



west virginia department of environmental protection

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Joe Manchin III, Governor
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February 28, 2005

Coal River Mountain Watch
Post Office Box 651
Whitesville, West Virginia 25209

Ohio Valley Environmental Coalition
✓ Post Office Box 6753
Huntington, West Virginia 25773-6753

Dear Coal River Mountain Watch and OVEC:

Re: February 10, 2005 Meeting

I have listed the following action items from our meeting February 10, 2005:

1. Flocculent spill at Gordon, Boone County.

Mike Dorsey of the Division of Water and Waste Management has been in contact with Ms. Patty Sebok concerning this issue. Approximately 15 to 25 gallons of polyaluminum hydrochlorosulfate was released to White's Branch of West Fork of Pond Fork. A fill hose containing the material was disconnected while filling a container on February 8, 2005. The material is used in sediment ponds to assist in coagulating fine sediment. The coagulated sediment deposits in the sediment pond rather than remaining in solution and discharging to the receiving stream. Several fish were killed during the release. Pine Ridge Coal Company was issued a cessation order on February 8, 2005. The cessation order was in place for one day, and the company was fined \$1,893.

2. Wastewater permit for deep mines on Horse Creek, Raleigh County.

The two proposed deep mines on Horse Creek will each have a bathhouse. Each bathhouse will have a sewage treatment system with chlorination. The Division of Water and Waste Management has approved the Waste Load Allocations (WLA) for those discharges. Approval was based on treatment methodology, flow rate, discharge water quality, and the receiving stream water quality. Horse Creek is not listed as impaired. Horse Creek is a tributary of Marsh Fork of the Coal River, which is listed on the impaired streams list for fecal coliform and iron. However, even if Horse Creek were listed for fecal coliform, the discharge limits that may apply to the bathhouse discharges are more stringent than the water quality criteria and the WLA could

have been approved. The discharge limits for the treatment systems have been incorporated into the draft National Pollutant Discharge Elimination System (NPDES) permits. The public comment periods for the NPDES permits have ended. Comments were heard at an informal public hearing on January 31, 2005.

3. Coal silo near Marshfork Elementary School, Raleigh County.

The coal silo at the Goals Company preparation plant in Sundial is also known as a rapid trainload out bin. The Division of Air Quality (DAQ) approved the silo permit application in 1998. The Division of Mining and Reclamation approved the construction of the silo in June 2003. The silo was constructed in late 2003 and is covered by Division of Mining and Reclamation permit D-66-82 and Division of Air Quality permit R13-2188C.

4. Citizen Training for mine permits.

The WVDEP is currently planning a citizen mine permit training seminar. The training seminar will occur early this summer. Information concerning the date, place, and type of training will be forthcoming.

5. Mr. Jackie Browning's Goals Impoundment Concern.

Mr. Jim Pierce, P.E., WVDEP Lead Permitting Engineer, contacted Mr. Browning on February 16, 2005 and obtained specific information concerning the impoundment. The WVDEP will perform a detailed investigation into the concerns and will remain in contact with Mr. Browning during the investigation.

6. Fine Assessment Reduction.

As you are aware, the DEP must follow the legislative rules that require administrative review of assessments by an assessment officer. The DEP has only one mining assessment officer, selected by former Director Matt Crum. During the administrative review, the assessment officer considers information provided by the operator and must apply the penalty matrix to determine the appropriate penalty. The penalty may be increased or decreased by the assessment officer. Whenever the officer changes a matrix rating from the inspector's submission, he explains the basis for the change on the assessment conference form. The factors which may explain the difference between the original assessment and the assessment following administrative review include: (1) information provided during the assessment conference that was not previously provided or otherwise available to the inspector; (2) determination that the violation was administrative in nature versus a violation causing or having the potential to cause environmental harm; (3) reconsideration of the merits of a violation originally cited based upon information provided in citizen complaints that cannot later be verified; (4) misapplication of the penalty matrix by the original inspector; and (5) consideration of applicable court rulings or Surface Mine Board rulings that impact the application of the penalty matrix.

The process was designed to reduce the arbitrary nature of penalty assessments. The Division of Mining and Reclamation has over 70 inspectors with the authority to issue notices of violations. The administrative review process by one assessment officer allows the agency to maintain consistency in enforcing the laws. An incident that may be viewed by an inspector in the northern part of the state as constituting a negligence of 2 and seriousness of 4 may be rated by

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an inspector from the southern part of the state as negligence of 4 and seriousness of 6. The assessment officer is able to provide more consistency than can be provided even by the matrix. Therefore, the legislatively approved system builds in a process that logically leads to a difference between the original assessment and the assessment after administrative review.

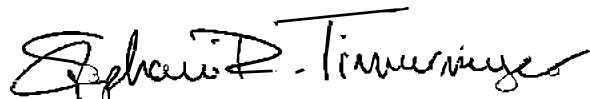
Your complaint about the assessment officer was general in nature. Based upon the process that is followed, the DEP does not believe the actions of the assessment officer are arbitrary or unfounded. If you have specific complaints about a penalty or can cite to a pattern of actions which supports your concern, we will review the matter again.

7. Boulders near Pettry Bottom along Route 3 between Whitesville and Naoma.
The WVDEP will contact the West Virginia Division of Highways concerning this issue.

Both of your organizations will be updated upon the conclusion of findings pertaining to each item.

At this time, however, I would like to take the opportunity to let you know how disappointed I was at both of your organizations' participation in the deceitful and dishonest method in which you set up this meeting. I have never refused a meeting with any group when the subject matter pertained to environmental issues. Further, I was insulted by the personal attacks including some sign messages and accusations by your members during the meeting. I have never treated anyone in either of your organizations with anything but respect and professionalism. I expect the same. In the future, if you expect to meet with me concerning an environmental issue, I welcome you to schedule a meeting, as do the other citizens of this state, and to act in a professional manner.

Sincerely,



Stephanie R. Timmermeyer
Cabinet Secretary

SRT/dos