

Cross-posted at [CPRBlog](#).

EPA's seesaw on mountaintop removal mining continues. Last time I [wrote about this topic](#) it was to note EPA's approval of the Hobet 45 project. Today, EPA [announced that it is proposing to veto](#) the Spruce No. 1 project, as [it had threatened](#) last fall. Should EPA follow through on its proposal, this would be its first veto of a Clean Water Act section 404 permit since 1990. Publication of the proposal in the Federal Register will start a 60-day public comment period, and EPA has promised to schedule a public hearing on the proposal, which is certain to prove controversial.

Indeed, the [Coal Tattoo blog](#) reports that Congressman Nick Rahall (D-W.Va.) has already announced his strong disagreement with the proposal:

“This is an unprecedented, unjustified and undeserved decision and I completely disagree with it as I told EPA Administrator Lisa Jackson directly. The owners of the Spruce Mine worked in good faith over the course of many years with State and Federal permitting agencies, including the EPA, and the permit was issued after the conclusion of a full environmental impact statement. To come back now and pull the rug out from under this mining operation is unconscionable.”

Spruce No. 1 has had a long regulatory history. It was initially approved under a nationwide permit in 1998, despite the fact that it would have buried 10 miles of stream. After a district court enjoined the use of a nationwide permit (which are supposed to be available only for projects that will not have a significant individual or cumulative environmental impact), Mingo Logan (a subsidiary of Arch Coal) applied for an individual permit. A draft environmental impact statement issued in 2002 was roundly criticized by EPA. Mingo Logan responded by downsizing the project a bit, so that it would bury “only” 7.5 miles of stream, under 110 million cubic yards of spoil. (The scale of modern mountaintop removal project is nearly unimaginable.) Both EPA and the US Fish and Wildlife Service remained critical of the proposal, but the Corps nonetheless issued the permit. A court challenge to that permit has not yet been resolved.

This proposal shows that EPA is serious about controlling the impacts of mountaintop mining. It is very good news as far as it goes. The proposed decision includes a ringing endorsement of both the ecological importance of headwater

streams and the cultural importance of intact mountains. It notes the cumulative effects of past, present, and proposed mining in the watershed. It takes a serious look at existing data documenting the adverse impacts of mountaintop mining in the region. And it calls for consideration of the environmental justice impacts of this project, which would be carried out in an area where per capita income is only half of the national average and nearly a quarter of residents live below the poverty line.

But there's still something missing. EPA remains unwilling or unable to articulate why some mountaintop projects, such as Hobet 45, are acceptable but others are not.

The proposal itself seems aimed at encouraging the Corps and Mingo Logan to have another go at negotiations. Regional Administrator Shawn Garvin says in the agency's press release

Coal, and coal mining, is part of our nation's energy future, and for that reason EPA has made repeated efforts to foster dialogue and find a responsible path forward. But we must prevent the significant and irreversible damage that comes from mining pollution — and the damage from this project would be irreversible.

Ultimately, this latest proposal leaves everybody guessing at where the line will be drawn. If Mingo Logan scales back the project a bit or offers a better mitigation plan, will EPA let the permit stand? Will EPA impose its own set of conditions? Or if the political ruckus exceeds some threshold volume, will EPA cave and let the Corps have its way?

Stay tuned.