Leeco Coal Company, Stacy Branch Mine Permit, Eastern KY
Background Information

I. Issue: Leeco, Inc. is proposing to construct six valley fills and six sediment control ponds for a new surface coal mining operation in Perry and Knott Counties in eastern Kentucky. As proposed, the project would result in the largest direct stream impacts of all the ECP mines in Region 4 and has the third-highest impacts of all ECP projects. The mine's valley fills would impact more than four miles of headwater streams (Spruce No. 1 would fill over 6 miles), and result in downstream water quality impacts to Stacy Branch, Yellow Creek, Carr Fork, Elk Fork, Lotts Creek, and the North Fork of the Kentucky River.

II. Key Background:

- **Mine Size:** 869 Acres. By comparison Spruce No. 1 is 2,300 acres.
- **Impacts to Streams:** 22,861 linear feet (lf), including 14,807 lf of ephemeral and 5,914 lf of intermittent
- **Existing Stream conditions:** Fair (400-600 µS/cm conductivity as a result of previous mining in watershed)
- **Current Status:** Draft comment letter to the Corps in final stages – due to Corps on Dec 14th. This date reflects a 29-day extension beyond the standard ECP 60 day review.

III. Key Issues in Comment Letter:

- **Avoidance and Minimization:** EPA is requesting additional justification from company to support need for all 6 valley fills.
- **Water Quality:** EPA believes that the Kentucky state (KPDES) General Permit, under which this project has been permitted, does not adequately protect water quality. There is no Reasonable Potential (RP) analysis. To ensure water quality protection consistent with the CWA, additional water quality conditions must be incorporated into the 404 permit including:
    - **Sequencing:** The applicant has proposed sequencing three fills at a time. 75% of the stream impacts would occur during the first round of three fills. EPA is recommending sequencing of no more than two fills at a time (including that no two large fills be constructed at any one time) to reduce temporal impacts and better demonstrate water quality protection at each phase of the project.
    - **Greater Use of Best Management Practices(BMPs):** The Applicant has agreed to use several BMPs to reduce anticipated water quality impacts from the project. We are recommending additional BMPs, including isolating toxic-forming rock strata and material, reducing contact with surface and groundwater to prevent leaching of conductivity, and utilizing a Forest Reclamation Approach.
    - **Adaptive Management:** If conductivity levels increase to 500 µS/cm, we are recommending that an Adaptive Management Plan (AMP) be triggered that requires implementation of additional actions to control conductivity. EPA is recommending that no further valley fill construction be permitted if conductivity cannot be maintained below 500 µS/cm. We expect the Corps would make this decision in consultation with EPA, as 404 permits in WV are written.
    - **Cumulative Effects:** Existing biological and water quality impacts have occurred to streams in the watershed, likely the result of past surface mining. EPA is concerned about the loss of dilution from the streams that will be impacted by this project and is recommending downstream monitoring on several of the affected streams. The applicant's cumulative effects analysis was also done at too broad a scale.
    - **Compensatory Mitigation:** EPA is concerned about underestimates of impacted stream condition by the applicant. EPA is requesting that mitigation be increased to reflect more accurate assessment of stream impacts, and that the company's off-site mitigation plans must be consistent with CWA regulations.
    - **EJ:** The communities near the project area all fall well below the average national poverty rates and several EJ concerns remain outstanding.
- **NEPA:** EPA believes the Corps cannot support a Finding of No Significant Impact (FONSI) which allows the Corps to avoid preparation of a full EIS.

IV. Conclusion: Region 4's letter will state that without recommended changes to the permit, the proposed mine is a candidate for review under Section 404(c) of the Clean Water Act.

V. Stakeholder Interest and Reaction: The mine is located in Rep. Hal Rogers's district, who is incoming Chair of the House Appropriations Committee. Rep. Rogers is already talking about introducing legislation to limit EPA CWA mining authorities. The environmental community is watching this mine very closely because of its size and has indicated that EPA and the Corps would be sued if the permit is issued.