



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

19 NOV 2009

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Chris Blanchard, President  
Marfork Coal Company, Inc.  
P.O. Box 457  
Whitesville, West Virginia 25209

Re: Marfork Coal Company, Inc.; Bee Tree Surface Mine  
Coal River Sub-basin  
Raleigh County, West Virginia  
Request for Information Pursuant to  
Section 308 of the Clean Water Act, 33 U.S.C. 1318

Dear Mr. Blanchard:

I am writing to follow up a site visit conducted at the above-referenced facility by representatives of the U.S. Environmental Protection Agency (EPA) on November 3-4, 2009. At the outset, I would like to convey our thanks to the on-site staff for their cooperation and assistance during the site visit.

During the site visit, the EPA representatives observed that Marfork Coal Company was conducting significant operations at the Site. Operations generally involved site preparation including building up existing roads, constructing temporary sediment ditches and preparation areas. Blasting to create two boxcuts that will provide access to the highwalls on the perimeter of the Brushy Fork Impoundment also has commenced.

It is EPA's understanding that Marfork Coal Company received a surface mining permit (S301004) from the West Virginia Department of Environmental Protection (WVDEP) in July 2006, with a revision in July 2008, an incremental start in September 2008 and two incidental boundary revisions in November 2008 and November 2009. It is our understanding that WVDEP also has issued a National Pollutant Discharge Elimination System (NPDES) permit for this facility. While the Corps of Engineers has received an application for a Section 404 permit under the Clean Water Act (CWA), that permit has not been issued. No public notice of the permit has occurred and EPA anticipates that, due to the scale and potential impacts of the proposed mining activities, it will review the permit application closely. EPA would like to emphasize that we will coordinate with you and the Corps of Engineers on your Section 404

permit and that such cooperation early in the Clean Water Act review can be very effective in facilitating communication and resolving permit issues.

The activities underway at the site do not appear to have independent utility from the proposed mining project that is the subject of the Section 404 permit application. EPA is concerned that Marfork Coal Company may be committing significant resources and conducting operations in reliance on a Section 404 permit that has not been issued. The Corps has not yet made a determination of jurisdictional waters and we have some concern that ongoing activities at the site could impact such waters if sufficient precautions are not exercised.

Accordingly, EPA is seeking additional information regarding activities at the Bee Tree Surface Mine to ascertain the intended scope of site operations. EPA is authorized under Section 308(a) of the Clean Water Act (the "Act"), 33 U.S.C. § 1318(a), to require owners and/or operators of point sources to provide certain information, establish records and make such reports necessary to carry out the objectives of the Act. Pursuant to Section 308 of the Act, 33 U.S.C. § 1318, you are directed to provide EPA the information requested in the enclosure. You should be aware that failure to provide the requested information or providing misleading or false information may subject you to civil and/or criminal sanctions. The information you provide may be used by EPA in administrative, civil, or criminal proceedings.

You may, if you desire, assert a business confidentiality claim covering all or part of the information requested herein in the manner described in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Subpart B, 40 C.F.R. Part 2. If no claim of confidentiality accompanies the information requested herein when it is received by EPA, it may be made available to the public by EPA without further notice to you. This inquiry is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. (See 5 C.F.R. § 1320.3(c)).

Please forward the requested information contained in the enclosure within thirty (30) days of receipt of this Request for Information to:

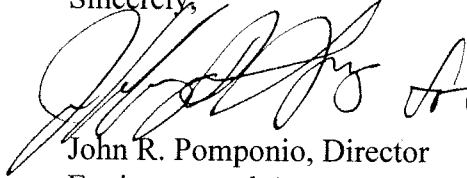
Jeffrey D. Lapp  
Associate Director  
Office of Regulatory Programs  
Environmental Assessment & Innovation Division  
Water Protection Division (3EA30)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

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We appreciate your cooperation and prompt attention to this matter. If you would like an opportunity to confer, or if you have any questions relating to this Information Request, please contact Jeff Lapp at 215-814-2717, or if you are represented by counsel, your counsel may contact Stefania D. Shamet at 215-814-2682.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Pomponio". The signature is fluid and cursive, with a large initial "J" and "P".

John R. Pomponio, Director  
Environmental Assessment and Innovation Division

Enclosures

- (1) Information Request
- (2) Statement of Certification



Enclosure 1

### **Information Request**

This information is requested pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a).

### **Instructions and Definitions**

1. The use of the terms "you" and "your" herein refer to Marfork Coal Company, Inc. and its subsidiaries. Thus, the response to each question concerning you or your activities should reflect information regarding each and every entity.
2. Provide all documents in your possession which relate to the responses given. With respect to each document, identify the date, author, addressee, current location, and custodian and identify the question or subpart to which it relates.
3. The term "document" refers to "writings," "recordings" and "photographs" as those terms are defined in Rule 1001 of the Federal Rules of Evidence. Documents should be produced as they are kept in the usual course of business.
4. If any question cannot be answered in full, provide an answer to the maximum extent possible and note that a full answer cannot be provided. If your responses are qualified in any manner, please explain.
5. If information or documents are not known or not available to you, as of the date of submission of your response to this request and should later become known or available, you must supplement your response to EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the facts, you must notify EPA of this fact as soon as possible and provide a corrected response.
6. Provide a separate narrative response to each and every question and subpart of a question set forth in this Information Request. Precede each answer with the text and the number of the question and its subpart to which the answer corresponds (i.e., A, B.1., B.2., etc.).
7. Each submission pursuant to this request must include a certification statement (Enclosure 2) signed by a person authorized to respond on behalf of Marfork Coal Company, Inc..

All information shall be provided within 30 days, unless otherwise noted in this letter

### **Respond to the Following**

1. Identify the name, position and title of all person(s) who answered each question in this Information Request.
2. Fully describe the ownership or control of the facility, including the identification and relationship of any parent, subsidiary, joint venture, or lease agreement.
3. Provide a complete copy of all submissions to the West Virginia Department of Environmental Protection for Surface Mining Control and Reclamation Act (SMCRA), the Surface Coal Mining Reclamation Act, and National Pollutant Discharge Elimination System (NPDES) permits, permit renewals, corrections, revisions, modifications, and incidental boundary revisions for the Bee Tree Surface Mine, Raleigh County, West Virginia.
4. Provide a complete copy of all SMCRA and NPDES permits, corrections, revisions, modifications and incidental boundary revisions for Bee Tree Surface Mine, Raleigh County, West Virginia.
5. Provide a copy of any Probable Hydrologic Consequences analysis and any Cumulative Hydrologic Impact Analysis that have been prepared for the Bee Tree Surface Mine.
6. Have you submitted a notice of intent or otherwise sought authorization pursuant to the NPDES program for the discharge of stormwater associated with land disturbance activity (including but not limited to blasting, excavation, and clearing) at the Bee Tree Surface Mine? If so, provide a copy of your submission and a copy of any NPDES authorization.
7. Provide an electronic spreadsheet with all instream water quality monitoring data for the period of time from May 1, 2004 to present for all waters that would receive discharges if the mining plan described in the application for SMCRA Permit No. S301004, including all revisions and amendments, were carried out, regardless of whether those waters are within the surface area of disturbance described in SMCRA Permit No. S301004 or covered by a different permit.
8. Describe all work performed at the Bee Tree Surface Mine site to date, and identify any mining plan or sequence approved by the West Virginia Department of Environmental Protection of which the work is a part.
9. Provide a copy of any stormwater or surface water runoff management plan for the Bee Tree Surface Mine. Describe all actions you have taken to date to comply with any such plan.
10. Have you or do you intend to place any durable rock, excess spoil, debris, or any material generated as part of activities associated with the Bee Tree Surface Mine within the

boundaries of the Brushy Fork Surface Impoundment? If your answer is affirmative, provide a description, volume, location, and date or proposed date of placements of materials into the Brushy Fork Surface Impoundment.

11. Provide copies of any document that authorizes the placement within the boundaries of SMCRA permit no. O-3010-95 of material other than slurry and other than material necessary for construction of the impoundment.
12. Provide copies of any jurisdictional determination or other identification of waters of the United States within the permit boundaries of SMCRA permit no. O-3010-95. Identify all jurisdictional waters located within the impoundment boundary of the Brushy Fork Slurry Impoundment.
13. Have you hired or identified employees and/or commenced mobilizing or staging equipment in anticipation of performing the work for any phase of the mining plan described in SMCRA permit no. S301004, IBR No. 1, Section N, Attachment N-1B, other than the work described in Phase IIA? If the answer is affirmative, identify the number of employees hired or identified and the equipment type and number that has been mobilized or staged.
14. Was timber cut down and/or removed as part of operations related to the Bee Tree Surface Mine? If so, how was the timber disposed?
15. Provide copies of any permit issued by the U.S. Army Corps of Engineers pursuant to CWA Section 404 for the discharge of dredged and/or fill material associated with operations at SMCRA permit no. O-3010-95, including any CWA authorization for discharges to create the impoundment and authorization to discharge into the impoundment.
16. How many individuals reside within a two-mile radius of the Bee Tree Surface Mine?
17. Provide all information known to you regarding the location of public drinking water systems and private drinking water wells within a two-mile radius of the Bee Tree Surface Mine. Provide all results in your possession from any sampling conducted on water from such systems or wells.

**STATEMENT OF CERTIFICATION**

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)