

From: Aspatore, Amanda [AAspatore@nma.org]
Sent: 9/5/2017 8:17:49 PM
To: Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]
Subject: Conductivity Information
Attachments: 2008 Pond Passmore Study_opt.pdf; 2009 Pond Passmore Study_opt.pdf; National Mining Association Cover Letter - Conductivity Comments_opt.pdf; National Mining Association Conductivity Comments_opt.pdf; Gina McCarthy Conductivity TMDL Brief.pdf; Lower Court Conductivity TMDL Decision_opt.pdf; NACWA, NCBA, NMA 4th Cir TMDL Amicus Brief.pdf; WVA Coal Association 4th Circuit Conductivity TMDL Amicus.pdf; OVEC v Fola District Court Decision.pdf; State of WV Brief 4th Circuit OVEC v. Fola.pdf; OVEC v. Fola 4th Circuit Decision.pdf

Hi Sarah –

Attached please find some information on conductivity that I thought might be helpful. Included are the following:

Technical Conductivity Documents:

- 1) 2008 Pond Passmore Study - The original study by Gregory Pond, Margaret Passmore etc. from which EPA's Appalachian conductivity "benchmark" was derived, and which serves as the basis for all of EPA's current conductivity initiatives, including the proposed draft conductivity field-based methodology.
- 2) 2009 Pond Passmore Study - A later study by Pond and Passmore that reached very different conclusions from those in the original study, including that sites with conductivity > 500 $\mu\text{S}/\text{cm}$ were not impaired, that ion makeups vary, and that stressors other than conductivity cause additional degradation (highlighted in the document, starting pg. 13).
- 3) NMA's comments (with cover letter) on the proposed draft conductivity methodology.

Conductivity Litigation Documents:

- 1) *OVEC v. McCarthy* – Federal district court utilizing conductivity "benchmark" (which serves as the basis for the current draft conductivity methodology) over objection of both EPA and State in the context of TMDL development:
 - a. Obama Administration brief supporting West Virginia's decision to delay development of conductivity TMDLs due to complexity of the science.
 - b. Adverse district court holding that EPA had to approve or deny State's "constructive submission" of no conductivity TMDLs, in part based on the "extensive" existing scientific record on conductivity (i.e., EPA's Appalachian "benchmark").
 - c. Industry amicus briefs in EPA's appeal to 4th Circuit addressing conductivity (4th Circuit decision pending).
- 2) *OVEC v. Fola* – Federal district court utilizing EPA's "benchmark" to impose post-hoc numeric conductivity limit directly onto permittee over objection of State:
 - a. District court decision setting post-hoc NPDES permit limit based on benchmark.
 - b. **State brief** to 4th Circuit explaining that State expressly rejected standards applied by district court and asking 4th Circuit to overturn (NMA and others also amici in case).
 - c. 4th Circuit decision upholding lower court decision despite State's brief.

Thank you so much – I know how busy you all are, and I really appreciate your taking the time to look at this issue! I will also be passing along some information on selenium and groundwater permitting shortly. Please do not hesitate to contact me if you have any questions or would like any additional information.

Sincerely,
Amanda



Amanda E. Aspatore
Vice President, Water Law & Policy
National Mining Association
101 Constitution Ave. NW, Suite 500 East
Washington, D.C. 20001
Phone: (202) 463-2600
Direct: **Personal Matters:**
aaspatore@nma.org