



washington dc update

Corps of Engineers/USEPA “Enhanced Coordination Process” Challenged on the Hill

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Look for a NEW FEATURE to the Update – the “why it is important” statement. Listening to WESTCAS members, we know you are busy; having a concise statement of relevance for each Update will be a useful tool.

Carnies in coal mines and water in West—so what’s the connection?

Water managers in the West should be aware of the impacts of the recent and increasing use of the “Enhanced Coordination Process.”

Take away: WESTCAS opportunity to support new legislation to limit EPA to 60 days on 404 permit review.

Coal mining permits would seem to be far removed from most of the concerns of the arid west. But a growing battle between the EPA and Eastern coal producing states could have a major impact on the 404 permitting process.

In broad terms this issue has been characterized by a dramatic slow-down in the Corps’ issuing 404 permits, largely because of its “Enhanced Coordination Process” with USEPA. This issue has come to a boil recently when EPA rescinded a years-long 404 permit what had been issued to a mining operation in West Virginia.

Many observers believe that what is happening to mines in the east with regard to 404 permitting can and will be transferred to water resources permitting as well.

Over the past week, Senators McConnell, Paul, and Inhofe, joined on Tuesday by House Appropriations Chair Hal Rogers and Representative Caputo of West Virginia have introduced legislation that would limit EPA to 60 days to act on a 404 permit once it receives a referral from the Army Corps of Engineers. The Senate bill is S. 468. We will report on the House bill number when one is assigned.

Here are two key provisions in the Senate bill. The first addresses the ability of EPA to endlessly delay approval of a 404 permit application referred by the Corps:

“The authority of the Administrator to disapprove or prohibit issuance of a specification under this subsection terminates as of the date that is 60 days after the date on which the Administrator [of EPA] receives the proposed specification from the Secretary [of the Army] for review.”

And also this bill language: **“If the Administrator fails to take any action or meet any deadline described with respect to a proposed specification, the Administrator shall have no further authority under this subsection to disapprove or prohibit issuance of the specification.”**

Yesterday, during Corps testimony before the House Energy and Water Appropriations Subcommittee concerning their FY12 proposed budget, full Appropriations Chair Hal Rogers [R:KY], in reference to the “Enhanced Coordination Process”, asked: “Since 2009 in my Congressional district the Corps has issued two Individual [404] Permits. Two years. Two projects. What is so “enhanced” about this process?”

Chairman Rogers then continued, “Under the law, the Corps is the lead agency for issuing 404 permits. You all have been in this process for decades. Why now have you capitulated to the politically driven regulatory agenda of an out of control EPA?”

CONCLUSION

It’s a long way from the coal mines of West Virginia and Kentucky to the arid west. But the issue of 404 permits could literally be the proverbial “canary in the coal mine” for a wide spectrum of agencies, including water WESTCAS members.

We will be watching this legislation as it moves forward.

