

**SIERRA CLUB**  
**West Virginia Chapter**  
P. O. Box 4142  
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Dec. 23, 2009

Randy Moore  
Permit Supervisor  
WV-DEP, Division of Mining and Reclamation  
105 South Railroad Street, Suite 301  
Philippi, WV 26416

RE: Coresco, LLC - Permit No. 0200709

Dear Mr. Moore:

I received your Nov. 9 response to our comments on the above-referenced permit application in which you indicated that the applicant would make a valid effort to resolve all comments before a decision was made to approve or deny the application.

I received a letter earlier this month from John Angiulli of Coresco in which he acknowledged receiving the comments, but responded without resolving any of the issues raised. We therefore have no option but to again ask that the permit be denied, or, at a minimum, very substantial modifications be adopted to adequately protect the environment. I will reiterate and expand on several issues we raised in our earlier comments.

1 & 3. We believe that a "beneficial use" designation is inappropriate and that the facility should be regulated as a solid waste landfill. Coresco responded that CCBs do not constitute solid waste and that they may be used to neutralize coal refuse if applied in certain ratios determined to be adequate. We believe, at a minimum, that simply applying them at a prescribed ratio is insufficient, and such materials must be adequately mixed to assure adequate neutralization occurs. Placing a truckload of CCB next to a truckload of coal refuse is likely to be inadequate to assure neutralization. More importantly, recent EPA studies have documented that fly ash fills create substantial risks to ground water and cancer risks as high as 1 in 50 have been documented from ash disposal sites. Contrary to the arguments of Coresco, the earlier approval of the O101593 permit does not automatically justify approval of this new permit.

Solid Waste rules (33-CSR-1) at section 5.5.b specify requirements for CCB disposal facilities, and section 5.5.b.4 identifies exemptions for beneficial uses. None of the enumerated uses at the Coresco facility appear to apply, with the possible exception of 5.5.b.4.D, which exempts "Coal combustion by-products used under the authority of W. Va. Code §§22-2-1 et seq. and 22-3-1 et seq.;" . Since 22-2-1 applies to Abandoned Mine Lands, and this site is obviously not abandoned, it does not apply. WV State Code 22-3-1 applies to Surface Coal Mining and Reclamation, however, it does not specifically authorize an exemption under beneficial use solely for the purpose of disposing of CCBs, and refers primarily to "mineland reclamation". Thus, there does not appear to be any authorization for exempting the Coresco facility from 33-CSR-1.

*Not Blind Opposition To Progress, But Opposition To Blind Progress*

Furthermore, in a filing on Nov. 12, 2009 (after the public comment period for this permit had expired) with the WV Public Service Commission, Longview LLC seeks approval of the use of tax-exempt Industrial Development Revenue Bonds from the WV Economic Development Authority for various pollution control facilities (available at: <http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=283411&NotType=WebDocket>). Attachments to this document clearly describe solid waste recycling and disposal facilities including "solid waste landfills" (Exhibit, Description of the Project, paragraph 4). This description was the basis for the issuance of such bonds by the WV-EDA in 2007. Insofar as the State of West Virginia recognizes this facility as a landfill, at least for the purposes of issuing tax exempt bonds, WV-DEP should adhere to that description, and the provisions of 33-CSR-1 5.5.b should apply.

In addition, US-EPA is in the process of developing new rules for CCB disposal facilities. Given the size and likely duration of the Coresco operation, waiving the 33-CSR-1-5.5b requirements is likely to be contradicted by the forthcoming rules. It makes little sense to issue a permit knowing that the regulatory requirements are almost certain to be inadequate when viewed in the light of forthcoming rules.

Finally, the Coresco location will allow surface runoff to be discharged into Crafts and Crooked Run. Crafts Run and Robinson Run are already on the WV 303(d) List of Impaired Streams due to iron, manganese and pH. This watershed is immediately adjacent to the Dunkard Creek watershed which has recently suffered from excessive levels of chlorides, sulfates, conductivity and total dissolved solids (TDS). It seems virtually certain that, without adequate surface water and leachate collection systems (and proper treatment of those collected materials before discharge), this facility will discharge high amounts of TDS into receiving waters. While West Virginia currently does not have a water quality standard for TDS, such a standard appears increasingly likely in the near future. Issuance of this permit would likely create a situation where TDS discharges are exacerbated, and none of the requirements in the permit would prevent releases of TDS into the receiving streams. As we discussed in our comment # 3, two of the samples from the receiving streams already exceed EPA's Safe Drinking Water TDS standard of 500 ppm. A standard adequate to protect aquatic life has not yet been determined, but it is almost certain to be substantially lower than 500 ppm. No permit should be issued that does not provide limits on TDS adequate to protect aquatic life in Crooked and Crafts Runs.

Coresco's response to the issue is that they have met the minimum requirements for water sampling requested by WV-DEP. By their omission of any discussion regarding TDS or other water pollutant discharges, they implicitly acknowledge that they have no plans to monitor for these pollutants.

4. We recommended that the post mining land use be retained as forestland, and that pasture land be approved only if the applicant can document that grazing will actually occur. We further recommended that the requirement for 4 feet of topsoil be retained. Coresco's only response was that the post mining land use and revegetation plan meets requirements in state rules. They did not indicate whether this means they are no longer seeking the variance or the alteration in post-mining land use. Unless they indicate otherwise, it is unclear whether they still object to our recommendations.

5. We recommended a more detailed analysis of both water quality and quantity impacts. Coresco responded that they had already met the minimum requirements. They also indicate that a "Surface water Runoff Analysis" was completed after the initial permit submittal, suggesting that they acknowledge the original application was incomplete. We request that no permit be issued until a complete and accurate application is available for public comment. The applicant has a responsibility to provide complete and accurate information. Recent court cases have ruled that submittal of information after the public comment period does not provide an adequate basis for informed public comment, and permits should not be issued without complete information available for public comment.

6. We recommended that more complete test borings and data be required to verify the applicant's claim that subsidence in underground mines has already occurred. Coresco responded that an engineer has certified that the proposed refuse pile meets stability requirements. At a minimum, this appears to indicate either that Coresco has no intention of

responding to this issue, or that they have additional data and are unwilling to release those to the public. It appears that this, at best, is another example of Coresco seeking a permit with an incomplete application, and declining to release complete information to the public.

7. We recommended that the Ground Water Monitoring Plan should require no less than one up-gradient well and three down-gradient well in each defined aquifer, because the reported subsidence indicates a highly fractured site with potential connections through confining layers. Coresco responded with vague assurances that existing wells and seeps would be monitored, but did not indicate which aquifers were being monitored or whether the recommended monitoring wells in each aquifer would be installed. We conclude from their statement that they implicitly acknowledge that their current ground water monitoring plan does not meet the requirement of no less than one up-gradient and three down-gradient monitoring wells in each defined aquifer. We again recommend a more comprehensive monitoring plan than was proposed in the original application.

8. We objected to the on-going underground injection of coal slurry. Coresco indicates that they will submit a permit modification to reflect that no underground injection will be proposed as part of THIS permit, however, they do not indicate whether they agree that existing injection should stop, or that they will comply with the recommended ground water monitoring needed to detect any possible migration of contaminants from the UIC site. We again recommend that the current UIC permit be terminated as a condition of this permit.

In summary, our concerns about this proposed permit have grown, and Coresco's response, if anything, has exacerbated those concerns and raised new issues. We recommend that the permit be denied, or that substantial revisions, with another opportunity for public review and comment be considered.

Sincerely,

James Kotcon, Chair  
Energy Committee

Cc: John Angiulli, Coresco