

Early on in the Obama administration, EPA did some inconclusive dancing and shuffling about its role in overseeing the issuance of Clean Water Act section 404 permits by the Corps of Engineers for mountaintop removal coal mining projects. Now, though, EPA is bringing the big guns into position.

Section 404(c) of the Clean Water Act authorizes EPA to veto any permit issued by the Corps upon finding “after notice and opportunity for public hearings,” that the permitted action “will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.” The veto power has been used sparingly, to put it mildly — EPA has formally vetoed permits only 12 times, and only once since 1990 (the vetos are listed [here](#)). Nonetheless, a credible veto threat provides strong leverage to persuade the Corps to tighten up its permit terms.

EPA has now made just such a threat with respect to Arch Coal’s proposed Spruce No. 1 mine in Logan County, West Virginia. In [a letter to the Corps](#) District Engineer, EPA Acting Regional Administrator William Early has formally notified the Corps that EPA intends to issue a public notice of a proposed veto because the project as currently authorized threatens unacceptable adverse impacts to fish and wildlife resources. The Charleston (W.Va.) Gazette has the story [here](#). EPA’s explanation of the steps in the veto process is [here](#). The next step is up to the Corps, which has been given an opportunity to respond before EPA officially brings out the veto hammer.