

**STATEMENT OF
MICHAEL B. GARDNER**

**GENERAL COUNSEL
OXFORD RESOURCE PARTNERS, LP**

**Before the House Subcommittee on Water
Resources and Environment**

Hearing On

**EPA Mining Policies:
Assault on Appalachian Jobs – Part I**

May 5, 2011

Good morning; my name is Michael Gardner, and I am General Counsel of Oxford Resource Partners, LP (NYSE: OXF). Oxford is a Top 20 Domestic Producer of steam coal and the largest surface coal mining company in Ohio. In addition to its Northern Appalachia operations in Ohio, West Virginia and Pennsylvania, Oxford has operations in Western Kentucky in the Illinois Basin.

We have a dedicated, non-union workforce of approximately 880 employees and expected coal production for 2011 of 9+ MM tons from 21 mines. Oxford has an enviable environmental, health and safety record, as evidenced by its recognition for outstanding achievements in reclamation and safety with more than 100 awards since 1985.

Oxford supports a carbon sequestration research project with Ohio State University and sponsors a field trial evaluation with a biotech company to demonstrate the viability of growing energy crops on our reclaimed mined land. And Oxford is fulfilling a substantial, three-year financial commitment as a corporate sponsor of the Foundation for Appalachian Ohio, to enhance the quality of life in our local communities.

We do surface mining only. Nearly all of our operations involve re-mining to some extent with the resulting beneficial backfilling of miles of dangerous highwall left from past mining practices, treatment of millions of gallons of toxic water accumulated in old strip pits, and elimination of acid mine drainage from abandoned deep mines, along with restoration of the land in accordance with current mining standards.

I have been asked to share Oxford's experiences in dealing with EPA's Mining Policies and its assault on the coal industry in the name of our nation's Clean Water Act.

The exhibits to my testimony contain a summary of facts and supporting documentation for 9 Oxford mining projects that illustrate our experience since June 2009, when EPA announced its Enhanced Coordination Procedures. I would need 5 hours, not 5 minutes, to do this justice; so I will share with you some of the highlights from my perspective.

But first, on behalf of Oxford, let me thank you for conducting these oversight hearings and for the opportunity to present my testimony. It is vital to our national interest in providing affordable energy that this Committee and others in Congress carefully review the EPA's recent activities.

ENHANCED COORDINATION PROCEDURES

On June 11, 2009, EPA announced its Enhanced Coordination Procedures and published an initial list of 108 §404 permits subject thereto (Ex. D). Eight Oxford sites appeared on EPA's Initial List of 108. It suffices to say that it's not a good thing to be on any list compiled by EPA. I sometimes refer to this as EPA's Blacklist. It's not a misstatement to say that, since June 11, 2009, every pending coal mining §404 permit application is on EPA's Blacklist, whether or not it appears on any published list. It's a Blacklist not only because these permits became subject to "Enhanced Coordination," but because these applications literally fell into a Black Hole, where no information was forthcoming—literally the opposite of transparency. You couldn't find out why a permit was on the list; and you couldn't find out how to get them issued off the list. This was a *de facto* moratorium on §404 permits – one sure way to reduce environmental impacts.

OXFORD BLACKLISTED PERMITS

On September 11, 2009, EPA published its "Final/Initial" List of 79 §404 permits subject to Enhanced Coordination (Ex. E). Only 4 of Oxford's 8 permits on the initial list made the final cut; the others having already been previously issued. The first 4 numbers of these permits are highlighted below to indicate the year when Oxford first began coordinating these permits with the Corps of Engineers – the delegated regulatory authority under §404 of the Clean Water Act. This Blacklist includes 4 Oxford sites: (1) Kaiser Mathias (200701021); (2) Halls Knob (200501385); (3) Peabody 3 (200500421); and (4) Ellis (200701180).

On September 18, 2009, Oxford's CEO, Chuck Ungurean, sent an urgent letter to EPA Administrator Lisa Jackson (Ex. F). This was a plea, as stakeholder, to meet with EPA to discuss the critical nature of 3 of our 4 permits on EPA's final/initial Blacklist of 79 (see EPA Letter to Sen. Inhofe, May 6, 2009, Q&A #4). We reminded EPA of its June 11, 2009 Press Release (Ex. F, p.11) entitled: Obama Administration Takes Unprecedented Steps to Reduce Environmental Impacts of Mountaintop Coal Mining [MTM], and reiterated that none of these permits involved MTM or for that matter Valley Fills. Despite numerous attempts to follow up by email, telephone messages left with Ms. Jackson's assistant, and voicemails to her Chief of Staff in the Division of Water, no response has ever been received.

Kaiser-Mathias (Ex. G)

The first one on the final/initial Blacklist of 79 that I want to discuss is Oxford's Kaiser-Mathias permit. It is the poster child for the absurdity of EPA's Enhanced Coordination.

Oxford began *coordinating* this permit with the Corps in 2005 to determine the extent of its jurisdiction (*aka* Jurisdictional Determination). Oxford submitted an application for a NWP 49 permit on November 4, 2008. This gives you an idea how far out ahead of the curve we try to be in our permitting efforts because of all the regulatory burdens and uncertainty.

NWP 49 is a nationwide general permit, specifically, pre-approved by EPA for surface coal **re-mining** activities because the benefits of **re-mining** so clearly outweigh any adverse environmental impacts. In this instance, Oxford proposed to backfill 4.55 miles of dangerous highwall, reclaim 455 acres (87% of the permit area) of previously unreclaimed mined land, and restore the land to meet current SMCRA standards.

This project was a new mine with 24 direct mining jobs. Studies have shown that up to 11 indirect jobs (*e.g.*, mechanics, welders, truck drivers, etc.) are created for every direct coal mining job. Thus, the cumulative potential employment impact was more than 200 jobs, and this in the Appalachian area that chronically suffers from high unemployment.

It wasn't until March 5, 2010 that EPA finally authorized the Kaiser-Mathias permit (see Ex. G, pp. 2-3). This was 6 months after our plea to EPA Administrator Jackson (see Ex. F, p. 2) and after nine months of EPA-Enhanced Coordination of a permit that should never have been on EPA's radar to begin with; and a permit decision, which was quite literally a no-brainer. Members of the Subcommittee, that's EPA's Enhanced Coordination.

But it doesn't stop there. Three days later, EPA published a Press Release (Ex. G, p. 4) taking credit for an 80% reduction in impacts to streams (12,930' > 2352') and a

70% reduction in impacts to wetland (3.39 acres >1), all ostensibly as a result of Enhanced Coordination. The only problem with this self-serving Press Release was that the starting points for these claimed reductions are completely fabricated. Oxford could not have submitted an NWP 49 had it proposed the kind of impacts for which EPA claimed a reduction.

And there was no mention in its Press Release that the application was for an NWP 49 permit, preauthorized for this type of mining. So much for transparency in EPA-Enhanced Coordination.

Halls Knob (Ex. H) (a personal favorite)

Oxford began *coordinating* this permit with the Corps, also in 2005, to determine the extent of its jurisdiction under Clean Water Act §404. On October 2, 2008, Oxford submitted an Individual Permit §404 application and proposed to backfill 1.62 miles of dangerous highwall, reclaim 38 acres of previously unreclaimed mine land, seal abandoned deep mine entries, and restore the land in accordance with current SMCRA standards. At the time, this project was a proposed new mine with 25 direct mining jobs (thus a cumulative potential impact of greater than 200 jobs).

On July 27, 2009, the SMCRA mining permit was conditionally issued, subject to issuance of Ohio EPA's Clean Water Act § 401 permit and the Corps' §404 permit. On September 11, 2009, Ohio EPA issued its §401 water quality certification that the project meets stringent state water quality standards.

In our September 18, 2009 plea to EPA Administrator Jackson (see Ex. F, p. 2), Oxford asked about the EPA's environmental concerns, given that Ohio EPA had none.

We were 3 months into Enhanced Coordination. There was no response from the black hole. On further, six months, and then nine months, into Enhanced Coordination, and still nothing. It was not until on May 27, 2010 – after nearly one year of Enhanced Coordination - under transmittal by EPA's Office of Water, Chief of Staff, Greg Peck, EPA – that we found out what EPA wanted to exact from Oxford for this permit in comments submitted to the Corps (Ex. H, pp. 2-9). The comments contained a host of unacceptable special conditions, that Oxford has never before seen and could not accept. EPA had recommended that Corps deny the §404 permit without these special conditions.

Halls Knob would be one of the first §404 permits issued after EPA's Guidance on Enhanced Coordination was published on April 1, 2010. On June 6, 2010, the Corps drafted the permit as instructed by EPA, without any material changes in the egregious special conditions, including phased sequencing of mining (which was ridiculous as mining had commenced almost one year prior); extensive specific conductivity monitoring; extensive biological monitoring; additional mitigation requirements for temporal losses; and mining operations stoppage if any sample result exceeded Ohio's water quality standard of 2400 microsiemens/cm for specific conductivity, whether or not it was caused by mining activities. The draft permit gave EPA ten additional days to seek any further changes and Oxford a window of opportunity to eliminate or reduce the regulatory burdens of these special conditions in the final permit.

Now faced with shutting down the mine and laying off 25 coal miners because we had run out of mineable SMCRA permitted reserves without the Corps §404, Oxford went to its Congressional delegation for help. On June 11, 2010, ironically after exactly

one year of EPA-Enhanced Coordination, the Delegation sent a letter to EPA Administrator Jackson requesting a meeting to discuss Halls Knob (see Ex. H, pp. 10-11).

On June 18, 2010, the meeting was held in the office which I believe is now occupied by Chairman Gibbs. Attending for Oxford was our CEO, Chuck Ungrean, our §401/404 Permitting Coordinator, Nate Leggett, and myself. Attending for EPA was Greg Peck, Office of Water, Chief of Staff, and others, along with representatives of our Ohio Delegation.

The most noteworthy comment from the meeting was the lay opinion expressed by Mr. Peck that streams were void of aquatic life with specific conductivity above 300. Mr. Leggett presented Mr. Peck with pre-mining, background sampling data for Halls Knob indicating specific conductivity ranging upwards of 1,500 in streams which we were being required to mitigate because of the aquatic life present. (See Ex. H, pp. 12-13.)

On July 12, 2010, after three more weeks of Enhanced Coordination, the Corps re-proffered the §404 permit with marginally acceptable special conditions. This was 10 months after our initial plea to EPA Administrator Jackson, nearly one year after mining had already commenced, 13 months after EPA-Enhanced Coordination was introduced and 21 months after the Individual Permit §404 application was submitted.

Peabody 3 (Ex. I)

Oxford began *coordinating* with the Corps on its Jurisdictional Determination in 2005. On February 27, 2009, an Individual Permit §404 application was submitted. On

May 15, 2009, USEPA objected to the Corps issuing the permit for a variety of reasons having nothing to do with making our nation's waters fishable or swimmable (Ex .I, pp. 2-3). To no one's surprise, Peabody 3 appeared on EPA's initial Blacklist of June 11, 2009, and was still on the September 11, 2009 "final/initial" list of 79.

In our September 18, 2009 plea to EPA Administrator Jackson (Ex. F, p. 2), Oxford advised USEPA that 1.1 MM tons of permitted coal reserves would be lost without this §404 permit, resulting in the layoff of 57 coal miners employed at the mine (thus a cumulative potential impact of greater than 500 Appalachian jobs). On November 20, 2009, by mutual agreement with the Corps, Oxford withdrew the Individual Permit application in order to avoid the scrutiny facing permits on the Blacklist. This was viewed as the best possible remedy to deal with Enhanced Coordination in order to advance issuance of the permit.

On November 30, 2009, Oxford resubmitted the Individual Permit; nonetheless, on April 9, 2010 (Ex. I, pp. 4-6), EPA again commented to the Corps on the Individual Permit. Oxford agreed to avoid impacts to streams that aren't streams; to avoid wetland that was created by human activities; to build sediment ponds outside natural drainage channels where they belong; and to avoid springs emanating from the coal seam that will be mined--all of which result in dramatically increased mining costs--in order to obtain the permit, continue mining and avoid laying off a dedicated workforce.

On June 9, 2010, seven months after resubmittal and 21 months after the original submittal, the Corps Issued the Individual Permit.

As a direct result of Enhanced Coordination, EPA's mining policy has sterilized over 150,000 tons of coal in the ground, contrary to the express purposes of SMCRA

and the energy needs of our country. This sterilized coal represents more than 10% of the coal reserves to be mined at Peabody 3. There are 15,000 more tons of coal at risk of sterilization by future mining due to EPA-Enhanced Coordination (see Ex. I, pp. 7-8).

Ellis (Ex. J)

Oxford began *coordinating* with Corps on its Jurisdictional Determination in 2007. On October 28, 2008 Oxford submitted the Individual Permit §404 application proposing to backfill 2.63 miles of dangerous highwall, reclaim 144 acres (31% of the permit area) of previously unreclaimed mined land and restore the land to in accordance with current SMCRA standards. Ellis will be a new mine with 32 direct mining jobs (thus a cumulative impact of greater than 300 jobs).

On April 22, 2010, Oxford withdrew the Ellis Individual Permit §404 application in order to remove it from EPA's Blacklist and advance issuance of the permit. On August 17, 2010, Oxford resubmitted an Individual Permit application for Ellis. On November 24, 2010, EPA provided comments to the Corps on the Individual Permit application (see Ex. J, pp. 2-5). In addition to raising earlier Enhanced Coordination concerns of avoidance, minimization of impacts and biological monitoring, EPA raised new concerns regarding the Financial Assurances that will be provided and lack of details on protecting mitigation areas from livestock impacts because the postmining land use is described as pastureland and the Ohio River is impaired for fecal coliform. After nearly two years of this kind of EPA-Enhanced Coordination, permit issuance is anything but certain.

OTHER OXFORD CLEAN WATER ACT §404 PERMITS IMPACTED BY ENHANCED COORDINATION

Garrett (Ex. K)

Garrett was not Blacklisted by EPA, although the Individual Permit §404 application was submitted on February 18, 2009. Nevertheless, Garrett still was being subjected to Enhanced Coordination. *Coordinating* with the Corps on its Jurisdictional Determination commenced in 2007. Oxford proposed to backfill 0.70 miles of dangerous highwall and reclaim 50 acres (9% of the permit area) of previously mined and unreclaimed mined land in accordance with current SMCRA standards.

Garrett is a new mine with 30 direct mining jobs (thus a cumulative impact of greater than 300 jobs). On September 2, 2010, the EPA provided comments to the Corps on the Individual Permit application (Ex. K, pp. 2-5).

In addition to raising earlier Enhanced Coordination concerns of avoidance, minimization of impacts and biological monitoring, the EPA raised new concerns regarding the Financial Assurances that will be provided, requirements for Adaptive Management Plans and the Cumulative Impacts of livestock impacts and impacts from other mining projects in the watershed. After nearly two years of this kind of EPA-Enhanced Coordination, permit issuance is anything but certain.

EPA'S MINING POLICIES: CLEAN WATER ACT §402; OXFORD'S EXPERIENCE

EPA-Enhanced Coordination is not limited to §404 of the Clean Water Act. Section 402 of the Clean Water Act grants exclusive jurisdiction to state-approved programs like Ohio to issue National Discharge Elimination System (NPDES) permits. EPA had previously approved Ohio's NPDES General Permit for surface coal mining

operations effective February 28, 2009. (See Ex. L, p. 9.) This General Permit established effluent limitations for discharges of water from surface coal mines such that, if these limits are met, individual and cumulative discharges from surface coal mines to waters of the US will have de minimus adverse impacts.

EPA-Enhanced Coordination is following the same pattern here as with the NWP 21 permit under §404, namely to invalidate the utility of a General CWA permit. Except that EPA has not followed the law to suspend or revoke Ohio's valid, existing Coal General Permit, which does not expire until 2014 by its own terms (*id.*). EPA-Enhanced Coordination has unlawfully interfered with Ohio's EPA-approved §402 program causing Ohio EPA to deny coverage under Ohio's Coal General NPDES Permit.

West (Ex. L)

On December 22, 2009, Oxford submitted its Notice of Intent (NOI) for coverage under Ohio Coal General NPDES Permit to Ohio EPA (Ex. L, p. 6). On May 13, 2010, six weeks after EPA published its April 1, 2010 "Guidance" on Enhanced Coordination, Ohio EPA put Oxford's West NOI on "hold" (see Ex. L, p. 8).

On July 28, 2010, Ohio EPA denied Oxford's West coverage under Ohio's valid Coal General NPDES permit (see Ex. L, pp. 4-5). The purported basis for this denial was two External Review Draft studies, funded by EPA, authored by EPA researchers and conducted in West Virginia to establish aquatic life benchmark levels for specific connectivity (see Ex. L, pp. 10-11). Oxford was directed by Ohio EPA to submit an Individual NPDES permit for surface coal mining operations, which had never before been required in Ohio.

On August 26, 2010, Oxford appealed the denial of coverage under the NOI. On August 27, 2010, Oxford's CEO wrote to Governor Strickland asking for assistance in getting Ohio EPA to issue coverage under a valid, existing Ohio Coal General NPDES Permit (Ex. L, pp. 2-3).

On September 20, 2010, Oxford submitted an Individual NPDES application for surface coal mining operations, even without any chemical-specific monitoring limitations established by EPA-Enhanced Coordination.

On March 3, 2011, Ohio EPA backtracked and authorized coverage under the Coal General NPDES, 7 months after preparing and submitting an Individual NPDES permit application, 9 months after it was originally denied, after 10 months of EPA-Enhanced Coordination, and 14 months after the original NOI was submitted for what was previously a routine authorization.

OTHER EPA-ENHANCED COORDINATION INTERFERENCE WITH STATE §402 PROGRAM

The attached Ex. L contains an email thread from EPA Region 5 Chief of Watershed and Wetlands Branch, Kevin Pierard, and Krista McKim, Professional Engineer (January 24, 2011- February 8, 2011, Ex. L, pp. 12-17). EPA requested supplemental information on sediment pond design, construction, etc., so EPA can "have a better understanding of the project." These emails demonstrate that EPA Region 5 lacks the engineering/technical skills to review even General Coal Mining NPDES permits.

Issuing a valid General NPDES Permit is the exclusive province of EPA-approved State programs – like Ohio's. More Enhanced Coordination for your consideration.

Elk Run and East Canton

Elk Run and East Canton are two separate mining projects combined to demonstrate how EPA-Enhanced Coordination works by co-opting its state counterparts. The circumstances in these instances follow on the heels of Ohio EPA denying coverage under the Coal General NPDES Permit for Oxford's West mine.

On September 30, 2010, Brian Hall, Assistant Chief, Ohio EPA, emailed EPA asking permission of EPA Region 5 to see if Ohio can still issue Ohio's Coal General NPDES permits for these two projects (Ex. M, pp. 2-6). In response, EPA indicated its engagement in Enhanced Coordination with the Corps. On October 1, 2010, EPA Region 5 Watersheds & Wetlands Branch Chief, Kevin Pierard, responded to further inquiry that Region 5 needs to do more Enhanced Coordination with the Corps on its Jurisdictional Determinations (Ex. M, p. 3). On October 13, 2010, Ohio EPA received direction from Region 5 on issuance of Ohio's Coal General NPDES permit, but needed to first brief the Director of Ohio EPA (Ex. M, pp. 4-5).

On October 18, 2010, "Based on direction of [EPA] Region 5," Oxford is advised to submit Individual NPDES permit applications for East Canton and Elk Run (Ex. M, p. 6).

On October 25, 2010, Ohio EPA backtracked and issued General Coal NPDES permit because Region 5 ultimately conceded that there were no jurisdictional waters of

the US impacted by these projects. EPA-Enhanced Coordination was thus even extended to matters for which it has no jurisdiction.

EPA'S MINING POLICIES: SECONDARY EFFECTS ON CORPS §404 DECISION-MAKING

Daron/Consol

On August 21, 2006, the Corps issued an Individual Permit for this 1700-acre project. This is one of the first Individual Permits issued to Oxford after it became clear that NWP 21 permits would be of no further value. NWP 21s are issued for a 5-year term. The industry had been advised to use Individual Permits in lieu of NWP 21 because, among other reasons, Individual Permits are issued for the duration of the project--until activities are completed. No renewals were required.

Unknowingly at the time, the Corps erroneously issued a Daron/Consol Individual Permit with a 3-year term for construction activities. The construction period expired December 31, 2009, which was not a reasonable time for completion as required by 33 CFR 325.6(c).

This fact was not discovered until January 10, 2011 (Ex. N, p. 2). On February 4, 2011, Oxford requested an extension of the time period authorized for construction activities (Ex. N, pp. 2-3). Extensions will be granted unless contrary to public interest (accord, 33 CFR 325.6(d)). There were no additional impacts or expansion in the scope of the project that would require a new permit to be issued (accord, 33 CFR 325.7 (a)).

Nonetheless, on March 24, 2011, the Corps denied Oxford's request for an extension of time (Ex. N, p. 4). The Corps decided the work was no longer authorized, even though not completed and even though Oxford had been mining in the interim

since December 2009. Oxford must resubmit a new Individual Permit application, specifically subject to Public Notice and Comment—again--and subject to more Enhanced Coordination for the same project permitted in 2006.

EPA-Enhanced Coordination and scrutiny has the Corps scared of its own shadow, which interferes with the exercise of sound regulatory decision-making.

SUGGESTED GENERAL WATER RESOURCES POLICY CONSIDERATIONS

Water Resources Policy should recognize coal's importance in providing an affordable source of America's energy needs.

Water Resources Policy should reconcile statutory conflicts between the CWA and SMCRA with regard to protection of water resources and performance standards.

Water Resources Policy should recognize that the coal mining industry does not need three environmental protection agencies at the federal level and counterparts at the state level to command and control coal mining impacts on water resources.

Water Resources Policy should acknowledge and reflect that impacts to water resources from coal mining are unavoidable.

Water Resources Policy should recognize OSM and its primacy state agencies as the regulatory authority on impacts to water resources from coal mining operations.

Water Resources Policy should provide that unavoidable impacts to water resources from coal mining operations should be managed to minimize the adverse impacts to water resources within the mine site and prevent material damage to water resources outside of the mine site to the extent technologically and economically feasible.

Water Resources Policy should acknowledge that, by minimizing the adverse impacts to water resources within the mine site and preventing material damage to water resources outside of the mine site to the extent technologically and economically feasible, aquatic biology will be adequately protected.

Water Resources Policy should afford as much protection to the lives of coal miners as is provided to the protection of macroinvertebrates.

Water Resources Policy should refocus EPA on the Clean Water Act goals of making waters of the US fishable/swimmable, while recognizing that no natural person swims or fishes in waters of the US within the boundaries of a coal mining permit.

Water Resources Policy should recognize that Clean Water Act jurisdiction does not extend to cover every drop of water in the hydrologic cycle.

Water Resources Policy should prescribe limits on jurisdictional determinations of waters of the US with respect to intermittent and perennial streams located below the local water table as determined by the scientific methods of hydrogeology and geomorphology.

SUGGESTED CLEAN WATER ACT AMENDMENTS FOR CONSIDERATION

The Clean Water Act should be amended to delegate from the Administrator and the Secretary of the Army to OSM all Clean Water Act authority with respect to coal mining projects, without any reservation of rights.

The Clean Water Act paradigm that there shall be no discharge of pollutants without a valid permit should be amended to designate a SMCRA permit as the valid permit for Clean Water Act § 404 (dredge & fill), § 402 (water discharges) and § 401

(state water quality certification), in lieu of any other permits required for impacts to water resources from coal mining operations.

Clean Water Act § 404(c) should be amended to prohibit use (and threatened use) of the Administrator's veto authority under § 404(c) after a § 404 permit has issued and restrict any use (or threatened use) of the Administrator's veto authority to 30 days after a § 404 permit is proffered.

Clean Water Act § 404(f) exemptions should be enlarged to expressly exempt SMCRA permitted activities.

The Clean Water Act should be amended to define intermittent and perennial streams as only those located below the local water table as determined by the scientific methods of hydrogeology and geomorphology, thereby eliminating any existing and conflicting definitions in federal jurisprudence.

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Exhibit A

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EXHIBIT A – CURRICULUM VITAE

Michael B. Gardner has been General Counsel of Oxford Resources GP, LLC, the general partner of Oxford Resource Partners, L.P. (NYSE: OXF)(OXFORD), since September 2007. Mr. Gardner also serves as General Counsel of OXFORD's operating companies, Oxford Mining Company, LLC and its wholly owned subsidiary, Oxford Mining Company – Kentucky, LLC. For three years prior to joining Oxford, Mr. Gardner was Associate General Counsel of the largest independently-owned coal mining company in the US.

Mr. Gardner has more than 30 years experience in the coal industry and environmental regulatory compliance management, beginning in 1979 as a state mine inspector with the Ohio Department of Natural Resources, jointly responsible for enforcing the federal Surface Mining Control and Reclamation Act of 1977 with the US Department of Interior, Office of Surface Mining. Mr. Gardner also worked for another surface coal mining company in Ohio, an international engineering and construction company and an environmental consulting firm before entering the private practice of environmental law in 1993.

Mr. Gardner is an alumnus of the Ohio University, where he received a Bachelor of Science degree in Environmental Biology (Botany emphasis). He also holds a Juris Doctorate from Case Western Reserve University and a Masters of Business Administration from Ashland University.

Mr. Gardner is a licensed Ohio attorney and is admitted to practice before the Ohio Supreme Court, the US District Court of Ohio (Northern and Southern Districts), the US Court of Appeals (6th Circuit) and US Tax Court.

Mr. Gardner serves on the Board of Directors of the Ohio Coal Association and Kentucky Coal Association and serves as a trustee on the Energy and Mineral Law Foundation Governing Member Organization for the Ohio Coal Association. He is also a member of the American Corporate Counsel Association, Northeast Ohio Chapter and the Cleveland Metropolitan Bar Association.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name:
MICHAEL B. GARDNER

(2) Other than yourself, name of entity you are representing:
OXFORD RESOURCE PARTNERS, LP

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?
YES If yes, please provide the information requested below and attach your curriculum vitae.
NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

NONE KNOWN


Signature

May 2, 2011
Date

Exhibit B



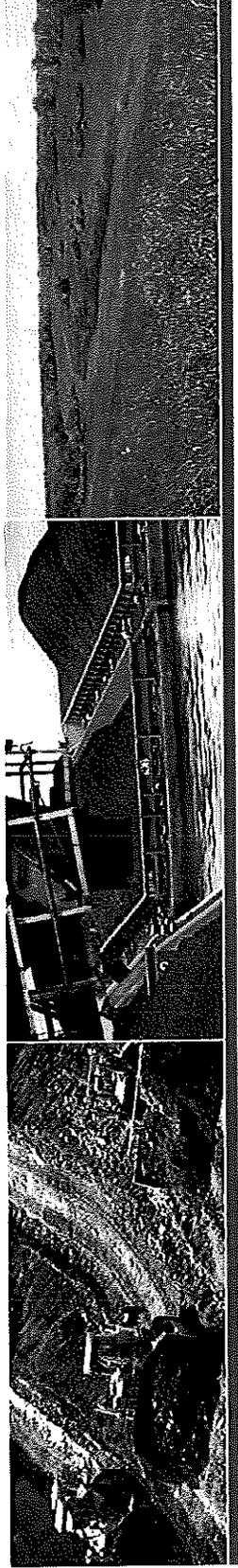
**EXHIBIT B – INTRODUCTION TO OXFORD
Excerpt from 12/7/2010 Presentation**

Reliability Matters

2010 Wells Fargo Securities 9th Annual Pipeline, MLP and E&P, Services & Utility Symposiums

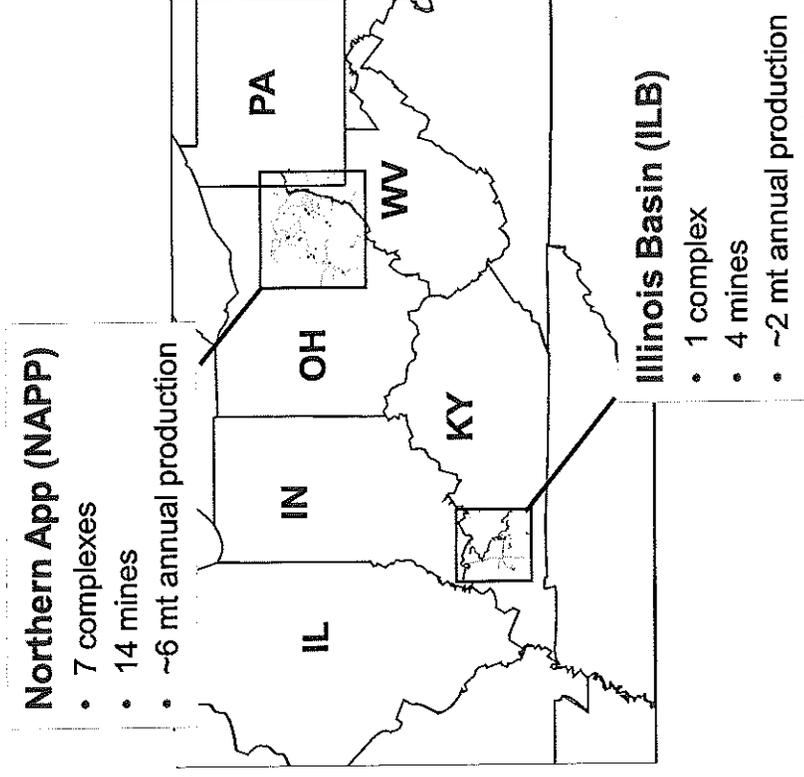
Jeff Gutman, SVP & CFO
Brian Meilton, Investor Relations

December 7, 2010



We are a Leading Producer of Surface Mined Coal in NAPP and ILB

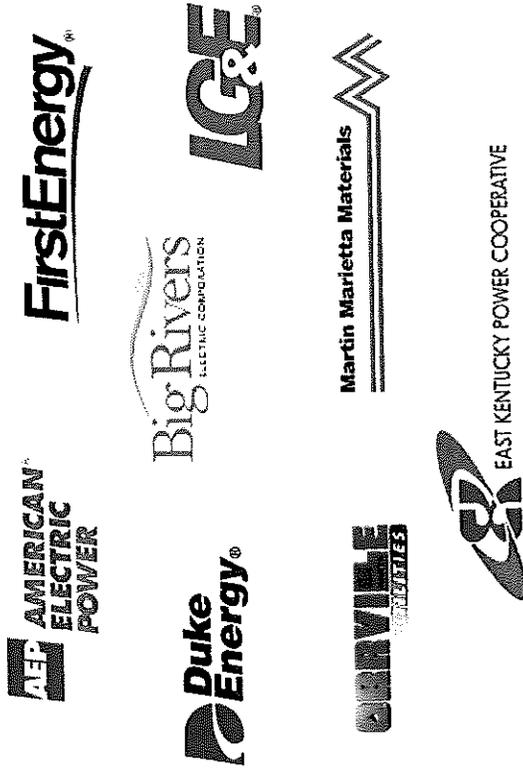
- Successful operating history since 1985
- Among lowest cost producers in region
- Diverse asset base with 8 mining complexes comprised of 18 individual mines
- 92 million tons of reserves located in eastern Ohio (NAPP) and western Kentucky (ILB)
- Annual production of ~8 mt of thermal coal
- Strategically located in close proximity to customers in 6-state region



Long-term Customer Relationships

- Long-standing relationships with top electric utility customers
- Sales contracts with terms ranging from one to eight years
- Mainly serve base-load scrubbed power plants

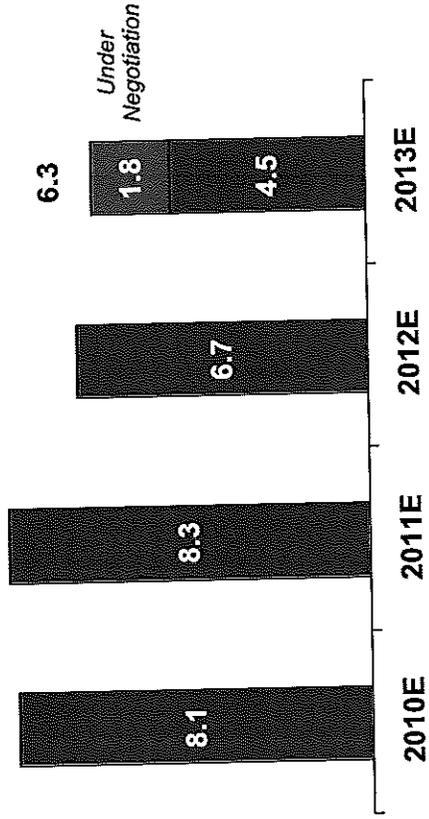
High Quality Customer Base



Highly Committed Sales Portfolio¹

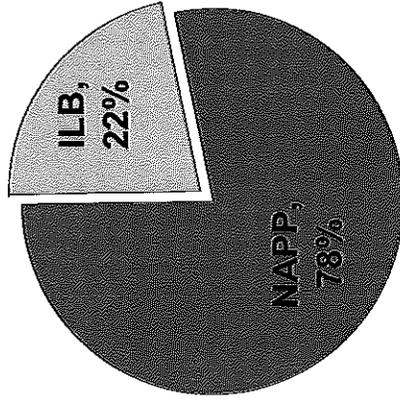
(Tons in millions)

Committed Tons as % of 2010 Sales		
100%	102%	82%
		56% / 80%

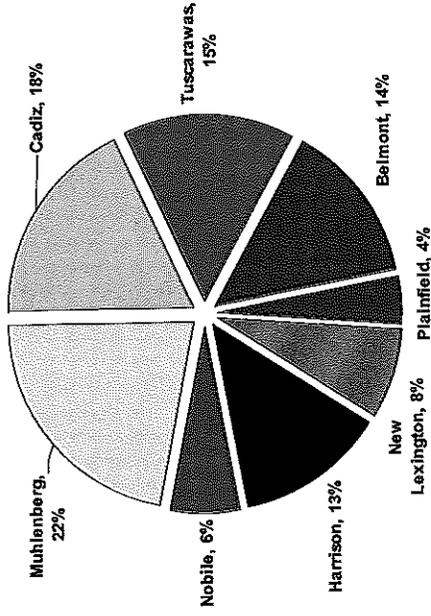


Diverse Operations

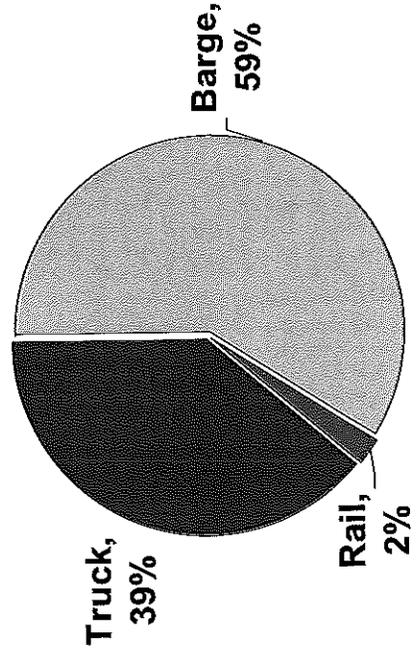
Regional Production



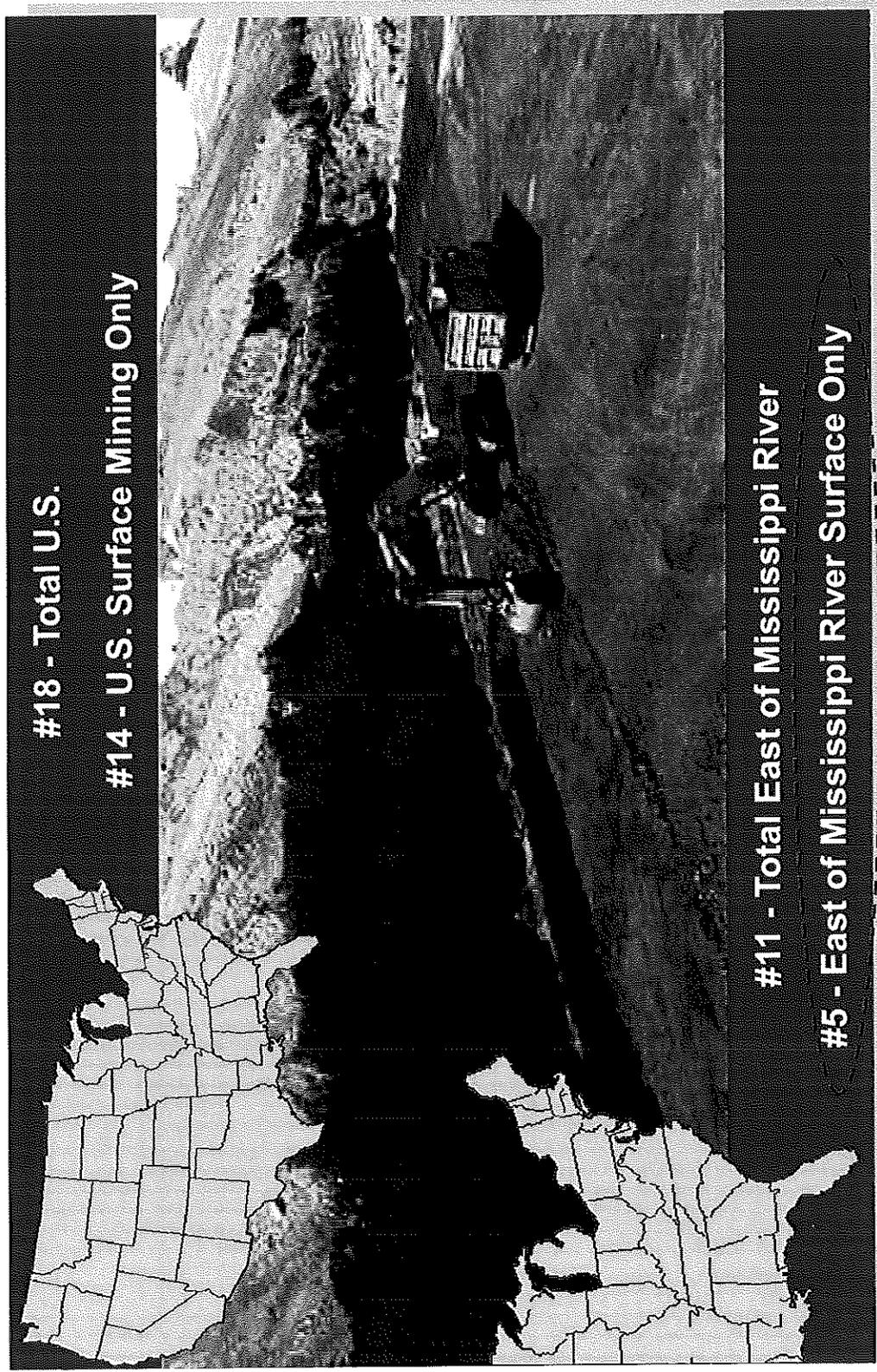
Production by Mining Complex



Transportation



Oxford is a Top 20 Domestic Coal Producer



*Source: Boyd and MSHA; 2009 production data, Oxford is pro forma Phoenix Coal acquisition.



Exhibit C

EXHIBIT C - EPA MINING POLICIES

I. January 20, 2009 (Obama inauguration)

- A. *EPA Region III letter to Corps*
- B. *Objects to/threatens to veto CWA §404 permits issued for surface coal mining based on draft, EPA-funded study in WV of impacts on benthic macroinvertebrate populations downstream of valley fills from mountain top mining operations.*

II. February 13, 2009 (US Court of Appeals, 4th District)

- A. *Reverses OVEC et al. v. Aracoma, et al (S.D. WV)*
- B. *Upholds Corps authority to issue CWA §404 permits*
- C. *EPA launches into anti-mining agenda into overdrive*

III. March 2009

- A. *EPA list of 48 permits w/i 60 days of issuance*
- B. *6/48 with substantial environmental concerns*

IV. June 11, 2009 -EPA MOU with Corps/OSM/CEQ

- A. *EPA Enhanced Coordination Procedure (ECP)*
 - 1. Press Release “to reduce environmental impacts of Mountain Top Mining” (Ex. F, p.11)
 - 2. Asserted control over all Corps §404 permits
 - 3. Enhanced coordination = regulatory black hole
 - 4. Transparency - only thing apparent -delayed issuance
- B. *List of 108 (1 many lists, e.g., “Cong. Rahall List”; “NMA”; “final initial”); Ex. D (w/ 8 Oxford permits highlighted)*
- C. *Corps seeks to suspend NWP 21 in 6 Appalachian states only*
 - 1. General CWA §404 permit for surface coal mining ops
 - 2. First issued 1982;
 - a) reauthorized March 2007
 - b) expires March 2012
 - c) Streamlined permitting process pre-approved by EPA
 - d) Minimal individual and cumulative impacts
- D. *EPA to review CWA §401 & §402 programs*
 - 1. §401- State certification that project meets state WQS
 - 2. §402- federal NPDES permit for water discharges
 - a) General Coal NPDES permit available for surface mining ops
 - b) Pre-approved by EPA where discharges meet certain technologically-based effluent limitations

V. September 30, 2009

- A. *“final”“initial” List of 79 (Ex. E)*
 - 1. w/ 4 OXF permits highlighted
- B. *Introduced MIRA tool used to coordinate process*

1. Multi-criteria Integrated Resource Assessment
 2. Never before used in regulatory decision-making
 - C. *CWA§404 permit blackhole gets darker/deeper*
- VI. October 16, 2009- EPA threatens veto Arch Coal – Spruce No. 1**
- A. *IP Issued 2007*
 - B. *Never before used authority CWA §404c*
 - C. *After 10 years of environmental studies*
 1. Including EIS with EPA as coordinating agency
 - D. *Threat to ALL EXISTING §404 Permits*
- VII. April 1, 2010 – Detailed Guidance effective immediately**
- A. *EPA invades states exclusive authority to:*
 1. Issue CWA §402 NPDES permits
 - a) imposing numeric/narrative WQS
 - (i) *e.g, conductivity*
 2. Issue state CWA§401 water quality certifications
 - B. *Ignores procedural safeguards for establishing new Water Quality Standards and technologically-based effluent limitations.*
 - C. *CWA §404 application – new requirements*
 1. Biological monitoring
 2. Adaptive Management Plans
 - a) Surrogate for inspection & enforcement
 - b) Additional compensatory mitigation required
 - D. *Challenged by NMA, WV and KY; now in DC District Court of Appeals*
- VIII. May 21, 2010 – Sen. Environment/Public Works Report**
- A. *235 permits subject to EPA enhanced coordinated review*
 - B. *EPA had allowed only 45 to be issued*
 1. At significant increased cost and lost reserves
- IX. June 18, 2010- Corp Suspends CWA§ 404 NWP 21**
- A. *After public hearing and comment.*
- X. January 13, 2011- EPA vetoes Arch Spruce No. 1 CWA§404**
- A. *Due to adverse effects on WILDLIFE*
 1. Specific Conductance.>adv. Macroinvertebrates>adv. Fish>adv. Wildlife
 2. Alternatives to veto: Adv. municipal water supplies, shellfish beds; fisheries, recreational [or wildlife] –
 3. absurd causal nexus
 - B. *Eliminate all certainty in permitting process*
- XI. May 2011- Final EPA – Corps Guidance on ECP?**
- A. *Due, Per April 1, 2010 Initial Guidance Memo*
 - B. *National Clean Water Act Framework – April 27, 2011?*

Exhibit D

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Huntington	200300065	S-5027-99	Hobet Mining	Hewett
Huntington	200400336	898-0715	Bear Fork	Bear Fork
Huntington	200400624	S-5025-97	Independence Coal Company	Constitution Surface Mine
Huntington	200400867	S-45014-04	Central Appal Mining	Remining No. 3
Huntington	200401152	10296	Buckingham Coal	Buckingham Wash Plant
Huntington	200401155	S-2001-05	Brooks Run Mining	Brandy St & Cove MIn
Huntington	200401451	S-5001-02	Independence Coal Company	Glory Surface Mine
Huntington	200500167	U-3004-06	Catenary Coal Co.	Tenmile Fork Deep Mine
Huntington	200500217	S-4014-01	Bluestone	Contour Auger 1
Huntington	200500421	D-2295	Oxford	Peabody 3
Huntington	200500753	D-2290-1	Oxford Mining	Long Sears Adjacent
Huntington	200500934	898-5694 Am5	Premier Elkhorn	U/T Old Beefhide
Huntington	200501115	O-10-83IBR9	Green Valley Coal Company	Blue Branch Refuse
Huntington	200501198	S-5008-02 S-5021-01	Marrowbone Development	Taywood W & Marrowbone
Huntington	200501211	S-5020-99 AM3	Premium Energy, Inc.	Premium Mills Surface Mine
Huntington	200501275	10397	Oxford	Mizer
Huntington	200501385	10400	Oxford	Halls Knob

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Huntington	200600100	S-5009-00	ICG Eastern, LLC	Jenny Creek Surface Mine
Huntington	200600126	860-0390 Am4	Consol of KY	Area 80
Huntington	200600127	860-5260 Am1	Consol of KY	Slone Br Mine
Huntington	200600821	U-3001-98 IBR5	Catenary Coal Co.	Laurel Fork
Huntington	200602033	S-3016-06	Wildcat	No. 2 Surface
Huntington	200602256	10379	Oxford Mining	Horn
Huntington	200602290	S-7-81	Colony Bay Coal Co.	Colony Bay Surface Mine
Huntington	200700182	S-3011-07	Alex Energy, Inc.	Federal Surface Mine
Huntington	200700282	U-4012-06	Pioneer Fuel	Little Eagle
Huntington	200700285	S-3009-07	Alex Energy, Inc.	Lonestar Surface Mine
Huntington	200700286	S-3010-06	Pioneer Fuel	MT5B
Huntington	200700499	10372	Oxford Mining	Page
Huntington	200700708	10391	Surface Mining Inc	Young Property
Huntington	200701021	10405	Oxford Mining	Kaiser Mathias
Huntington	200800114	U-3016-95	Performance Coal Company	Upper Big Branch Deep Mine
Huntington	200800491	S-5002-07	CONSOL of Energy	Buffalo Mt. Surface Mine
Huntington	200800562	S-4004-07	Eastern Associated Coals	Huff Creek Surface Mine

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Huntington	200800791	S-5002-07	Hobet Mining	Surface Mine No. 45
Huntington	200800805	S-3001-08	Coyote Coal Company	Joes Creek Surface Mine
Huntington	200800830	S-5006-07	CoalMac, Inc.	Pine Creek Surface Mine
Huntington	200800935	U-5010-08	Hampden Coal	Harrys Br
Huntington	200801098	S-5018-08	Frasure Creek Mining	Spring Fork Surface Mine No. 2
Huntington	200802160	10403	B&N Coal	Whigville III
Huntington	200900427	U-5023-92	Argus Energy WV, LLC	Devils Trace No. 2 Punchout
Huntington	200900428	U-5031-08	Consol of Kentucky	Spring Branch No. 3 Deep Mine
Louisville	200301276	897-0430 A1	Candle Ridge Mining	Candle Ridge Mining
Louisville	200500851	867-0440	Cheyenne Resources	Cheyenne Resources
Louisville	200501893	895-0171	Sturgeon Mining	Sturgeon Mining
Louisville	200600756	897-0457 A2	ICG Hazard	ICG Hazard
Louisville	200601124	836-5488, 836-0317	Matt/Co	Matt/Co
Louisville	200601290	877-0167, 877-0168	Licking River Resources	Licking River Resources
Louisville	200601296	898-4150 A1	Clintwood Elkhorn	Clintwood Elkhorn
Louisville	200700069	898-0803	CAM Mining	Cane Branch
Louisville	200700193	898-0400	Premier Elkhorn Coal	Premier Elkhorn Coal

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Louisville	200700217	897-0480	Leeco, Inc.	Stacy Branch Surface Mine
Louisville	200700335	898-0607	Apex Energy	Apex Energy
Louisville	200700393	867-0456	Consol of KY	Razorblade Surface Mine
Louisville	200700400	895-0177	Candle Ridge Mining	Candle Ridge Mining
Louisville	200700400	864-0195	Argus Energy	Argus Energy
Louisville	200700594	898-0800	Premier Elkhorn Coal	Premier Elkhorn Coal
Louisville	200700595	860-0455	Leeco, Inc.	Elk Lick
Louisville	200700669	836-0338	Miller Bros. Coal	Miller Bros. Coal
Louisville	200700706	858-0206	Johnson Floyd Coal	Johnson Floyd Coal
Louisville	200700733	880-5071	Martin County Coal	Martin County Coal
Louisville	200700815	877-0176	Licking River Resources	Licking River Resources
Louisville	200700867	898-0779	CAM Mining	CAM Mining
Louisville	200701026	836-0341 A1	Frasure Creek Mining	Frasure Creek Mining
Louisville	200701044	898-0712	Apex Energy	Apex Energy
Louisville	200701104	836-0292 A1	The Raven Co.	The Raven Co.
Louisville	200701131	836-0335 A2	Miller Bros. Coal	Miller Bros. Coal
Louisville	200701132	836-0349	Miller Bros. Coal	Frasure Branch Mine

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Louisville	200701190	897-0355 A3	Pine Branch Coal	Pine Branch Coal
Louisville	200701205	836-0307	Matt/Co	Matt/Co
Louisville	200701206	877-0782	Frasure Creek Mining	Frasure Creek Mining
Louisville	200701224	860-5304	Miller Bros. Coal	Miller Bros. Coal
Louisville	200701230	860-8012	ICG Knott Co.	ICG Knott Co.
Louisville	200701301	836-0335	CAM Mining	Tom's Branch Surface Mine
Louisville	200701397	836-0350	FCDC	FCDC
Louisville	200701406	860-0462	ICG Hazard	Bearville North
Louisville	200701445	836-0339	FCDC	FCDC
Louisville	200701504	898-0783 A3	CAM Mining	CAM Mining
Louisville	200701515	897-0456 A10	ICG Hazard	ICG Hazard
Louisville	200701518	898-0799	Clintwood Elkhorn	Clintwood Elkhorn
Louisville	200701582	813-0319	Miller Bros. Coal	Miller Bros. Coal
Louisville	200701644	877-0166	Consol of KY	Consol of KY
Louisville	200701660	880-0066	Martin County Coal	Findlay Branch Mine
Louisville	200800095	898-0817	Premier Elkhorn Coal	Premier Elkhorn Coal
Louisville	200800114	897-0445 A1	BDCC Holdings	Cherries Branch

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Louisville	200800115	836-0356	Wolverine Resources	Jake Fork and Stoney Branch Surface Mine
Louisville	200800138	807-0352	Chas Coal	Chas Coal
Louisville	200800139	898-0646 A1	Apex Energy	Apex Energy
Louisville	200800226	880-8002 A4	Czar Coal	Czar Coal
Louisville	200800239	813-0328	Frasure Creek Mining	Frasure Creek Mining
Louisville	200800408	880-0156	Czar Coal	Czar Coal
Louisville	200800525	877-0191	Middle Fork	Middle Fork
Louisville	200800654	860-0464	Enterprise Mining	Enterprise Mining
Louisville	200800727	813-0310 A1	Miller Bros. Coal	Miller Bros. Coal
Louisville	200800777	897-0455 A3	ICG Hazard	ICG Hazard
Louisville	200800781	836-0348	Wolverine Resources	Wolverine Resources
Louisville	200801368	919-0067	North Fork Collieries	Gilmore Surface Mine
Nashville	200201435	3064	Premium Coal	Refuse Area No.3
Nashville	200400062	3143	Premium Coal	Area 19
Nashville	200400609	3112	Appolo Fuels	Jellico Strip
Nashville	200401108	918-0392	Ikerd Coal	Ikerd Coal
Nashville	200401391	861-0467	CH Development	CH Development

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

District	Corps Number	SMCRA Number	Applicant name	Project Name
Nashville	200501691	3191	Appolo Fuels	Buckeye Springs Mine No. 2
Nashville	200601647	807-0342	Nally & Hamilton	Nally & Hamilton
Nashville	200700820	807-0355	Nally & Hamilton	Nally & Hamilton
Nashville	200900382	8502	Tennessee Land Reclamation	Cherry Branch Reclamation Project
Pittsburgh	200600660	10395	Ohio American Energy	Red Bird South
Pittsburgh	200701180	10399	Oxford Mining Company LLC	Ellis Area

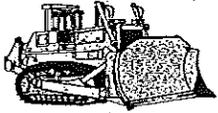
Exhibit E

Permit Number Listed in ECP	Revised Permit Number	Applicant Name	Project Name	County	State
LRL-2004-00336		Bear Fork	Bear Fork S.M	Pike	KY
LRL-2005-00934		Premier Elkhorn	U/T Old Beehide	Letcher	KY
LRL-2006-00126		Consol of KY	Area 80	Knott	KY
LRL-2006-00127		Consol of KY	Stone Br Mine	Knott	KY
LRL-2005-00851		Cheyenne Resources	Cheyenne Resources	Letcher	KY
LRL-2006-01124		Matt/Co	Matt/Co	Floyd	KY
LRL-2006-01290		Licking River Resources	Licking River Resources	Magoffin	KY
LRL-2006-01296		Clintwood Elkhorn	Clintwood Elkhorn	Pike	KY
LRL-2007-00069		CAM Mining	Cane Branch	Pike	KY
LRL-2007-00193		Premier Elkhorn Coal	Premier Elkhorn Coal	Pike	KY
LRL-2007-00217		Leeco, Inc.	Stacy Branch Surface Mine	Perry	KY
LRL-2007-00335		Apex Energy	Apex Energy	Pike	KY
LRL-2007-00400		Argus Energy	Argus Energy	Lawrence	KY
LRL-2007-00400	LRL-2007-00401	Candle Ridge Mining	Candle Ridge Mining	Owsley	KY
LRL-2007-00594		Premier Elkhorn Coal	Premier Elkhorn Coal	Pike	KY
LRL-2007-00595		Leeco, Inc.	Elk Lick	Knott	KY
LRL-2007-00706		Johnson Floyd Coal	Johnson Floyd Coal	Johnson	KY
LRL-2007-00867		CAM Mining	CAM Mining	Pike	KY
LRL-2007-01026		Frasure Creek Mining	Frasure Creek Mining	Floyd	KY
LRL-2007-01044		Apex Energy	Apex Energy	Pike	KY
LRL-2007-01104		The Raven Co.	The Raven Co.	Floyd	KY
LRL-2007-01131		Miller Bros. Coal	Miller Bros. Coal	Floyd	KY
LRL-2007-01132		Miller Bros. Coal	Frasure Branch Mine	Floyd	KY
LRL-2007-01205		Matt/Co	Matt/Co	Floyd	KY
LRL-2007-01206		Frasure Creek Mining	Frasure Creek Mining	Magoffin	KY
LRL-2007-01224		Miller Bros. Coal	Miller Bros. Coal	Knott	KY
LRL-2007-01230		ICG Knott Co.	ICG Knott Co.	Knott	KY
LRL-2007-01301		CAM Mining	Tom's Branch Surface Mine	Floyd	KY
LRL-2007-01397		FCDC	FCDC	Floyd	KY
LRL-2007-01406		ICG Hazard	Bearville North	Knott	KY
LRL-2007-01445		FCDC	FCDC	Floyd	KY
LRL-2007-01504		CAM Mining	CAM Mining	Pike	KY
LRL-2007-01515		ICG Hazard	ICG Hazard	Perry	KY

Permit Number Listed in ECP	Revised Permit Number	Applicant Name	Project Name	County	State
LRL-2007-01518		Clintwood Elkhorn	Clintwood Elkhorn	Pike	KY
LRL-2007-01582		Miller Bros. Coal	Miller Bros. Coal	Breathitt	KY
LRL-2007-01660		Martin County Coal	Findlay Branch Mine	Martin	KY
LRL-2008-00095		Premier Elkhorn Coal	Premier Elkhorn Coal	Pike	KY
LRL-2008-00114		BDCC Holdings	Cherries Branch	Perry	KY
LRL-2008-00115		Wolverine Resources	Jake Fork and Stoney Branch Surface Mine	Floyd	KY
LRL-2008-00139		Apex Energy	Apex Energy	Pike	KY
LRL-2008-00226		Czar Coal	Czar Coal	Martin	KY
LRL-2008-00239	LRL-2009-00239	Frasure Creek Mining	Frasure Creek Mining	Breathitt	KY
LRL-2008-00408		Czar Coal	Czar Coal	Martin	KY
LRL-2008-00525		Middle Fork Dev.	Middle Fork Dev.	Magoffin	KY
LRL-2008-00654		Enterprise Mining	Enterprise Mining	Knott	KY
LRL-2008-00727		Miller Bros. Coal	Miller Bros. Coal	Breathitt	KY
LRL-2008-00781		Wolverine Resources	Wolverine Resources	Floyd	KY
LRN-2006-01647		Nally & Hamilton	Nally & Hamilton	Bell	KY
LRN-2007-00820		Nally & Hamilton	Nally & Hamilton	BELL	KY
LRH-2004-01152		Buckingham Coal	Buckingham Wash Plant	Perry	OH
LRH-2005-00421		Oxford	Peabody 3	Coshocton / Muskingum / Guernsey	OH
LRH-2005-01385		Oxford	Halls Knob	Guernsey	OH
LRH-2007-01021		Oxford Mining	Kaiser Mathias	Tuscarawas	OH
LRP-2006-00660		Ohio American Energy	Red Bird South	Belmont	OH
LRP-2007-01180		Oxford Mining Company LLC	Ellis Area	Jefferson	OH
LRN-2004-00062		Premium Coal	Area 19	ANDERSON	TN
LRH-2003-00065		Hobet Mining	Hewett	Boone	WV
LRH-2004-00624		Independence Coal Company	Consitution Surface Mine	Boone	WV
LRH-2004-01155		Brooks Run Mining	Brandy St & Cove Mtn	Webster	WV
LRH-2004-01451		Independence Coal Company	Glory Surface Mine	Boone	WV
LRH-2005-00217		Bluestone	ContourAuger1	Wyoming	WV
LRH-2005-01115		Green Valley Coal Company	Blue Branch Refuse	Nicholas	WV
LRH-2005-01198		Marrowbone Development	Taywood W & Marrowbone	Mingo	WV
LRH-2005-01211		Premium Energy, Inc.	Premium Mills Surface Mine	McDowell	WV
LRH-2006-00756	LRH-2006-00100	ICG Eastern, LLC	Jenny Creek Surface Mine	Mingo	WV
LRH-2006-02033		Wildcat	#2 Surface	Kanawha	WV

Permit Number Listed in ECP	Revised Permit Number	Applicant Name	Project Name	County	State
LRH-2006-02290		Colony Bay Coal Co.	Colony Bay Surface Mine	Boone	WV
LRH-2007-00182		Alex Energy, Inc.	Federal Surface Mine	Nicholas	WV
LRH-2007-00285		Alex Energy, Inc.	Lonestar Surface Mine	Nicholas	WV
LRH-2007-00286		Pioneer Fuel	MTSB	Raleigh	WV
LRH-2008-00491		CONSOL of Energy	Buffalo Mt. Surface Mine	Mingo	WV
LRH-2008-00562		Eastern Associated Coals	Huff Creek Surface Mine	Wyoming/ Logan	WV
LRH-2008-00791		Hobet Mining	Surface Mine No. 45	Lincoln	WV
LRH-2008-00805		Coyote Coal Company	Joes Creek Surface Mine	Boone/ Kanawha	WV
LRH-2008-00830		CoalMac, Inc.	Pine Creek Surface Min	Logan	WV
LRH-2008-01098		Frasure Creek Mining	Spring Fork Surface Mine NO. 2	Mingo	WV
LRH-2009-00428		Consol of Kentucky	Spring Branch No. 3 Deep Mine	Mingo	WV
	LRH-2006-00760	Paynter Branch Mining	Paynter Branch South Surface Mine	Wyoming	WV
	LRH-2007-00134	Atlantic Leasco	Muddlety Surface Mine No. 1	Nicholas	WV

Exhibit F



OXFORD Mining Company, LLC

544 Chestnut Street
P.O. Box 427
Coshocton, OH 43812-0427

- Mining
- Reclamation
- Earth Moving

Bus. (740) 622-6302

Fax (740) 623-0365

Via US and Electronic Mail (Jackson.Lisa@epamail.epa.gov)

September 18, 2009

Lisa P. Jackson, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Appalachian Surface Coal Mining Enhanced Coordination Procedures
Request for Meeting

Dear Ms. Jackson:

I am writing to you as President and Chief Executive Officer of Oxford Mining Company, LLC ("Oxford") to take you up on your offer "...to meet with stakeholders at any time" expressed in your May 6, 2009 letter to Senator James J. Inhofe in response to his inquiry of you regarding recent activities under your Enhanced Coordination Procedures to review Appalachian coal surface coal mining permits (see, attached Answers to Questions 4 & 8) As the coal mine applicant for four of the six Ohio permit applications that remain identified on your recently published preliminary list of 79 permits identified for further, detailed review, Oxford has a tremendous stake in the outcome of this unprecedented process (see, attached EPA press release/list, 9/11/09). So do the 570+ Oxford coal miners employed and producing over 6 million tons of Ohio coal as a low-cost energy source to fuel our economic recovery. The time to meet is now.

Our Company's mission is to fuel America's energy independence through coal, which we accomplish by supplying key markets and corporate citizens such as American Electric Power ("AEP"), Duke Energy Ohio ("Duke"), First Energy as well as the Ohio municipalities of Shelby, Orville and Dover. Oxford has also received numerous "Greening of the Lands" awards recognizing our outstanding achievements in reclamation over the past 20 years and just this year, Oxford received the Excellence in Reforestation Award sponsored by the US Department of the Interior's, Office of Surface Mining, Appalachian Region Reforestation Initiative. I also want you to know that, in addition to providing these high-paying, well-benefitted, private sector jobs in the most economically depressed part of Ohio, we are under a three-year commitment as a corporate sponsor of the Foundation for Appalachian Ohio to enhance the quality of life here, where the latest reported unemployment rates in Ohio's coal-bearing counties is 12.9%.

It is my understanding that EPA has a short, 15-day window of opportunity that closes next Friday, September 28, 2009, at which time your preliminary list will become final. It is my sincere hope and objective that the outcome of our meeting will result in at least two, if not all of Oxford's permit applications being removed from your preliminary list.

I have attached a summary table of what I believe are the pertinent facts for the subject permits abstracted from your document entitled "Detailed information on all proposed surface mines" at the following URL http://www.epa.gov/owow/wetlands/pdf/Proposed_Project_Info_09-11-09.pdf. What the data on this table indicates is that none of our subject permit applications involves mountain top mining or valley fills, the premise for your enhanced coordinated review of Appalachian coal mining (See, attached Press Release, Obama Administration Takes Unprecedented Steps to Reduce Environmental Impacts of Mountaintop Coal Mining, Announces Interagency Action Plan to Implement Reforms, 6/11/09).

Moreover, none of our subject permit applications impact more than 1 acre of wetland and to the extent that any of the impacted watercourses have perennial flow, it is only because of base groundwater emanating from the very coal resource that will be interrupted for a short time during mining. All of these adverse impacts will be more than compensated for by our excellent mitigation and reclamation work.

One important criteria missing from your detailed permit information and apparently not considered by your Multi-criteria Integrated Resource Assessment decision-making tool ("MIRA") is the fact our Kaiser-Mathias application is pending under a Nationwide Permit (NWP-49) because 87% of the area impacted has been previously mined. The nationwide permit program authorizes only those activities with minimal individual and cumulative adverse environmental effects on the aquatic environment and state water quality certification is not even applicable. Oxford proposes to reclaim 4.55 miles of dangerous highwalls in its mining process, another criteria apparently omitted in your decision-making. One would think that the EPA would not stand in the way of eliminating such a significant public safety hazard to the 5,129 people in the surrounding community under a permit that by its own terms has only minimal adverse environmental impacts. Oxford stands ready to commence performing this public service as soon as you release the Corps of Engineers to issue the §404 permit.

Our Hall's Knob permit is another pending application where the State of Ohio has just issued its §401 water quality certification (September 11, 2009) under laws and regulations that are more stringent than federal law. Additionally, the figure for the sum of watercourses filled in linear feet under the approved §401 certification, was reduced from the 9306 feet shown on your detailed project information to 5920. Since Ohio EPA has indicated that Oxford's Hall's Knob permit will not violate its stringent state water quality standards, it is not clear what EPA's environmental concerns are in this instance.

Administrator Jackson, each and every one of our §404 applications is vital in succession to an active mining operation. What is clear to this coal mine applicant is that your review process is unfair to our miners, who wonder if they will be able to continue providing for their families and it is unfair to expect Oxford to make substantial investments and business plans to assure our long-term success under such regulatory uncertainty. Your Enhanced Coordination Procedures have a long way to go to achieve its laudable goals of transparency and timely review.

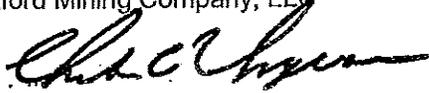
By way of example, we have been engaged with Ohio and US EPA since 2005 to obtain our §§401 & 404 permits at Peabody 3. Although we have more than 1.3 million tons of coal remaining under our SMCRA authorized mining permit, we simply have no place left to mine. I will have no choice but to layoff dozens of miners with high-paying, well-benefitted jobs, by the end of October, at a time when Ohio's latest reported unemployment rate in coal-bearing counties stands at 12.9% without an acceptable and timely resolution at Peabody 3.

I will be pleased to review with you our revised mine plans to further minimize and mitigate impacts to watercourses and wetlands at Peabody 3 and at all of our pending applications when we meet. I know that time is of the essence, and I will make myself available to meet with you on short notice. Oxford is steadfastly committed to working with EPA and every level of state and

federal government to secure these critical water quality certifications in a fair and lawful process that protects our natural resources.

I look forward to meeting you. Please do not hesitate to contact me should you have any questions or require additional information. Thank you for your consideration.

Sincerely,
Oxford Mining Company, L.L.C.



Charles C. "Chuck" Ungurean
President and Chief Executive Officer

Attachments

cc: President Barack H. Obama (via facsimile 202-456-2461)

VIA Electronic Mail

Governor Ted Strickland

(c/o John.Haseley@governor.ohio.gov & Jennifer.Lynch@governor.ohio.gov)

The Honorable George V. Voinovich

(c/o Phil_Park@Voinovich.senate.gov & Doug_Dziak@Voinovich.senate.gov)

The Honorable Sherrod Brown

(c/o Eleanor_dehoney@brown.senate.gov & Mark_powden@brown.senate.gov)

The Honorable Charlie Wilson

(c/o Joan.gregory@mail.house.gov)

Asst. Sec. Army Civil Works, Jo Ellen Darcy,

(joellen.darcy@us.army.mil & c/o John.Hurley@us.army.mil)

Greg Peck: peck.gregory@epa.gov

Bob Sussman: Sussman.Bob@epamail.epa.gov



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

MAY - 6 2009

OFFICE OF
WATER

The Honorable James M. Inhofe
United States Senate
Washington, DC 20510

Dear Senator Inhofe:

Thank you for your April 20, 2009, letter to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson, expressing concerns regarding review of pending mountaintop mining permits and the economic importance of mountaintop mining activities. Administrator Jackson asked that I respond to the important questions posed in your letter

EPA has raised detailed concerns with potential environmental risks associated with surface coal mining, particularly to water quality in streams and rivers below surface coal mines. Scientific studies have highlighted the water quality impacts associated with surface coal mining activities. EPA is prioritizing its evaluation to those mining proposals undergoing Clean Water Act evaluation which raise the greatest potential for environmental harm. Our goal is to work in a timely manner with the Army Corps of Engineers, the States and the mining community on those few permits with which we have the most serious environmental concerns, to effectively reduce the potential for adverse environmental effects.

EPA is not raising concern with the majority of pending permits, and the Corps is expected to continue to issue permits for surface coal mining operations that do not raise environmental problems. We also expect that mining companies will continue to submit new permit applications for evaluation under the Clean Water Act. For these new proposals, EPA will follow existing regulatory procedure and provide comments to the Army Corps of Engineers as a part of the public notice and comment process.

I want to assure you that EPA understands the importance of surface coal mining to the economic welfare of the communities and citizens of the Appalachian region and pledge to work with the Committee, our state and federal partners, and the mining industry to identify improvements to mining operations that reduce environmental impacts. In doing so, our goal will be to ensure consistency with the requirements of the Clean Water Act and the Surface Mining Coal and Reclamation Act, and allow environmentally responsible coal mining to proceed.

I hope you will find the enclosed detailed responses address your concerns. If you have any additional questions, please feel free to contact me or your staff may call Denis Borum of EPA's Office of Congressional and Intergovernmental Relations at 564-4836.

Sincerely,

A handwritten signature in cursive script that reads "Michael Shapiro".

Michael H. Shapiro
Acting Assistant Administrator

Enclosure

Surface Coal Mining

Questions and Answers Senator James M. Inhofe

1. Please list the entire scope of mountaintop mining permits that EPA is currently reviewing. Please also list the time that the permit has been pending or backlogged and the rationale for the review. Please also indicate on the list the permits that have previously been reviewed.

Because of active litigation in the 4th Circuit challenging the issuance of these Corps permits for coal mining, the Corps has been issuing far fewer permits for surface coal operations since the litigation began in 2007. As a result, there is a significant backlog of permits under review by the Corps, some of which have been pending for years while others for only months, and are in differing stages of evaluation.

EPA has identified only a small subset, 6 of 54 actions pending authorization in the next several months, with which the Agency has concern. EPA is not raising concern with the majority of pending permits. These represent mines with significantly fewer environmental impacts. The Corps is expected to continue to issue permits for surface coal mining operations that do not raise environmental problems.

We also expect that mining companies will continue to submit new permit applications under the CWA. For these new proposals, EPA is following existing regulatory procedure to provide comments to the Corps of Engineers as a part of the public notice and comment process. As provided in greater detail below, EPA has identified a set of environmental criteria under which we have, and will continue to, review and evaluate, pending permit actions for surface coal mine operations

2. It has taken EPA a month and a half to review and comment on 54 permits that were previously reviewed. How much time will it take EPA to reexamine the remaining backlog of permits?

EPA is prioritizing its evaluation to those current mining proposals which raise the greatest potential for environmental harm. In doing so, EPA is working with the Corps to identify an efficient and effective process for working through the backlog of proposals. Our goal is to work in a timely manner with the Corps, the State and the mining community on those few permits with which we have concerns, to effectively reduce the potential for adverse environmental effects.

3. Which of the permits are individual permits and which are NWP 21? Do you anticipate that your review of individual permits will take more time than reviewing NWP 21 permits? Can this be expedited?

As you have identified, there is a significant backlog of permits resulting from the 4th Circuit litigation that are under review by the Corps. EPA expects to be actively involved in the review of these permits. As indicated above, EPA is prioritizing its evaluation to those current mining proposals which raise the greatest potential for environmental harm. Under section 404(e) of the Act, the issuance of a nationwide permit may not have more than individual minimal or cumulative impact. So long as EPA believes that threshold is met according to the information provided to us under the pre-construction notification, we will continue to focus our review on individual permits, those believed to raise the greatest potential for environmental harm. Our goal is to work in a timely manner with the Corps, the State and the mining community on those few permits with which we have concerns, to effectively reduce the potential for adverse environmental effects.

In addition, the district court for the Southern District of West Virginia issued an order on March 31 vacating and remanding the Corps' primary nationwide permit for authorizing discharges associated with surface coal mining (NWP21). The judge enjoined the Corps from issuing authorizations pursuant to NWP 21 (2007) in the Southern District of West Virginia until the Corps prepares a revised EA or an EIS and also determines that NWP 21 (2007) will not have adverse cumulative impacts as required by CWA §404(e). The judge also enjoined the Corps and the Intervenors (a number of mining associations and individual coal companies) from all activities authorized under NWP 21 (2007).

4. In terms of full disclosure, please list all industry groups, mining companies, non profit groups, associations, advocacy groups, and local stakeholders that you or your staff have met with or are scheduled to meet with at EPA from January 23, 2009 through April 17, 2009 regarding mountaintop mining.

EPA has met with a variety of stakeholders and government officials on all sides of this issue. Meetings have been held with the Governor of West Virginia, the West Virginia Department of Environmental Protection, representatives of the environmental community, including: Sierra Club, Natural Resources Defense Council, Public Justice, Southern Appalachian Mountain Stewards, Coal River Mountain Watch, Ohio Valley Environmental Coalition, Appalachian Voices, Save Our Cumberland Mountains, Kentuckians for the Commonwealth, and Heartwood, the National Mining Association, and representatives of the mining community including: Massey Energy, Patriot Coal, Colony Bay Coal, Central Appalachia Mining, International Coal Group, CONSOL, and Alpha National Resources. EPA believes these meetings are valuable and welcomes the opportunity to meet with stakeholders at any time.

5. Please list the issues—scientific, legal, and technical—behind EPA's decision to reexamine these permits. Were these issues different from those covered in previous reviews?

EPA has identified a set of environmental criteria under which we have, and will continue to, review and evaluate, pending permit actions for surface coal mine operations. Based on these criteria, EPA has, and will continue to, focus our comments to mine proposals in the following areas:

- Length of stream impacts, in particular impacts to perennial streams and critical headwater streams
- Number of valley fills
- Geographic location of the proposed action, and assessment of impacts based on watershed level information, considering factors such as percentage of area mined, percentage of forested area, interior forest, percentage of urban area, and stream density/quality, index of biotic integrity (IBI), threatened and endangered (T&E) species
- Cumulative effects, particularly in consideration of the number of proposed new mines proposed for given watershed
- Existing water quality and potential for water quality impacts downstream of fill, in particular selenium and conductivity as specific constituents of concern; and the potential impacts to biotic integrity and T&E species in high quality and state outstanding resources waters
- Adequacy of alternative analysis; and
- Adequacy of mitigation

Where EPA believes that an activity, as proposed and noticed by the Corps of Engineers, may result in an adverse impact to the aquatic environment, based upon the above criteria, EPA will exercise its responsibility to ensure compliance with the regulations under the Act.

6. Did you discuss this review process at any time with Carol Browner and/or other White House officials? If so, what role has she and other White House officials had in this review process?

As part of this action, EPA is following its long-standing practice of coordinating these reviews with the Army Corps of Engineers and is consulting the Council on Environmental Quality as necessary.

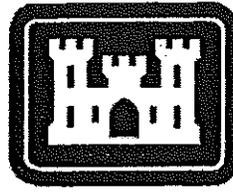
7. The Buffalo Mountain Section 404 permit covers a project that is estimated to produce 50 direct jobs and 250 indirect jobs with about \$94.3 million in tax revenue for the state of West Virginia and the United States Treasury. The Highland Permit covers a project with 203 existing jobs. The Republic No.1 Permit covers another project that would create 270 jobs. If EPA continues to delay issuance of these permits, these jobs will be lost. Is EPA taking these economic considerations into account in its review?

EPA shares your concerns about the welfare of the people of the Appalachian region and its citizens. EPA has expressed concerns with the environmental risks associated with surface coal mines. These risks have raised issues regarding not only the health of the streams in this region, but the welfare of its people as well. EPA's objective is to ensure that activities which will discharge a pollutant into a water of the United States are fully evaluated in accordance with the regulations under sections 404 and 402 of the Clean Water Act to afford the citizens of these affected areas full protection of the streams used for swimming, fishing, and public drinking water, and can result in contamination of groundwater also used for drinking water. EPA also understands the importance of surface coal mining to the economic welfare of the communities and citizens of the Appalachian region. We can address both of our concerns by working closely with all of the involved agencies, interested officials and the mining community to effectively respond to the environmental problems while ensuring that coal extraction is allowed to proceed.

8. Please provide me with the specific steps EPA plans to take in the coming months to process these permits.

EPA believes that meetings directly with the individual mining companies are valuable and welcomes the opportunity to meet with our state partners and coal mine applicants at any time. As indicated above, we are working with the Corps to identify an efficient and effective process for working through the backlog of proposals. Our goal continues to be to work in a timely manner with the Corps, the State and the mining community on those few permits with which we have concerns, to effectively reduce the potential for adverse environmental effects. In addition, EPA has suggested identifying an opportunity to discuss EPA's concerns more broadly and consider measures our state partners and the coal industry could evaluate when drafting a mining plan in an effort to lend greater predictability to the process. To begin discussion with the WVDEP and the mining industry, EPA has proffered some suggested measures which we believe could yield significant improvements in environmental protection. These are not meant to be exhaustive and may not be appropriate in all circumstances, but have been offered as a means to initiate this dialogue. EPA welcomes discussion on these opportunities, many of which relate directly to authorities under the CWA, and how best to incorporate these considerations earlier in the mine development process under SMCRA in an effort to strengthen environmental protections and lend greater predictability and transparency into the process.

Corps #	200500421	200501385	200701021	200701180
Mining Company Name	Oxford - Peabody 3	Oxford - Halls Knob	Oxford - Kaiser-Mathias	Oxford- Ellis
401* (Issued or Pending)	I	I	P	P
PEOPLE	2275	2803	5,129	6,801
Valley Fill DRAINAGE	0	0	0	0
WETLAND LOSS (acres)	0.410	0.18	0.98	0.03
STRM_RATIO (mitig/impact)	1	0.61	1	0.92
WETL_RATIO (mitig/impact)	1	1	1	1
Sum of Streams Filled (l.f.)	6033	9306	2,352	11,816
Coal Extraction (mm Tons)	1.200	0.64	1.32	1.89
Stream mitigation (l.f.)	6,033	5,679	2,352	11,388
Wetland mitigation (ac.)	0.62	0.48	1.47	0.03
New Mine (Y/N)	N	Y	Y	Y



FOR IMMEDIATE RELEASE:
June 11, 2009

Contact: Christine Glunz (CEQ): (202) 456-3469
Kendra Barkoff (DOI): (202) 208-6416
Adora Andy (EPA): (202) 564-2715
Gene Pawlik (USACE): (202) 761-4715

Obama Administration Takes Unprecedented Steps to Reduce Environmental Impacts of Mountaintop Coal Mining, Announces Interagency Action Plan to Implement Reforms

Federal agencies take coordinated action to strengthen oversight and regulation, minimize adverse environmental consequences of mountaintop coal mining

WASHINGTON, DC – Obama Administration officials announced today that they are taking unprecedented steps to reduce the environmental impacts of mountaintop coal mining in the six Appalachian states of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia through a coordinated approach between the Environmental Protection Agency (EPA), Department of the Interior (DOI) and Army Corps of Engineers.

Through a Memorandum of Understanding signed by Lisa P. Jackson, Administrator of the Environmental Protection Agency; Ken Salazar, Secretary of the Interior; and Terrence "Rock" Salt, Acting Assistant Secretary of the Army for Civil Works, the Administration will implement an Interagency Action Plan on mountaintop coal mining that will:

- Minimize the adverse environmental consequences of mountaintop coal mining through short-term actions to be completed in 2009;
- Undertake longer-term actions to tighten the regulation of mountaintop coal mining;
- Ensure coordinated and stringent environmental reviews of permit applications under the Clean Water Act (CWA) and Surface Mining Control and Reclamation Act of 1997 (SMCRA);
- Engage the public through outreach events in the Appalachian region to help inform the development of Federal policy; and
- Federal Agencies will work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities.

"Mountaintop coal mining cannot be predicated on the assumption of minimal oversight of its environmental impacts, and its permanent degradation of water quality. Stronger reviews and protections will safeguard the health of local waters, and thousands of acres of watersheds in Appalachia," said EPA Administrator Lisa P. Jackson. "Our announcement today reaffirms EPA's fundamental responsibility for protecting the water quality and environmental integrity of streams,

rivers, and wetlands under the Clean Water Act. Getting this right is important to coalfield communities that count on a livable environment, both during mining and after coal companies move to other sites.”

“The Army is pleased to support interagency efforts to increase environmental protection requirements and factual considerations for mountaintop coal mining activities in Appalachia,” said Terrence “Rock” Salt, Acting Assistant Secretary of the Army for Civil Works. “The initiative being announced today will allow us to move forward on a number of important permit applications while providing improved certainty and transparency to permit applicants and the public.”

“The steps we are taking today are a firm departure from the previous Administration's approach to mountaintop coal mining, which failed to protect our communities, water, and wildlife in Appalachia,” said Secretary Salazar. “By toughening enforcement standards, by looking for common-sense improvements to our rules and regulations, and by coordinating our efforts with other agencies, we will immediately make progress toward reducing the environmental impacts of mountaintop coal mining.”

“This agreement represents federal agencies working together to take the President’s message on mountaintop coal mining into action,” said Nancy Sutley, Chair of the White House Council on Environmental Quality. “We are committed to powering our country while protecting health and welfare in the Appalachian region, securing access to clean streams and safe drinking water, and honoring our clean water laws.”

In close coordination, EPA, DOI, and the Corps will take several short-term actions to reform the regulation of mountaintop coal mining under the two primary environmental laws governing this mining practice.

The Army Corps of Engineers and the Environmental Protection Agency will take immediate steps under the CWA to minimize environmental harm by taking the following actions in 2009:

- Requiring more stringent environmental reviews for future permit applications for mountaintop coal mining;
- Within 30 days of the date of the MOU, the Corps will issue a public notice (pursuant to 33 C.F.R. § 330.5) proposing to modify Nationwide Permit (NWP) 21 to preclude its use to authorize the discharge of fill material into streams for surface coal mining activities in the Appalachian region, and will seek public comment on the proposed action;
- Strengthening permit reviews under CWA regulations (Section 404(b)(1)) to reduce the harmful direct and cumulative environmental impacts of mountaintop coal mining on streams and watersheds;
- Strengthening EPA coordination with states on water pollution permits for discharges from valley fills and state water quality certifications for mountaintop coal mining operations; and
- Improving stream mitigation projects to increase ecological performance and compensate for losses of these important waters of the United States.

The Department of Interior will also take the following steps:

- Reevaluate and determine how the Office of Surface Mining Reclamation and Enforcement (OSM) will more effectively conduct oversight of state permitting, state enforcement, and regulatory activities under SMCRA;

- Ensure the protection of wildlife resources and endangered species by coordinating the development of CWA guidance with the U.S. Fish and Wildlife Service (FWS); and
- If the U.S. District Court vacates the 2008 Stream Buffer Zone Rule, as requested by the Secretary of the Interior on April 27, 2009, Interior will issue guidance clarifying the application of stream buffer zone provisions in a preexisting 1983 SMCRA regulation to ensure mining activities will occur in a more environmentally protective way in or near Appalachian streams.

Concurrent with these short-term actions, the three agencies will embark on a comprehensive, coordinated review of their existing respective regulations and procedures governing mountaintop coal mining under existing law. The agencies will also create an interagency working group to promote ongoing Federal collaboration and ensure the Action Plan achieves results. As these reforms are implemented, the agencies will seek to involve the public and guide Federal actions through robust public comment and outreach.

EPA and the Army Corps of Engineers are today taking steps to enhance coordination in the environmental review of pending Clean Water Act permits for surface coal mining activities in Appalachian States. Administrator Jackson and Acting Assistant Secretary Salt have directed EPA and Corps field offices to coordinate under new procedures to ensure Clean Water Act permit decisions are fully consistent with sound science and the law, reduce adverse environmental impacts, provide greater public participation and transparency, and address pending permits in a more timely manner.

The Federal agencies will also work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities. This interagency effort will have a special focus on stimulating clean enterprise and green jobs development, encouraging better coordination among existing federal efforts, and supporting innovative new ideas and initiatives.

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Exhibit G

EXHIBIT G
OXFORD KAISER-MATHIAS
CWA §404 NATIONWIDE PERMIT 49 (NWP 49)

OXFORD MINING COMPANY, LLC (OHIO) USEPA Blacklisted 404 Permit Application	
Project Name	Kaiser Mathias
Permit Number	LRH-2007-01021
SMCRA Number	10405
Applicant Name	Oxford Mining
NWP/IP	NWP 49
Submittal Date	11/4/2008
Coordinate PN/PCN (Date)	1/26/2009
Days to Coordinate	82
Status Date (Issued)	3/5/2010
New or Expansion (N/E)	N
Direct Mining Job Potential	24
Remining (Y/N)	Y
Mine Acres	531
Remining Acres (% mining acres)	455 (86%)
Pre-law Highwall to be reclaimed	24,042 feet
Proposed Coal Extraction (tons)	1,320,000
Valley Fills (#)	0

ABSTRACT

USEPA in its press release takes credit for an 80% reduction in impacts due to its enhanced coordination procedures, when Oxford never intended to impact and only applied to permit impacts to 2300 feet of jurisdictional streams, not the 13,000 feet in the vicinity of the project over which the Corps had jurisdiction. Kaiser-Mathias was applied for and issued as a Nationwide Permit 49, a special permit authorized by USEPA for remining projects where it has already determined there to be minimal adverse impacts of mining clearly outweighed by the benefits of remining and reclaiming, as in this case, nearly 5 miles of abandoned, dangerous old highwalls not to mention acres of old pit impoundments.

NWP 49 nationwide general permit for remining projects previously approved by USEPA based on the conclusion that remining projects generally do not have significant adverse environmental impacts and thus the environmental benefits clearly outweigh any impacts.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 05 2010

REPLY TO THE ATTENTION OF: WW-16J

Ginger Mullins, Chief
Regulatory Branch
U.S. Army Corps of Engineers
Huntington District
Attn: CELRH-OR-F
502 Eighth Street
Huntington, WV 25701-2070

Subject: LRH-2007-1021-Kaiser Mathias

Dear Ms. Mullins:

U.S. Environmental Protection Agency, Region 5, has completed its review of Oxford Mining's proposed Kaiser Mathias mine in Tuscarawas County, Ohio. This review was conducted under the Enhanced Coordination Procedures (ECP) for surface coal mining applications, as detailed in the June 30, 2009, *Memorandum of Understanding among the U.S. Department of the Army, U.S. Department of the Interior, and U.S. Environmental Protection Agency Implementing the Interagency Action Plan on Appalachian Surface Coal Mining*. This project was placed on the final list of applications subject to the ECP on September 30, 2009, due to environmental concerns over the potential for further impact minimization and the inadequacy of proposed compensatory mitigation, specifically the lack of long-term site protection.

The ECP 60-day coordination period was begun by Huntington District on October 5, 2009, and would have originally concluded on December 3, 2009. During discussions on potential resolution of EPA's concerns, it was discovered that the Huntington Corps District had not been aware the State of Ohio was still processing Oxford's SMCRA application for the mine, and the SMCRA review was not anticipated to be complete for several months. As a result, Huntington District requested that the ECP coordination be placed on hold while the District waited for final SMCRA authorization. Following SMCRA authorization, and the finalization of Huntington District's application review, the District notified Region 5 on January 6, 2010, that they had reinitiated the 60-day coordination period for resolving environmental concerns through the ECP. Following discussion with the applicant and the Huntington District, EPA believes the previously identified environmental concerns have been addressed, and the application may be finalized by the Corps.

The applicant proposes to discharge 1,850 cubic yards of fill material into 0.98 acres of jurisdictional wetlands and 2,352 linear feet (ft) of jurisdictional streams. Impacts to these waters would occur in association with surface coal mining activities such as pond construction

and coal removal. It is EPA's understanding that this project will be authorized under a Nationwide Permit #49, for coal remining activities. To demonstrate that water quality will improve as a result of this project, the applicant proposes to reclaim abandoned mine lands by removing 193 acres of pit impoundments, backfilling 24,042 lft of highwall to the approximately original contour and reducing sediment loading through reclamation and revegetation of exposed soils. The applicant also proposes to reconstruct 2,571 lft of both jurisdictional and non-jurisdictional streams using natural channel design and 1.47 acres of wetlands on site. The reconstructed streams will have a 50 foot wide riparian corridor and both streams and wetlands will be preserved with conservation easements.

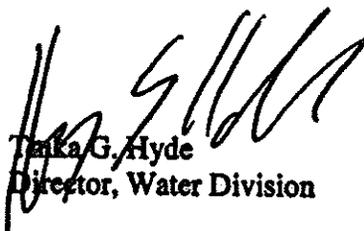
Stream impacts have been reduced 80%, from 12,930 lft to 2,352 lft and wetland impacts have been reduced 70%, from 3.39 acres to 0.98 acres. Four hundred and fifty-five (455) acres of the 531 acre mining area has been previously stripped mined and left unreclaimed. Because of these pre-SMCRA, unreclaimed areas, the majority of streams on-site scored low using the Qualitative Habitat Evaluation Index (QHEI) and the Headwater Habitat Evaluation Index (HHEI). Low QHEI and HHEI scores often indicate a lack of species diversity present in the streams as well as poor fish habitat. As a result, the applicant will demonstrate appropriate biological communities are present in the reconstructed streams through direct biological sampling.

Pre-SMCRA, unreclaimed features on site include pits, 80 foot high highwalls and spoil piles, some of which are highly erodible and contribute significant quantities of soils and sediments downstream. Currently, there are an estimated 437.4 tons of soil lost through erosion on site yearly. Through the reclamation practices proposed within this project, total post mining soil loss would be reduced to an estimated 115.66 tons/year and will be monitored as a permit condition. The restoration of pre-SMCRA areas will improve resources in the impaired Stone and Oldtown Creek watersheds by restoring on-site streams using natural channel design and permanently protecting those areas under a conservation easement.

EPA believes the improved mitigation proposal compensates for unavoidable project impacts, which have been significantly reduced. Reclamation of the existing source of water quality problems will provide an overall environmental benefit and ecological lift to the watershed. We have reviewed the draft permit and are satisfied that our concerns have been addressed; therefore, EPA does not foresee any delay in the Corps' ability to issue the permit

I want to thank you and your staff for your cooperation and willingness to address our issues. If you have any question, please call me at 312-886-9296, or Wendy Melgin of my staff at 312-886-7745.

Sincerely,



Jenka G. Hyde
Director, Water Division

cc: OEPA

EPA: United States Environmental Protection Agency

[A-Z index](#)

News Releases By Date

EPA Approves Ohio Surface Coal Mine

Release date: 03/08/2010

Contact Information: Enesta Jones, jones.enesta@epa.gov 202-564-7873 202-564-4355

FOR IMMEDIATE RELEASE
No. 10-OPA025

EPA review and coordination with company results in less environmental impacts

CHICAGO (March 8, 2010) - The U.S. Environmental Protection Agency (EPA) has concluded its review of a Clean Water Act permit application for Oxford Mining Company's proposed Kaiser Mathias mine in Tuscarawas County, Ohio and has approved the project. After extensive coordination with the coal operator, EPA is requiring significant improvements to the surface coal mining project to reduce anticipated environmental and water quality impacts and repair environmental damages caused by previous mining in the watershed. There are no valley fills associated with this mine.

The project changes identified by EPA will result in an overall ecological improvement to the Stone Creek and Oldtown Creek watersheds through the reduction of sediment loads to downstream waters, replacement of lost wetlands and stream functions, the restoration of areas previously mined and long-term site protection.

Improvements to the project will require the company to:

- Reduce stream impacts by more than 80 percent from 12,930 linear feet to 2,352 linear feet.
- Reduce wetland impacts from 3.39 acres to less than one acre.
- Restore the entire 531 acre mining site to repair environmental and water quality impacts from previous mining activities at the site.
- Conduct enhanced biological and water quality monitoring to protect streams and establish conservation easements to permanently protect undisturbed streams.
- Reduce erosion from previously mined areas into streams by an estimated 115.66 tons a year.
- Require stream and wetlands mitigation to replace lost ecological function.

The Kaiser-Mathias mine is a "remining" project that will recover coal at a location mined prior to the Clean Water Act and the Surface Mining Control and Reclamation Act. Clean Water Act approval for new mining at the site provides an opportunity to require that previous environmental and water quality damages within the watershed are repaired. The U.S. Army Corps of Engineers is expected to issue a final Clean Water Act permit for the Kaiser Mathias mine shortly.

The Kaiser Mathias mine was evaluated by EPA as part of the EPA/Army Corps Clean Water Act "Enhanced Coordination Procedures" for review of Appalachian surface coal mining projects.

The details of EPA's revisions to the permit are described here:

http://www.epa.gov/owow/wetlands/guidance/pdf/Kaiser_Mathias_030510.pdf

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Exhibit H

EXHIBIT H
OXFORD HALLS KNOB

OXFORD MINING COMPANY, LLC (OHIO) USEPA Blacklisted 404 Permits	
Project Name	Halls Knob
Permit Number	LRH-2005-01385
SMCRA Number	App 10400
Applicant name	Oxford Mining
NWP/IP	IP
Submittal Date	10/2/2008
Coordinate PN/PCN (Date)	3/20/2009
Days to Coordinate	170
Status Date (Issue/Withdrawn/Pending)	7/12/2010
New or expansion (N/E)	N
Direct Mining Job Potential	25
Remining (Y/N)	Y
Mine acres	263
Remining acres (% mining acres)	38 (14.4%)
Pre-law Highwall to be reclaimed	8,600 feet
Proposed Coal Extraction (tons)	635,000
Valley fills (#)	0

ABSTRACT

Oxford began coordinating this permit with Corps in 2005. October 2, 2008, Individual §404 Permit (IP) submitted. No MTM or Valley Fills. Oxford proposed to reclaim 1.62 miles of dangerous highwall and 38 acres (14.5%) of this 263 acre project that was previously mined and unreclaimed to current SMCRA standards. This was a new mine with 25 direct mining jobs. On July 27, 2009 the SMCRA Permit conditionally issued subject to issuance of CWA§ 401 & §404 permits. On September 11, 2009, Ohio EPA issued its §401 permit. On May 27, 2010, after nearly 1 year of Enhanced Coordination, Greg Peck, Chief of Staff, Office of Water EPA transmits comments to Corps with unacceptable proposed terms and conditions, without which EPA recommend denial. Halls Knob was one of first 404 permits issued after EPA's April 1, 2010 Guidance was published. Faced with shutting down mine operations w/o §404 permit, Oxford went to its Congressional delegation, who helped arrange a meeting with EPA in Representative's D.C. office. On June 16, 2010 the Corps proffers permit without any material changes to EPA draft conditions (phased sequencing of mining; monthly Specific Conductivity upstream/downstream; extensive biological monitoring twice seasonally; additional mitigation for temporal losses; stop mining if SC > 2400 microsiemens/cm; TDS > 1500 mg/l). On July 12, 2010 §404 permit issued with marginally acceptable terms and conditions two weeks after our meeting in D.C. and after 13 months of Enhanced Coordination.

-----Original Message-----

From: Taylor, Mark A LRH [<mailto:Mark.A.Taylor@usace.army.mil>]
Sent: Tuesday, June 01, 2010 8:31 AM
To: Nate Leggett
Cc: Newman, Sheila M LRH
Subject: FW: EPA Region 5 Comments on Halls Knob Mine

Nate,

Here is the USEPA letter, sorry I could not get it to you sooner, my PC and Blackberry crashed on me while out west. After you read, I would suggest you, Sheila, and I have a call.

Mark

* * *

-----Original Message-----

From: Peck.Gregory@epamail.epa.gov [<mailto:Peck.Gregory@epamail.epa.gov>]
Sent: Friday, May 28, 2010 2:17 PM
To: Taylor, Mark A LRH; Mullins, Ginger LRH
Cc: Hyde.Tinka@epamail.epa.gov; Melgin.Wendy@epamail.epa.gov;
Swenson.Peter@epamail.epa.gov; Henry.Timothy@epamail.epa.gov
Subject: EPA Region 5 Comments on Halls Knob Mine

Ginger/Mark:

Since a number of EPA folks have started the long holiday weekend early (and hopefully you have too!), there aren't many of us around today to send you EPA comments on the DA permit application for the Halls Knob mine. But this note gives me the opportunity to say hi to both of you and wish you a happy weekend. Tinka and her folks are back in the office on Tuesday - so please give them a call if you have any questions.

Best,
Greg

(See attached file: Halls Knob Letter.pdf)

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

202-564-5778



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
WW-16J

May 27, 2010

Ginger Mullins, Chief
Regulatory Branch
U.S. Army Corps of Engineers
Huntington District
Attn: CELRH-OR-F
502 Eighth Street
Huntington, West Virginia 25701-2070

Subject: LRH-2005-1385-TUS Halls Knob

Dear Ms. Mullins:

The U.S. Environmental Protection Agency, Region 5, has reviewed Oxford Mining's proposed Halls Knob mining project located in Millwood Township, Guernsey County, Ohio. The project proposes to impact 5,445 linear feet of stream (214 linear feet of perennial stream, 3,184 linear feet of intermittent stream, and 2,047 linear feet of ephemeral stream), 0.173 acre of jurisdictional wetland and 0.923 acre of jurisdictional open water through new mining activities, re-mining, and reclamation of historic abandoned mine areas. This permit application was selected as one of 79 permit applications for enhanced coordination announced pursuant to the June 11, 2009, interagency Memorandum of Understanding on Appalachian surface coal mining. In its September 30, 2009, announcement that this and other projects would be subject to enhanced coordination, EPA identified three areas of general concern: avoidance and minimization, water quality impacts, and mitigation. There are no valley fills associated with this mine.

Avoidance and Minimization

As originally proposed in the March 20, 2009, public notice, the project would have filled 9,306 linear feet of stream (214 linear feet of perennial stream, 6,269 linear feet of intermittent stream and 2,823 linear feet of ephemeral stream), 0.183 acres of wetland and 0.923 acres of open water. As currently proposed, stream impacts have been reduced by 3,861 linear feet (41%), from 9,306 linear feet to 5,445 linear feet. Wetland impacts have been reduced by 0.01 acre (5%) from 0.183 acre to 0.173 acre.

Oxford's original mine plan included 13 sediment ponds to reduce the amount of pollutants entering the surface water system from the mining operation. Streams 1, 2, and 7 would have been significantly impacted by construction of the ponds as originally proposed. Oxford has revised the application to construct 3 additional sediment ponds out of channel, so that the ponds associated with streams 1, 2, and 7 could be reduced in size, and to specify that the remaining instream ponds will be temporary and stream channels restored post mining.

In cases where springs are mined through, depending on the elevation of the coal seam, critical sources of hydrology are eliminated, thereby decreasing the chance for a the establishment of a diverse biological community in mitigated streams. Oxford's plan to stop the highwall at 100 feet in elevation and continue with auger mining does not adversely impact the springs, and will benefit both downstream water quality and the proposed stream reclamation.

Water Quality

This project is within the Wills Creek Watershed, which is listed on the State of Ohio's 303(d) list for aquatic life use impairment caused by sediment and siltation from surface mining sources. The directly impacted downstream water is an unnamed tributary (Stream 9) to Leatherwood Creek; neither of these has been assessed. The area has been partially impacted by previous pre-SMRCA mining. The applicant proposes to reclaim the entire site to current regulatory standards as set by ODNR-DMRM under SMCRA and return the land to its previous uses as requested by the landowner.

Ambient data collected by the company on April 12, 2010, showed conductivity levels ranging from 812 μ S/cm to 2,680 μ S/cm over 13 monitoring stations. The 39.5 acres of pre-SMCRA mining are suspected to be partly responsible for the high conductivity levels. The operation will eliminate an abandoned underground mine, that is a suspected source of acid mine drainage (AMD), and reclaim abandoned highwalls and old pit impoundments, which will improve water quality. During mining the use of Best Management Practices will help to prevent the degradation of water quality prior to reclamation of the site.

Mitigation

As mitigation for impacts to 214 linear feet of perennial stream, 3,184 linear feet of intermittent stream, and 2,552 linear feet of ephemeral stream, Oxford proposed to construct a minimum of 214 linear feet of perennial stream and 3,925 linear feet of intermittent stream using natural channel design, as well as 0.06 acre of wetland. As mitigation for impacts to 0.173 acres of non-forested/emergent wetlands, Oxford will construct a minimum of 0.32 acres of wetland.

EPA appreciates that Oxford identifies and restores pre-mined areas that are contributing to downstream water quality impairments. For this project, they will eliminate an abandoned underground mine that is a suspected source of AMD, and

reclaim abandoned highwalls and old pit impoundments. They have a proven track record of conducting this type of reclamation that will result in environmental improvement.

To account for temporal loss and the uncertainty of stream reclamation, Oxford will provide additional mitigation, consisting of at least 750 linear feet of stream restoration and protection of the area with a conservation easement. They will also identify additional areas for mitigation focused on chemical and/or biological improvements in the watershed.

Proposed Permitting Approach

EPA appreciates the efforts of Oxford and the Corps to incorporate provisions in the design of the Halls Knob mine intended to avoid and minimize the potential for increased water quality problems within the Wills Creek Watershed. Remining and reclamation on 39.5 acres of the site are intended to correct existing sources of conductivity currently contributing to exceedances of the state's water quality criterion for conductivity. We are concerned, however, that new mining and associated disturbance of 224.2 acres of land at the site, including new mine through operations impacting almost 5,500 linear feet of stream, will likely cause or contribute to additional exceedances and associated significant degradation of aquatic life in the already impaired Wills Creek Watershed. Current information available does not provide quantifiable data regarding the efficacy of reclamation efforts to ensure that new mining will not further elevate conductivity levels in the watershed.

In order to address this concern, and in an effort to allow some mining to proceed at the site as soon as possible, EPA recommends that the Corps proceed with phased permitting of the proposed mining operation as follows:

Phase I mining would be authorized to permit remining and reclamation to proceed immediately on the 39.5 acres of the Halls Knob site. The permit would require downstream monitoring of conductivity levels to evaluate the effectiveness of reclamation efforts to reduce existing conductivity levels in the watershed and to protect stream biota. The Corps, EPA, and the State should coordinate to assess any observed reduction in conductivity in waters below the remining/reclamation area as a part of the decision to approve subsequent new mining at the site under Phase II.

Phase II mining would involve the remainder of proposed mining at the Halls Knob site, including the mine through of 5,500 linear feet of stream. A decision whether or not to approve Phase II mining would be based on coordination among the Corps, EPA, and State to compare anticipated increases in conductivity in waters downstream of Phase II mining with the results of any observed improvement in water quality below Phase I remining and reclamation efforts, based on data collected during conductivity and biological monitoring. Phase II mining could be approved if the agencies determined that a combination of anticipated new mining water quality impacts and reductions in conductivity associated with repair of existing conductivity sources resulted in no net

increase in conductivity and related biological impairments in surface waters in the Wills Creek watershed.

Absent the adoption of a phased permitting approach described here, as well as the collection and utilization of this necessary information and analysis, EPA recommends that the permit application for the project, as currently proposed, be denied.

The combination of a phased mining approach, of reclaiming pre-SMCRA areas, reclamation of on site streams, additional on-site stream mitigation, extensive water quality and biological monitoring, use of best management practices, and an adaptive management plan for corrective action, will prevent this project from elevating pollutant levels in streams already impaired by previous mining and causing significant degradation to downstream waters. We believe the enclosed conditions are consistent with the agencies' Clean Water Act regulations, including the section 404(b)(1) Guidelines.

I want to thank you and your staff for your cooperation and willingness to address our issues. If you have any question, please call me, at 312-353-2147, or Wendy Melgin of my staff, at 312-886-7745.

Sincerely,



for Tinka G. Hyde
Director, Water Division

Enclosure

cc: George Elmaraghy, Ohio EPA

Special Conditions

EPA appreciates the collaboration between the Region and the District on developing the special permit conditions. We believe this productive working relationship benefits both agencies in our effort to ensure that the chemical, physical and biological integrity of the nation's waters is maintained.

In addition to the conditions, the applicant is required, in the SCMRA permit, to implement Best Management Practices and reclamation methods for land disturbance, erosion and sediment control, revegetation and drainage. The proposed Section 404 special conditions, which EPA and the Corps have agreed upon, are listed below.

1. Conductivity shall be monitored on a monthly basis at upstream monitoring station U-9 and downstream monitoring station D-9. Other parameters to be monitored include flow, pH, temperature, dissolved oxygen, Iron, Aluminum, Selenium, TDS, TSS, Conductivity, Calcium, Potassium, Magnesium, Sulfate, Chloride, Sodium, and Total Alkalinity. The upstream monitoring point will be the reference point and the downstream station will be the compliance point.

Data shall be reported to the USACE and USEPA within 15 days of monitoring. After 6 months of data collection a time-series analysis of the data shall be performed to determine if conductivity readings are developing a trend. The analysis shall be reported to the USACE and USEPA within 30 days of the 6 month monitoring date. If the conductivity is trending upward a detailed reasoning for increased conductivity shall be conducted and included in the above analysis report.

The trend analysis shall begin upon site preparation for mining and take place every 6 months until reclamation is completed.

If an unexplained spike in conductivity reading takes place, the frequency of monitoring shall be increased to twice per month.

If corrective measures are necessary, the Adaptive Management Plan shall be implemented, which may require additional mitigation focused on chemical improvements in the watershed.

2. Habitat and aquatic biology shall be monitored twice between June 15 to September 30 at least 6 weeks apart at upstream monitoring station U-9 and downstream monitoring station D-9. During the sampling period, the company will determine if there is any change in QHEI, ICI, and IBI scores. Data shall be reported to the USACE and USEPA within 15 days of monitoring.

If the ICI or IBI scores show a negative change greater than 4 points an analysis with detailed reasoning for decreased biology will be required. The QHEI score shall be used to determine any change in the physical habitat. After a season (two complete monitoring reports) of data collection an analysis of the data shall be reported to the USACE and USEPA within 30 days.

If the QHEI score drops significantly or the ICI or IBI scores show a negative change greater than 4 points during to your mining operation, the Adaptive Management Plan shall be implemented, which may require additional mitigation focused on habitat or biological improvements in the watershed.

3. Yearly sampling shall be conducted on each of the thirteen sampling stations using the qualitative methodology described in the Primary Headwater Habitat Manual (HHEI) and the Headwater Macroinvertebrate Field Evaluation Index (HMFEI). HHEI and HMFEI scores shall be reported in the annual monitoring reports. The approved monitoring stations are documented on the Monitoring Station Map (Hall's Knob D-2334) dated 2/23/2010 which is attached (Attachment D). Baseline parameters shall be established prior to any site activity.

4. For temporal loss of stream functions on site, you shall submit an additional mitigation plan. The plan shall identify a minimum of 750 linear feet of stream channel on or off site as a mitigation site. The mitigation should include restoration/creation/enhancement and must include protection in perpetuity.

5. If water quality shows that the conductivity has exceeded Ohio's water quality standard for conductivity of 2400 $\mu\text{S}/\text{cm}$ or 1500 mg/l Total Dissolved Solids at downstream monitoring station D-9, mining must stop and the adaptive management plan must be implemented.

6. An Adaptive Management Plan (AMP) shall be developed and approved with 90 days of this authorization. This plan shall include activities initiated when there is a degradation of water quality or biology. If trend analyses indicate a degradation of water quality or biology, then the applicant will submit a report within 30 days to the USACE, and the USEPA and any other appropriate agency with a detailed list of proposed actions to address the increased conductivity or loss of biodiversity. The proposed actions shall also identify a timeline for the implementation of the action plan which shall be implemented following written approval by the USACE after consultation with the USEPA and other resource agencies. The potential techniques that may be employed include, but are not limited to, revisions to material handling plans, revisions to the storm water storage; grading and vegetation of reclaimed areas, addition of pretreatment ponds, and internal storm water diversion.

7. Additional Compensatory Mitigation shall be required for degradation of water quality which results in action under the Adaptive Management Plan. If monitoring indicates any upward trend in conductivity or downward trend in biology due to the mining activity additional mitigation focused on chemical and/or biological improvements in the watershed shall be provided. The requirement will be reset after 24 consecutive sample reports indicate results in normal limits of the baseline. The projects to which the additional compensatory mitigation can be applied will be defined in advance by the applicant and approved by the USACE in consultation with the USEPA and other resource agencies.

An additional proposed Section 404 special condition, which EPA and the Corps have not yet agreed upon, is listed below.

1. The permit shall allow mining to occur in 2 phases. Phase I would include the 39.5 acres of pre-SMCRA mined and unreclaimed portion of the project. Based on monitoring results and the success of reclamation in reducing existing conductivity and pH at monitoring station D-9, the Corps and EPA would determine whether the second phase (new mining) could be approved.

Congress of the United States
Washington, DC 20515

June 11, 2010

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Federal Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

We write to ask that you please accommodate Oxford Mining's request to meet with Washington-based senior level officials at the Environmental Protection Agency (EPA) before June 16, 2010. The company wishes to discuss the draft final special conditions that were attached to its Halls Knob permit, and to do so before EPA's 10 day final review period terminates.

As you know, the Halls Knob permit application was one of the 79 permits selected for enhanced coordination pursuant to the June 11, 2009, interagency Memorandum of Understanding on Appalachian surface coal mining. Out of that effort, EPA identified three areas that it believed were of concern: avoidance and minimization, water quality impacts, and mitigation. It is our understanding that the special conditions were recommended by EPA to be incorporated into the draft permit issued by the Army Corp of Engineers. That permit is now under a 10 day review period by your agency that is due to end on June 16th.

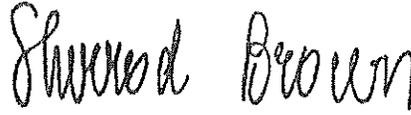
Oxford Mining would like to discuss its concerns about the special conditions proposed by EPA. The company believes that the special conditions proposed by EPA are excessive and if followed, will not make it economically feasible for the company to pursue the project. Due to the uniqueness of this approval process and the fact that these new procedures could have a profound and direct economic impact on a region of our state that has been devastated by high unemployment, we would ask that you agree to Oxford Mining's request for a meeting in Washington, D.C. prior to your June 16th deadline.

Thank you for your personal attention to this matter. We hope that you can accommodate the company's request and ask that you keep us informed as to the status of this request in a timely manner.

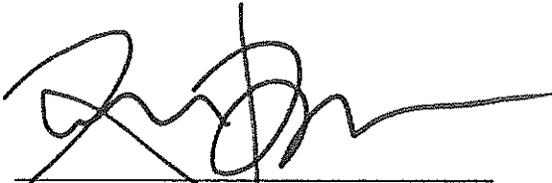
Sincerely,



George V. Voinovich
United States Senator



Sherrod Brown
United States Senator



Zack Space
United States Representative



Charlie Wilson
United States Representative

CC: Ted Strickland, Governor, State of Ohio
Ginger Mullins, Chief, U.S. Army Corps of Engineers – Regulatory Branch
Tinka G. Hyde, Director, U.S. Environmental Protection Agency – Water Division
George Elmaraghy, Chief, Ohio EPA – Division of Surface Water

				D-2334		D-1						
Date	Disc.	pH	Acid	Alk	Fe	Mn	AL	SS	Hard	So3	SC	Net Alk
01/09/06	5.0	7.63	5	66	0.220	0.424	-	3	258.54	126.00	472	61
02/20/06	5.0	7.70	3	44	0.061	0.146	-	1	281.57	189.00	526	41
10/09/06	4.0	7.77	6	74	0.380	0.394	0.353	5	218.56	119.00	453	68
08/18/09	0.1	7.33	12	128	0.110	0.011	0.096	1	351	210.00	778	116
11/04/09	0.1	7.32	18	164	2.300	0.080	1.860	162	299	88.20	528	146
03/16/10	7.0	7.13	4	36	0.900	0.070	0.700	12	469	321.00	687	32
												0
				D-2334		D-4						
Date	Disc.	pH	Acid	Alk	Fe	Mn	AL	SS	Hard	So3	SC	Net Alk
01/09/06	28.0	7.67	4	52	0.066	0.020		2	286.59	155.00	512	48
02/20/06	32.0	7.61	4	48	0.044	0.011		1	285.23	175.00	499	44
10/20/06	30.0	7.95	2	76	0.141	0.017		1	246.01	180.00	557	74
08/18/09	0.1	6.86	16	74	0.061	0.010	0.059	1	211	105.00	492	58
11/04/09	0.1	7.41	6	40	0.140	0.330	0.080	7	562	4.97	958	34
03/16/10	28.0	7.48	2	38	0.150	0.040	0.200	3	321	234.00	548	36
				D-2334		D-7						
Date	Disc.	pH	Acid	Alk	Fe	Mn	AL	SS	Hard	So3	SC	Net Alk
01/09/06	20.0	7.70	7	76	0.040	0.364	-	11	677.1	439.00	1023	69
02/20/06	24.0	7.57	5	60	0.062	0.307	-	1	619.77	491.00	1008	55
10/09/06	25.0	7.82	7	66	0.538	0.538	0.575	30	371.23	245.00	682	59
08/18/09	NF											0
11/04/09	0.2	7.44	8	80	0.550	0.040	0.580	12	263	181.00	464	72
03/16/10	12.0	7.76	2	70	1.700	0.030	1.330	4	156	34.70	232	68
				D-2334		D-8						
Date	Disc.	pH	Acid	Alk	Fe	Mn	AL	SS	Hard	So3	SC	Net Alk
01/09/06	12.0	7.96	6	90	0.111	<0.01	-	17	170.69	63.60	320	84
02/20/06	14.0	7.67	4	86	0.340	0.012	-	7	109.28	30.40	227	82
10/09/06	12.0	7.92	4	116	0.333	0.024	0.388	3	182.9	77.40	380	112
08/18/09	NF											0
11/04/09	NF											0
03/16/10	9.0	7.81	2	84	0.980	0.020	0.820	8	183	53.30	283	82
				D-2334		D-50						
Date	Disc.	pH	Acid	Alk	Fe	Mn	AL	SS	Hard	So3	SC	Net Alk
01/09/06	70.0	7.89	7	94	0.045	0.155	-	8	676.1	401.00	1038	87
02/20/06	75.0	7.93	5	103	0.051	0.187	-	13	657.18	498.00	1178	98
10/09/06	70.0	7.91	6	108	0.207	0.158	0.234	1	501.14	346.00	951	102
08/18/09	8.0	7.68	8	148	0.080	0.031	0.176	3	640	446.00	1311	140
11/04/09	10.0	8.01	6	154	0.110	0.200	0.160	1	842	64.30	1440	148
03/16/10	200.0	7.72	4	80	0.260	0.260	0.280	2	718	436.00	995	76
				D-2334		U-4						
Date	Disc.	pH	Acid	Alk	Fe	Mn	AL	SS	Hard	So3	SC	Net Alk
01/09/06	4.0	3.75	99	0	0.230	9.250	-	9	528.89	513.00	1061	-99
02/20/06	7.0	3.74	97	0	0.815	7.990	-	1	456.17	521.00	1005	-97
10/20/06	2.0	3.62	129	0	1.410	9.910	-	1	504.61	743.00	1510	-129
08/18/09	NF											0
11/04/09	NF											0
03/16/10	4.0	3.85	150	0	0.450	10.300	34.800	2	709	748.00	1241	-150

				D-2334		U-50							
Date	Disc.	pH	Acid	Alk	Fe	Mn	AL	SS	Hard	So3	SC	Net Alk	
01/09/06	50.0	8.01	11	110	0.029	0.181	-	9	797.33	546.00	1272	99	
02/20/06	50.0	7.92	7	106	0.028	0.229	-	<1	770.97	618.00	1319	99	
10/09/06	50.0	8.01	5	134	0.171	0.193	0.242	3	643.23	462.00	1169	129	
08/18/09	6.0	7.76	8	150	0.065	0.048	0.184	2	658	509.00	1404	142	
11/04/09	7.0	8.06	4	164	0.380	0.120	0.060	1	1030	87.80	1553	160	
03/16/10	100.0	7.88	4	100	0.880	0.290	0.880	9	893	576.00	1218	96	

Exhibit I

EXHIBIT I

OXFORD PEABODY 3

OXFORD MINING COMPANY, LLC (OHIO) USEPA Blacklisted 404 Permits Applications	
Project Name	Peabody 3
Permit Number	LRH-2005-00421
SMCRA Number	D-2295
Applicant name	Oxford Mining
NWP/IP	IP
Submittal Date:	2/27/2009; 11 /2009
Coordinate PN/PCN (Date)	3/20/2009; 12/30/2009
Days to Coordinate	22
Status Date (Issued)	6/9/2010
New or expansion (N/E)	N
Direct Mining Job Potential	57
Mine acres	888
Proposed Coal Extraction (tons)	1,168,978
Valley fills (#)	0

ABSTRACT

Oxford originally submitted Individual Permit (IP) Application on February 27, 2009, after coordinating with the Corps on this project since 2005. On November 20, 2009 Oxford voluntarily withdrew the IP after it was agreed with the Corps that this was the best possible remedy, in order to advance this project as a result of EPA Enhanced Coordination. Oxford agreed to reduce impacts by relocating sediment ponds at increased mining cost out of natural drainage channels and to avoid springs emanating from the coal seam that contribute water to these natural drainage channels in order to obtain the permit. On June 9, 2010, the Corps issued the IP. In the final application (revised Min Deg II), Oxford agreed to avoid Stream PS-55 as EPA was not going to allow impacts as it was designated as a Class III perennial stream, although not located below the local water table. Oxford's plan called for recovering this coal by mining through streams 51 and 52 (only the upper 150 feet). As it turned out, the coal dipped into the avoidance area and made the mining impracticable. The total tonnage loss in these areas is 153,603 tons. This loss is directly attributed to the EPA.

The three remaining areas of coal loss are smaller in scale but represent the same issue. The coal crop was lower in elevation, making the lower extent untouchable as doing so would have affected jurisdictional waters. The total tonnage in these areas is 15,000 tons.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WW-16J

May 15, 2009

U.S. Army Corps of Engineers
ATTN: CELRH-OR-FE
502 8th Street
Huntington, West Virginia 25701-2070

Re: Oxford Mining Company, LLC-Peabody III-UT to Two Mile Run / PN # LRH-2005-421-1

Dear Ms. Newman:

This letter responds to the subject public notice issued March 20, 2009 by the U.S. Army Corps of Engineers (Corps) in which Oxford Mining Company, LLC proposes modifications to permit # 200500421 (Peabody III-UT to White Eyes Creek) authorized on August 1, 2008. The original permit allowed for impacts to 981 linear feet of perennial streams; 4,420 linear feet of intermittent streams; and 7,141 linear feet of ephemeral streams in association with mining activities on 424 acres of the 1400 acre Peabody III surface coal mine site (the site). The proposed permit modification includes impacts to an additional 6,033 linear feet of streams and 41 acres of wetland that are located within an 888.8 acre portion of the site. The total surface area that would be affected by the original and proposed mining activities is 1312.8 acres. The Peabody III surface coal mine site is located in Linton Township in Coshocton County, Monroe Township in Muskingum County and Knox Township in Guernsey County, Ohio.

As you know, the 404 (b) (1) Guidelines require the applicant to demonstrate there are no practicable alternatives available which would have a less adverse impact on the aquatic environment for non-water dependant activities. The guidelines presume that less damaging upland alternatives exist for these activities unless demonstrated otherwise by the applicant. The applicant must follow a sequence of steps to achieve compliance with the 404 (b) (1) Guidelines; which include avoidance, minimization, and compensation for unavoidable impacts. The United States Environmental Protection Agency is deeply concerned about the potential for serious impacts to the current hydrologic regime and ecological structure of Class III primary headwater habitat streams (PHWH) and Category III wetlands.

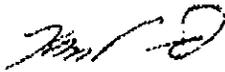
Streams J, 18, 24, 27, 29, 32, 33, 40, 44, 49, 55, 64, 76, 81, 102, and 103 have been identified as perennial Class III PFWH streams by the Ohio Environmental Protection Agency (OEPA). Class III PFWH streams support aquatic communities specifically adapted to cold water systems. PFWH streams aid in nutrient control, sediment control, and flood control, transport of organic matter and aquatic organisms downstream, and regulation of base flow in larger streams within the watershed. Adverse impacts to high quality PFWH streams may compromise the ecological integrity of and hydrological connectivity to downstream waters. Approximately 2,790 linear feet of perennial Class III PFWH would be impacted for this project according to the information available to EPA.

Category III wetlands typically display unique, high-quality ecological values and functions. WL3, WL4, WL9, WL10, WL12 and WL18 have been designated by OEPA as Category III wetlands. EPA understands that all direct impacts to Category III wetlands have been avoided; however, secondary impacts such as fluctuations in hydrology and an increase in sediment and nutrient load could detrimentally affect these high quality resources.

Please be advised that Wills Creek (downstream Leatherwood Creek to mouth), OH05040005001, is listed on the 2008 303(d) list by the State of Ohio as an impaired water body. The cause of impairment to this segment of Wills Creek is siltation. A mining operation will likely increase the sediment load to Wills Creek-potentially causing further impairment. Just upstream of this segment of Wills Creek is segment OH05040005020 (headwaters to upstream Leatherwood Creek), which is impaired for metals (other than mercury), habitat alteration, pathogens, siltation and unionized ammonia. The information available indicates that the wetland/stream systems within and surrounding the downstream segment of Wills Creek are likely functioning to alleviate the loads of metal, pathogens, and ammonia to the downstream segment of Wills Creek. The proposed project would likely put the downstream segment of Wills Creek at risk for further impairment.

In conclusion, EPA is deeply concerned about further disturbance of the landscape and hydrology in an area where high quality wetlands and streams exist. We object to the issuance of a permit for the reasons mentioned above. Thank you for the opportunity to provide comments on this public notice. If you have any questions, please call Melissa Gebjen of my office at 312-886-6833.

Sincerely,



Kevin Pierard, Chief
Watersheds & Wetlands Branch

cc: Ric Queen, OEPA

Opt-Out: *****



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 9 2010

REPLY TO THE ATTENTION OF:

WW-16J

U.S. Army Corps of Engineers, Huntington District
ATTN: CELRH-OR-FE
502 8th Street
Huntington, West Virginia 25701-2070

Subject: Oxford Mining Company, LLC / Peabody III -UT to Two Mile Run / PN #
LRH-2005-421-1

Dear Ms. Mullins:

On March 20, 2009, the U.S. Army Corps of Engineers (Corps) issued a Public Notice in which Oxford Mining Company, LLC (Oxford) proposed modifications to permit # 200500421, Peabody III-UT to White Eyes Creek, authorized on August 1, 2008. The original permit authorized discharges to 981 linear feet of perennial stream, 4,420 linear feet of intermittent stream, and 7,141 linear feet of ephemeral stream in association with mining activities on 424 acres of the 1400 acre Peabody III surface coal mine site located in Linton Township in Coshocton County, Monroe Township in Muskingum County and Knox Township in Guernsey County, Ohio.

The proposed permit modification included an additional 6,033 linear feet of stream impacts and 0.41 acres of wetland impacts. The permit modification area encompassed approximately 888 acres of the 1400 acre Peabody III surface coal mine site. On May 15, 2009, the United States Environmental Protection Agency objected to the issuance of a permit for the project as proposed because of direct and indirect impacts to Class III Primary Headwater Habitat (PHWH), which support aquatic communities specifically adapted to cold water systems, and indirect impacts to Category III wetlands, which typically display unique, high-quality ecological values and functions. Ultimately, the applicant did not demonstrate avoidance and minimization of adverse aquatic impacts to the maximum extent practicable in the proposal, which is required by the 404 (b)(1) Guidelines.

On November 20, 2009, Oxford withdrew the pending Individual Section 404 application for the Peabody III modification area because of the concerns raised by state and federal agencies on impacts to Class III PHWH streams and Category 3 wetlands.

Oxford submitted a revised Individual Section 404 application to the Corps for the 888 acre Peabody III modification area, which was subsequently public noticed on December 30, 2009. EPA has reviewed this public notice, the revised 404 permit

application dated November 2009, the Monitoring Plan dated January 29, 2010, and the revised Monitoring Plan dated February 4, 2010. The revised project as proposed would impact approximately 100 linear feet of perennial streams and 961 linear feet of intermittent streams for a total of 1,066 linear feet of stream impacts. Proposed stream impacts have been reduced by a total of 4,967 linear feet with the revised permit modification. Proposed impacts to Class III PHWH streams have been reduced from 2,790 linear feet to 100 linear feet. EPA appreciates the applicant's efforts to significantly reduce impacts to these valuable resources.

EPA offers the following comments based on our review of the revised documents:

To enhance avoidance and minimization efforts, EPA recommends the applicant avoid, where possible, mining through springs on site in order to maintain hydrology for both the reconstructed and avoided streams, as well as avoided wetlands. The avoidance of springs/hydrology sources, with certain exceptions, should be included as a special condition of the 404 permit. This is especially important for all Class III PHWH streams and Category III wetlands.

According to the monitoring plan, the applicant has agreed to perform biological monitoring and physical assessments prior to the initiation of mining activities to establish baseline conditions, during the mining activities to assist in determining potential impacts to aquatic habitat, and continuing at least five years after the completion of stream restoration and site reclamation activities at the mine site, where appropriate, to determine mitigation success. On February 4, 2010, EPA reviewed the January 29, 2010 Monitoring Plan and recommended that the applicant establish monitoring stations on stream IS-2 south of the confluence of IS-1 and IS-2 and Township Road 812, at the confluence of streams PS-53 and PS-55 and just upstream of the confluence of streams PS-33 and PS-41 on PS-33. On February 8, 2010, EPA received a copy of the revised monitoring plan which included the additional stations.

The applicant's revised mitigation proposal includes mitigation for 1,016 linear feet of stream impacts with the reconstruction and protection of all 1,061 linear feet of streams, and protection of an additional 532 linear feet of Class III PHWH streams in perpetuity with an environmental covenant. However, the proposal does not include many details on performance standards, success criteria or a conceptual mitigation schedule. It is critical that these be included in the final mitigation plan to ensure there is a means to measure and evaluate the success of the mitigation areas. Additionally, financial assurances and adaptive management should be addressed in the final mitigation plan. Ultimately, the mitigation plan must include more detailed information and meet the minimum requirements set forth in the 2008 Compensatory Mitigation Rule so that the Agencies may evaluate whether or not the mitigation will provide appropriate compensation for any unavoidable loss of functions and values before a 404 permit is issued.

In conclusion, permit conditions should incorporate our comments on avoiding springs, biological monitoring, and mitigation details. Thank you for the opportunity to provide comments on this project. Please keep EPA apprised of the status of the permit and any major revisions. If you have any questions, or if we can be of further assistance, please contact Melissa Gebien at 312-886-6833 or Andrea Schaller Hilton at 312-886-0746.

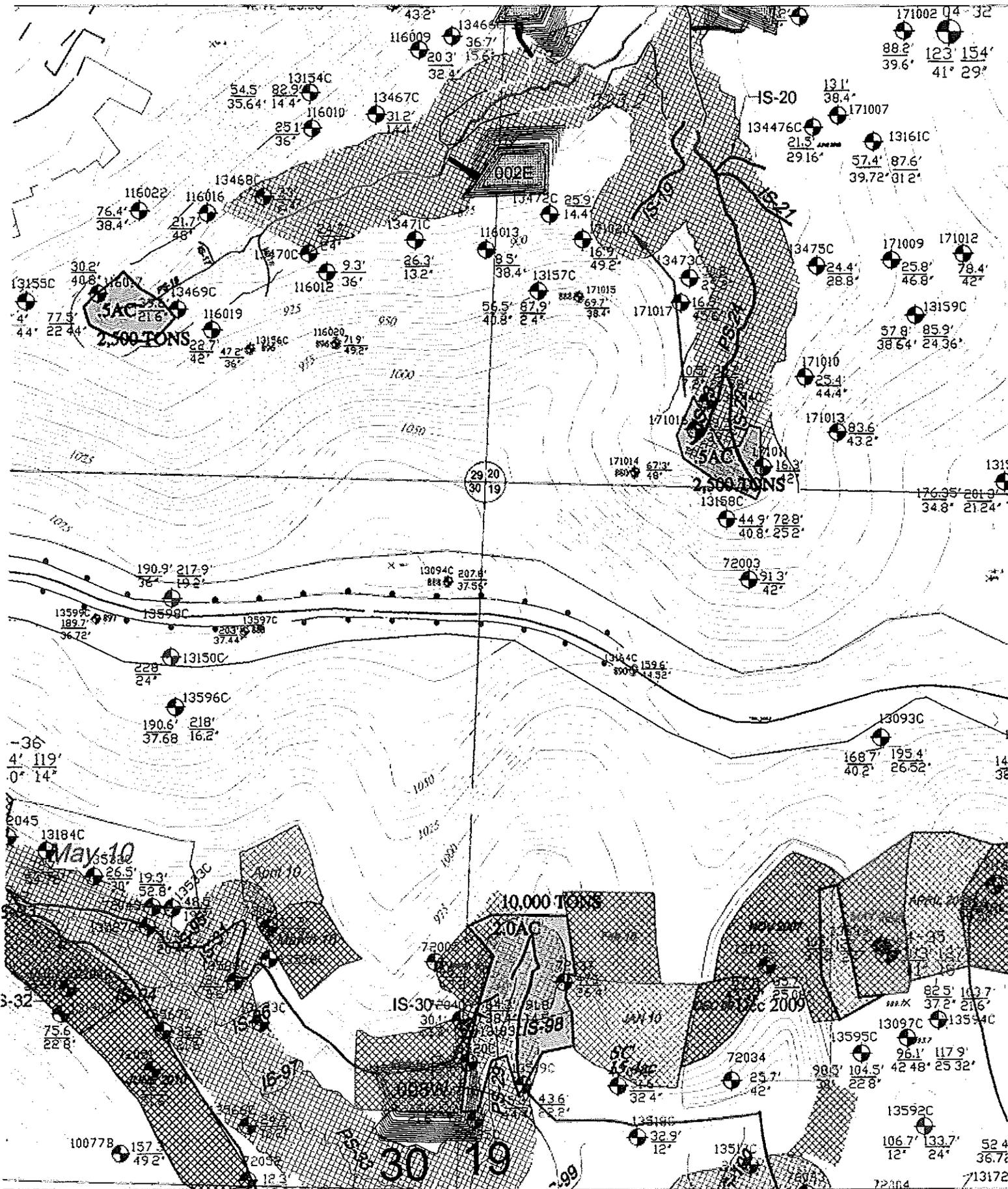
Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde". The signature is stylized with a long horizontal line extending to the right.

for Tinka G. Hyde, Director
Water Division

cc: Ric Queen, Manager
Ohio Environmental Protection Agency
Division of Surface Water
Lazarus Government Center
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

Mary Knapp, Field Supervisor
U.S. Fish and Wildlife Service
Reynoldsburg Ecological Services Field Office
6950-H Americana Parkway
Reynoldsburg, Ohio 43068



1" = 300'

Exhibit J

EXHIBIT J
ELLIS AREA

OXFORD MINING COMPANY, LLC (OHIO) USEPA Blacklisted 404 Permits Applications	
Project Name	Ellis Area
Permit Number	LRP-2007-001180
SMCRA Number	App 10399
Applicant name	Oxford Mining
NWP/IP	IP
Submittal Dates:	10/28/2008; 8/17/2010
Coordinate PN/PCN (Date)	2/10/2009; 4/22/2010
Days to Coordinate	106
Status Date (Issued)	Uncertain
New or expansion (N/E)	N
Direct Mining Job Potential	32
Remining (Y/N)	Y
Mine acres	470
Remining acres (% mining acres)	144 (30.6%)
Pre-law Highwall to be reclaimed	13,890 feet
Proposed Coal Extraction (tons)	848,000
Valley fills (#)	0

ABSTRACT

Individual Permit (IP) LRP 2007 001180. Coordinating with Corps commenced 2007. IP submitted October 28, 2008. There is no proposed Mountaintop Mining or Valley Fill. Oxford proposes to reclaim 2.63 Miles of dangerous highwall, and 144 acres previously mined and unreclaimed (31% of this 470 acre project) and restore the land to meet current SMCRA standards. This project is for a new mine with 32 direct mining jobs. On June 11, 2009, the project was Blacklisted by USEPA and subjected to Enhanced Coordination. On August 17, 2010, Oxford resubmits IP. On November 24, 2010, EPA further comments on IP to Corps raising original Enhanced Coordination concerns (avoidance; sediment ponds in streams), biological monitoring and new Enhanced Coordination concerns; Financial Assurance requirements and Protection of Mitigation Areas from Livestock. IP Issuance is uncertain due to continued Enhanced Coordination.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 24 2010

REPLY TO THE ATTENTION OF:

WW-16J

Scott A. Hans, Chief
Regulatory Branch
U.S. Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222-4186

Re: Public Notice No. 10-57 / Ellis Area, Oxford Mining Company, LLC

Dear Mr. Hans:

The United States Environmental Protection Agency has reviewed the subject Public Notice (PN) and the associated Section 404 permit application for the Ellis Area project located approximately 2.5 miles southwest of Brilliant in Wells Township, Jefferson County, Ohio. According to the PN, the applicant proposes to strip and auger mine the No. 8, No. 8A and No. 9 coal seams within the 450.3 acre permit area which would result in impacts to 12,169 linear feet of perennial and intermittent tributaries to Blues Run and Rush Run and .03 acres of wetland. We offer the following comments based on our review of the documents provided and our November 10, 2010 site visit:

Background Information:

- The applicant refers to the reclamation of an abandoned mine land (AML) site that will improve water quality, however not much detail is provided regarding the reclamation. The applicant should provide details about all AML reclamation work that is proposed onsite and elaborate on anticipated water quality improvements onsite and directly downstream.
- The cumulative impacts analysis (CIA) includes Rush Run and other selected tributaries, however the CIA does not specify what other tributaries were evaluated. The CIA states that pre-SMCRA mining has impacted the watershed with high sediment loading, high metal loading, acid mine drainage (AMD) contamination, and reduced upland buffers. The applicant must detail how the proposed project will avoid causing or contributing to the impairment of the Rush Run and Blues Run watersheds. At a minimum, this assessment should discuss how the proposed operation, in conjunction with previous, current and reasonably foreseeable future operations, may affect the physical, chemical and biological integrity of the Blues and Rush Run watersheds.

Avoidance and Minimization:

- Where possible, the applicant must avoid mining through hydrology sources in order to maintain hydrology for both the reconstructed and avoided aquatic resources. Oxford does not discuss the avoidance of hydrology sources in detail in the application. The applicant should consider avoidance of Springs 2 and 6 which are major sources of hydrology for Stream 8 and 9. The applicant should also explore the feasibility of locating Pond 001 outside of Stream 8 and Pond 003 outside of Stream 1.
- The economic feasibility of transporting overburden/spoil to upland areas is discounted within the application, however no cost estimates are provided to support the statements made. Oxford should substantiate these statements to enhance the alternatives analysis.

Mitigation/Monitoring:

- The applicant proposes to reconstruct 12,169 linear feet of perennial and intermittent streams. A distinction must be made between the linear feet of perennial and intermittent channel that will be reconstructed.
- There are statements within the application that the surface mining will permanently impact several hydrology sources, i.e. springs and seeps, and that the original flow regime will return via manipulation of hydrology during reclamation. The applicant must detail how reconstructed mitigation reaches will achieve and maintain their intended flow regime.
- A construction schedule for completion of stream and wetland mitigation construction should be provided.
- Ecological performance standards must be provided for stream buffer and wetland vegetation.
- Wetland mitigation monitoring is only proposed in years 3 and 5 post construction. Wetland mitigation should be monitored biannually for a minimum of five years and monitoring data should be included in an annual report submitted to your office.
- As a part of the monitoring program for affected and reconstructed streams, biological monitoring is required to ensure there is no degradation to the communities that inhabit the streams. Biological monitoring, along with water chemistry and physical assessments, must occur prior to the initiation of mining activities to establish baseline conditions. During the mining activities, these assessments must continue and will assist in determining potential impacts to aquatic habitat and water quality downstream of the impacts. Finally, the assessments must continue for at least five years after the completion of stream reconstruction and site reclamation activities at the mine site where appropriate to determine mitigation success. The suite of monitoring requirements should be included in the conditions of the Section 404 permit.

- The adaptive management plan for mitigation needs to be more detailed. As stream reconstruction and AML reclamation are major components of the plan, it should be expanded to include a "strategy that anticipates likely challenges associated with compensatory mitigation projects and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects (40 C.F.R. § 230.92)." Further, the applicant should also consider the risk associated with implementing the plan along with the complexity of the mitigation. Procedures should be established for identifying, reporting, and implementing remedial actions according to specific timelines, in the event they are necessary. The discussion about contingency actions in the permit application is vague as the applicant simply indicates that issues will be addressed as they arise. A greater level of pre-planning is needed to instill confidence that any remedial actions will be conducted appropriately and in a timely manner.
- The applicant must provide information regarding the Financial Assurances that will be provided and what form they will take. The mitigation rule provides that the "district engineer shall require sufficient financial assurances to ensure a high level of confidence that the compensatory mitigation project will be successfully completed." (40 C.F.R. § 230.93(n)(1))
- Long-term protection is not proposed for all mitigation areas. In order to receive mitigation credit for proposed stream and wetland mitigation, the mitigation areas must be protected in perpetuity. Long-term protection of the mitigation areas should be included as a condition of the Section 404 permit.
- The post mining land use will consist of prairie and grassland habitat. There are no details regarding how restored and preserved waters would be protected from potential livestock impacts. The Ohio River is impaired for dioxins and fecal coliform downstream of the project area. The applicant should take every precaution to avoid contributing further to said impairments.

If Oxford accepts our recommendations, we do not object to issuing the permit. As indicated by the preceding comments, a substantial amount of information must be provided to the Corps before an informed permit decision can be made. Please keep EPA apprised of any response to these comments. Feel free to contact Melissa Gebien at 312-886-6833 or Andrea Schaller at 312-886-0746 with any questions you may have.

Sincerely,



Peter Swenson, Chief
Watersheds and Wetlands Branch

cc: Rachel Taulbee, OEPA (via e-mail)
Jeromy Applegate, USFWS (via e-mail)
Tyler J. Bintrim, USACE-Pittsburgh District (via e-mail)
Scott Stiteler, ODNR-DMRM (via e-mail)

Exhibit K

EXHIBIT K
GARRETT
OTHER OXFORD CWA § 404 ENHANCED COORDINATION

Project Name	Garrett
Permit Number	2007-874
SMCRA Number	App 10411
Applicant name	Oxford Mining
NWP/IP	IP
Submittal Date	2/18/2009
Coordinate PN/PCN (Date)	5/14/2009
Days to Coordinate	86
Status Date (Issue/Withdrawn/Pending)	Pending
New or expansion (N/E)	N
Direct Mining Job Potential	30
Remining (Y/N)	Y
Mine acres	583
Remining acres (% mining acres)	49.5 (8.5%)
Pre-law Highwall to be reclaimed	3,741 feet
Proposed Coal Extraction (tons)	880,000
Valley fills (#)	0

ABSTRACT

Garrett was overlooked from any list published by EPA, but did not escape Enhanced Coordination. The Individual Permit (IP) was submitted February 18, 2009, without any Mountaintop Mining or Valley Fill. Oxford proposes to reclaim 0.7 miles of dangerous highwall, 50 acres of previously unreclaimed mined land to current SMCRA standards. This is a new mine with 30 direct mining jobs. On September 2, 2010, after 15 months of Enhanced Coordination, in addition to previously raised environmental concerns of avoidance and biological monitoring, EPA raise new issue of financial assurance, ignoring SMCRA's performance bonding requirements, Adaptive Management Plans being used for additional mitigation requirement, and cumulative impacts. IP issuance uncertain due to Enhanced Coordination 4 years after first coordination with Corps and 2+ years after submittal of application.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP - 2 2010

REPLY TO THE ATTENTION OF:
WW-16J

U.S. Army Corps of Engineers, Huntington District
502 Eighth Street
Huntington, West Virginia 25701-2070
ATTN: CELRH-OR-FE

Re: Public Notice No. LRH 2007-874 / Oxford Mining Company, Garrett Surface Mine

Dear Ms. Mullins:

The United States Environmental Protection Agency has reviewed the subject public notice issued on June 13, 2009, the 401 Water Quality Certification issued November 4, 2009, and other relevant documents associated with the proposed surface mining of an 583.7 acre site located in Clay Township, Tuscarawas County, Ohio. The project as proposed would impact approximately 9,820 linear feet intermittent streams, 2,715 linear feet of ephemeral streams and 0.49 acres of jurisdictional wetlands as a result of mining activities. The project involves the remining and reclamation of 67.4 acres of pre-law mining on the site. EPA offers the following comments based on our review of the abovementioned documents:

404(b)(1) Guidelines

As you know, the Guidelines require that the applicant demonstrate there are no practicable alternatives available that would have a less adverse impact on the aquatic environment for non-water dependant activities. The Guidelines presume that less damaging upland alternatives are available for these activities unless demonstrated otherwise by the applicant. The applicant must follow a sequence of steps to be in compliance with the 404 (b)(1) Guidelines that include avoidance, minimization, and compensation for unavoidable impacts.

As proposed there are several detention basins within the stream channels. The application must relocate the new impoundments out of the stream channels where possible and remove all impoundments from the stream channels during reclamation. As currently proposed the applicant has not adequately demonstrated avoidance and minimization efforts within the project boundary.

Mitigation

The applicant's revised mitigation includes mitigation for 12,535 linear feet of stream impacts with the reconstruction and long-term protection of 13,405 linear feet of streams. The 401 Water Quality Certification included many details on performance standards, success criteria and a conceptual mitigation schedule. Additionally, constructed or restored waters must meet the definition of waters of the United States under the Regulatory Program regulations applicable on the date of the nationwide permit authorization and are connected to a surface water tributary system of waters of the United States.

Stream Monitoring

Baseline biological stream data were not included in the public notice or other material reviewed. Baseline biological assessments must occur prior to the initiation of mining activities to establish baseline conditions, during the mining activities to assist in determining potential impacts to aquatic habitat immediately downstream of the operation, and must continue at least five years after the completion of stream reconstruction activities at the mine site where appropriate to determine mitigation success. In addition to biological monitoring, chemical and physical monitoring should be conducted at the same time and be included in the conditions of the Section 404 permit.

The parameters monitored must include conductivity, flow, pH, temperature, dissolved oxygen, iron, aluminum, selenium, TDS, TSS, Conductivity, Calcium, Potassium, Magnesium, Sulfate, Chloride, Sodium, and Total Alkalinity. It is recommended that this data minimally be taken with the appropriate level of physical and biological sampling on downstream compliance sites. The results should be analyzed every six months with a trend analysis. Any upward trend in conductivity or downward trend of biology would require a detailed rationale and possible implementation of a pre-approved adaptive management plan.

The biological monitoring plan should include multiple sampling stations using the qualitative methodology described in the Primary Headwater Habitat Manual (HHEI) and the Headwater Macroinvertebrate Field Evaluation Index (HMFEI). HHEI and HMFEI scores shall be reported in the annual monitoring reports. It is important that these standards be included in the mitigation plan to ensure there is a means to measure and evaluate the biological success of the mitigation areas.

Financial Assurances and adaptive management

Financial assurances and adaptive management should be addressed before the Section 404 permit is issued. Financial assurances for compensatory wetland and stream mitigation for 404 purposes are separate and distinct from those required by the Surface Mining Control and Reclamation Act (SMCRA). Oxford Mining should discuss details on the dollar amount, type(s) of assurance (ex. performance bond, letter of credit) and

release conditions with the U.S. Army Corps of Engineers (Corps). Estimates of the planning, construction, monitoring, and maintenance costs of mitigation activities will be necessary. The Corps cannot evaluate whether the financial assurances are sufficient to cover potential mitigation inadequacies without this type of information. Ultimately, the mitigation plan must include more detailed information and meet the minimum requirements set forth in the 2008 Compensatory Mitigation Rule so that the Agencies may evaluate whether or not the mitigation will provide appropriate compensation for any unavoidable loss of functions and values.

Cumulative Impacts

Post mining land use includes the conversion of 578.9 acres from undeveloped to grazing land. This sub watershed of the Tuscarawas River is listed on the State of Ohio's 303(d) list with impairments due to habitat alteration, metals (other than mercury), organic enrichment, pathogens, and sediment. Unrestricted access to creeks by livestock is listed as one of the sources of impairments in the watershed. This project would convert 578.9 acres of land to grazing land use; EPA requests the applicant provide measures to protect the water resources onsite site and the watershed from further degradation. As you know the Guidelines require the proposed project must not cause or contribute to further impairment of the water resource.

Currently, there are at least eight Surface Coal Mining Section 404 permits being reviewed or recently issued within the Tuscarawas Watershed. Due to the current volume and proximity of these projects to one another in an impaired watershed, EPA is concerned about the cumulative impacts to the chemical, physical and biological integrity of the watershed. Collectively, these projects would impact over 24,000 linear feet of stream and approximately 2.5 acre of wetland impacts, and convert 920 acres of forested lands into grazing lands.

Please consider these comments prior to issuance of a permit for the proposed project. Thank you for the opportunity to provide comments on this project. Please keep me apprised of the status of the permit and any major revisions. If you have any questions, or if we can be of further assistance, please contact Andrea Schaller at 312-886-0746 or Melissa Gebien at 312-886-6833.

Sincerely,



Peter Swenson, Chief
Watersheds and Wetlands Branch

cc: Ohio EPA, Division of Surface Water, Environmental Mitigation & Special
Permitting Section
Attn: Ric Queen, Manager
Lazarus Government Center
50 West Town Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Mary Knapp, Field Supervisor
U.S. Fish and Wildlife Service
Reynoldsburg Ecological Services Field Office
6950-H Americana Parkway
Reynoldsburg, Ohio 43068

Scott Stiteler, Ohio Department of Natural Resources
Division of Mineral Resources Management
2045 Morse Road, Building H-3
Columbus, Ohio 43229

Exhibit L

EXHIBIT L
OXFORD WEST - RUSH TWP APPLICATION
USEPA CWA SECTION 402 INTERFERENCE

Abstract: On July 26, 2010 Ohio EPA denies Oxford West CWA §402 General Coal NPDES Permit based on Draft USEPA funded studies, by USEPA researchers conducted not in Ohio, but West Virginia. Correspondence dated August 27, 2010 from Oxford to Governor Strickland seeking assistance in having Ohio EPA issue existing Coal General NPDES, previously approved by USEPA in February, 2009. Oxford submits Individual NPDES application never before used for surface coal mining operations on September 20, 2010.

Other USEPA Enhanced Coordination interferences with West Coal General NPDES continue from January 24, 2011 through February 8, 2011 and document in accompanying email highlight EPA's lack of understanding of basic engineering and design of surface coal mining and wastewater treatment and discharge facilities and inability to perform basic map reading and interpretation.

On March 3, 2011, Ohio EPA backtracked and issued the West Coal General NPDES permit after 10 months of Enhanced Coordination, 14 months after submittal of what was previously a routine authorization of a valid existing permit.

August 27, 2010

Governor's Office
Riffe Center
77 South High Street
Columbus, OH 43215-6108

Re: Request for Intervention with Ohio EPA's denial of coverage under Ohio's NPDES general permit for surface coal mining operation (NPDES coal general permit #OHR000003)

Dear Governor Strickland:

I am once again writing with a personal plea for your leadership to help Oxford Mining Company, LLC keep our 600+ Ohio coal miners employed and producing over 6 million tons of Ohio coal as a low-cost energy source to fuel our economic recovery. Recently, your director of environmental protection denied our request for initial coverage under Ohio's NPDES coal general permit #OHR000003 for surface coal mining operations for a new mine we proposed to open in Tuscarawas County (see the accompanying OhioEPA denial letter dated July 26, 2010).

The purported bases for this unprecedented action are the following two studies cited only by reference to a USEPA website (see the accompanying copy of the USEPA website page where such studies can be accessed under "EPA Office of Research & Development Scientific Reports"):

- The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields (*External Review Draft*)
- A Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams (*External Review Draft*)

Governor Strickland, these studies at face value are draft reports performed in the Central Appalachian Coalfields (not the Northern Appalachian Coalfields of Ohio), have not been subject to the level of rigorous scientific review required to alter decades of permitting practice in Ohio and cannot possibly form a rational basis for denying coverage under Ohio's NPDES coal general permit. There is no alleged imminent threat to Ohio water quality that can only be addressed by an individual NPDES permit as implied by the director's action.

The inappropriate action in this regard was the director's attempt to impose specific monitoring requirements under §402 of the federal Clean Water Act (the "CWA") as special conditions of the state's water quality certification under §401 of the CWA. By reason of Oxford exercising its lawful right to object to the director's inappropriate use of authority under §401 of the CWA, the director has wrongfully sought to exact retribution by denying coverage under Ohio's NPDES coal general permit.

In the interest of full disclosure, I must inform you that Oxford has appealed the director's misguided action to the Environmental Review Appeals Commission in order to protect its right to

coverage under Ohio's NPDES coal general permit. We will also be pursuing an individual NPDES permit application. However, we have no idea how long either process will take.

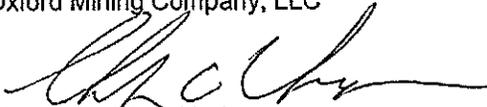
Oxford simply cannot afford further delays in obtaining all of the required permits to open a new mine and bring more high-paying, well-benefitted, private sector jobs to the most economically depressed part of Ohio where, I dare say, unemployment is even higher than the statewide average of nearly 10%. In my past 37 years of industry experience we have always received the NPDES coal general permit upon issuance of the Ohio Department of Natural Resources mining permit, which we would expect to be issued early next year.

I implore you to work with us to restore the utility of Ohio's NPDES coal general permit. We need more certainty, not less certainty, in the processing of coal mining permit applications in order for us to be able to plan and invest in our business so that our miners can continue working to expand the economic recovery. To that end, we would welcome the opportunity to meet with you, your staff, Director Korleski and Department of Development Director Lisa Patt-McDaniel to discuss this critical issue as soon as practical.

Please do not hesitate to contact me should you have any questions or require additional information in advance of such meeting. I thank you in advance for your consideration.

Sincerely,

Oxford Mining Company, LLC



Charles C. "Chuck" Ungurean
President and Chief Executive Officer

Enclosures

cc (w/enc): Jen Lynch (via email: Jennifer.Lynch@governor.ohio.gov)
Lisa Patt-McDaniel (via email: Lisa.Patt-McDaniel@development.ohio.gov)
Chris Korleski (via email: chris.korleski@epa.state.oh.us)
Michael T.W. Carey
Michael B. Gardner



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

July 26, 2010

Richard Smith
Oxford Mining Company, LLC
P.O. Box 427
Coshocton, Ohio 43812

Dear Mr. Smith:

Re: Oxford West Mine, Rush Township, Tuscarawas County

As a result of Oxford Mining's decision not to accept chemical-specific monitoring conditions in its 401 certification for the proposed "West" mine, I am returning the enclosed Notice of Intent (NOI). You will need to apply for an individual NPDES permit.

Please refer to EPA's website www.epa.gov/owow/wetlands/guidance/mining.html. Once on the website please click on the link entitled: "EPA Office of Research & Development Scientific Reports" and then review the first two reports. These reports in conjunction with federal regulation 40 CFR 122.44 support the need for chemical-specific monitoring in addition to the requirements contained in Ohio's NPDES general permit for coal surface mining activities (NPDES permit # OHR000003). Therefore, coverage under the general permit is inappropriate.

Also enclosed are federal application Forms 1-General Information, 2C-Wastewater Discharge Information (intended for existing discharges), and 2D-New Sources and New Discharges. In order for an initial individual NPDES permit to be drafted and processed, you must first submit Form 1 and 2D. Form 2D requires you provide an estimated daily maximum and average for certain pollutants, listed in the form's instructions. It also requires that within 2 years of when the mine begins discharging that items V (Intake and Effluent Characteristics) and VI (Potential Discharges Not Covered by Analysis) of Form 2C be completed and submitted.

If you would prefer, we would accept your completing Form 2C for an existing mine where the discharge characteristics are expected to be representative of the proposed mine; thereby, negating the need to submit Form 2D. In addition to the parameters requiring sampling/estimates per Form 2C/2D's instructions, respectively, U.S. EPA is requiring the same information be provided for total dissolved solids, specific conductance, and chloride under the authority of 40 CFR 122.21.

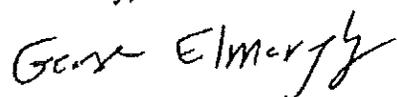
Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Ohio EPA is an Equal Opportunity Employer

Richard Smith
Re: Oxford West Mine, Rush Township, Tuscarawas County
July 26, 2010
Page Two

If you have any questions regarding this letter, please contact Paul Novak at (614) 644-2035 or via e-mail at paul.novak@epa.state.oh.us.

Sincerely,

A handwritten signature in black ink that reads "George Elmaraghy". The signature is written in a cursive style with a large, stylized "G" and "E".

George Elmaraghy, P.E., Chief
Division of Surface Water

cc: Kevin Pierard, U.S. EPA-Region 5
John Husted, Ohio Department of Natural Resources-MRM
Brian Hall, Division of Surface Water
Paul Novak, Division of Surface Water
Ric Queen, Division of Surface Water



Notice of Intent (NOI) For Coverage Under Ohio Environmental Protection Agency General Permit

(Read accompanying instructions carefully before completing this form)
Submission of this NOI constitutes notice that the party identified in Section I of this form intends to be authorized to discharge into state surface waters under Ohio EPA's NPDES general permit program. Becoming a permittee obligates a discharger to comply with the terms and conditions of the permit. Complete all required information as indicated by the instructions. Forms transmitted by fax will not be accepted. A check for the proper amount must accompany this form and be made payable to "Treasurer, State of Ohio." (See the fee table in Attachment D of the NOI instructions for the appropriate processing fee)

I. Applicant Information/Mailing Address

Company (Applicant) Name: Oxford Mining Company, LLC

Mailing (Applicant) Address: P.O. Box 427

City: Coshocton State: OH Zip Code: 43812

Contact Person: Richard Smith Phone: (330) 878-5120 Fax: (330) 878-5410

Contact E-Mail Address: dsmith@oxfordmining.com

II. Facility/Site Location Information

Facility Name: West

Facility Address/Location: _____

City: _____ State: _____ Zip Code: _____

County(ies): Tuscarawas Township(s): Rush

Facility Contact Person: _____ Phone: _____ Fax: _____

Facility Contact E-Mail Address: _____

Quarter: _____ Section(s): 21 & 22 Range: _____

Receiving Stream or MS4: Tuscarawas River (via Crooked Creek and Stillwater Creek)

If aware of a state nature preserve within 1,000 feet of the facility/site, check here:

Enter river code here, if discharge is to a river designated scenic, wild, or recreational, or to a tributary within 1,000 feet (see instructions): _____

General Permit Number: OHM000003 Coal Surface Mining Activities Initial Coverage: Renewal Coverage:

Type of Activity: Coal Surface Mining Activities Fee = \$200

SIC Code(s): _____

Existing NPDES Permit Number: _____

ODNR Coal Mining Application Number: 10420

Outfall	Design Flow (MGD)	Latitude	Longitude
<u>001</u>	_____	<u>40° 17' 45.19"</u>	<u>81° 21' 21.12"</u>
<u>002</u>	_____	<u>40° 17' 56.73"</u>	<u>81° 21' 15.73"</u>
<u>003</u>	_____	<u>40° 18' 06.26"</u>	<u>81° 21' 26.51"</u>
<u>004</u>	_____	<u>40° 18' 05.43"</u>	<u>81° 21' 40.13"</u>

Other DSW Permits Required: _____

Proposed Project Start Date (MO DY YR): 06/01/10 Estimated Completion Date: (MO DY YR): 06/01/15

Total Land Disturbance (Acres): 125.6 MS4 Drainage Area (Square Miles): _____

Payment Information: Check # 039293 Check Amount: \$200 Date of Check: 12/18/09

For Ohio EPA Use Only

Check ID (OFA): 508402

Person: _____

Place: _____

DOC #: 377030

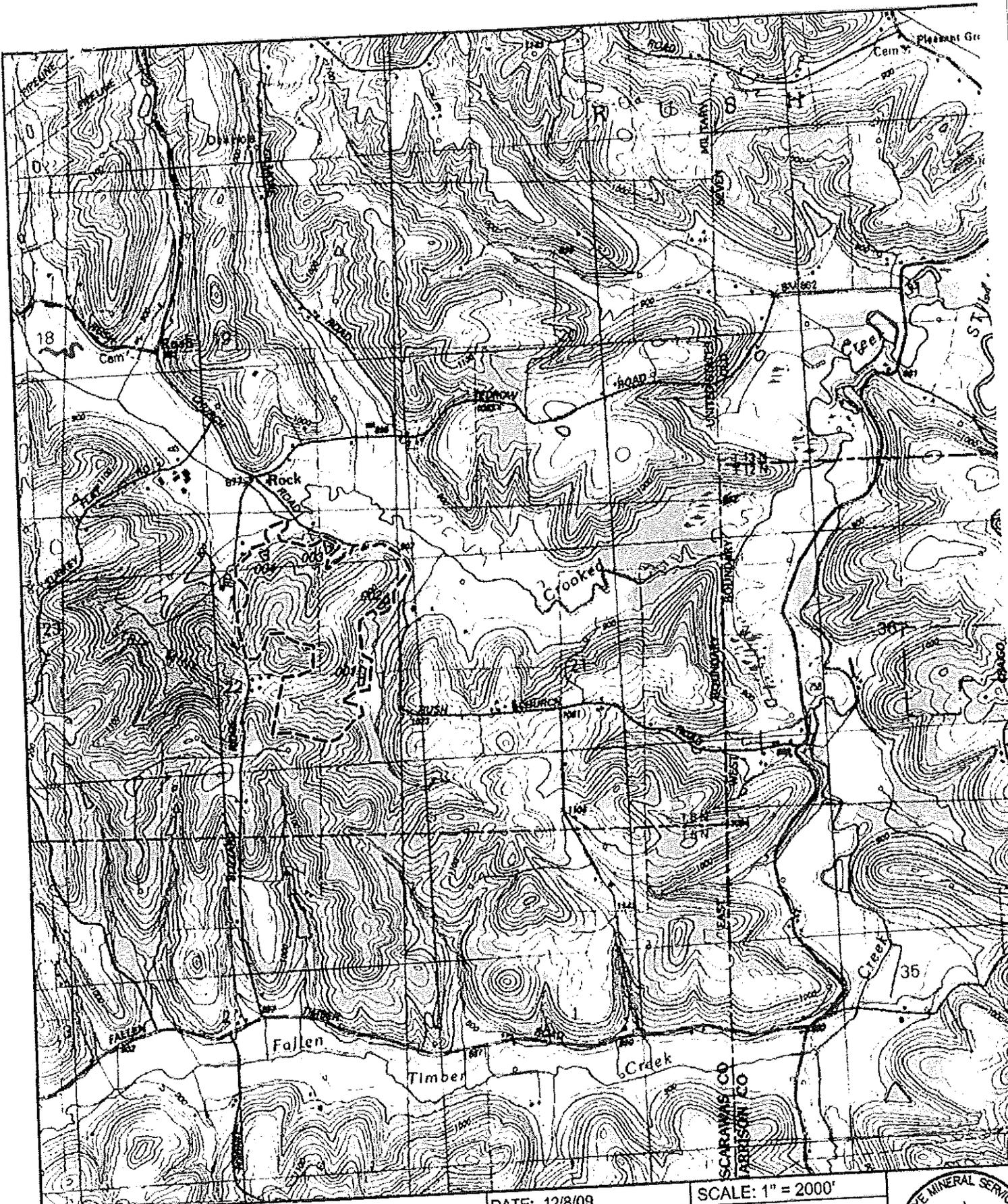
ORG #: 102786

Rev. ID #: 7475903

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Applicant Name: R. Wayne Light Title: Permit Coordinator

Applicant Signature: R. Wayne Light Date: 12/22/09



SHEET TITLE:
NPDES MAP

PROJECT NAME:
WEST

COMPANY NAME:

OXFORD MINING COMPANY, LLC

DATE: 12/8/09

SCALE: 1" = 2000'

QUAD: TIPPECANOE

NOTES: PROPOSED PERMIT LIMITS
 SEDIMENT POND



Rrc said keep on hold, 5/13/10

NPDES Permit No.: OHM000003

Issuance Date: November 24, 2008

Effective Date: March 1, 2009

Expiration Date: 5 years after effective date

OHIO ENVIRONMENTAL PROTECTION AGENCY

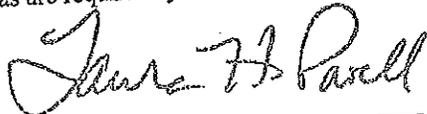
**GENERAL PERMIT AUTHORIZATION TO DISCHARGE WASTEWATER AND
STORM WATER FROM COAL SURFACE MINING ACTIVITIES UNDER
THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq., hereafter referred to as "the Act"), and the Ohio Water Pollution Control Act (Ohio Revised Code Section 6111), discharges of waste water, as defined in Part I.B. of this permit, are authorized by the Ohio Environmental Protection Agency, hereafter referred to as "Ohio EPA", to discharge from the outfalls at the sites and to the receiving waters identified in the applicant's Notice of Intent (NOI) on file with Ohio EPA in accordance with the conditions specified in Parts I through VI of this permit.

It has been determined that a lowering of water quality of various waters of the state associated with granting coverage under this permit is necessary to accommodate important social and economic development in the State of Ohio. In accordance with OAC 3745-1-05, this decision was reached only after examining a series of technical alternatives, reviewing social and economic issues related to the degradation, and considering all public and intergovernmental comments received concerning the proposal.

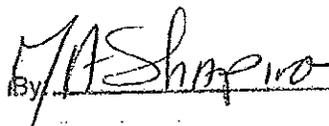
Granting of permit coverage is conditioned upon payment of applicable fees and submittal of the Notice of Intent form. Permit coverage is effective only after the applicant receives written notice from the Director that coverage is granted.

This permit and the authorization to discharge shall expire at midnight on the expiration date shown above. In order to receive authorization to discharge beyond the above date of expiration, the permittee shall submit such information and forms as are required by the Ohio EPA.



Laura H. Powell
Assistant Director

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By:  Date: 11/20/08

PERMITTED DISCHARGE SYSTEM

NOV 20 2008

OHIO EPA

DRAFT
DO NOT CITE OR QUOTE

EPA/600/R-10/023A
March 2010
External Review Draft



A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams

NOTICE

This information is distributed solely for the purpose of predissemination peer review under applicable information quality guidelines. It has not been formally disseminated by the U.S. EPA. It does not represent and should not be construed to represent any Agency determination or policy.

National Center for Environmental Assessment
Office of Research and Development
U.S. Environmental Protection Agency
Washington, DC 20460

Downstream effects of mountaintop coal mining: comparing biological conditions using family- and genus-level macroinvertebrate bioassessment tools

Gregory J. Pond¹, Margaret E. Passmore², Frank A. Borsuk³,
Lou Reynolds⁴, AND Carole J. Rose⁵

Region 3, US Environmental Protection Agency, 1060 Chapline Street, Wheeling, West Virginia 26003 USA

Abstract. Surface coal mining with valley fills has impaired the aquatic life in numerous streams in the Central Appalachian Mountains. We characterized macroinvertebrate communities from riffles in 37 small West Virginia streams (10 unmined and 27 mined sites with valley fills) sampled in the spring index period (March–May) and compared the assessment results using family- and genus-level taxonomic data. Specific conductance was used to categorize levels of mining disturbance in mined watersheds as low (<500 $\mu\text{S}/\text{cm}$), medium (500–1000 $\mu\text{S}/\text{cm}$), or high (>1000 $\mu\text{S}/\text{cm}$). Four lines of evidence indicate that mining activities impair biological condition of streams: shift in species assemblages, loss of Ephemeroptera taxa, changes in individual metrics and indices, and differences in water chemistry. Results were consistent whether family- or genus-level data were used. In both family- and genus-level nonmetric multidimensional scaling (NMS) ordinations, mined sites were significantly separated from unmined sites, indicating that shifts in community structure were caused by mining. Several Ephemeroptera genera (e.g., *Ephemerella*, *Epeorus*, *Drunella*) and their families (Ephemerellidae, Heptageniidae) were correlated most strongly with the primary NMS axis ($r > 0.59$ for these genera; $r > 0.78$ for these families). These same Ephemeroptera were absent and, thus, eliminated from most of the mined sites. Total Ephemeroptera richness and relative abundance both declined with increasing mining disturbance. Several other metrics, such as richness, composition, tolerance, and diversity, clearly discriminated unmined vs mined sites. Most family-level metrics performed well and approximated the strength of genus-based metrics. A genus-based multimetric index (MMI) rated more mined sites as impaired than did the family-based MMI. Water-quality variables related to mining were more strongly correlated to NMS axis-1 scores, metrics, and MMIs than were sedimentation and riparian habitat scores. Generally, the correlations between the genus-level MMI and water-quality variables were stronger than the correlations between the family-level MMI and those variables. Our results show that mining activity has had subtle to severe impacts on benthic macroinvertebrate communities and that the biological condition most strongly correlates with a gradient of ionic strength.

Key words: bioassessment, coal mining, macroinvertebrates, specific conductance, Ephemeroptera, multimetric index, taxonomic resolution.

Many studies have shown that coal mining activities negatively affect stream biota in nearly all parts of the globe (e.g., Lewis 1973a, b, Scullion and Edwards 1980, Winterbourn and McDiffett 1996, Garcia-Criado et al. 1999, Kennedy et al. 2003). Acidic coal mine drainage (pH < 6) and associated water-quality degradation

have been studied the most extensively of all effects (e.g., Herlihy et al. 1990, Maltby and Booth 1991, Winterbourn and McDiffett 1996, Verb and Vis 2000, Cherry et al. 2001, DeNicola and Stapleton 2002, Freund and Petty 2007). In the northern Appalachians and Allegheny Plateau, certain coal strata have higher S content than other strata and tend to cause acidic mine drainage. Some coal mining activities routinely produce acidic mine drainage, but mountaintop mining (MTM) in the steep terrain of the Central Appalachian coalfields of Kentucky, Virginia, and West Virginia generally results in alkaline mine drainage

¹ E-mail addresses: pond.greg@epa.gov

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³ borsuk.frank@epa.gov

⁴ reynolds.louis@epa.gov

⁵ rose.carole@epa.gov

* * *

-----Original Message-----

From: Pierard.Kevin@epamail.epa.gov [mailto:Pierard.Kevin@epamail.epa.gov]
Sent: Monday, January 24, 2011 1:35 PM
To: Nate Leggett
Cc: McKim.Krista@epamail.epa.gov
Subject: NPDES Oxford West - Rush twp

Nate - We have reviewed the information provided with the NOI for this proposed operation and supplemental information provided by OEPA. We still have some questions that I think may be most efficiently addressed by Oxford. Would it be possible to talk with you this week? I have 9 to 1 open on Wednesday and 8 - 10 on Thursday (central time) if either of those times work for you. Please let me know.

thanks

* * *

From: Nate Leggett <NLeggett@oxfordresources.com>
To: Kevin Pierard/R5/USEPA/US@EPA
Date: 01/24/2011 01:11 PM
Subject: RE: NPDES Oxford West - Rush twp

Kevin,

Yes, I can make myself available for a discussion on our pending West NOI. Let me know if 11:00 on Wednesday will work out for you. Also, let me know what you want to talk about so I can better prepare for the discussion. Thanks.

* * *

-----Original Message-----

From: Pierard.Kevin@epamail.epa.gov [mailto:Pierard.Kevin@epamail.epa.gov]
Sent: Monday, January 24, 2011 2:43 PM
To: Nate Leggett
Cc: McKim.Krista@epamail.epa.gov
Subject: RE: NPDES Oxford West - Rush twp

Thanks Nate - 10 central (11 eastern) on Wednesday works. We have questions concerning sediment pond design. It seems the ponds are intended to control sediment but we need to confirm. Pond monitoring and maintenance procedures. Residence time and flow rates. Effluent monitoring information including effluent sampling and monitoring locations. Information on the overflow spillway including design capacity, expected flow, and monitoring during overflow. Those are a few items we wanted to discuss so we have a better understanding of the project. Please call my direct number 312-886-4448.

* * *

From: Nate Leggett NLeggett@oxfordresources.com
To: Kevin Pierard/R5/USEPA/US@EPA
Date: 01/25/2011 08:32 AM
Subject: RE: NPDES Oxford West - Rush twp

Kevin,

I apologize, but I am not going to be available for the call tomorrow. The consultant in charge of preparing the ODNR ponds (who was going to join the call as he prepared the pond designs), is not available. Also, is this going to be the normal protocol for a coal operator to obtain a State of Ohio permit? I'm all for problem solving and open lines of communication, but I didn't see where the OEPA was going to be involved with the call. Any info in this regard would be appreciated. Thanks.

Nate

* * *

-----Original Message-----

From: Pierard.Kevin@epamail.epa.gov [<mailto:Pierard.Kevin@epamail.epa.gov>]
Sent: Tuesday, January 25, 2011 11:15 AM
To: Nate Leggett
Cc: McKim.Krista@epamail.epa.gov; paul.novak@epa.state.oh.us
Subject: RE: NPDES Oxford West - Rush twp

Nate - We discussed this site with OEPA and had several questions for them which caused them to gather more information I believe from DNR and from Oxford. The information we got resulted in additional questions.

We discussed with Paul but he did not have answers to our questions readily available. Paul indicated that he would not have any problem with us going directly to you with our questions, and in previous communications between us you had offered to help with any questions we may have. This approach reduces the burden on OEPA and improves our timeliness. I will invite Paul and his staff to participate when we get the call set up.

This is not a normal protocol for us. We have reviewed many NOI's and worked with OEPA to address any questions that we have, but I believe this is the first where we are communicating directly with the company.

I have more experience in the 404 arena where we have routinely worked directly with companies on specific projects. This has worked very well and led to a better understanding of environmental and business issues and concerns in the mining sector and allowed us to work collaboratively to address these on a site by site basis. I expect we will do more of this in 402 as part of our ongoing oversight of the Ohio program and commitment to assist Ohio. This approach reduces costs and improves quality while not significantly impacting timeliness of permit decisions.

Look forward to talking with you about Oxford West. I still have Thursday 8-10 central open if that helps otherwise I am generally available any day next week.

* * *

From: "David Longfellow" <dlongfellow@buckeyemineral.com>
To: Krista McKim/R5/USEPA/US@EPA
Date: 01/27/2011 01:39 PM
Subject: NPDES Oxford West - Rush twp

Attached is a reference page from one of my wastewater manuals showing how detention time (residence time) is calculated. It is the pond (tank) volume times the flow period divided by a flow volume for the same flow period.

I have revised the Pond Design document to correct a typo and to reflect the results from the attached calculations. The detention time for the 10 year 24 hour storm event has actually increased to 11.53 hours (see calculation sheet).

The Pond Design document you presently have lists a detention time for the 1 year 6 hour storm as 50 days. That is a typo and should have been 50 hours. When this was calculated, we assumed that the 1.5 inches of rain occurred over a 24 hour period so a time factor of 24 times the pond volume was used in the initial calculation. After reviewing this information we have decided to go with a more conservative approach and use a time factor of 6 to match the storm event. After correcting the storm time factor to 6, drops the detention time down to 13.887 hours (see calculation sheet).

I hope this helps to clear this issue up. If not, please feel free to get back in touch with me.

David Longfellow
Buckeye Mineral Services, Inc.
P.O. Box 546
New Philadelphia, Ohio 44663
dlongfellow@buckeyemineral.com
(330) 339-2100

[attachment "Pond Design 5.pdf" deleted by Krista McKim/R5/USEPA/US] [attachment
"WWTPCalculationsBook3.09 Detention time.pdf" deleted by Krista McKim/R5/USEPA/US]
[attachment "Detention Time Calculations.pdf" deleted by Krista McKim/R5/USEPA/US]

* * *

From: McKim.Krista@epamail.epa.gov [mailto:McKim.Krista@epamail.epa.gov]
Sent: Tuesday, February 01, 2011 3:40 PM
To: David Longfellow
Subject: Re: NPDES Oxford West - Rush twp

Dear Dave,

Thank you for the additional information and the new documents. I'm glad we spoke last week as it did help to clear up some of our questions. However, I do have some more questions for you if you don't mind.

Can you tell me the size of the watershed for Pond 001? I think this will help me to follow the calculations, as the design document lists only the peak flows.

As I read the drawing, the water level during the 10 yr, 24 hr event is 916 ft elevation, but the document lists a peak elevation of 917.6 feet for the same storm event. Is flow somehow restricted at the spillway in order to cause the waterlevel to reach 1.6 ft above the spillway elevation?

I would think your capacity is the same regardless of the storm event - whatever the available storage is between 916 and 913 feet. However, the document states that the capacity is higher for the 10 yr, 24 hr storm than for the 1 yr, 6 hr storm - so I think the numbers in the document are the capacity that is expected to be consumed for the different storm events. What is the available storage between 913 and 916 ft?

Thanks,
Krista

Krista McKim, PE
Environmental Engineer
NPDES Programs Branch, Water Division
US Environmental Protection Agency
Region 5, WN-16J
77 W Jackson Blvd
Chicago, IL 60604
ph: 312.353.8270
fax: 312.697.2734
mckim.krista@epa.gov

* * *

From: David Longfellow [mailto:dlongfellow@buckeyemineral.com]
Sent: Tuesday, February 01, 2011 8:27 PM
To: McKim.Krista@epamail.epa.gov
Cc: Nate Leggett
Subject: RE: NPDES Oxford West - Rush twp

The answers to your questions follow. If you have any other, just get back with me.

Can you tell me the size of the watershed for Pond 001? 64.543 acres (SedCAD Page 4)

As I read the drawing, the water level during the 10 yr, 24 hr event is 916 ft elevation, but the document lists a peak elevation of 917.6 feet for the same storm event. This is what happens when you get in too big of a hurry. The drawing you have should indicate "Water Level at 1 year 6 hour storm event 916 elev". Normal water level is 913, the 1 yr, 6 hr peak is 916, 10 yr, 24 hr peak is 917.6, 25 yr, 24 hr peak is 917.99.

Is flow somehow restricted at the spillway in order to cause the waterlevel to reach 1.6 ft above the spillway elevation? No flow restrictions, just drawdown pipe.

I would think your capacity is the same regardless of the storm event - whatever the available storage is between 916 and 913 feet. However, the document states that the capacity is higher for the 10 yr, 24 hr storm than for the 1 yr, 6 hr storm - so I think the numbers in the document are the capacity that is expected to be consumed for the different storm events. (Capacities are listed on SedCAD page 6) @913 = 2.124 ac ft, @916 = 3.613 ac ft, @917.6 = 4.567 ac ft, top of dam @919 = 5.499 ac ft.

What is the available storage between 913 and 916 ft? $3.613 \text{ ac ft} - 2.124 \text{ ac ft} = 1.489 \text{ ac ft}$

David Longfellow
Buckeye Mineral Services, Inc.
P.O. Box 546
New Philadelphia, Ohio 44663
dlongfellow@buckeyemineral.com
(330) 339-2100

* * *

From: McKim.Krista@epamail.epa.gov [mailto:McKim.Krista@epamail.epa.gov]
Sent: Tuesday, February 08, 2011 9:54 AM
To: Nate Leggett
Subject: Oxford West NPDES discharges and monitoring locations

Hi Nate,

Thanks for checking in. I was just talking with Scott McWhorter from 404 about this project.

Would you be able to locate the NPDES monitoring points on one of your maps - I am looking right now at the "Application/Hydrology Map" which locates SMCRA sampling points but not NPDES sampling locations. Also this map does not depict flow out of the ponds. Is this shown on a different map? We would like to see flow out of the ponds depicted on a map.

The pond drawing that was emailed to me also does not locate the NPDES sampling points. We would like to see, in detail, where the NPDES sampling points will be.

Thank you,
Krista

Krista McKim, PE
Environmental Engineer
NPDES Programs Branch, Water Division
US Environmental Protection Agency
Region 5, WN-16J
77 W Jackson Blvd
Chicago, IL 60604
ph: 312.353.8270
fax: 312.697.2734
mckim.krista@epa.gov

* * *

From: Nate Leggett
Sent: Tuesday, February 08, 2011 10:24 AM
To: McKim.Krista@epamail.epa.gov
Subject: RE: Oxford West NPDES discharges and monitoring locations

The designated monitoring location for pond discharge is at the discharge point. Depending on the type of pond design, it will either be directly from the pipe or in the open channel directly downstream of the slope toe. These sampling points are not shown on the map as it is understood that a point source discharge will be sampled at the point source.

I guess I don't understand the need to show flow out of the pond. If it does discharge, it will flow from the pipe or open channel.

Exhibit M

EXHIBIT M
OXFORD ELK RUN AND EAST CANTON APPLICATIONS
USEPA CWA §402 INTERFERENCE

Abstract: Elk Run and East Canton are two separate mining projects discussed collectively to illustrate the point that EPA has taken Enhanced Coordination to interfere with Ohio EPA lawfully issuing its Coal General NPDES permit where the Corps had previously determined there were no jurisdictional waters of the US for purposes of the Clean Water Act Section 404. Attached are email communications highlighting between Ohio EPA and USEPA Region 5 inquiring if Ohio can still issue General NPDES Permits. Email exchanges September 29, 2010 through October 18, 2010. Ohio EPA concluded that it could not issue the Coal General NPDES permit and that Oxford needed to submit Individual NPDES permit applications. Ultimately, Ohio EPA reversed its position and issued the General NPDES Permits in October 25, 2011, 3 months after denying Oxford's West Coal General NPDES permit as a result of Enhanced Coordination.

>>> Nate Leggett <NLeggett@oxfordresources.com> 9/29/2010 8:25 AM >>>

I hate to be a pest about these two jobs, but I need to know about the NPDES permits for Elk Run and East Canton. Please let me know whenever you get a chance. Thanks.



Reliability Matters

Nate Leggett

P 330-878-5120
C 740-502-6272
F 330-878-5410
E nleggett@oxfordresources.com

PO Box 135
Strasburg, OH 44680

www.oxfordresources.com

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* * *

From: Brian Hall [mailto:Brian.Hall@epa.state.oh.us]
Sent: Thursday, September 30, 2010 8:44 AM
To: Nate Leggett
Cc: Ric Queen
Subject: Re: NPDES

Nate

We understand your need to continue to ask for status updates. I left a voice mail with the US EPA Region 5 yesterday asking if Ohio could issue general NPDES permits to the two sites. The response I got back was that they are working with the Corps and they are trying to move them along.

We have a conference call with Region this afternoon and issuing these permits will be on the agenda. You are welcome to send me an email or phone me tomorrow for the results of our call with them today.

Brian

Brian W Hall, P.E.
Assistant Chief
Ohio Environmental Protection Agency
Division of Surface Water
(614) 644-2033 Phone
(614) 644-2745 Fax

Ohio Environmental Protection Agency Unless otherwise provided by law,
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* * *

>>> Nate Leggett <NLeggett@oxfordresources.com> 9/30/2010 9:28 AM >>>

Since when does the Corps have input on the NPDES process? This process makes no sense at all. Let me know when you anticipate the call ending, or just email me an update when it's over. Thanks.

* * *

From: Brian Hall [mailto:Brian.Hall@epa.state.oh.us]
Sent: Thursday, September 30, 2010 9:56 AM
To: Nate Leggett
Subject: RE: NPDES

The Corps doesn't, but I think the US EPA is trying to confirm the Corps JD for the sites. We all knows what happens when there are too many cooks in the kitchen.

* * *

>>> Nate Leggett <NLeggett@oxfordresources.com> 9/30/2010 10:30 PM >>>

Brian,
Hope the conference call went well. When you get a chance, please let me know the outcome as these NPDES permits have the potential to hold up some high priority jobs. Thanks.

Nate

* * *

From: Brian Hall [mailto:Brian.Hall@epa.state.oh.us]
Sent: Friday, October 01, 2010 8:27 AM
To: Nate Leggett
Cc: Ric Queen
Subject: RE: NPDES

Nate

The Region is still reviewing the proposals. I guess that Watershed and Wetland Branch of the Office of Water needs to do a little more follow up on the Corps JD letters.

<http://www.epa.gov/r5water/org.htm>

I explained that you are really hoping that these can be issue. Kevin Pierard, Chief of the NPDES Program Branch is willing to talk to you about these projects. Kevin's phone number is 312.886.4448 and email is pierard.kevin@epa.gov

I suggest that you contact him to see what concerns they still have.

Brian

* * *

>>> Nate Leggett <NLeggett@oxfordresources.com> 10/12/2010 4:14 PM >>>

Any updates on the general NPDES applications for Elk Run or East Canton? I spoke with Kevin Pierard last week (or the week before) and he was having a few of his staff review some info the Corps was forwarding to him. I was just wondering if you'd heard anything. Thanks.



Nate Leggett

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* * *

From: Brian Hall [<mailto:Brian.Hall@epa.state.oh.us>]
Sent: Wednesday, October 13, 2010 1:39 PM
To: Nate Leggett
Cc: Paul Novak; Ric Queen
Subject: Re: NPDES

Nate

We talked with Region 5 and got direction on the NPDES permits. We have to brief Director Korleski before we can discuss. The Director had a medical procedure late last week and hasn't been in the office. He should be in tomorrow or Friday. We will review with him and then I'll give you a call.

Brian

Ohio Environmental Protection Agency Unless otherwise provided by law,
this communication and any response to it constitutes a public record.

* * *

>>> Nate Leggett <NLeggett@oxfordresources.com> 10/13/2010 1:41 PM >>>

Brian,
I don't know if you'll be able to tell me or not, but is the general permit still applicable for these jobs? If not, please tell me so we can exercise other options. Thanks for the update.

Nate

* * *

From: Brian Hall [mailto:Brian.Hall@epa.state.oh.us]
Sent: Wednesday, October 13, 2010 02:06 PM
To: Nate Leggett
Subject: RE: NPDES

Sorry Nate. We have to talk to the Director first. As soon as I can I'll let you know what's going on.

* * *

From: Nate Leggett
Sent: Friday, October 15, 2010 11:12 AM
To: 'Brian.Hall@epa.state.oh.us'
Subject: Re: NPDES

Once you speak with the Director and are able to contact me, please let me know about the pending 402 applications. Thanks.

* * *

>>> Nate Leggett <NLeggett@oxfordresources.com> 10/18/10 8:50 AM >>>

Just a reminder for a follow up. Let me know if there is an update on these pending 402 applications. Thanks Brian.

* * *

From: Brian Hall [mailto:Brian.Hall@epa.state.oh.us]
Sent: Monday, October 18, 2010 4:31 PM
To: Nate Leggett
Subject: Re: NPDES

Nate

Just confirming that George Elmaraghy talked to someone at Oxford (sorry been out of the office, not sure who he talked to) about the need to submit individual NPDES permit applications for East Canton and Elk Run. This was based on direction from Region 5 and their concern with 402 discharges into impaired receiving waters. Determination of the impairment is based on discharging into the Little Sandy/Black Creek (05040001 06 04, 05040001 06 03) watershed and the Brushy Fork (05040001 14 02) watershed.

More information about the impairments can be found in Ohio's 2010 Integrated Water Quality Report.

<http://www.wapp.epa.ohio.gov/dsw/ir2010/basin.php>

Hope you understand that we needed the Director's input before contacting Oxford.

Brian

* * *

Exhibit N

EXHIBIT N

DARON CONSOL CWA §404 USEPA ENHANCED COORDINATION; SECONDARY EFFECTS ON CORPS DECISION-MAKING

Abstract: USEPA undue influence and scrutiny of Corps CWA §404 permitting resulted in denial of an ordinary request for permit modification to extent the time required for construction activities that would not have resulted in any additional impacts to water resources or any decision adverse to the public interest. Original 404 permit was submitted as an Individual 404 Permit ("IP") to avoid USEPA induced controversy over previously issued General Nationwide Permit 21 ("NWP 21") for surface coal mining activities, that would have been covered this project with an automatic 5 year term. This was one of the first IPs issued by the Corps Huntington District for surface coal mining activities and was erroneously issued with a three-year term that was overlooked by all until discovered in December 2010 more than a year after the original term had expired. The original term of three years was manifestly unreasonable for a 1,700-acre mining project when issued, juxtaposed against a concomitantly issued IP for Oxford's Cole mine, a 400-acre project issued with a five-year term. This reasonable request could have easily been addressed by simply fixing the original error and granting a minimum 5-year term that automatically applied to the NWP 21 permits for which this IP was substituted. Instead Oxford has no practicable alternative but to unnecessarily resubmit an application for a 404 permit for the same project that was approved by the Corps in 2006.



DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

MAR 24 2011

Regulatory Branch
OR-FE
LRH-2004-1249-UT Standingstone Fork

Mr. Nathan Leggett
Oxford Mining Company
544 Chestnut Street
Post Office Box 547
Coshocot, Ohio 43812

Dear Mr. Leggett:

This letter is in response to your February 4, 2011 request for extension of time for Department of Army individual permit LRH-2004-1249-UT Standingstone Fork. The individual permit was issued August 21, 2006 authorizing impacts to 9,154 linear feet of stream, 15.19 acres of wetlands and 41.24 acres of open water impoundments associated with the Daron-Consol Mine Site located in Cadiz, Harrison County, Ohio. The time limit for completing the work authorized expired on December 31, 2009.

The terms and conditions of the individual permit were accepted by the applicant as indicated by the signature on the permit document. General Condition 1 of the permit states the expiration date of the permit and the procedure to request a time extension prior to that expiration date.

As the permit authorization has expired, the applicant is no longer authorized for work in jurisdictional waters of the United States. The applicant must submit a new permit application for any proposed impacts to jurisdictional waters of the United States associated with the above referenced permit area. The proposal will be processed in accordance with 33 CFR 325: Processing of Department of the Army Permits to include a 30 day public notice period.

If you have any questions, please contact Ms. Sheila Newman at 740-454-2225 ext. 5.

Sincerely,

Ginger Mullins
Chief, Regulatory Branch



February 4, 2011

Mrs. Sheila Newman
Department of the Army
Corps of Engineers, Huntington District
Dillon Dam Office, 4969 Dillon Dam Rd.
Zanesville, OH 43701

41 South High Street
Suite 3450
Columbus, OH 43215-6150
P 614.643.0337
F 614.754.7100
www.oxfordresources.com

VIA Email: Sheila.M.Newman@usace.army.mil

RE: Daron Consol – Ohio Division of Mineral Resources Management Permit D-2277
Individual §404 Permit No. UNTrib Standingstone Fork - 200401249
Request for Extension of Time – Construction Period

Dear Mrs. Newman:

On August 21, 2006, the Huntington District Corps of Engineers issued an Individual Clean Water Act §404 Permit (IP) to Oxford Mining Company (Oxford) for surface coal mining operations at its Daron Consol mine, authorizing dredge and fill activities in waters of the United States (attached). This IP contained a construction period for completing the work or authorized activities that ended on December 31, 2009. This date, established by the issuing official, did not provide a reasonable time for completing the work or authorized activities, contrary to 33 CFR 325.6(c).

Immediately upon discovering this circumstance, you contacted me and on January 10, 2011, I submitted a request for extension of time for the authorization or permit. My letter to you dated January 10, 2011 is hereby rescinded and should be replaced by this request enclosed.

Oxford hereby requests an extension of time limit of the construction period, which ended December 31, 2009, until December 31, 2015. The basis for the request is the unreasonable time period provided by the issuing official for a mine of ~1700 acres with 9514 l.f. of jurisdictional streams, which is contrary to 33 CFR 325.6(c). The time limit of the construction period in the permit was only 2 years and 4 months. As of December 13, 2010, nearly a year after that limit ended, only ~2/3 of the wetland and ~1/4 of the stream impacts have occurred (see, Project Status Report, attached). The unreasonableness of the time limit provided is underscored by the fact that an IP was issued for Oxford's Cole mine (~400 acres with 5331 l.f. of stream) on August 22, 2006 (the day after the Daron Consol IP was issued) by the same issuing official with a construction period that ended on December 31, 2011 (see, IP No. Un Trib Tuscarawas River 200400434-1, attached). A five-year construction period is the least amount of time that should have been authorized. Five years is as long of a construction period as was provided by the former NWP-21 that the IP process superseded and further illustrates the unreasonableness of this time limit. Every other IP issued to Oxford for mines of similar size and similar impacts as Daron Consol contained a time limit out at least five years from the year of issuance.

For the foregoing reasons, Oxford expects that this request will be granted as to do so would not be contrary to the public interest (see, 33 CFR 325.6(d)). Therefore, Oxford considers that the construction period is continuing (*Id.*).

Mrs. Sheila Newman
February 4, 2011
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Further, Oxford has every reason to expect that this request will be processed in accordance with the regular procedures of 33 CFR 325.2, except that public notice is not required because there have been no significant changes in the attendant circumstances since the authorization was issued (*Id.*).

Oxford regrets not having submitted this request at least one month before the time limit of the construction period ended, in accordance with General Condition 1 (GC1). As a matter of fact, Oxford only recently realized that it needed additional time to complete the authorized activities and proceeded with all dispatch to request an extension of time.

Under all of the attendant circumstances regarding the unreasonableness of the time limit in GC1 described above, and with Daron Consol being one of the first IPs issued to Oxford for activities previously eligible for coverage under a nationwide permit, Oxford trusts that the Corps will view any lack of strict adherence to GC1 at most as excusable neglect and grant the requested extension of time to complete the authorized activities. Please accept our apology for any undue inconvenience.

However, and more importantly, Oxford considers that IP No. UNTribe Standingstone Fork - 200401249 continues in effect until the work or authorized activities are completed, which is when the permit/ authorization would automatically expire, unless modified, suspended or revoked (see, 33 CFR 325.6(a)). Any contrary position would be an extreme and unwarrantable penalty for the lack of strict adherence to a permit general condition as well as untenable.

Consider a situation where Oxford completed the work within the allotted time limit, commenced monitoring and ultimately it was determined that more work was required after the time limit had elapsed. What would be the Corps' position or response? Certainly not that the authorization expired; only the period authorized for completing the work. In response to a request for an extension of time after-the-fact that the time limit had lapsed, one would reasonably expect the Corps to either allow the work to proceed informally under the valid and existing authorization or formally grant the request and modify the term of the construction period. Such a grant of an extension of time would not be contrary to the public interest nor would the public interest be further served by a public notice.

If you have any questions or would like additional information regarding these matters, please feel free to contact me. Thank you for your consideration.

Sincerely,

OXFORD MINING COMPANY, LLC



Nathan L. Leggett
Environmental Compliance Manager

Enclosures

cc: Charles C. Ungurean
Meg Smith, Corps Regulatory Branch Chief (Meg.E.Gaffney-Smith@usace.army.mil)