



# Permits: A Kentucky Perspective

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# Coal in Kentucky

- ✓ Eastern Field - Appalachian Basin
- ✓ Western Field - Illinois Basin

Location  
Map





# Kentucky Coal

- 107 million tons / 3<sup>rd</sup> in the nation.
- 18,000+ Coal Miners. In Kentucky, approx. three other workers depend on every one miner for their jobs.
- KCA - 27 member companies, 113 associate members.
- Represent more than 85% of production.
- Kentucky coal mining is 97% union free.



# Kentucky Coal\*

- Alabama – 2,376,000 tons
- Florida – 10,123,000 tons
- Georgia – 15, 861,000 tons
- Kentucky – 27,565,000 tons
- Mississippi – 289,000 tons
- North Carolina – 8,873,000 tons
- South Carolina – 11,574,000 tons

\*Used for Power Generation

# Types of Permits

- **404** – Federal permit that must be certified by the state. CoE with EPA oversight. No federal permit can be issued without certification of Section 401 of Clean Water Act (CWA).
- **402** – State permit that is subject to federal oversight. Issued by KY DEP.

## 404 Permits

- **No timeline.** Timelines do exist, but they are not respected.
- **No answers / feedback / specific comments.** Forced to resubmit without identifying what the specific concern is...
- **Spruce Mine Veto** – January 13, 2011.

# Spruce Mine Veto

- Located in Logan County, WV.
- Ten (10+) years to develop application.
- Approved.
- In operation for more than three (3) years employing nearly 300 people.
- 1/13/11 - EPA vetoes the permit **RETROACTIVELY.**
- Concerns from every industry that depends on a federal permit to work.

# 402 Permits

- Two types:
  - General.** 2,000+ issued and working.
  - Individual.** 200+ issued and working.
- Five Year Permit.
- Prior to April 1, 2010, EPA would “disagree” but not “object.”

**June 11, 2009**

- MOU between CoE, OSM & EPA to *“take coordinated action to strengthen the oversight and regulation, and minimize adverse environmental consequences of mountaintop coal mining.”*
- Targeted six states – KY, OH, PA, TN, VA & WV.

# April 1, 2010

- EPA announces “**Final Interim Guidance**”
- Considered a “new interpretation of existing law”
- In KY, OH, PA, TN, VA & WV, new requirements for:
  - 404s
  - 402s
  - SMCRA

# April 1, 2010

- Establishes a Conductivity level of 300 to 500 us/cm.
- *“This concentration is essentially unachievable using current coal mining practices and treatment, and may not be achievable even with yet to be determined modified coal mining practices and treatment.”*
  - Kentucky DEP Commissioner Bruce Scott

# April 1, 2010 Changes

- March 2010 – KY issues 27 402 permits with no EPA objection.
- April 1, 2010 – EPA announces “Final Interim Guidance”
- April 2010 – KY issues 21 402 permits, which EPA objects to, even though the permits are EXACTLY THE SAME as the March 2010 permits.



## Since April 1, 2010

- State (KY DEP) continues to issue General & Individual 402 Permits WITHOUT FEDERAL OBJECTION for:
  - Western KY Operations
  - Underground Operations in E. & W. KY.
  - Prep Plants in E. & W. KY.

EPA does not “agree” with these permits. They’ve commented, but not “objected” to them.

- EPA has “*objected*” to any Individual 402 Permit involving Eastern Kentucky Surface Mining.



## Since April 1, 2010

- EPA objected to 21 402 permitted projects:
  - Eleven (11) – Late September 2010
  - Ten (10) – Late October 2010
- Eight (8) of these projects were able to continue by reapplying as a General Permit with no further objection.
- A total of Eighty Five (85) 402 permits are currently pending.



# Kentucky & EPA

- Total of 106 402 permitted projects are in “proverbial limbo” until a mutual understanding is reached, even if we win our lawsuit against EPA.
- NOTE – 106 is a **BIG** number.
- E. KY needs jobs and revenue.
- Objective to create a template for future permits w/o EPA’s 4/1/10 “Interim Guidance”
- We’re mining coal, but the *permit pipeline* is closed.



## EPA's Lisa Jackson

“In my conversations with Lisa Jackson, the head of the U.S. Environmental Protection Agency, she said that she explicitly omits economic considerations from her decision-making process.”

-Rep. Shelley Moore Capito  
(R-WV)



# Lawsuit Timeline

- NMA sues July 20, 2010.
- WV Coal Assoc / State of WV sues Oct 6, 2010.
- KY Coal Assoc sues Oct 19, 2010.
- Commonwealth of KY sues Oct 22, 2010.
- **All the above litigation has been moved to DC where they have been consolidated together.**
- Other litigation exists as well.

# Kentucky Gov. Steve Beshear



- *“...the EPA’s recent arbitrary and unreasonable actions could well have a devastating impact to Kentucky’s economy.”*

## DC Court

- Federal Judge in DC has already written that NMA's suit will likely prevail based on its merits.
  - *".....is likely to succeed on the merits of its claim that the challenged EPA actions are legislative rules that were adopted in violation of the APA's notice and comment requirements."* – 1/14/11
- \*APA = Administrative Procedures Act (APA)

# WV DEP Sec. Randy Huffman



- *“The good news from Washington, DC is we got the same judge that ruled on a similar case that basically said ‘EPA you’re wrong.’”*

## Next Steps?

- Working to get the 402 permit floodgates to open.
  - Thirteen (13) objected permits are being individually negotiated.
  - Fifty-Five (55) permits have gone out for public comment and EPA approval (Late Sept. Deadline for EPA action).
  - Thirty (30) permits are still in process.

## Next Steps?

- EPA is already allowing CoE to proceed with action involving two 404 major permits, which were initially held up.
- *“You have not met the requirements, but we’re still removing our objection.”* – Response to a KCA member company seeking a permit.

# Bad Faith Talks

- Discussion were started between EPA Region IV & Commonwealth of KY.
- Gov. Beshear assured by Adm. Jackson that Region IV had authority.
- Template agreed to from talks, then...
- Rejected by Adm. Jackson & HQ in Washington, DC.



# EPA Changes

- EPA being called before Congress.

# Congressman Hal Rogers (R-KY)

- *"With unemployment hovering at 9 percent, our job-creating industries need regulatory certainty - not more of EPA's aggressive and overzealous strangulation by regulation."*



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- EPA asserts that DC Court does not need to proceed as it addresses “Final Interim Guidance” and the “Final Guidance” should be released April 1, 2011.
- “Final Guidance” actually released on July 21, 2011.

# “Final Guidance”

- EPA issues “Final Guidance” on July 21, 2011.
- 500 limit for Conductivity had been the guidance, now set at 300, BUT...
- Optional approaches now exist and will be evaluated on a “case by case” basis.
- Concepts, not standards, which are arbitrary and may not be enforced in an equitable manner.



**Where are we now?**



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- We don't know.



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- Wait to see how new "Final Guidance" is implemented.
- Wait to see how the result of our litigation affects the permitting process.
- Does EPA object to our latest batch of Fifty-five (55) permits from July 1, 2011? (Deadline of Late September, 2011.)

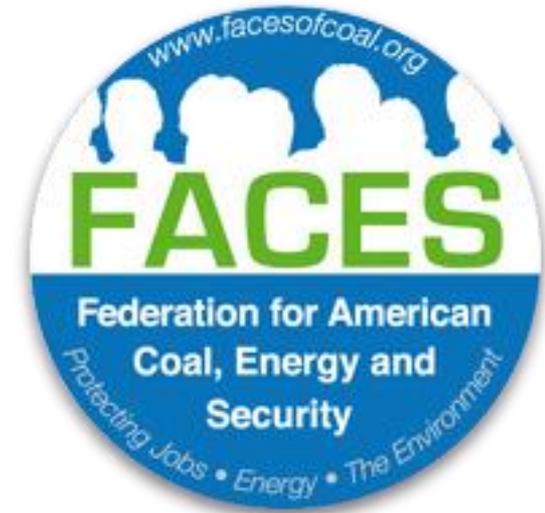
# Friends of Coal

- Visual Identification that you support coal.
- Friends of Coal License Plate – 41,000+
- [www.Friendsofcoalky.com](http://www.Friendsofcoalky.com)



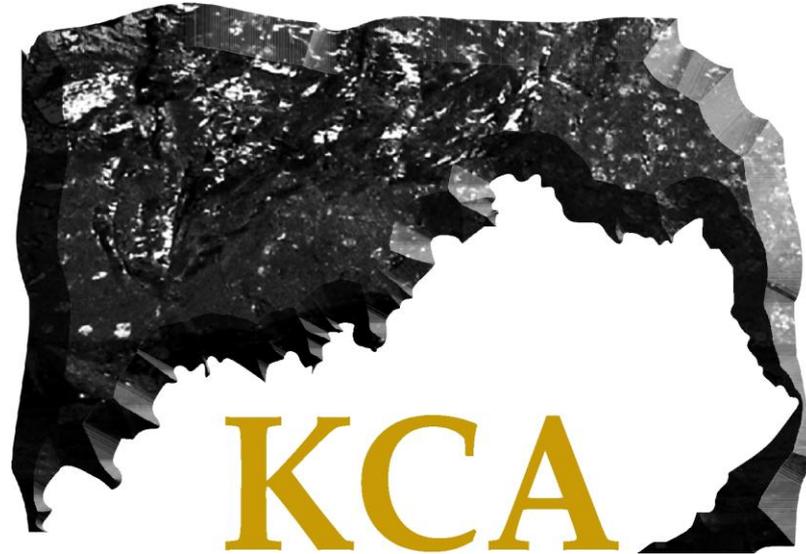
# F.A.C.E.S. Campaign

- Federation for American Coal, Energy & Security (FACES).
- Creates “Grass-tops” and Third-Party Advocates for coal.
- Multi-state effort.
- [www.facesofcoal.org](http://www.facesofcoal.org)





# Questions?



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