

# February 2000 Monthly Report

## West Virginia Permitting Activities

March 14, 2000

### I. INTRODUCTION

#### **Purpose of This Report**

The purpose of this report is to update the West Virginia Congressional Delegation and the public on the status of pending West Virginia surface coal mining permit applications containing plans to construct valley fills. The report covers the activities of the Fish and Wildlife Service (FWS), the Office of Surface Mining (OSM), the U.S. Army Corps of Engineers (COE), the U.S. Environmental Protection Agency (EPA), and the West Virginia Division of Environmental Protection (WVDEP) during the period from February 1, 2000, through February 29, 2000. It relates to both the surface mining program under the authority of the Surface Mining Control and Reclamation Act (SMCRA) and water quality programs authorized by the Clean Water Act (CWA). The background for the activities covered by the report and the individual agency responsibilities are discussed in Appendix II.

### II. PERMIT REVIEW STATUS SUMMARY

Since the last report listing fifty-nine SMCRA applications for proposed operations and seven revision/amendment applications for previously permitted operations, no applications have received all of the necessary approvals to begin operations.

Seven applications were submitted for new operations and two applications were submitted for revisions to existing operations in February. This brings the number of pending applications for proposed new operations to sixty-six and the number of revision/amendment applications to nine. These seventy-five applications need at least one of the four approvals necessary to begin operations.

Revisions were made to the February estimated decision dates for six SMCRA applications and for two revision/amendment applications. The following is a list of the applications and an explanation of why the estimated decision date was revised:

- Cumberland River Coal O-5007-97 The mining operation is being redesigned. The estimated decision date is now December.
- Elk Run Coal Company S-5028-98 The application is ready to be sent to WVDEP headquarters. The estimated decision date is now April.
- Evergreen Mining Company O-2011-98 Corrections submitted by the applicant are being reviewed by OSM and the WVDEP. The estimated decision date is now June.

- Fola Coal Company S-2013-98 Outstanding company corrections exist. The estimated decision date is now June.
- Spartan Mining U-5039-98 The stream buffer zone waiver review is being completed. The estimated decision date is now March.
- Vandalia Resources, Inc. S-2012-98 A stream buffer zone waiver review and the CHIA are being completed. The estimated decision date is now March.
- Marrowbone Development Company U-5005-97, IBR 5 The application is being reviewed by the WVDEP regional office. The estimated decision date is early March.
- CC Coal Company S-3007-96, IBR 1 Outstanding company corrections and a benthic survey are needed from the applicant and a stream buffer zone waiver review needs to be completed. The estimated decision date is now July.

### **III. SIGNIFICANT MONTHLY ACTIVITIES AND EVENTS**

On January 29, 2000, WVDEP presented a new AOC process to the plaintiffs in Bragg v. Robertson that includes consideration of reducing the amount of fill in waters of the United States. Under the terms of the Consent Decree accepted and entered by Judge Hayden on February 17, the effected federal agencies must agree to the process prior to its implementation. Each agency is now reviewing the revised process in preparation for providing their concurrence to WVDEP.

On February 17, 2000, WVDEP and OSM staff began drafting guidance documents to be used by WVDEP permitting staff in the review of SMCRA applications and by industry staff for the preparation of applications. The guidance is being developed to provide more consistency in the preparation and review of permit applications. A total of 18 topics have been selected for development of guidance documents over the next two years. Six of these topics will be developed during the current year. As each document is finalized, training will be provided to WVDEP staff and industry staff responsible for preparing applications. Implementation of the guidance documents will be followed by oversight by OSM to ensure that the intent of each document is being met.

Since beginning the coordinated interagency review process last year, discussions have taken place about potential impacts in certain watersheds from the cumulative effects of multiple fills. As a result of these discussions and the review of a specific CWA Section 404 Nationwide Permit application, EPA determined that the Twentymile Creek watershed in Nicholas County is such a watershed. As a result, EPA advised the COE that a cumulative impact assessment should be completed for the watershed before authorization of additional valley fills beyond the Alex Energy Robinson North project approved on February 28, 2000. The assessment process,

which will focus on impacts to aquatic resources resulting from valley fills, is now being organized and should be completed in about 60 days.

#### **IV. APPENDICES**

Appendix I - *West Virginia Permitting Status*

Appendix II - *Background and Agency Responsibilities and Coordination*

**Appendix I**  
**West Virginia Permitting Status**

**ISSUED PERMITS WITH VALLEY FILLS - REMOVED FROM PENDING LIST - FEBRUARY 2000**  
**(SMCRA, 401, 402 AND 404 APPROVAL)**

Amd = Amendment  
 IBR = Incidental Boundary Revision  
 IP = Individual 404  
 GP = General Nationwide 404

COMPANY NAME	SMCRA PERMIT	ISSUE DATE	NO. of FILLS	LARGEST VF W/S ACRES	401 CERT. DATE	402 ISSUE DATE	404 PERMIT TYPE & ISSUE DATE	COUNTY

**No application received all of the approvals necessary to begin operations during the month of February 2000.**

## PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

I = Issued Permit

PH = Pending Final Decision - DEP Headquarter IP = Individual 404

PC = Pending Company Action

PR = Pending DEP review

GP = Gen. Nationwide 404

404 Application not received if blank

COMPANY NAME	SMCRA PERMIT	* ESTIMATED DECISION DATE	NO. of FILLS	LARGEST VF W/S ACRES	* 402 ESTIMATED DECISION DATE	404 STATUS	COUNTY
Hobet Mining Inc	S501397	Issued I	5	1100.00	Issued I	IP Pending	Logan
Mid-Vol Leasing Inc.	S400198	Issued I	3	178.00	Issued I		McDowell
Uphold Trucking	S100595	Issued I	1	92.00	Issued I		Preston
Appalachian Mining	S300296	Issued I	5	350.00	Issued I	IP Pending	Fayette
Alex Energy Inc.	S300598	Issued I	9	246.00	Issued I	GP Issued	Nicholas
Buffalo Mining	S503295	Issued I	3	279.00	Apr-00 PC		Boone/Logan
Mountain View	S300195	Issued I	3	380.00	Jul-00 PC		Kanawha
Spartan Mining Co	U503998	Mar-00 PR	2	40.00	Issued I		Logan
Vandalia Resources	S201298	Mar-00 PC	4	192.00	Mar-00 PC	IP Pending	Clay
CC Coal Co	O500299	Mar-00 PC	1	35.00	Mar-00 PC		Mingo
Fork Creek Mining	U503798	Mar-00 PR	4	536.00	Mar-00 PR		Lincoln
Mingo Logan Coal Co	S502297	Mar-00 PC	5	839.00	Mar-00 PC		Logan
Tom L. Scholl	S300499	Mar-00 PR	4	152.00	Mar-00 PR		Kanawha
Elk Run Coal Co	S502898	Apr-00 PC	5	854.00	Issued I	IP Pending	Boone
Alex Energy Inc.	S300199	Apr-00 PR	3	183.00	Apr-00 PR		Nicholas
Baystar Coal Co	S400698	Apr-00 PR	1	37.00	Issued I		McDowell
Bluestone Coal Corp.	U400999	Apr-00 PR	1	149.00	Apr-00 PR		Wyoming
Bluestone Coal Corp.	U401799	Apr-00 PC	1	246.00	Apr-00 PC		McDowell
CC Coal Co	S500999	Apr-00 PR	13	104.00	Apr-00 PC		Mingo
Mid-Vol Leasing Inc.	U400499	Apr-00 PH	1	40.00	Apr-00 PH	NA	McDowell
Stollings Trucking	S501499	Apr-00 PC	1	184.00	Apr-00 PC		Logan
Consol of Kentucky	S501597	May-00 PC	6	571.00	May-00 PC		Mingo
Independence Coal	S502597	May-00 PC	6	223.00	Jan-01 PC		Boone
Marfork Coal Co	U300299	May-00 PC	1	254.00	May-00 PC		Raleigh
Pen Coal	S501299	May-00 PC	5	68.00	Apr-00 PC		Wayne/Linc.
Evergreen Mining Co	O201198	Jun-00 PC	1	342.00	Jun-00 PC		Webster
Fola Coal Co LLC	S201398	Jun-00 PC	4	237.00	Jun-00 PC		Clay/Nicholas
Bluestone Coal Corp.	S400199	Jun-00 PC	2	1000.00	Jun-00 PC	IP Pending	McDowell
Bluestone Coal Corp.	S400899	Jun-00 PR	3	235.00	Jun-00 PR		Wyoming
Bluestone Coal Corp.	S400399	Jun-00 PR	10	158.00	Jun-00 PC		Wyoming
Huff Creek Energy	U400299	Jun-00 PR	1	110.00	Jun-00 PR		Wyoming
Independence Coal	S502798	Jun-00 PC	1	383.00	May-00 PC	IP Pending	Boone
JMAC Leasing Inc	S401499	Jun-00 PR	2	191.00	Jun-00 PR		Wyoming
Pen Coal	S501899	Jul-00 PC	3	91.00	Jul-00 PC		Lincoln
Road Fork Dev.	S501798	Jul-00 PR	5	157.00	Jul-00 PC		Logan
Vandalia Resources	S200599	Jul-00 PC	5	411.00	Jul-00 PC		Nicholas
Coastal Coal WV LLC	U200200	Aug-00 PC	2	22.00	Aug-00 PC		Webster
Marfork Coal Co	U301399	Aug-00 PC	1	284.00	Aug-00 PC		Raleigh
Pine Ridge	U500200	Sep-00 PC	1	250.00	Sep-00 PC		Boone
Fola Coal Co LLC	S201199	Oct-00 PC	5	176.00	Oct-00 PC		Nicholas
Hobet Mining	S502799	Oct-00 PC	6	141.00	Oct-00 PC		Boone

## PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

I = Issued Permit

PH = Pending Final Decision - DEP Headquarter; IP = Individual 404

PC = Pending Company Action

PR = Pending DEP review

GP = Gen. Nationwide 404

404 Application not received if blank

COMPANY NAME	SMCRA PERMIT	* ESTIMATED DECISION DATE	NO. of FILLS	LARGEST VF W/S ACRES	* 402 ESTIMATED DECISION DATE	404 STATUS	COUNTY
Marrowbone Dev.	U502999	Oct-00 PC	2	150.00	Oct-00 PC	GP Issued	Mingo
Mid-Vol Leasing Inc.	S401999	Oct-00 PC	5	220.00	Oct-00 PC		McDowell
Mingo Logan Coal Co	S502399	Oct-00 PC	4	154.00	Oct-00 PC		Mingo/Logan
Premium Energy	S500300	Oct-00 PC	3	125.00	Oct-00 PC		Mingo
Premium Energy Inc	S502099	Oct-00 PC	11	244.00	Oct-00 PC		Mingo
Riverside Energy Inc	U401697	Oct-00 PC	1	100.00	Issued I		Wyoming
Independence Coal	S301299	Nov-00 PR	2	497.00	Nov-00 PR		Raleigh
Kingston Resources	S301599	Nov-00 PC	4	183.00	Nov-00 PC		Raleigh
Cumberland River Coal	O500797	Dec-00 PH	3	317.00	Issued I		Mingo
Black Wolf Mining	S400200	Jan-01 PR	3	40.00	Jan-01 PR		McDowell
Bear Cub Coal Co Inc	S400998	Jan-01 PR	2	61.00	Jan-01 PR		Mercer
Guyandotte Pocahontas	U402199	Jan-01 PR	1	1127.00	Jan-01 PR		Raleigh
Mingo Logan Coal Co	S501598	Jan-01 PC	5	142.00	Jan-01 PH		Logan
Mingo Logan Coal Co	S501998	Jan-01 PR	6	174.00	Jan-01 PH		Logan
Independence Coal	S301999	Feb-01 PR	1	249.00	Feb-01 PR		Raleigh
Terry Eagle	S300400	Feb-01 PR	4	245.00	Feb-01 PR		Fayette
Terry Eagle	O300500	Feb-01 PR	1	343.00	Feb-01 PR		Fayette
Patriot Mining Co Inc	S100200	Feb-01 PR	2	249.00	Feb-01 PR		Monongalia
Vandalia Resources	S300100	Feb-01 PR	1	593.00	Feb-01 PR		Kanawha
CC Coal Co	S302299	Feb-01 PR	2	218.00	Feb-01 PR		Fayette
Kanawha Energy Co	U301899	Feb-01 Pr	3	1542.00	Feb-01 PR		Kanawha
Kanawha Energy Co	O302199	Feb-01 PC	1	2609.00	Feb-01 PC		Kanawha
Catenary Coal Co	S300800	Mar-01 PR	3	338.00	Mar-01 PR		Boone
Fola Coal Co LLC	S200499	May-01 PR	3	1863.00	May-01 PR		Clay
CC Coal Co	S501799	Sep-01 PC	19	87.00	Sep-01 PC		Mingo

## PENDING REVISIONS TO EXISTING PERMITS WITH VALLEY FILLS - STATEWIDE

COMPANY NAME		SMCRA PERMIT	* ESTIMATED DECISION DATE	NO. of FILLS	LARGEST VF W/S ACRES	* 402 ESTIMATED DECISION DATE	404 STATUS	COUNTY
Marrowbone Dev.	Amd 1	S500692	Issued I	4	76.00	Issued I	GP Pending	Mingo
Marrowbone Dev.	IBR 5	U500597	Mar-00 PR	1	43.00	NA		Mingo
Catenary Coal Co.	Amd 2	S300495	Apr-00 PR	1	207.00	Mar-00 PR		Boone
Aracoma Coal Co	Amd 1	S501390	Apr-00 PC	1	89.00 <sup>1</sup>	Issued I	IP Pending	Logan
Alex Energy	IBR 1	5-80	May-00 PR	1	114.00	NA		Logan
Falcon Land	IBR 8	P-606	May-00 PR	1	70.00	NA		Logan
US Steel Mining	Amd 1	S400397	Jun-00 PR	2	89.00	Jun-00 PR		Wyoming
CC Coal Co	IBR 1	S300796	Jul-00 PR	6	69.00	Jul-00 PR		Kanawha
Wyoming Pocahontas	IBR 8	U401994	Jul-00 PR	1	40.00	Jul-00 PR		Raleigh

<sup>1</sup> The pending SMCRA application is for an amendment to a previously approved but not-started operation. The 404 application is for the entire permit area, including the previously approved areas and the area under the SMCRA amendment.

## ISSUED PERMITS WITH VALLEY FILLS

(SMCRA, 401, 402 AND 404 APPROVAL)

Amd = Amendment

IBR = Incidental Boundary Revision

COMPANY NAME	SMCRA PERMIT	ISSUE DATE OF FINAL PERMIT	COUNTY
Bluestone Coal      IBR 3	U401587	Jan 31, 2000	Wyoming
Marrowbone Dev	S502598	Dec 7, 1999	Mingo
Princess Beverly	S300599	Nov 3, 1999	Kanawha
Mingo Logan Coal      IBR 2	S506692	Nov 2, 1999	Mingo/Logan
Marrowbone Dev.      IBR 4	U500597	Nov 1, 1999	Mingo
Aracoma Coal Co	U500499	Oct 16, 1999	Logan
Aracoma Coal Co	U500699	Oct 12, 1999	Logan
Chicopee Coal Co      IBR 3	S500395	Sep 21, 1999	Logan
Patriot Mining Co	S100698	Sep 10, 1999	Monongalia
Catenary Coal Co.	U300198	Aug 31, 1999	Kanawha
Paynter Branch	S401298	Aug 25, 1999	Wyoming
Catenary Coal Co.      IBR 3	U303693	Aug 23, 1999	Kanawha
DDS Leasing Inc	U400798	Aug 20, 1999	McDowell
Pen Coal	S502698	Jul 23, 1999	Lincoln
Hobet Mining      IBR 1	S003882	Jul 23, 1999	Boone
Mingo Logan Coal Co      Amd 1	U504491	Jun 30, 1999	Mingo/Logan
Eastern Assoc. Coal	U500898	Jun 21, 1999	Boone
Catenary Coal Co.      Amd 1	S300495	Jun 10, 1999	Boone
Bluestone Coal	U401398	Jun 4, 1999	Wyoming
Pen Coal      IBR 5	S502797	Apr 30, 1999	Mingo/Logan
Marrowbone Dev.	S502998	Apr 27, 1999	Mingo
Triple B Leasing Corp.	S300998	Apr 21, 1999	Raleigh
Pen Coal      IBR 1	S503996	Apr 21, 1999	Lincoln/Logan
Vandalia Resources	S200798	Apr 15, 1999	Clay
Evergreen Mining Co      IBR3	S024076	Mar 29, 1999	Webster
MEPCO Inc.	S100896	Mar 29, 1999	Monongalia

## APPENDIX II

### **Background**

There are four environmental permits and/or approvals needed for any coal mining operation proposing to place mining material (excess spoil) in the waters of the United States, i.e., to construct a valley fill. These include a surface coal mining permit issued under authority of the Surface Mining Control and Reclamation Act (SMCRA), and three approvals/permits issued under authority of the Clean Water Act (CWA). The CWA approvals/permits consist of a Section 402 National Pollutant Discharge Elimination System permit, a Section 401 water quality certification, and a Section 404 permit. Five agencies have primary responsibilities related to the review and/or issuance of these approvals/permits; the Fish and Wildlife Service (FWS), the Office of Surface Mining (OSM), the U.S. Army Corps of Engineers (COE), the U.S. Environmental Protection Agency (EPA), and the West Virginia Division of Environmental Protection (WVDEP).

In West Virginia, federal authorization to issue three of the four required approvals/permits has been delegated to WVDEP. The authority to issue the fourth permit, the CWA Section 404 permit, is with COE. Section 404 permits can be either a General Permit for discharges that have only minimal adverse effects or an Individual Permit for projects that have impacts above the minimal level to the waters of the United States.

In the summer of 1998, several West Virginia citizens and the West Virginia Highlands Conservancy filed suit against WVDEP and COE in Federal District Court claiming approval of valley fills and other mining practices were resulting in an inappropriate application of the requirements of CWA and the approved West Virginia program under SMCRA. In December 1998, the parties to the suit, as well as EPA, FWS, and OSM, negotiated a Settlement Agreement for the portions of the litigation dealing with COE activities. The Settlement Agreement committed EPA, COE, OSM, FWS, and WVDEP to two major activities:

1. Prepare an Environmental Impact Statement considering policies, guidance and decision-making processes to minimize certain adverse environmental effects of mountaintop mining operations and to environmental resources that could be affected by the size and location of valley fills, and
2. Develop an interim permitting process, including a Memorandum of Understanding (MOU), providing for interagency coordination to ensure compliance with all applicable federal and State requirements. The interim approach also requires an Individual Permit under Section 404 of CWA for any mountaintop mining operation in West Virginia that has more than minimal adverse effects to the waters of the United States (as specified by the Settlement Agreement, generally those with fills in streams draining watersheds of 250 acres and greater, or those with more than minimal cumulative adverse impacts).

The required MOU was signed by the five agencies on April 7, 1999. This report addresses the MOU and the interim permitting activities discussed under paragraph 2 above. It includes permitting activities for all pending applications proposing to construct valley fills, regardless of whether they qualify for a General Permit or require an Individual Permit under Section 404 of CWA. It includes applications undergoing review by COE or WVDEP at the time the settlement agreement was signed, as well as additional applications received since that time.

### **Agency Coordination and Responsibilities**

Each of the five signatory agencies to the Settlement Agreement have specific duties and responsibilities under applicable laws and regulations. A brief description of these duties follows.

WVDEP is the first agency approached when a mine operator seeks the necessary environmental approvals and permits to conduct a proposed surface coal mining operation. It is responsible for implementation, administration, and enforcement of the SMCRA regulatory program in West Virginia. This includes review and approval of permit applications for surface mining operations as well as inspection and enforcement at the mine site until reclamation responsibilities are completed and all performance bonds are released. WVDEP also has responsibility for the National Pollutant Discharge Elimination System (NPDES) program for coal mining operations in accordance with Section 402 of CWA and the water quality certification required by Section 401 of CWA.

COE is the agency authorized by Section 404 of CWA to issue permits regulating the discharge of dredged or fill material into the waters of the United States, including valley fills. These permits consist of two basic types, Individual Permits which are specific to a particular site and Nationwide permits which are issued under the General Permit process. General Permits may be granted for discharges that have no more than minimal adverse impacts on the waters of the United States. If the discharge may have more than minimal impacts, an Individual Permit under Section 404 of CWA is required. These Individual Permits can be issued only after practicable alternatives which are less damaging to the aquatic environment have been considered and it is determined that the waters of the United States will not be significantly degraded.

EPA is responsible for providing technical assistance to COE for the CWA Section 404 regulatory program and oversight of and technical assistance to WVDEP for the NPDES program.

FWS is responsible for the implementation, administration, and enforcement of the Endangered Species Act. In addition, under the Fish and Wildlife Coordination Act, agencies proposing projects affecting waters of the United States are required to consult with FWS to ensure that fish and wildlife conservation is considered along with other features. Coordination with FWS is required for both SMCRA and CWA actions.

OSM is responsible for oversight of and technical assistance to the SMCRA regulatory program implemented by WVDEP. The oversight provisions of SMCRA do not provide for direct federal review of permit applications nor grant veto authority over the issuance of a specific permit. However, for activities under the MOU, OSM is providing technical assistance to the WVDEP by reviewing pending applications and coordinating with other federal agencies.