Licking River Resources</i>	2006-1290	12/05/06	None	05/19/10	Length of time from notification date to withdrawn date was 1,261 days. Administratively withdrawn because applicant did not respond to request for additional information.
Nally & Hamilton <i>Nally &amp; Hamilton</i>	2006-1647	07/31/06	None	11/13/09	Complete application not received before application withdrawn.
Buckeye Ind Mining <i>Beaver Excav</i>	2006-2001	04/22/08	None	11/30/09	Length of time from application date to withdrawn date was 586 days. Corps said permit not resubmitted.
Wildcat <i>#2 Surface</i>	2006-2033	03/05/08	None	03/02/11	Length of time from notification date to withdrawn date was 1,092 days. Corps said administratively withdrawn due to lack of applicant response to request for additional information. Application withdrawn from ECP.
Colony Bay Coal Co. <i>Colony Bay Surface Mine</i>	2006-2290	01/23/09	03/23/09	02/17/10	Length of time from notification date to withdrawn date was 389 days. Application withdrawn from ECP.
Jewell Smokeless <i>JSCC</i>	2006-6158	12/05/05	04/23/09	04/21/10	Length of time from application date to withdrawn date was 1,598 days. Corps said applicant failed to respond to several requests for information; application administratively withdrawn. We documented 03/31/09 public notification.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Withdrawn date</b>	<b>Notes</b>
Ohio American Energy <i>Red Bird South</i>	2006-660	09/30/08	None	01/04/10	Length of time from notification date to withdrawn date was 460 days. ECP clock started 10/06/09 but Corps placed it on hold to wait for information from applicant. Original end of 60-day clock was 12/04/09.
ICG Hazard <i>ICG Hazard</i>	2006-756	06/30/06	None	08/14/09	Length of time from notification date to withdrawn date was 1,140 days.
Catenary Coal Co. <i>Laurel Fork</i>	2006-821	08/21/06	None	02/22/11	Length of time from notification date to withdrawn date was 1,644 days.
Frasure Creek Mining <i>Frasure Creek Mining</i>	2007-1026	12/13/07	None	01/18/11	Length of time from notification date to withdrawn date was 1,130 days. Withdrawn and referred to EPA for enforcement action.
Apex Energy <i>Apex Energy</i>	2007-1044	08/28/07	None	05/24/10	Length of time from notification date to withdrawn date was 1,000 days. Application withdrawn by applicant who avoided impacts to waters so no permit required.
The Raven Co. <i>The Raven Co.</i>	2007-1104	09/05/07	None	05/20/10	Length of time from notification date to withdrawn date was 989 days. Administratively withdrawn because applicant did not respond to request for additional information.
Pine Branch Coal <i>Pine Branch Coal</i>	2007-1190	11/28/07	None	06/23/09	Length of time from notification date to withdrawn date was 573 days.
Matt/Co <i>Matt/Co</i>	2007-1205	12/05/07	None	05/19/10	Length of time from notification date to withdrawn date was 896 days. Administratively withdrawn because applicant did not respond to request for additional information.
Frasure Creek Mining <i>Frasure Creek Mining</i>	2007-1206	07/08/08	None	01/19/11	Length of time from notification date to withdrawn date was 924 days. Withdrawn and referred to EPA for enforcement action.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Withdrawn date</b>	<b>Notes</b>
FCDC FCDC	2007-1397	10/20/08	None	05/19/10	Length of time from notification date to withdrawn date was 577 days. Administratively withdrawn because applicant did not respond to request for additional information.
ICG Hazard Bearville North	2007-1406	07/06/08	08/12/08	05/19/10	Length of time from notification date to withdrawn date was 682 days. Administratively withdrawn because applicant did not respond to request for additional information.
FCDC FCDC	2007-1445	11/29/07	None	05/19/10	Length of time from notification date to withdrawn date was 902 days. Administratively withdrawn because applicant did not respond to request for additional information.
FCDC Coal FCDC Coal	2007-1498	11/15/08	11/17/08	10/27/10	Length of time from notification date to withdrawn date was 712 days.
ICG Hazard ICG Hazard	2007-1515	12/06/07	None	03/04/10	Length of time from notification date to withdrawn date was 819 days.
Clintwood Elkhorn Clintwood Elkhorn	2007-1518	12/05/07	None	08/31/10	Length of time from notification date to withdrawn date was 1,000 days. Administratively withdrawn because applicant did not respond to request for additional information.
Laurel Mountain Resources Laurel Mountain Resources	2007-1582	12/28/07	None	01/13/10	Length of time from notification date to withdrawn date was 745 days.
Consol of KY Consol of KY	2007-1644	03/12/08	None	11/23/09	Length of time from notification date to withdrawn date was 619 days. We documented 08/13/09 letter saying withdrawn because work completed.
Premier Elkhorn Coal Premier Elkhorn Coal	2007-193	03/14/07	None	02/17/11	Length of time from notification date to withdrawn date was 1,433 days. Administratively withdrawn because applicant did not respond to request for additional information.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Withdrawn date</b>	<b>Notes</b>
Apex Energy <i>Apex Energy</i>	2007-335	05/02/07	None	04/27/10	Length of time from notification date to withdrawn date was 1,090 days. Application withdrawn by applicant who avoided impacts to waters so no permit required.
Consol of KY <i>Razorblade Surface Mine</i>	2007-393	05/03/07	None	07/08/09	Length of time from notification date to withdrawn date was 796 days.
Argus Energy <i>Argus Energy</i>	2007-400	08/15/07	None	06/29/10	Length of time from notification date to withdrawn date was 1,048 days. Corps said permit withdrawn 06/29/09; however, we documented 06/29/10 withdrawal.
Revelation Energy, LLC <i>Revelation Energy, LLC</i>	2007-401	05/08/07	None	06/17/10	Length of time from notification date to withdrawn date was 1,135 days. List of 237 listed company name and project name as Candle Ridge Mining.
Leeco, Inc. <i>Elk Lick</i>	2007-595	09/04/07	None	06/28/10	Length of time from notification date to withdrawn date was 1,028 days. Administratively withdrawn because applicant did not respond to request for additional information.
Laurel Mtn. Resources <i>Laurel Mtn. Resources</i>	2007-669	07/13/07	None	07/08/09	Length of time from notification date to withdrawn date was 725 days. List of 237 listed company name and project name as Miller Bros. Coal.
Johnson Floyd Coal <i>Johnson Floyd Coal</i>	2007-706	07/19/07	None	11/23/09	Length of time from notification date to withdrawn date was 856 days. Applicant met with agencies and revised mine plan to avoid impacts to waters, so no permit required.
Nally & Hamilton <i>Nally &amp; Hamilton</i>	2007-820	10/01/08	None	04/12/10	Length of time from notification date to withdrawn date was 559 days. We documented NWP 21 notification dated 10/08/08.
BDCC Holdings <i>Cherries Branch</i>	2008-114	04/09/08	None	05/19/10	Length of time from notification date to withdrawn date was 771 days. Administratively withdrawn because applicant did not respond to request for additional information.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Withdrawn date</b>	<b>Notes</b>
Wolverine Resources <i>Jake Fork and Stoney Branch Surface Mine</i>	2008-115	04/17/08	None	05/19/10	Length of time from notification date to withdrawn date was 762 days. Administratively withdrawn.
Apex Energy <i>Apex Energy</i>	2008-139	03/02/09	12/29/09	04/21/10	Length of time from notification date to withdrawn date was 415 days. Also had notification date 03/31/08. Applicant revised project so no impacts to waters and no permit required. ECP started 10/16/09 but applicant withdrew before completed.
Patriot Mining Company <i>Wades Run extension</i>	2008-1564	02/26/10	02/09/10	05/19/10	Length of time from notification date to withdrawn date was 84 days. Documentation stated public notification date 01/26/10 (closing date 02/26/10). List of 237 listed application number as 2008-2414.
Czar Coal <i>Czar Coal</i>	2008-408	05/14/08	None	09/18/10	Length of time from notification date to withdrawn date was 856 days. According to EPA comment letter dated 08/05/11, permit application resubmitted and public notice issued 06/30/11. Letter mentions conductivity values.
Laurel Mtn. Resources <i>Laurel Mtn. Resources</i>	2008-727	02/27/09	None	04/06/10	Length of time from notification date to withdrawn date was 405 days. Administratively withdrawn because applicant did not respond to request for additional information. List of 237 listed company name and project name as Miller Bros. Coal. We documented e-mail stating project withdrawn by applicant on 02/23/10.
Eastern Associated Coal <i>Huff Creek Haul Road</i>	2008-75	07/08/08	None	07/28/09	Length of time from application date to withdrawn date was 385 days.
ICG Hazard <i>ICG Hazard</i>	2008-777		None	06/30/09	Length of time from notification date to withdrawn date was 335 days.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Withdrawn date</b>	<b>Notes</b>
Wolverine Resources <i>Wolverine Resources</i>	2008-781	07/18/08	None	05/20/10	Length of time from application date to withdrawn date was 671 days. Administratively withdrawn because applicant did not respond to request for additional information.
Coyote Coal Company <i>Joes Creek Surface Mine</i>	2008-805	03/20/09	None	03/29/11	Length of time from notification date to withdrawn date was 739 days. Corps said administratively withdrawn due to lack of applicant response. Did not meet NWP 49 criteria. Application withdrawn from ECP.
Premier Elkhorn Coal <i>Premier Elkhorn Coal</i>	2008-95	03/12/08	None	08/31/10	Length of time from notification date to withdrawn date was 901 days. Administratively withdrawn because applicant did not respond to request for additional information.
Clintwood Elkhorn <i>Clintwood Elkhorn</i>	2009-182	09/16/09	02/26/10	07/19/10	Length of time from notification date to withdrawn date was 307 days. Application withdrawn by applicant who avoided impacts to waters, so no permit required.
Frasure Creek Mining <i>Frasure Creek Mining</i>	2009-237	06/19/09	None	06/16/10	No completed application received. Administratively withdrawn because applicant did not respond to request for additional information.
Frasure Creek Mining <i>Frasure Creek Mining</i>	2009-239	04/10/09	05/26/09	06/14/10	Length of time from notification date to withdrawn date was 430 days. List of 237 listed application number as 2008-239.
Miller Bros. Coal <i>Miller Bros. Coal</i>	2009-368	04/07/09	None	04/07/10	No completed application received. Application withdrawn because applicant did not respond to request for additional information.
Lone Mountain Processing Prep Plant	2009-576	03/11/09	None	02/22/10	Length of time from application date to withdrawn date was 346 days.
Knox Creek Coal <i>Trace Fork Surface Mine</i>	2009-577	03/11/09	None	12/03/09	Length of time from application date to withdrawn date was 266 days.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Withdrawn date</b>	<b>Notes</b>
Frasure Creek Mining <i>Frasure Creek Mining</i>	2009-95	05/06/09	None	06/16/10	Length of time from notification date to withdrawn date was 406 days. Administratively withdrawn because applicant did not respond to request for additional information.



**Applications Pending:**

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Notes</b>
Sand Hill Coal Co. <i>Big Valley Mine</i>	2001-407	02/13/08		Length of time application pending from most recent notification date to 05/27/11 is 1,200 days. Corps noted as unauthorized fill enforcement action.
Appolo Fuels <i>Jellico Strip</i>	2002-609	09/21/04		Length of time application pending from most recent notification date to 05/27/11 is 2,439 days. Enforcement case due to unauthorized work performed before permit issued. Resolution agreement signed 04/11/11. List of 237 listed application number as 2004-609.
Alex Energy <i>Republic No. 1</i>	2003-238		04/03/09, 04/28/09, and 06/04/10	Length of time application pending from most recent notification date to 05/27/11 is 871 days. Original permit dated 08/04/06 voluntarily forfeited 12/15/08 due to a lawsuit. On 03/02/10, Massey advised that Republic No. 1 is a priority and it will submit data soon.
Premier Elkhorn <i>Premier Elkhorn</i>	2004-1557	<del>01/08/09</del> 09/22/05		Complete application not received.
Green Valley Coal Company <i>Blue Branch Refuse</i>	2005-1115	10/04/05	02/09/10	Length of time application pending from most recent notification date to 05/27/11 is 2,061 days. We documented PCN for NWP 21 on 02/23/00 with permit no. 1998-1315. EPA commented to that notification 03/15/00, urging Corps to reconsider application as IP. Corps verified NWP 21 03/20/00. EPA commented to Corps 03/15/04, reasserting position that Corps reconsider application as IP. Corps says still pending because it awaits approved final mitigation plan. Project will be reviewed under ECP.*
Marrowbone Development <i>Taywood West &amp; Marrowbone</i>	2005-1198	11/07/05		Length of time application pending from most recent notification date to 05/27/11 is 2,028 days. Corps said that additional information needed on revised impacts, monitoring and adaptive management plan, and compensatory mitigation plan. Project will be reviewed under ECP.*
Appolo Fuels <i>Buckeye Springs Mine 2</i>	2005-1691	08/08/07		A complete application not received. Enforcement case due to unauthorized work. Resolution agreement signed 04/11/11.
Bluestone <i>ContourAuger1</i>	2005-217	04/13/05		Length of time application pending from most recent notification date to 05/27/11 is 2,235 days. Corps stated it needs extensive information. Project will be reviewed under ECP.*

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Notes
Kimble Clay & Limestone <i>Hunt</i>	2005-478	10/20/10	02/08/11	Length of time application pending from most recent notification date to 05/27/11 is 220 days. According to Corps, IP application submitted 01/18/07 with public notice 03/01/07 (documented). EPA and Corps jointly commented on 11/24/09, urging applicant to withdraw. Region 5 explained that comments delayed because it performed several site visits with Corps and held several preapplication meetings to try to reduce impacts. Withdrawn 07/27/10 because mine plan changed. Applicant resubmitted project (we documented public notice 12/10/10).
Leeco <i>Leeco</i>	2005-851	09/24/07		Length of time application pending from most recent notification date to 05/27/11 is 1,341 days. List of 237 listed company name and project name as Cheyenne Resources.*
Premier Elkhorn <i>U/T Old Beefhide</i>	2005-934	01/06/06		Length of time application pending from most recent notification date to 05/27/11 is 1,968 days. Transferred between Corps districts during boundary realignment.*
ICG Eastern, LLC <i>Jenny Creek Surface Mine</i>	2006-100	03/03/11		Length of time application pending from most recent application date to 05/27/11 is 85 days. Corps shows IP application submitted 02/05/09 (documented) and withdrawn 11/08/10. Mine plan changed and application resubmitted 03/03/11. Per 10/07/10 letter from ICG, application withdrawn to address West Virginia's recently implemented <i>Permitting Guidance for Surface Coal Mining Operations to Protect West Virginia's Narrative Water Quality Standards</i> . Application withdrawn from ECP 11/08/10 and resubmitted outside ECP 03/03/11. List of 237 listed application number as 2005-370. We also documented application number of 2006-1000.
Matt/Co <i>Matt/Co</i>	2006-1124	02/14/07		Length of time application pending from most recent notification date to 05/27/11 is 1,564 days.*
Pine Ridge Coal <i>Hiriams Hol Refuse Fill</i>	2006-117	05/16/06		Length of time application pending from most recent notification date to 05/27/11 is 1,836 days. Corps said PN needs to be reissued, additional information is needed, and it is waiting for applicant to respond.

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Notes
Clintwood Elkhorn <i>Clintwood Elkhorn</i>	2006-1296	05/07/07		Length of time application pending from most recent notification date to 05/27/11 is 1,480 days. Applicant self-reported violation. Cease and desist letter sent 07/02/08. Sent to EPA for enforcement week of 02/08/10. EPA will not take action due to previous involvement in case with a citizen's lawsuit. Awaiting CWA Section 401 and U.S. Fish and Wildlife Service clearances.*
Highland Mining <i>Georges Creek Surface Mine</i>	2006-2196	03/03/11	08/28/09, 09/22/09, and 04/19/11	Length of time application pending from most recent notification date to 05/27/11 is 85 days. Documentation of public notice dated 07/21/09. Project appears to be in 404(q) process.
Freeport Mining, LLP <i>Freeport Mining, LLP</i>	2006-2207	10/18/10		Length of time application pending from most recent application date to 05/27/11 is 222 days. Corps said application withdrawn 02/25/09 and resubmitted as IP 10/18/10. There are Historic Property issues (Section 106) with current application.
Catenary Coal Co. <i>Moccasin Hollow</i>	2006-2278	03/01/07		Length of time application pending from most recent notification date to 05/27/11 is 1,547 days. Applicant resubmitting new Environmental Information Document.
Nally & Hamilton <i>Nally &amp; Hamilton</i>	2006-2522	10/25/10		Complete application not received. Original application submitted 03/18/08 incomplete and withdrawn by applicant 05/14/09. Applicant submitted new incomplete application for IP. We also documented NWP 50 notification dated 04/23/10 and EPA comments dated 07/14/10.
Paramount Coal <i>PVVC (per Corps spreadsheet: PCCV)</i>	2006-5999		11/12/10 and 12/07/10	Length of time application pending from most recent notification date to 05/27/11 is 239 days. Corps said application for IP submitted in 2005 and withdrawn 06/17/08.
Clintwood Elkhorn <i>CEMC</i>	2006-7163	10/01/10 05/13/09	06/02/09	Length of time application pending from most recent notification date to 05/27/11 is 744 days. Corps said application for acreage amendment withdrawn by applicant 03/24/09. We documented an e-mail public notification dated 05/13/09.
Mid Vol <i>Paradise</i>	2006-828		03/04/10 and 06/08/10	Length of time application pending from most recent notification date to 05/27/11 is 400 days. Documentation of NWP 49 notification 12/17/09 that was withdrawn 12/17/09 and resubmitted as IP 03/26/10.
		04/22/10		

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Notes
Miller Bros. Coal <i>Miller Bros. Coal</i>	2007-1131	11/09/07		Length of time application pending from most recent notification date to 05/27/11 is 1,296 days.*
Miller Bros. Coal <i>Frasure Branch Mine</i>	2007-1132	07/20/10		Length of time application pending from most recent notification date to 05/27/11 is 311 days. Also had notification date 09/26/07. Corps said plans changed to become dual-purpose application. Application withdrawn from ECP 05/14/10, resubmitted by applicant, and is being reviewed under application 2010-519.
Oxford Mining Company LLC <i>Ellis Area</i>	2007-1180	09/29/10	11/24/10	Length of time application pending from most recent notification date to 05/27/11 is 241 days. Corps said applicant withdrew application 06/08/10 and resubmitted 09/10/10. Application withdrawn from ECP.
Laurel Mtn. Resources <i>Laurel Mtn. Resources</i>	2007-1224	10/22/07		Length of time application pending from most recent notification date to 05/27/11 is 1,313 days. List of 237 listed company name and project name as Miller Bros. Coal.*
ICG Knott Co. <i>ICG Knott Co.</i>	2007-1230	11/27/07		Length of time application pending from most recent notification date to 05/27/11 is 1,278 days.*
CAM Mining <i>CAM Mining</i>	2007-1504	08/27/08		Length of time application pending from most recent application date to 05/27/11 is 1,004 days.*
Jamieson Construction <i>Jamieson Construction</i>	2007-1641	03/03/10	07/29/10	Length of time application pending from most recent notification date to 05/27/11 is 450 days. NWP 21 application withdrawn by applicant 04/15/09 and resubmitted as IP.
Nally & Hamilton <i>Nally &amp; Hamilton</i>	2007-1642	03/18/10	04/22/10	Length of time application pending from most recent notification date to 05/27/11 is 435 days. Application originally submitted 7/29/08 as NWP 21 but was incomplete; withdrawn 11/17/09 and later resubmitted.
Buckeye <i>Freed Road</i>	2007-17	01/15/09		Length of time application pending from most recent notification date to 05/27/11 is 864 days. Previous notification 03/03/08 was withdrawn 06/30/08.
Alex Energy, Inc. <i>Federal Surface Mine</i>	2007-182	08/19/08		Length of time application pending from most recent notification date to 05/27/11 is 1,012 days. Delayed due to mitigation plan. Project will be reviewed under ECP.*
Leeco, Inc. <i>Stacy Branch Surface Mine</i>	2007-217	04/17/07	10/22/10 and 12/14/10	Length of time application pending from most recent notification date to 05/27/11 is 1,501 days. Application being processed through ECP, started 9/16/10 with 60-day clock ending 11/15/10; however, permit still pending.*

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Notes
Pioneer Fuel <i>Little Eagle</i>	2007-282	07/08/07		Length of time application pending from most recent notification date to 05/27/11 is 1,418 days. Corps said it is waiting on additional information from applicant.
Load-Out <i>Locust Fork</i>	2007-284	05/16/08		Length of time application pending from most recent notification date to 05/27/11 is 1,106 days.
Alex Energy, Inc. <i>Lonestar Surface Mine</i>	2007-285	08/12/08	11/30/10	Length of time application pending from most recent notification date to 05/27/11 is 1,019 days. Project will be reviewed under ECP.*
Pioneer Fuel <i>MT5B</i>	2007-286	03/12/08		Length of time application pending from most recent notification date to 05/27/11 is 1,171 days. Project will be reviewed under ECP.*
Black Diamond <i>Norton Coal</i>	2007-3433		08/23/10	Length of time application pending from most recent notification date to 05/27/11 is 323 days. Original NWP application submitted in 2008 administratively withdrawn 03/24/09 due to lack of applicant response to request for additional information. Data shown are for resubmitted application currently being processed as IP. Currently resolving final mitigation plan and additional baseline data collection. Corps also listed "awaiting CWA Section 401 approval" as a reason for delay.
		07/08/10		
Nally & Hamilton <i>Nally &amp; Hamilton</i>	2007-439	05/30/08		Length of time application pending from most recent notification date to 05/27/11 is 1,092 days.
Nally & Hamilton <i>Nally &amp; Hamilton</i>	2007-450	08/24/10		Complete application not received. Original IP application submitted on 02/26/07 and withdrawn on 10/14/09 upon discovery of unauthorized work. Current IP application incomplete.
Powdermill Processing <i>Stone 1 U/G Mine, PrepPlant, Refuse Fill</i>	2007-488	05/02/08		Length of time application pending from most recent notification date to 05/27/11 is 1,120 days. Corp said it is waiting on revised mitigation plan.
Premier Elkhorn Coal <i>Premier Elkhorn Coal</i>	2007-594	09/07/07	09/30/10 and 11/02/10	Length of time application pending from most recent notification date to 05/27/11 is 1,359 days. Application being processed through ECP, started 08/19/10 with 60-day clock ending 10/18/10. However, deadline extended numerous times. Corps said that it proffered permit 05/27/11.
CAM Mining <i>Cane Branch</i>	2007-69	02/07/07		Length of time application pending from most recent notification date to 05/27/11 is 1,572 days. Corps noted additional notification dated 11/27/06.*

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Notes
Surface Mining Inc. Young Property	2007-708	10/05/10	06/21/10	Length of time application pending from most recent notification date to 05/27/11 is 235 days. Corps said it awaits information from applicant. We also documented notification for NWP 21 dated 01/20/09 and withdrawal letter dated 07/30/09.
CAM Mining CAM Mining	2007-867	08/15/07		Length of time application pending from most recent notification date to 05/27/11 is 1,381 days.*
Oxford Garrett	2007-874	05/19/09	09/02/10	Length of time application pending from most recent notification date to 05/27/11 is 738 days. Corps said application pending.
Frasure Creek Mining Spring Fork Surface Mine No. 2	2008-1098	01/26/09	04/03/09 and 04/28/09	Length of time application pending from most recent notification date to 05/27/11 is 853 days. Public notification dated 01/26/09 documented. Corps waiting for additional required information from applicant due to change in mine plan. Project will be reviewed under ECP.*
Nally & Hamilton Kayjay #5	2008-1175	09/23/10		Complete application not received. Application originally submitted as NWP 21 02/12/09. Application withdrawn and resubmitted as NWP 49 07/16/10. Application withdrawn and resubmitted as IP 09/23/10; proposal currently pending.
Nally & Hamilton Nally & Hamilton	2008-1178	08/02/10		Complete application not received. Application originally submitted as NWP 21 03/09/09. Application withdrawn and resubmitted as NWP 49 04/09/10 (we documented public notification for NWP 49 dated 05/10/10 as well as EPA comments dated 07/14/10). Application withdrawn and resubmitted as IP.
Nally & Hamilton Nally & Hamilton	2008-1808	09/02/10		Complete application not received. Application originally submitted as NWP 21 07/22/08. Application withdrawn and resubmitted as NWP 49 08/25/09. Application withdrawn and resubmitted as IP 09/02/10; proposal pending.
A&G Coal A&G Coal	2008-2130		08/22/10	Length of time application pending from most recent notification date to 05/27/11 is 534 days. Application originally submitted as NWP 21 03/13/09. Application withdrawn 10/28/09 and resubmitted as IP.
Horizon Resources, LLC Synergy Surface Mine No. 2	2008-370	12/10/09	07/31/09 and 08/25/09	Length of time application pending from most recent notification date to 05/27/11 is 703 days. List of 237 listed application number as 2008-1445. We documented 07/06/09 public notification.

06/24/09

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Notes
CONSOL of Energy <i>Buffalo Mt. Surface Mine</i>	2008-491	01/03/09	01/20/09	Length of time application pending from most recent notification date to 05/27/11 is 876 days. We also documented public notification dated 12/03/08. Federal Highway Administration completing Environmental Impact Statement. Mine plan changed, and Corps is waiting on additional information. Project will be reviewed under ECP.*
Middle Fork Dev. <i>Middle Fork Dev.</i>	2008-525	01/08/09	11/15/10	Length of time application pending from most recent notification date to 05/27/11 is 871 days.*
Eastern Associated Coals <i>Huff Creek Surface Mine</i>	2008-562	11/09/08		Length of time application pending from most recent notification date to 05/27/11 is 931 days. We documented public notification dated 10/10/08 (11/09/08 listed as closing date). This had application number 2008-806; however, Corps said that this was duplicate number so it used 2008-562 for application. Mine plan changed and Corps is waiting for additional information from applicant. Project will be reviewed under ECP.*
Enterprise Mining <i>Enterprise Mining</i>	2008-654	07/29/08		Length of time application pending from most recent notification date to 05/27/11 is 1,032 days.*
Eastern Associated Coal <i>Rocklick Branch Refuse Fill</i>	2008-76	05/04/11		Length of time application pending from most recent application date to 05/27/11 is 23 days. Additional information recently received from applicant.
Pocahontas Coal Co <i>East Gulf Complex</i>	2008-801	02/14/11		Length of time application pending from most recent application date to 05/27/11 is 104 days. NWP 50 application withdrawn to be processed as IP.
Infinity Energy <i>Infinity Energy</i>	2008-918	05/29/09		Applicant self-reported violation 08/14/08. Submitted after-the-fact permit application. Enforcement action pending resolution.
Pocahontas Coal Co <i>Beckley Highwall #2</i>	2008-995	05/04/11		Length of time application pending from most recent application date to 05/27/11 is 23 days. Previous application withdrawn 07/16/09. JD requested 07/30/09. Corps indicated NWP 49 application complete 05/04/11.
Cambrian Coal <i>Cambrian Coal Group</i>	2009-1086	08/12/10		Length of time application pending from the most recent submission to 05/27/11 is 289 days.
Panther, LLC <i>Wet Branch Refuse</i>	2009-154	08/10/09	09/08/09	Length of time application pending from most recent notification date to 05/27/11 is 656 days. Corps said it is waiting for additional information from applicant.

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Notes
Laurel Mountain Resources <i>Laurel Mountain Resources</i>	2009-341	07/09/10		Length of time application pending from most recent notification date to 05/27/11 is 322 days. Also had notification date of 06/09/09 for NWP 21, but withdrawn 06/11/10 (also had EPA comments dated 02/26/10). Suspension of NWP 21 06/18/10 caused applicant to apply for IP. List of 237 had company name and project name as Miller Bros. Coal.
National Coal of AL <i>L. Massey North</i>	2009-443	11/01/10		Public notice issued 06/02/09. Applicant withdrew application 08/03/09 to address Corps comments. Corps said application resubmitted in November 2010 and is pending.
CAM Mining <i>Tom's Branch Surface Mine</i>	2010-825	09/24/10	11/02/10 and 11/30/10	Length of time application pending from most recent notification date to 05/27/11 is 246 days. There was also a notification date of 05/21/08. List of 237 listed application number as 2007-1301. Administratively withdrawn 06/28/10 because applicant did not respond to request for additional information. Application withdrawn from ECP. Applicant subsequently resubmitted, and application being reviewed under application number 2010-825.
Lexington Coal Co. LLC <i>Findlay Branch Mine</i>	2010-929	03/17/11		Length of time application pending from most recent notification date to 05/27/11 is 71 days. We documented additional notification date of 03/12/08. List of 237 listed company name as Martin County Coal and application number as 2007-1660. Application withdrawn by applicant 03/02/10. Application withdrawn from ECP. Lexington Coal bought the operation and resubmitted application, which is currently being reviewed under 2010-929.

\* On October 6, 2011, the United States District Court for the District of Columbia ([National Mining Ass'n](#) (Oct. 6, 2011, Memorandum Opinion and Order)) ruled that, with the adoption of the ECP, EPA exceeded its statutory authority afforded by the Clean Water Act and ordered the ECP as an unlawful agency action and set it aside. In light of the District Court's decision, EPA indicated that pending ECP projects will be evaluated by the Corps and EPA under existing regulatory and statutory procedures. EPA has 60 days to appeal the District Court's decisions, which it has not yet done. EPA indicated that it is currently working with the Corps and the U.S. Department of Justice to make that decision.



**Applications With Actions Completed Prior to List Date of May 12, 2009:**

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Permit-issued date or withdrawn date</b>	<b>Notes</b>
Emerald Coal Resources, LP <i>Emerald Coal Resources, LP</i>	1996-61011	01/24/97	Yes	09/17/99	Length of time from notification date to permit-issued date was 966 days.
Premium Coal Refuse Area #3	2000-2339	03/02/09	None	04/06/09	Length of time from notification date to permit-issued date was 34 days. Original IP application notification 03/12/07. Withdrawn 03/02/09. Application resubmitted and approved as NWP 21. (We were unable to obtain new notification date and used the 03/02/09 withdrawn date to calculate the review time period.) List of 237 had application number as 2002-1435.
Valley Mining	2002-1435	02/01/08	None	05/08/09	Length of time from notification date to permit-issued date was 463 days. Corps said internal administrative delay.
Central Appalachian Mining <i>Big Branch</i>	2004-1400	06/13/05	03/23/09	04/28/09	Length of time from notification date to permit-issued date was 1,414 days. CWA Section 404(c) review initiated 04/28/09. The 04/28/09 letter also said that EPA shared its concerns in letters dated 07/22/05, 08/16/05, and 12/21/07 (Corps also said there were letters dated 06/22/05, 10/06/08, 04/28/09, and 12/17/10). Corps said applicant responded to EPA's data request dated 12/17/10 on 02/04/11 and 02/11/11.
Clintwood Elkhorn <i>CEMC</i>	2004-1860	04/06/09	None	04/27/09	Length of time from notification date to permit-issued date was 21 days. Corps said this was NWP 50.
Oxford Mining Company LLC <i>Dagrava Area</i>	2004-396	03/30/09	None	05/04/09	Length of time from notification date to permit-issued date was 34 days. Corps said delayed due to SMCRA permit.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Permit-issued date or withdrawn date</b>	<b>Notes</b>
Central Appal Mining <i>Remining #3</i>	2004-867	04/02/08	None	03/10/09	Length of time from notification date to permit-issued date was 343 days. Corps said IP application submitted 01/01/05. We have documentation of public notice dated 03/15/05 that was withdrawn.
Oxford <i>Mizer</i>	2005-1275	02/06/09	None	03/11/09	Length of time from application date to permit-issued date was 35 days.
Sturgeon Mining <i>Sturgeon Mining</i>	2005-1893	06/30/06	None	04/28/09	Length of time from notification date to withdrawn date was 1,032 days.
Consolidated Coal Company <i>Consolidated Coal Company</i>	2005-2160	08/22/07	None	07/09/08	Length of time from notification date to permit-issued date was 321 days. Corps said delayed due to Endangered Species Act consultation for Indiana Bat.
Consolidated Coal Company <i>Wilson Hollow</i>	2005-2461	10/15/06	None	01/26/09	Length of time from notification date to permit-issued date was 832 days. Corps said delayed due to Endangered Species Act consultation for Indiana Bat.
Sturgeon Mining <i>Sturgeon Mining</i>	2006-1053	02/08/08	None	03/02/09	Length of time from notification date to withdrawn date was 389 days.
Cumberland River Coal <i>Cumberland River Coal</i>	2006-2131	11/10/08	None	03/30/09	Length of time from notification date to permit-issued date was 142 days.
Oxford Mining <i>Horn</i>	2006-2256	01/15/09	None	05/08/09	Length of time from notification date to permit-issued date was 115 days.
Buckeye Ind Mining <i>Wilson</i>	2006-484	08/31/07	None	12/19/08	Length of time from notification date and to permit-issued date was 476 days. Corps said delayed due to SMCRA permit and resolution of comments.
D&C Mining <i>D&amp;C Mining</i>	2006-928	06/23/08	None	04/06/09	Length of time from notification date to permit-issued date was 287 days. Corps said IP also submitted 01/07/08 and withdrawn by applicant 06/23/08. Application for NWP 21 resubmitted and verified.
Kimble Clay Limestone <i>Harmon Hill</i>	2007-1101	01/20/09	None	03/11/09	Length of time from notification date to permit-issued date was 52 days.

Company name <i>Project name</i>	Application number	Notification or application date	EPA comment letter date(s)	Permit-issued date or withdrawn date	Notes
A&G Coal Corp <i>Ison Rock Ridge</i>	2007-1351	05/17/07	04/03/09 and 08/21/09	08/07/07	Length of time from notification date to permit-issued date was 81 days. EPA e-mailed Corps 04/03/09 asking that NWP 21 be revoked and that company should apply for IP. Corps told EPA 04/30/09 that it would not revoke NWP 21. Corps suspended NWP 21 05/06/09 because 2 years had passed since original verification issued. Corps advised company to proceed as IP application 08/11/09. A&G Coal's 08/17/09 letter to Corps requested Corps to reconsider suspension, saying permit process near completion. Corps told applicant to apply as IP 07/27/10.
Sapphire Coal <i>Sapphire Coal</i>	2007-1645	10/21/08	None	03/12/09	Length of time from notification date to permit-issued date was 143 days. Corps internal administrative delay.
ICG Hazard <i>ICG Hazard</i>	2007-334	04/04/07	None	03/25/09	Length of time from notification date to permit-issued date was 721 days. Corps internal administrative delay. In addition, lawsuit filed against Corps over original decision on application.
Oxford Mining <i>Page S.M.</i>	2007-499	12/19/07	None	02/17/09	Length of time from notification date to permit-issued date was 424 days.
Licking River Resources <i>Licking River Resources</i>	2007-815	11/29/07	None	05/11/09	Length of time from notification date to withdrawn date was 529 days.
Atlantic Leaseco <i>Peerless #1</i>	2007-961	04/08/08	None	04/06/09	Length of time from notification date to permit-issued date was 363 days. Corps said this was NWP 50.
Performance Coal Company <i>Upper Big Branch Deep Mine</i>	2008-114	12/03/08	None	04/01/09	Length of time from notification date to permit-issued date was 120 days. Mine reviewed as an after-the-fact authorization and Corps said it issued NWP 50 04/01/09.
Chas Coal <i>Chas Coal</i>	2008-138	03/31/08	None	05/09/09	Length of time from notification date to withdrawn date was 405 days.

<b>Company name Project name</b>	<b>Application number</b>	<b>Notification or application date</b>	<b>EPA comment letter date(s)</b>	<b>Permit-issued date or withdrawn date</b>	<b>Notes</b>
GTM Energy Partners <i>GTM Energy Partners</i>	2008-572	03/13/09	None	04/17/09	Length of time from application date to permit-issued date was 34 days. NWP 14—Linear Transportation Projects issued for road crossings only.
Patrick Processing <i>Patrick Processing</i>	2008-651	06/05/08	None	05/07/09	Administratively withdrawn; applicant never submitted complete application. NWP 50.
National Coal of AL <i>L. Massey South</i>	2009-416	03/18/09	None	04/27/09	Length of time from application date to permit-issued date was 40 days. Coordination not required; impacts to waters less than 0.5 acres.

**Nonsurface Mining Applications:**

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Permit issued date or withdrawn date	Notes
<b>Jurisdictional Determination</b>					
B&N Coal <i>Whigville</i>	2008-106	N/A			According to Corps, only JD applied for. Applicant never applied for permit.
Frasure Creek Mining <i>Frasure Creek Mining</i>	2008-388				JD only for this project.
<b>NWP 14</b>					
Buckeye <i>Hamilton</i>	2006-483	10/27/09	None	11/12/09	Length of time from application date to permit-issued date was 15 days. According to Corps, this was NWP 14—Linear Transportation Projects issued for road crossings only. Corps says application completed 10/27/09 and verified 11/12/09. We documented public notification for NWP 21 dated 05/27/08.
<b>NWP 32</b>					
Apex Energy <i>Apex Energy</i>	2003-1415	11/25/03	None	04/02/10	Length of time from application date to permit-issued date was 2,319 days. Unauthorized activity cease and desist order issued by Corps 02/26/04. Referred to EPA for enforcement 04/13/04. Copy of consent decree received 02/02/09. Applicant paid \$115,000. List of 237 had application number as 2002-1435.
<b>NWP 50</b>					
Bluestone Coal <i>Deep Mine 65</i>	2003-794	04/08/08	None	05/29/09	Length of time from notification date to permit-issued date was 417 days.
Ohio Valley Coal <i>No. 2 Slurry Exp.</i>	2003-853	07/09/09	None	10/07/09	Length of time from application date to permit-issued date was 89 days.
Bluestone Coal <i>Pocahontas #11</i>	2003-995	02/13/08	None		Length of time application pending from most recent application date to 05/27/11 is 1,200 days. Corps said permit pending, waiting on additional information from applicant. EPA had public notification date as 03/31/08.

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Permit issued date or withdrawn date	Notes
National Coal <i>National Coal</i>	2005-854	10/27/09	None	03/17/10	Length of time from notification date to permit-issued date was 142 days. Application originally submitted as IP but due to plan changes was resubmitted and processed as NWP 50.
Laurel Cr Coal <i>#7</i>	2006-2405	04/09/07	None	08/20/10	Length of time from notification date to withdrawn date was 1,228 days. Administratively withdrawn due to lack of applicant response.
Appalachian Fuels <i>Big Creek</i>	2007-1161	01/20/09	None	05/07/10	Length of time from application date to withdrawn date was 473 days. Company bankrupt and ceased business operations. Corps says administratively withdrawn due to lack of company response.
Eastern Associated Coal <i>Pond Fork #2 Gas Deep Mine</i>	2007-347	08/04/08	None	05/15/09	Length of time from notification date to permit-issued date was 285 days.
CAM Mining <i>CAM Mining</i>	2008-1361	12/10/08	None	10/21/09	Length of time from notification date to permit-issued date was 315 days. Corps internal administrative delay.
Newagle Mining Corporation <i>Hoover Fork Deep Mine</i>	2008-321	04/21/09	None		Length of time application pending from most recent notification date to 05/27/11 is 767 days. Corps waiting for additional information.
Hampden Coal <i>Harrys Br</i>	2008-935	03/30/09	None	05/21/10	Length of time from notification date to withdrawn date was 417 days. Corps administratively withdrew due to lack of applicant response to request for additional information.
Kanawha Eagle <i>Coalburg5 &amp; Eagle2</i>	2009-15	04/26/10	None	04/21/11	Length of time from notification date to permit-issued date was 360 days.
Hillside Mining <i>Workman Br</i>	2009-189	09/10/09	None	08/09/10	Length of time from notification date to permit-issued date was 334 days.
Chevron Mining <i>North River R-34</i>	2009-232	04/15/09	None	05/29/09	Length of time from application date to permit-issued date was 45 days. Coordination not required; impacts to waters less than 0.5 acres.

Company name Project name	Application number	Notification or application date	EPA comment letter date(s)	Permit issued date or withdrawn date	Notes
McElroy Coal Company 5 North # 11 Bleeder Shaft	2009-286	02/18/09	Yes	08/17/09	Length of time from notification date to permit-issued date was 181 days.
Consolidated Coal Company Loveridge Mine #22	2009-293	05/15/09	None	07/13/09	Length of time from notification date to permit-issued date was 59 days.
Leeco, Inc. Leeco, Inc.	2009-344	09/23/09	03/17/10		Length of time application pending from most recent notification date to 05/27/11 is 612 days. Corps internal administrative delay.
Argus Energy WV, LLC Deviltrace No. 2 Punchout	2009-427	02/06/09	None	05/13/10	Length of time from notification date to permit-issued date was 463 days.
ICG Knott Co. Lige Hollow Amburgy Mine	2009-75	02/16/10	03/25/10	05/12/10	Length of time from notification date to permit-issued date was 87 days. Corps internal administrative delay.
<b>Other</b>					
National Coal of AL Kansas Mine No. 2	2009-318				No permit required.

Source: On May 27, 2011, the Corps provided the senator's office permit application data, including status and reasons for delay, on the 237 applications under our review. The senator's office forwarded this information to us. We also visited EPA Regions 3, 4, and 5 to examine source documents and interview staff. This appendix presents our analysis of all data and information we obtained.

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