



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE
355 Deadmore Street, PO Box 1688, Abingdon, Virginia 24212
Phone (276) 676-4800 Fax (276)676-4899
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Dallas R. Sizemore
Regional Director

February 28, 2011

Mr. C. Wayne Hawley, Attorney-in-Fact
Cumberland River Coal Company
P.O. Drawer 109
Appalachia, VA 24216

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

RE: Joint Permit Application Number 10-1273
Cumberland River Coal Company-Roaring Fork Water Withdrawal
Wise County, Virginia

Dear Mr. Hawley:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 et seq., § 401 of the Clean Water Act Amendments of 1977, and Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit for the Cumberland River Coal Company- Roaring Fork Water Withdrawal. The project proposes a 0.36 million gallon per day withdrawal on the Roaring Fork River in Wise County, Virginia. This will be accomplished through a suction line placed in a 1mm screened intake structure, one cubic-foot in size, placed in Roaring Fork as needed. Excavation or placement of fill material within the stream channel is prohibited. The intake will allow the permittee to withdraw up to 250 gallons per minute over an 24-hour day, not to exceed an instantaneous withdrawal rate of 500 gallons per minute.

This permit is valid for 15 years from the date of issuance. Continuation of the permit may be necessary if any portion of the authorized activities or any permit requirement, including compensatory mitigation provisions, have not been completed. An extension may be requested through written notification to the Department of Environmental Quality Southwest Regional Office, provided that there are no changes in the authorized activities.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have **30 calendar days** from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in

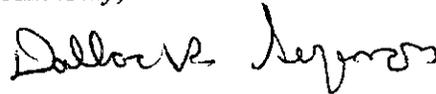
Mr. C. Wayne Hawley
February 28, 2011
Page 2 of 2

accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, any owner under §§62.1-44.16, 62.1-44.17, and 62.1-44.19 of the State Water Control Law aggrieved by any action the board has taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board. Said petition must meet the requirements set forth in the board's Procedural Rule Number 1 (9 VAC 25-230-130 B). In cases involving actions of the board, such petition must be filed within 30 calendar days after notice of such action is sent to such owner by certified mail.

If you have any questions, please contact Clairise R. Shaheen at (276) 676-4809.

Sincerely,



Dallas R. Sizemore
Regional Director

Enclosures: Permit Cover Page, Part I - Special Conditions, Part II - General Conditions,
Water Withdrawal Reporting Request Form

Copy: Annette Poore, U.S. Army Corps of Engineers
Justin Worrell, Virginia Marine Resources Commission
Mr. Arten Charles, Cumberland River Coal Company
Tammy Stephenson, DEQ
DEQ File-69

U.S. Postal Service™

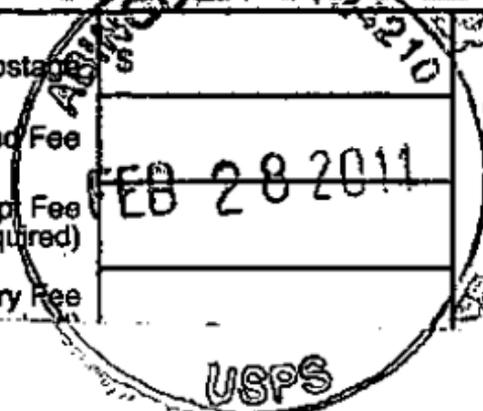
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MR C WAYNE HAWLEY ATTORNEY IN FACT

3 CUMBERLAND RIVER COAL CO

3 PO DRAWER 109

0 APPALACHIA VA 24216

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1. Article Addressed to:

MR C WAYNE HAWLEY ATTORNEY IN FACT
 CUMBERLAND RIVER COAL CO
 PO DRAWER 109
 APPALACHIA VA 24216

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Ron Samplers

-
- Agent
-
-
- Addressee

B. Received by (Printed Name)

Ron Samplers

C. Date of Delivery

3-2-71

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Department of Environmental Quality
Southwest Regional Office
P.O. Box 1688
Abingdon, Virginia 24212-1688



DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)
VWP - WATER WITHDRAWAL REPORTING REQUEST FORM
For New VWP Permitted Facilities

OWNER NAME:

FACILITY:

SYSTEM:

System Information Verification

PRIMARY CONTACT

CONTACT NAME:

Address/PO Box:

PO Box:

City:

State and Zip:

Phone:

Contact Title:

eMail Address:

SOURCE

Water Source:

USE TYPE:

ACTION Type:

VWP PERMIT:

INTAKE LOCATION (County/City/Town):

LATITUDE:

LONGITUDE:

(Please enter in decimal degrees)



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VWP Individual Permit Number 10-1273

Effective Date: February 28, 2011

Expiration Date: February 27, 2026

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner, and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

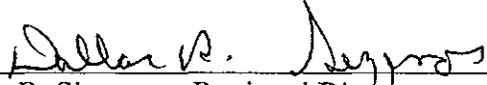
Permittee: Cumberland River Coal Company

Address: P.O. Drawer 109. Appalachia, VA 24216

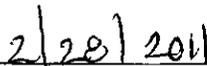
Activity Location: On St. Rt. 603 North, approximately 1 mile on Pine Branch Road along Roaring Fork, from its intersection with State Route 603.

Activity Description: The permittee proposes a 0.36 million gallon per day withdrawal on Roaring Fork. This will be accomplished through a suction line, placed in a 1mm screened intake structure, one cubic-foot in size, placed in Roaring Fork as needed. No excavation or amount of fill is authorized by this permit. The intake will allow the permittee to withdraw up to 250 gallons per minute over a 24-hour day, not to exceed an instantaneous withdrawal rate of 500 gallons per minute.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions.



Dallas R. Sizemore, Regional Director
Department of Environmental Quality



Date

Part I – Special Conditions

A. Authorized Activities

1. This permit authorizes the following impacts/activities associated with Cumberland River Coal Company (CRCC), Roaring Fork Water Withdrawal, in the application received by DEQ September 15, 2010, located at latitude 36°58'50.3" and longitude -82°43'49". The permit authorization and conditions are also based on additional submittals approved by DEQ.
2. The withdrawal of surface water from Roaring Fork, shall not exceed a maximum *daily* withdrawal volume of 0.36 million gallons; shall not exceed a maximum *instantaneous* withdrawal rate of 500 gallons per minute, and shall not exceed a maximum *annual* withdrawal volume of 131.4 million gallons. Authorization of this withdrawal shall be limited to 10 percent of the stream flow as outlined in Part I.D. of this permit.
3. The withdrawal of surface water from the Roaring Fork shall be through a suction line, placed in a 1mm screened intake structure, one cubic-foot in size, placed in Roaring Fork as needed. Excavation or placement of fill material within the stream channel is prohibited.
4. No discharge of backwash water into state waters, as a result of this water withdrawal, is authorized by this permit.

B. Permit Term

This permit is valid for **15 years** from the date of issuance. An extension of this permit term or a new permit may be necessary for the continuance of the authorized activities, including water withdrawals, or any permit requirement that has not been completed, including compensation provisions. The permit term, including any granted extensions, shall not exceed 15 years.

The permittee shall notify DEQ in writing at least **120 calendar days** prior to the expiration of this permit if an extension of the permit term is required.

C. Standard Project Conditions

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in § 62.1-10(b) of the Code, "beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic

values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.

2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water.
3. Flows downstream of the project area shall be maintained to protect all uses.
4. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
5. All required notifications and submittals shall be submitted to the DEQ office stated below, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit:

Virginia Department of Environmental Quality
Southwest Regional Office
P.O. Box 1688
355 Deadmore Street
Abingdon, VA 24212

6. All reports required by this permit and other information requested by DEQ shall be signed by the permittee or a person acting in the permittee's behalf, with the authority to bind the permittee. A person is a duly authorized representative only if *both* criteria below are met. If a representative authorization is no longer valid because of a change in responsibility for the overall operation of the facility, a new authorization shall be immediately submitted to DEQ.
 - a. The authorization is made in writing by the permittee.
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
7. All submittals shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that

qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

8. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at (276)676-4800. If DEQ cannot be reached, the spill shall be reported to the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.
9. DEQ shall be notified in writing within **24 hours or as soon as possible on the next business day** when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
10. The permittee shall notify the DEQ of any additional impacts to surface waters, including wetlands; of any modifications of the intake structure; and of any change to the type of surface water impacts associated with this project. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit. Compensation may be required.

D. Surface Water Withdrawal

1. Water withdrawal rates and volumes shall comply with the limits set forth in Part I.A. In addition, the withdrawal shall be limited to no more than 10 percent of the estimated instantaneous flow of Roaring Fork at the intake in order to preserve downstream uses.
2. The permittee shall monitor withdrawals from the Roaring Fork on a daily basis to confirm that the withdrawals are in compliance with special conditions of this permit. To comply with Part 1.D.1, the permittee shall monitor daily stream flow rates at the USGS gage 03529500, Powell River, at Big Stone Gap. The estimated flow in Roaring Fork at the intake location shall be the flow at the Powell River gage multiplied by 7 percent to account for the difference in drainage area. The permittee shall maintain daily records of pumping rate, total volume pumped, stream gage flow rate, and estimated stream flow rate at the intake.
3. To prevent the impingement and entrainment of fish eggs, larvae, and other aquatic life, the intake screens shall be so designed that screen openings are not larger than

1 millimeter in width and the screen face intake velocities are not greater than 0.25 feet per second.

4. Water withdrawal monitoring and reporting activities shall comply with this section, Part I.C, and Part II. All records and information that result from the monitoring and reporting activities required by this permit, including any records of maintenance activities to the withdrawal system, shall be retained for the life of the permit. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or as requested by the State Water Control Board.
5. A brief report shall be prepared summarizing the dates on which the flow-by rate did not meet the minimum 10 percent as required by this permit. Each monitoring report shall be submitted to DEQ by the 10th of the month following data collection (e.g., should May experience days of below minimum flow-by, the monitoring report shall be due June 10th of the applicable year).
6. The permittee shall report all authorized surface water withdrawals to the DEQ Office of Surface and Groundwater Supply Planning at P.O. Box 1105, Richmond, Virginia, 23218 by **January 31st** of the year following the year in which the withdrawals occurred. Reporting **surface water withdrawals** in accordance with the conditions of this permit satisfies the reporting requirement for *Water Withdrawal Reporting Regulation 9VAC25-200-10 et seq.* The annual monitoring report shall contain the following information:
 - the permittee's name and address;
 - the permit number;
 - the source (s) from which water is withdrawn;
 - the location (latitude and longitude) of each point of water withdrawal;
 - the cumulative volume (million gallons) of water withdrawn each month of the calendar year;
 - the largest single day withdrawal volume (million gallons) that occurred in the year and the month in which it occurred; and
 - the method of measuring each withdrawal.

Part II – General Conditions

A. Duty to Comply

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to Cease or Confine Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

D. VWP Permit Action

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Reissuance, and Termination of VWP permits).

E. Inspection and Entry

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; and
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and Records Requirements

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;

- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

H. Transferability

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and reissuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

I. Property rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

J. Reopener

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially

changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

K. Compliance with State and Federal Law

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

L. Severability

The provisions of this VWP permit are severable.

M. Permit Modification

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "reopener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

N. Permit Termination

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

O. Civil and Criminal Liability

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and Hazardous Substance Liability

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Unauthorized Discharge of Pollutants

Except in compliance with this VWP permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses;
4. On or after October 1, 2001 conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding;
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

R. Permit Extension

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.