

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

OHIO VALLEY ENVIRONMENTAL  
COALITION, et al.,

Plaintiffs,

v.

CIVIL ACTION NOS. 3:05-0784  
3:06-0438

UNITED STATES ARMY CORPS  
OF ENGINEERS, et al.,

Defendants.

v.

INDEPENDENCE COAL COMPANY, et. al.,

Intervenor-Defendants.

**ORDER**

Pending before the Court is the United States' Motion to Extend the Stay of Proceedings Regarding the Mingo Logan Coal Company's ("Mingo Logan") Spruce No. 1 Permit for an Additional Three Weeks (Doc. 474). For the reasons stated below, the Court **GRANTS** the motion and all proceedings concerning Mingo Logan's Spruce No. 1 Permit are **STAYED** until **March 26, 2010**.

This case concerns Mingo Logan's Spruce No. 1 Permit, which was issued by the U.S. Army Corps of Engineers ("the Corps") on January 22, 2007. The Spruce No. 1 Permit has been the subject of litigation, essentially since its issuance in January 2007. This litigation remains unresolved and, on July 16, 2009, Mingo Logan filed a motion for summary judgment, contending

that no genuine issue of material fact remains in the case and summary judgment should be granted in its favor. Since its filing in July 2009, Mingo Logan's motion has yet to be responded to by either the plaintiffs or the Corps. To the contrary, as early as July 27, 2009, the plaintiffs and the Corps sought and have received several extensions of their deadlines to file a response to Mingo Logan's motion. Additionally, beginning in September 2009, the parties sought and have been granted multiple stays of this action.

Mingo Logan opposed the Corps' initial motion for such a stay, filed on September 4, 2009. Mingo Logan further opposed the motion to extend this stay, filed on October 5, 2009. Each of the preceding motions to extend deadlines and each of the subsequent motions to extend the stay filed by the Corps, however, including those filed on November 4, 2009, December 4, 2009, and January 5, 2010, have been unopposed.<sup>1</sup>

At issue now is the motion to extend the existing stay, filed by the Corps on March 5, 2010. The plaintiffs do not oppose the motion. Mingo Logan does not formally oppose the stay, however, in its response, it requests that the Court condition any stay granted by (1) requiring the Corps' response to Mingo Logan's motion for summary judgment be due on March 26, 2010; and (2) stating that no further stays will be granted in this action, unless by March 26, 2010, the U.S. Environmental Protection Agency ("the U.S. EPA") has proceeded to the next step in its § 404(c) process and published a public notice of its proposed determination to prohibit or restrict the Spruce No. 1 Permit.

The Court understands Mingo Logan's frustration with the delay in this action. Moreover,

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<sup>1</sup>The plaintiffs have consented to each extension and each motion for a stay, including those filed on September 4, 2009, and October 5, 2009.

the Court agrees with the company that, at some point in the near future, the U.S. EPA must decide whether to proceed with its § 404(c) process and, if so, that the agency must issue a public notice to that effect. Nonetheless, the Court **GRANTS** the stay sought by the Corps, without the conditions requested by Mingo Logan, **FINDING** that, in the context of the multi-year permit review at issue in this litigation, and in light of the company's repeated consent to the prior requested deadline extensions and stays, a brief extension of the existing stay is appropriate. Such a stay will allow the U.S. EPA an opportunity to complete its determination of whether and how to exercise its §404(c) authority, which, as discussed in the Court's October 21, 2009, Order, is not only discretionary, but is also likely to affect the instant litigation. *See generally* Doc. 466. Further, in light of the repeated and often uncontested postponements in this action, and because Mingo Logan may continue to conduct limited mining operations pursuant to the Spruce No. 1 Permit, such an extension will not result in substantial prejudice to Mingo Logan.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: March 18, 2010



ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE