



ARGUS ENERGY WV, LLC.

June 25, 2012

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

RE: Comments on 2012 Draft 303(d) List
Maynard Branch of East Fork of Twelvepole Creek of Twelvepole Creek
(WVO-2-Q-23)
CNA – Biological, Mouth to RM 0.2

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.

As you can see in the included figures, the length of the stream segment listed in the States' 303(d) list (0.2 miles) reaches upstream to the embankments of these permitted ponds. The primary concern Argus Energy WV, LLC has with this listing is the use and location of the sampling for WVSCI determination. First, Maynard Branch is the location of Argus Energy WV, LLC's Maynard Branch slurry impoundment, with a 250-foot high embankment and a 30 acre lake impounded behind it. There are also a series of ponds below the structure to ensure compliance with our NPDES permit requirements. Downstream of the permitted ponds, a large amount of beaver activity occurs, thereby creating additional 'natural' impoundments (refer to pictures included with this letter). The actual length of stream remaining below the permitted area is a little more than 0.1 miles, and this reach is heavily impacted by beaver activity. Argus Energy WV, LLC feels that the sampling of this extremely small segment is inappropriate and inaccurate.

Because WVSCI was not intended for use below impounding structures, Argus Energy WV, LLC feels that the Maynard Branch listing is misinterpreting the WVSCI procedure. Please refer to "Comments to Proposed 303(d) List Prepared by REI Consultants, Inc. dated May 22, 2008". This report demonstrated the many variabilities and problems with using the WVSCI as the only tool for the 303(d) listing, and was included in Argus Energy WV, LLC's comments to the 2008 Draft 303(d) List. 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. Because 0.2 miles of Maynard Branch has been listed as impaired in accordance with a single sampling event below impoundment structures both natural and man-made, Argus Energy WV, LLC is requesting the immediate removal of Maynard Branch of the East Fork of Twelvepole Creek (mouth to RM 0.2) from the Draft 2012 303(d) List. This single benthic sampling event conducted by the WVDEP within Maynard Branch should not be the sole data relied upon for listing a stream impaired and subsequent placement on the States' 303(d) list when sampling has occurred in an inappropriate location.

Sincerely,

A handwritten signature in blue ink that reads "Randall R. Maggard / se". The signature is written in a cursive, flowing 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

Maynard Branch RM 0.2



End of Impairment



CNA - Biological



WVDEP Sample Site



Argus Energy WV, LLC
Sample Site



Concurrent Sampling Site
April 2009



ARGUS ENERGY WV, LLC

P.O. Box 200 Dunlow, WV. 25511

KIAH CREEK OPERATIONS
LOCATION MAP
MAYNARD BRANCH

SCALE 1" = 500'

303(d) Draft List Comments
2010

Maynard Branch
RM 0.2



End of Impairment



CNA - Biological



WVDEP Sample Site



Argus Energy WV, LLC
Sample Site



Concurrent Sampling Site
April 2009



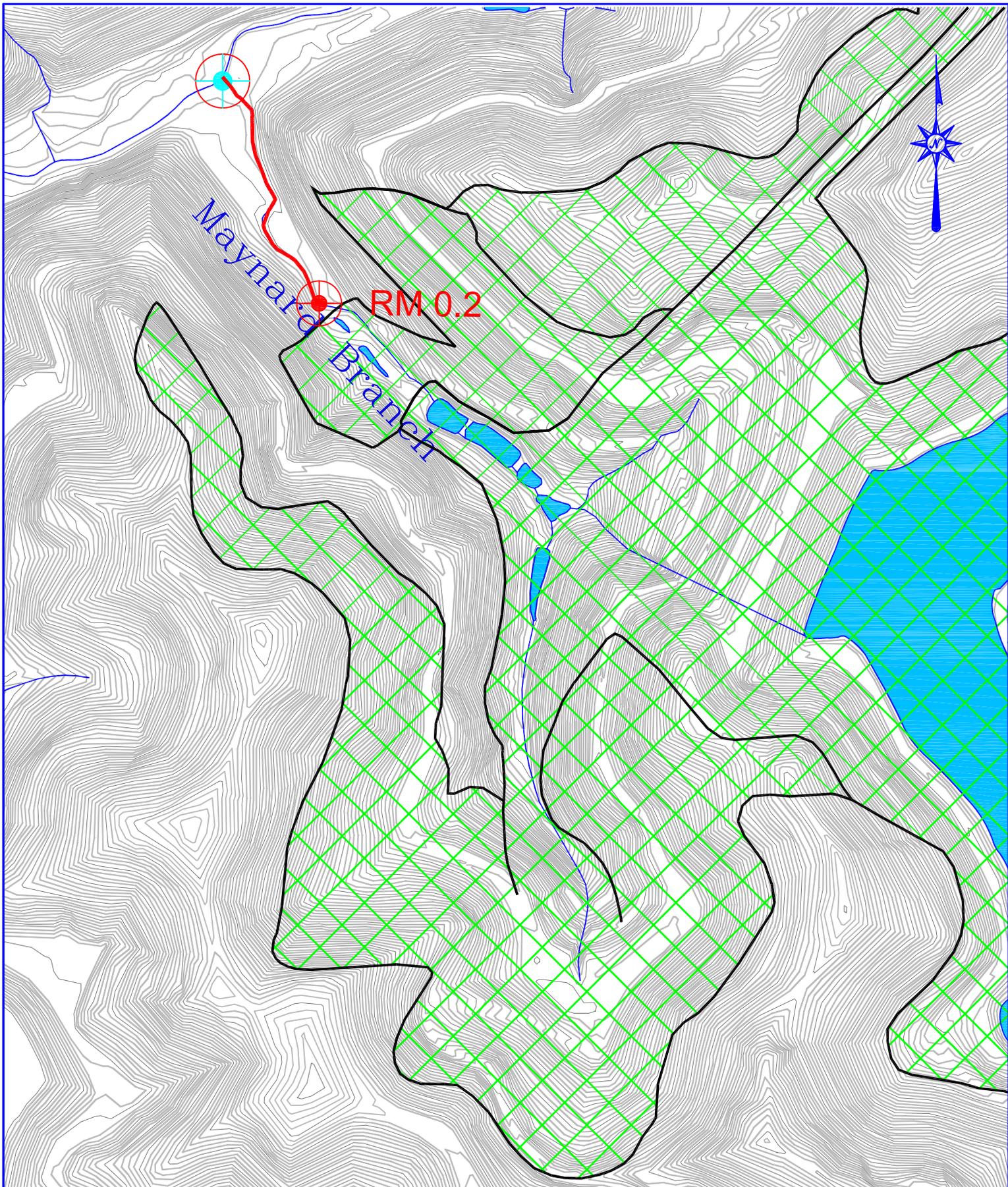
ARGUS ENERGY WV, LLC

9104 Twelvepole Creek Road Dunlow, WV. 25511

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LOCATION MAP
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303(d) Draft List Comments
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