

consider, under 34 CFR 75.253, the extent to which a grantee has made “substantial progress toward meeting the objectives in its approved application.” This consideration includes the review of a grantee’s progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contacts

### FOR FURTHER INFORMATION CONTACT:

Trini Torres, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C145, Washington, DC 20202–6510. Telephone: (202) 401–1445, or by e-mail: [trinidad.torres-carrion@ed.gov](mailto:trinidad.torres-carrion@ed.gov) or Itzeth Testa-Sanchez, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C151, Washington, DC 20202–6510. Telephone: (202) 401–1459, or by e-mail: [Itzeth.testa-sanchez@ed.gov](mailto:Itzeth.testa-sanchez@ed.gov).

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

**Accessible Format:** Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., Braille, large print, audiotope, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

**Electronic Access to This Document:** You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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Dated: January 13, 2011.

**Rosalinda B. Barrera,**

*Assistant Deputy Secretary and Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.*

[FR Doc. 2011–1041 Filed 1–19–11; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–R03–OW–2009–0985; FRL–9254–8]

### Final Determination of the Assistant Administrator for Water Pursuant to Section 404(c) of the Clean Water Act Concerning the Spruce No. 1 Mine, Logan County, WV

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of EPA’s Final Determination pursuant to section 404(c) of the Clean Water Act to withdraw the specification of Pigeonroost Branch, Oldhouse Branch, and their tributaries, within Logan County, West Virginia, as a disposal site for dredged or fill material in connection with construction, operation, and reclamation of the Spruce No. 1 Surface Mine, as authorized by DA Permit No. 199800436–3 (Section 10: Coal River). This determination also prohibits the specification of the defined area constituting Pigeonroost Branch, Oldhouse Branch, and their tributaries for use as a disposal site associated with future surface coal mining that would be expected to result in a nature and scale of adverse chemical, physical, and biological effects similar to the Spruce No. 1 mine. EPA’s determination is based upon a finding that the discharge of dredged or fill material associated with the construction and operation of the Spruce No. 1 Mine would result in unacceptable adverse effects on wildlife. **DATES:** *Effective Date:* The effective date of the Final Determination is January 13, 2011.

**ADDRESSES:** U.S. Environmental Protection Agency, Office of Water, Wetlands Division, Mail Code 4502T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. EPA has established a docket for this action under Docket ID No. EPA–R03–OW–2009–0985. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, e.g., CBI

or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Hunter, Office of Wetlands, Oceans, and Watersheds; U.S. Environmental Protection Agency, Mail Code 4502T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Additional information and copies of EPA’s Final Determination are available at the following Web site: <http://www.epa.gov/404c/>.

**SUPPLEMENTARY INFORMATION:** Section 404(c) of the CWA, 33 U.S.C. 1344(c), authorizes EPA to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site. EPA is authorized to restrict or deny the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever it determines, after notice and opportunity for public hearing, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

EPA’s regulations for implementing section 404(c) are set forth in 40 CFR part 231. Four major steps in the process are: (1) The Regional Administrator’s notice to the U.S. Army Corps of Engineers (the Corps), the applicant or permittee, the property owner, and the State, as appropriate, of the intention to initiate the section 404(c) process; (2) the Regional Administrator’s publication of a Proposed Determination to withdraw, deny, restrict, or prohibit the use of the site, soliciting public comment and offering an opportunity for a public hearing; (3) the Regional Administrator’s recommendation to the Assistant Administrator for Water at EPA Headquarters to withdraw, deny, restrict, or prohibit the use of the site (Recommended Determination); and, (4) the Assistant Administrator for Water’s

Final Determination to affirm, modify, or rescind the Regional recommendation.

As a result of significant new scientific information confirming and strengthening EPA's concerns regarding the environmental effects of mountaintop mining operations, and in particular those operations on the scope and scale of the Spruce No. 1 Mine, EPA Region III initiated the Clean Water Act § 404(c) process for the Spruce No. 1 Mine on October 16, 2009. The Spruce No. 1 Mine, as authorized in 2007 by Department of the Army (DA) Permit No. 199800436-3 (Section 10: Coal River), is one of the largest mountaintop mining projects ever authorized in West Virginia. The DA Permit authorizes the Mingo Logan Coal Company to construct six valley fills, associated sedimentation structures, and other discharges of fill material to the Right Fork of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch, and their tributaries. If fully constructed, the project will disturb approximately 2,278 acres (about 3.5 square miles) and bury approximately 7.48 miles of streams beneath 110 million cubic yards of excess spoil.<sup>1</sup>

Following initiation of the Section 404(c) process, EPA Region III communicated with representatives of Mingo Logan (a subsidiary of Arch Coal, Inc.) and the Corps both in person and by telephone and electronic mail on several occasions to determine whether corrective action would be taken to address EPA Region III's concerns. However, corrective action was not taken to resolve EPA's concerns. On April 2, 2010, EPA Region III published in the **Federal Register** a Proposed Determination to prohibit, restrict, or deny the specification or the use for specification (including withdrawal of specification) of certain waters at the project site as disposal sites for the discharge of dredged or fill material for the construction of the Spruce No. 1 Surface Mine. EPA Region III took this

step because it believed that discharges authorized by DA Permit No. 199800436-3 (Section 10: Coal River) would result in a significant loss of wildlife habitat and also cause significant degradation of downstream aquatic ecosystems and therefore could have unacceptable adverse effects on wildlife. A public hearing regarding the Proposed Determination was conducted on May 18, 2010. EPA Region III received more than 100 oral comments and more than 50,000 written comments both supporting and opposing its Proposed Determination.

On September 24, 2010, EPA Region III submitted to EPA Headquarters its Recommended Determination that the specification embodied in DA Permit No. 199800436-3 (Section 10: Coal River) of Pigeonroost Branch and Oldhouse Branch as disposal sites for discharges of dredged or fill material for construction of the Spruce No. 1 Surface Mine be withdrawn. EPA Region III based this recommendation upon a conclusion that the discharges of dredged or fill material to Pigeonroost Branch and Oldhouse Branch for the purpose of constructing the Spruce No. 1 Surface Mine as authorized would likely have unacceptable adverse effects on wildlife.

The U.S. Fish and Wildlife Service (USFWS), in its comments on both the Proposed and Recommended Determinations, concurred with EPA Region III's conclusion that the project, as authorized, would result in unacceptable adverse effects on wildlife and that this conclusion is supported by the available scientific information. USFWS also noted that it has consistently expressed concerns regarding the loss of headwater streams and adjacent riparian and terrestrial habitats associated with the Spruce No. 1 Mine, as well as its likely impacts on downstream water quality, aquatic organisms, and terrestrial and aquatic wildlife that depend on those resources.

Following receipt of the Recommended Determination, and consistent with EPA's Section 404(c) regulations, EPA Headquarters provided an opportunity for the project's proponents to propose corrective actions intended to prevent the unacceptable adverse environmental impacts presented in the Recommended Determination. On November 16, 2010, a consultation meeting was held at EPA Headquarters in Washington, DC to discuss the Region III Recommended Determination and potential corrective actions that could be undertaken to avoid the unacceptable adverse impacts that were of concern to EPA. Participants at the meeting included the

EPA Assistant Administrator for Water; the EPA Region III Regional Administrator; other EPA staff; representatives from Arch Coal, Inc. (parent company of Mingo Logan) and their legal counsel; the United Company (a mineral rights owner) and their legal counsel; the West Virginia Department of Environmental Protection, and the District Engineer of the Corps' Huntington District. At that meeting, and in subsequent communications, Arch Coal did not provide EPA with corrective actions that would meaningfully address the likely unacceptable adverse effects outlined in Region III's Recommended Determination.

Following review of the public comments received, existing and recently developed scientific data, and EPA Region III's Recommended Determination, EPA has concluded that the discharge of dredged or fill material to Pigeonroost Branch and Oldhouse Branch, in connection with the construction of valley fills and sedimentation ponds, as authorized by DA Permit No. 199800436-3 (Section 10: Coal River), will result in unacceptable adverse effects on wildlife. The administrative record developed in this case fully supports the conclusion that the Spruce No. 1 Surface Mine will have unacceptable adverse effects to wildlife, due to the filling of Pigeonroost Branch, Oldhouse Branch, and their tributaries. In addition, the administrative record demonstrates that the Spruce No. 1 Surface Mine will have unacceptable adverse effects on wildlife downstream of the project site as a result of increased pollution that the project will contribute to downstream waters.

EPA has determined that unacceptable adverse impacts to Pigeonroost Branch, Oldhouse Branch, and their tributaries will occur through the direct burial of 6.6 miles of high-quality stream habitat, including all wildlife in this watershed that utilize these streams for all or part of their life cycles (e.g., macroinvertebrate, salamander, fish, and water-dependent bird populations). Pigeonroost Branch, Oldhouse Branch, and their tributaries contain diverse and high-quality wildlife communities that are consistent with the ecological richness of high-quality Appalachian headwater stream systems. With their adjacent riparian areas, these streams provide important habitat for 84 taxa of macroinvertebrates, up to 46 species of amphibians and reptiles, 4 species of crayfish, and 5 species of fish, as well as birds, bats, and other mammals. As some of the last remaining high quality,

<sup>1</sup> EPA's Final Determination addresses only the 6.6 miles of fill authorized in Pigeonroost Branch, Oldhouse Branch, and their tributaries. While the permit also authorizes construction of valley fills and other discharges to the Right Fork of Seng Camp Creek and its tributaries, EPA is not withdrawing specification of those waters, in part because some of those discharges have already occurred and because the stream resources in Right Fork of Seng Camp Creek were subject to a higher level of historic and ongoing human disturbance than those found in Pigeonroost Branch or Oldhouse Branch. Due to litigation and an agreement with environmental groups, represented by Ohio Valley Environmental Coalition, operations following the issuance of this DA Permit have been limited to the Seng Camp Creek watershed, and as part of that agreement one valley fill is partially constructed.

least-disturbed headwater stream habitat within the sub-basin, these streams not only support resident wildlife, but also provide ecosystem functions for downstream waters, serve as refugia for aquatic life and potential sources for recolonizing nearby waters, and ultimately serve to maintain the aquatic ecosystem integrity in the sub-basin and the rich animal diversity in the ecoregion.

Burial of Pigeonroost Branch, Oldhouse Branch, and their tributaries will also result in unacceptable adverse effects on wildlife downstream through the removal of functions performed by the buried streams and by transformation of the buried areas into pollution sources that will contribute contaminants to downstream waters. Based on recent peer-reviewed literature, as well as available data from adjacent mine sites and from the active portion of the Spruce No. 1 Mine, EPA has concluded that the full construction of the Spruce No. 1 Mine will transform these headwater streams from high-quality habitat into sources of pollutants (particularly total dissolved solids and selenium) that will travel downstream and adversely impact the wildlife communities that utilize these downstream waters. Increased pollutant levels will lead to loss of macroinvertebrate communities and population shifts to more pollution-tolerant taxa, specifically the extirpation of ecologically important macroinvertebrates. Through the loss of stream macroinvertebrate communities, there will be, in turn, substantial effects on fish, amphibian, and bird populations that rely on these communities as a food source.

Furthermore, the increased loading of pollutants to downstream receiving waters will increase the potential for harmful golden algal blooms, while increased selenium exposure will result in impaired salamander populations and adverse effects to the reproduction of fish and bird species, thus harming the ability of these local populations to rebound. The loss of macroinvertebrate prey populations, increased risk of harmful golden algal blooms, and additional exposure to selenium will have an unacceptable adverse effect on the 26 fish species found in Spruce Fork (the receiving stream for Pigeonroost Branch and Oldhouse Branch), and will also have an unacceptable adverse effect on amphibians, reptiles, crayfish, and bird species that depend on downstream waters for food or habitat.

Furthermore, these adverse impacts do not comply with the requirements of the Clean Water Act (CWA) and EPA's implementing regulations under section 404(b)(1). EPA has determined that the Spruce No. 1 Surface Mine fails to adequately evaluate less environmentally damaging alternatives, will cause or contribute to significant degradation of waters of the United States (especially when considered in the context of the significant cumulative losses and impairment of streams across the Central Appalachian ecoregion), and lacks compensatory mitigation to adequately offset the impacts to Pigeonroost Branch and Oldhouse Branch. These failures to comply with the Guidelines serve to strengthen EPA's judgment about the unacceptability of the significant adverse impacts that will occur.

Based on these findings and pursuant to section 404(c) of the CWA, EPA's Final Determination withdraws the specification of Pigeonroost Branch, Oldhouse Branch, and their tributaries, as described in DA Permit No. 199800436-3 (Section 10: Coal River), as a disposal site for the discharge of dredged or fill material for the purpose of construction, operation, and reclamation of the Spruce No. 1 Surface Mine. This Final Determination also prohibits the specification of the defined area constituting Pigeonroost Branch, Oldhouse Branch, and their tributaries for use as a disposal site associated with future surface coal mining that would be expected to result in a nature and scale of adverse chemical, physical, and biological effects similar to the Spruce No. 1 mine. This Final Determination does not affect discharges to Seng Camp Creek as authorized in DA Permit No. 19980043603 (Section 10: Coal River) associated with the Spruce No.1 Surface Mine.

EPA continues to work effectively with the Corps, the mining industry, and the public to evaluate proposed Appalachian surface coal mining projects and to enable permitting of environmentally responsible mining projects that authorize continued coal production while preventing unacceptable adverse effects on wildlife.

Dated: January 13, 2011.

**Peter S. Silva,**  
Assistant Administrator, Office of Water.

[FR Doc. 2011-1013 Filed 1-18-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9254-2]

**Intent to Grant Patent License**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Intent to Grant Co-Exclusive Patent License.

**SUMMARY:** Pursuant to 35 U.S.C. 207 (Patents) and 37 CFR part 404 (U.S. Government patent licensing regulations), EPA hereby gives notice of its intent to grant a co-exclusive, royalty-bearing, revocable license to practice the inventions described and claimed in the U.S. patents and patent applications listed at the end of this message, and all corresponding patents issued throughout the world, and all reexamined patents and reissued patents granted in connection with such patent applications, to Oakland Technology, LLC of Farmington Hills, Michigan.

The inventions pertain to hybrid vehicle technology, particularly hydraulic hybrid drive systems, methods, and components. The proposed license will contain appropriate terms, limitations, and conditions negotiated in accordance with 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations. EPA will finalize terms and conditions and grant the license unless, within 15 days from the date of this notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the inventions listed in the patents and patent applications below should include an application for a nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Attorney and other EPA officials will review all written responses and then make recommendations on a final decision to the Director or Deputy Director of the Office of Transportation and Air Quality, who have been delegated the authority to issue patent licenses under EPA Delegation 1-55.

The proposed license will apply to the following patents and patent applications:

**Method or Vehicle Licensed Inventions**

Patent No.	Title	Date issued
5,495,912 .....	Hybrid Powertrain Vehicle .....	March 5, 1996.