



Photo from Mountain Action

EPA today [announced that it would review](#) 79 pending applications for Clean Water Act section 404 permits for surface coal mining projects in Appalachia (hat tip: [Coal Tattoo](#)). This review is good news, and an indication that EPA may be developing a backbone with respect to the effects of mountaintop removal mining on the region's waterways. It remains to be seen how firm that spine will be, that is, how much EPA will demand in the way of changes before it allows the projects to go ahead.

EPA's announcement suggests a new level of resolve on its part because the review will cover all the remaining applications that were pending before March 31, 2009. In June, in connection with the administration's [issuance of a new coordinated policy](#) on mountaintop removal mining, EPA and the Corps [announced](#) new procedures for permit review, under which EPA would identify two groups of permits: those requiring further review, and those that could go ahead as planned. In an earlier round of reviews, EPA had allowed 42 of 48 permits to go ahead as approved by the Corps. So the fact that EPA now says that all the remaining projects "would likely cause water quality impacts requiring additional review under the Clean Water Act" is itself a victory for environmental interests.

Another encouraging sign is that EPA has sent the Corps [a number of comment letters](#) on applications submitted after March 31 that are now working their way through the Corps' review process, and more remarkably has even requested that the Corps suspend, modify or revoke at least one [already-issued permit](#). Like the review announced today, the comment letters raise concerns about cumulative effects, water quality standards, and unacceptable adverse environmental consequences.

Still, it remains unclear exactly how demanding EPA's review will be, or who will win if EPA and the Corps get into a power struggle over these permits. EPA emphasized in an [question and answer document](#) accompanying its announcement that this is only a review, and does "not constitute a determination by EPA under its CWA Section 404(c) authority that surface coal mining can not be permitted under CWA Section 404, nor does it represent a final recommendation from EPA to the Corps on these proposed projects." In the [press release](#) announcing the review, Jo-Ellen Darcy, Assistant Secretary of the Army for Civil Works, said that she is "confident that this collaborative effort will strengthen our environmental reviews while allowing sustainable economic development to proceed."

EPA's review will be conducted under the existing [Section 404 Guidelines](#), jointly developed by EPA and the Corps of Engineers. EPA explains that the proposals to be reviewed may not

comply with the Guidelines in a number of respects:

(1) The majority of them “may not have adequately demonstrated avoidance and minimization” of impacts to aquatic systems.

(2) More than 80% look like they might violate state water quality standards.

(3) More than half “raise concerns regarding the potential for significant degradation of the aquatic ecosystem, either individually or cumulatively.

and (4) For an unspecified number, “the mitigation proposed may not be adequate to offset proposed impacts.”

Within two weeks, EPA will finalize this list, releasing any applications it concludes do not warrant further review. For each of the remainder, the Corps will notify EPA when it is ready to begin the formal coordinated review process, which is supposed to be completed within 60 days. The Corps will still be the primary decisionmaker, but the coordinated review process should ensure that EPA’s concerns are fully considered during the review process. If the Corps decides to issue any of the permits without incorporating conditions EPA believes are required, EPA will have to decide whether or not to use its veto power, something it has only done 12 times in the history of the Clean Water Act.

So this is still an issue to keep an eye on. We should learn more soon about how aggressively the Obama administration will address the environmental costs of coal mining.