

EPA Proposes Veto of Mine Permit Under the Clean Water Act

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WASHINGTON – The U.S. Environmental Protection Agency (EPA) today announced its proposal under the Clean Water Act to significantly restrict or prohibit mountain top mining at the Spruce No. 1 surface mine in Logan County, W. Va. Spruce No. 1 mine is one of the largest mountaintop removal operations ever proposed in Central Appalachia. The project was permitted in 2007 and subsequently delayed by litigation. The Spruce No. 1 mine would bury over 7 miles of headwater streams, directly impact 2,278 acres of forestland and degrade water quality in streams adjacent to the mine.

EPA's proposed determination comes after extended discussions with the company failed to produce an agreement that would lead to a significant decrease of the environmental and health impacts of the Spruce No. 1 mine.

"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," said EPA Regional Administrator for the Mid-Atlantic, Shawn Garvin. "This recommendation is consistent with our broader Clean Water Act efforts in Central Appalachia. EPA has a duty under the law to protect water quality and safeguard the people who rely on these waters for drinking, fishing and swimming."

EPA has used its Clean Water Act veto authority in just 12 circumstances since 1972 and never for a previously permitted project.

The proposed determination, signed today by Regional Administrator Garvin, identifies numerous potential adverse impacts associated with the Spruce No. 1 project:


- **Water Quality Impacts:** The mine will cause adverse impacts to drinking water, native aquatic and water-dependent communities in the Spruce Fork watershed. Drainage from the Spruce No. 1 project is likely to include high levels of total dissolved solids (TDS) and selenium which adversely affect the naturally occurring aquatic communities. These include birth defects in fish and other aquatic life and can also result in toxic effects to embryos, resulting in abnormal development or death for those organisms.
- **Fish and Wildlife Impacts:** Mining waste placed into headwater streams will impact fish and wildlife which depend for all or part of their lifecycles on these headwater systems. Ecosystem functions performed by headwaters are lost when the headwater stream is buried or removed. These functions are lost not only to the headwater stream itself, but also to downstream aquatic ecosystems.
- **Mitigation Impacts:** The project's mitigation plan inadequately evaluates the nature and extent of mining related aquatic impacts and therefore fails to replace streams' lost ecological services. Natural stream channels buried by mining will be replaced, in part, by ditches being built to drain stormwater off of the mine, not to compensate for natural stream losses. These ditches will also drain water contaminated by mining into streams adjacent to the mine.
- **Cumulative Mining Impacts:** EPA believes that the Spruce No. 1 project, in conjunction with numerous other mining operations either under construction or proposed for the Coal River basin, will contribute to the cumulative loss of water quality, aquatic systems, and forest resources. The Coal River basin is already heavily mined and substantially impaired. Landscape and site specific assessments reveal that past and current mountaintop mining has caused substantial, irreplaceable loss of resources and an irreversible effect on these resources within the Coal River basin.


CWA Section 404(c) authorizes EPA to restrict or prohibit placing certain pollutants in streams, lakes, rivers, wetlands and other waters if the agency determines that the activities would result in "unacceptable adverse impacts" to the environment, water quality, or water supplies. This authority applies to proposed projects as well as projects previously permitted under the CWA. A final decision to restrict or prohibit the Spruce No.1 mine will be made in EPA Headquarters based on a recommendation from the Regional Administrator, public comments, and discussions with the Army Corps of Engineers and the Mingo Logan Coal Company.

The proposed determination is being published in the federal register and EPA is taking public comment for 60 days. EPA is also scheduling a public hearing in West Virginia to provide an additional opportunity for public input.

The proposed determination: <http://www.epa.gov/region03/mntop/spruce1documents.html>

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