



DIVISIONS
ENERGY
GAS AND OIL
GEOLOGY AND MINERAL RESOURCES
MINED LAND RECLAMATION
MINERAL MINING
MINES
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COMMONWEALTH OF VIRGINIA

Department of Mines, Minerals and Energy

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June 6, 2017

Mr. David B. McGuigan
Associate Director
Office of NPDES Compliance and Enforcement
Water Protection Division
U. S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dear Mr. McGuigan:

The Division of Mined Land Reclamation (DMLR) Division Director Randy Casey shared a copy of the Clean Water Act Section 308 Information Requirement that EPA issued to Contura Energy on May 25th. I am deeply concerned about the action that EPA has taken. First and foremost, the Department of Mines, Minerals and Energy (DMME), which is the agency responsible for NPDES permitting and compliance in Virginia's coalfields, never requested this. It is our understanding this action was reported to EPA as being initiated by DMME and that is simply not the case. DMME does not support this action and is not in agreement that it is consistent with Section 308.

Second, all of the requested permitting data and information is readily available within DMME and is also electronically accessible to EPA; thus, it is punitive, inefficient, and beyond the regulatory confines to force Contura to pull and submit this information under a threat of penalty for delay or omission.

Third, DMME does not agree with EPA's interpretation regarding underdrains, which appears to be the focus of the Information Requirement. Additionally, we find the timing confusing considering we just arranged a call to discuss this issue on June 8th. DMME believes it improper for EPA to single out individual permittees like Contura and Red River (which previously received a similar information requirement) when our agencies are in fundamental disagreement over what is the regulatory requirement, which we have not had a chance to discuss, and which has widespread programmatic implications across numerous states. This proposed action would not only apply to coal mining fills, but as being applied by EPA, could be interpreted as a requirement for numerous other constructed fills such as road fills.

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For the above stated reasons, DMME requests EPA rescind the Information Requirement. Once we have had a chance to reach a common interpretation of Section 308 and have established associated regulatory program expectations, DMME stands ready to take any necessary appropriate action.

Sincerely,



Bradley C. Lambert
Deputy Director

c: Lawrence Starfield, EPA
James Golden, DEQ
John Warren, DMME