



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-8909

JUN 05 1998

REF: WMD/WCWQGB/WA

Colonel Harry L. Spears
Commander
U.S. Army Corps of Engineers, Louisville
P.O. Box 59
Louisville, Kentucky 40201-0059

Dear Colonel Spears:

This is regarding a Section 404 permit application (Public Notice No. 199700508) from MAPCO (formerly Andalex Resources, Inc., now Hopkins County Coal) involving the surface mining of 230 acres of forested, low gradient riverine wetland in Hopkins County, Kentucky. The Environmental Protection Agency (EPA) has recommended denial of this permit in letters dated May 14 and June 6, 1997, and January 22 and April 14, 1998. The basic issues outlined in these letters were: the high quality and functional capacity and the significant impacts to the proposed site; and the inadequacy of the proposed mitigation (Section 230.10(c) and (d) of the 404 (b)(1) Guidelines). EPA considers these bottomland hardwood wetlands in western Kentucky as an aquatic resource of national importance (ARNI).

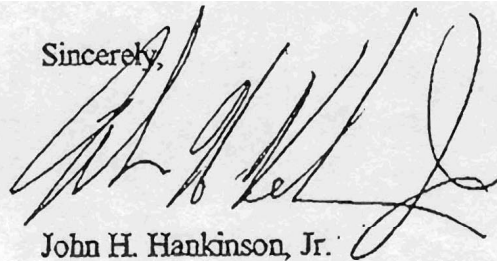
EPA conducted an onsite functional assessment of the proposed site using the draft "Regional Guidebook for Riverine, Low Gradient Wetlands in western Kentucky" (Ainslie et al. in review) and based on this functional assessment disagree on several points with the District regarding the current functional status of the site and the level of appropriate mitigation. In general, EPA differs from the District in maintaining that the site is sustaining a high level of functional capacity similar to other highly functioning bottomland hardwood wetlands in the Coalfield. EPA also maintains that regardless of the applicant's success at reclaiming the site to a wetland that there will be a net loss of function due to the mining. EPA has further projected that the proposed off-site mitigation will take approximately 50 years to achieve an appropriate level of function to replace the function lost as a result of surface mining the proposed site. This temporal loss or "loss over time" as well as the risk the mitigation might fail and a discounting the benefits the wetland will provide at the end of 50 years, are the basis for EPA's conclusion that the proposed mitigation is inadequate. In addition, EPA is concerned that the applicant has offered 4 disjunct tracts in 2 separate watersheds for mitigation. The fragmentation of these sites will seriously affect the ability of the proposed mitigation to offset the loss of the proposed mine site. Further, EPA is concerned with the effects of mine construction and operation the Pond

River, which is currently on the 303(d) list of State waters not meeting water quality standards for sediments. In particular, Pond River will be negatively impacted by the construction of this project which will involve sediment discharge to the river, and by the mine pit which will affect subsurface flow of water to the river. These impacts will not be adequately addressed by the proposed mitigation, a portion of which will occur in the Tradewater River Basin.

Therefore, based on the above concerns and in accordance with the procedures outlined in the Section 404(q) Memorandum of Agreement (Part IV, Paragraph 3(d)(2), Elevation of Individual Permit Decisions) between EPA and the Department of the Army, I am notifying you of my intention to forward this issue to the Assistant Administrator of Water with a recommendation to request review by the Assistant Secretary of the Army (Civil Works). Pursuant to Part IV, Paragraph 3(e), based on this notification, the permit will be held in abeyance pending completion of the Headquarters level review.

We appreciate your cooperation in this matter and the opportunity to comment on this public notice. Should you have any questions regarding our comments please contact Bill Ainslie my Wetlands Section staff at 404/562-9400.

Sincerely,



John H. Hankinson, Jr.
Regional Administrator