



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

December 13, 2021

**MEMORANDUM**

**SUBJECT:** Response to Planned Corrective Actions for Office of Inspector General  
Report No. [21-P-0122](#), *Improved Review Processes Could Advance EPA Regions 3 and 5 Oversight of State-Issued National Pollutant Discharge Elimination System Permits*,  
issued April 21, 2021

**FROM:** Sean W. O'Donnell

A handwritten signature in blue ink that reads "Sean W O'Donnell".

**TO:** Adam Ortiz, Regional Administrator  
EPA Region 3

Thank you for Region 3's October 25, 2021 briefing, which outlined the U.S. Environmental Protection Agency's planned corrective actions and estimated milestone dates for the unresolved Recommendations 1 and 2 issued in the subject Office of Inspector General report. Recommendations 3, 4, and 5 were previously resolved.

During the briefing, Region 3 for the first time acknowledged that the 286 modified National Pollutant Discharge Elimination System mining permits issued by the West Virginia Department of Environmental Protection, or WVDEP, do not in fact contain effluent limits for ionic pollution, new reasonable potential analyses, or backsliding analyses. We therefore remain concerned that these 286 permits—and potentially other mining NPDES permits issued since our report was published—are not adequately protective of human health and the environment. To address these concerns, Region 3 has committed to acting on Recommendation 1 by working with WVDEP to correct permit and program deficiencies through the Permit Quality Review process. For Recommendation 2, Region 3 plans to:

- Review WVDEP's *Permitting Guidance for Surface Coal Mining Operations to Protect West Virginia's Narrative Water Quality Standards*, dated 2012, to ensure guidance that makes clear that mining discharges do not cause or contribute to excursions from the narrative water quality criterion.
- Analyze water quality data to determine whether permits issued pursuant to WVDEP's 2012 Permitting Guidance effectively implement West Virginia's narrative water quality standards.

Based on the information and supporting documentation provided, we agree that the planned corrective actions meet the intent of our recommendations. All recommendations for the subject report are now considered resolved. You should track implementation of EPA corrective actions in the Agency's audit tracking system until all actions are completed.

We will post this memorandum on our public website at [www.epa.gov/oig](http://www.epa.gov/oig).

cc: Diana Esher, Deputy Administrator for Region 3  
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