DESK STATEMENT
Apex Energy – Carver Fork Mine
12/30/09

The Environmental Protection Agency Region 4 (EPA) provided final comments and recommended special conditions to the U.S. Army Corps of Engineers – Louisville District to resolve concerns with the proposed Apex Energy – Carver Fork Mine proposal today, December 30, 2009. These comments were provided in accordance with the enhanced coordination process (ECP), as laid out by the June 11, 2009, Memorandum to the Field on Enhanced Surface Coal Mining Pending Permit Coordination Procedures. This permit was the first permit released by the Louisville District (Corps) for formal coordination under the ECP on October 15, 2009. After discussions with the Louisville District, by letter dated December 15, 2009, EPA extended the initial 60 day coordination period by 15 days to December 30, 2009, consistent with the ECP. In accordance with the ECP, the Corps will have 10 days to respond to our comments and recommendations (January 11, 2010) and EPA will have a subsequent 10-day period to determine if the concerns raised have been adequately addressed or if further action is warranted.

There remain three unresolved issues that are addressed by our letter today:
(1) potential water quality impacts to receiving waters, (2) the cumulative effects of multiple mines within the Paw Paw Creek watershed, and (3) the adequacy of the proposed compensatory mitigation. EPA believes that the special conditions that we recommend today, if adopted by the Corps, will bring the permit into compliance with the Clean Water Act Section 404(b)(1) Guidelines.

The special conditions recommended by EPA include the follow requirements:
(1) the Company is required to develop and implement a Water Quality Standards Protection Plan with BMPs to prevent discharges from causing or contributing to water quality standards violations;
(2) the Company is required to conduct extensive in-stream chemical and biological monitoring at various locations throughout the watershed; effluent chemical monitoring; and effluent toxicity monitoring with toxicity reduction evaluations should the effluent be determined to cause toxicity in standard laboratory tests;
(3) the Company is required to implement an increased frequency of monitoring and remedial actions if pollutant discharges exceed levels that may cause or contribute to water quality standards violations or potentially cause significant degradation of the receiving waters;
(4) the Company is required to implement extensive and detailed compensatory mitigation requirements.

For further information, please contact Jim Giattina, Director, Water Protection Division, EPA – Region 4 (404-562-9288) or Tom Welborn, Chief of the Wetlands, Coastal and Oceans Branch, EPA – Region 4 (404-562-9354).