



ARGUS ENERGY WV, LLC.

June 14, 2012

Mr. Steve Young
Division of Water and Waste Management
West Virginia Department of
Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304

RE: Comments on 2012 Draft 303(d) List
Honey Branch of East Fork of Twelvepole Creek of Twelvepole Creek
(WVO-2-Q-29)
CNA – Biological, Mouth to RM 0.2 (below impoundment)

Dear Mr. Young,

Argus Energy WV, LLC, and its predecessor, Pen Coal Corporation, have substantial coal mining operations in the East Fork of Twelvepole and Kiah Creek watersheds. These operations have been on-going since 1987, with extensive water quality and benthic monitoring beginning in 1995. Since that time, as Argus mining operations have expanded, so has the scope of our continuing monitoring program. Our water benthic monitoring program was established by Ken Politan of the WVDEP as a part of our NPDES monitoring activities because of the concerns expressed by the managers of USACOE East Lynn Lake Project immediately downstream of our facilities.

During our earlier monitoring activities, Argus used typical biological metrics such as number taxa, EPT taxa, etc., as a tool to determine the biological health of the stream. After the development and release of "A Stream Condition Index for West Virginia Wadeable Streams" (WVSCI) in 2000, West Virginia reclamation agencies appeared to adopt this new multi-metric index for use as a water quality standard to determine compliance with state water quality narrative criteria.

It is stated by the WVDEP in the 2012 Draft 303(d) List, pg. 11 paragraph 2, "Assessment decisions are made using the most accurate and recent data available to the agency". In April 2011, Argus Energy WV, LLC contracted REI Consultants, Inc (REIC) to sample Honey Branch at a site located approximately 100 meters upstream from its confluence with the East Fork of Twelvepole Creek (near the WVDEP May 2000 sampling site, Spring 2011 benthic report included). This sampling event yielded a WVSCI score of 69.89, clearly unimpaired.

The WVDEP sampled concurrently with REIC in the Spring of 2009 within the East Fork of Twelvepole Creek watershed in order to determine comparability of methods and results. It was determined that data obtained by REIC was largely consistent with that of the WVDEP, and therefore the more recent Spring 2011 WVSCI score should be considered to reflect the current status of the benthic community in Honey Branch (refer to the included letter dated March 25,

2010). Argus Energy WV, LLC maintains that additional sampling prior to determination of impairment is necessary for an accurate portrayal of stream condition.

Argus Energy WV, LLC feels that the Honey Branch listing is an inappropriate and inadequate use of the WVSCI procedures. Argus Energy WV, LLC wishes to ensure that the Division of Water and Waste Management is not inflating the 303(d) List in order to present an inaccurate perception in regard to the quality of West Virginia's streams and rivers or to generate additional money for future TMDL projects. Argus Energy WV, LLC is requesting the immediate removal of Honey Branch of the East Fork of Twelvepole Creek (mouth to RM 0.2—below impoundment) from the Draft 2012 303(d) List.

Because practically the entire length of Honey Branch has been permitted and the ponds were to remain as wildlife enhancement structures, Argus Energy WV, LLC is requesting the immediate removal of the segment of Honey Branch of the East Fork of Twelvepole Creek of Twelvepole Creek (mouth to RM 0.2 miles) from the Draft 2012 303(d) List due to the inappropriate use of the 303(d) listing process.

Sincerely,

A handwritten signature in blue ink that reads "Randall R. Maggard /sc". The signature is written in a cursive style.

Randall R. Maggard
Manager of Environmental Compliance

Cc: Randy Huffman, WVDEP
Tom Clarke, WVDEP
Scott Mandirola, WVDEP
Lewis Halstead, WVDEP
Allyn Turner, Spilman, Thomas & Battle
Jason Bostic, WV Coal Association