

Monthly Report

West Virginia Permitting Activities

May 5, 1999

I. INTRODUCTION

Purpose of This Report

The purpose of this report is to update the West Virginia Congressional Delegation and the public of the status of pending West Virginia surface coal mining permit applications containing plans to construct valley fills. This report covers the period from April 7, 1999, through April 27, 1999. It is the first in a series of routinely prepared reports on the status of activities associated with valley fill mining operations in West Virginia.

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.

II. PERMIT REVIEW STATUS SUMMARY

Four proposed surface mine operations with valley fills have recently received all permits and approvals necessary to begin mining activities. They are MEPCO Inc., permit S-1008-96; Vandalia Resources, Inc., permit S-2007-98; Triple B Leasing Corporation, permit S-3009-98; and, Marrowbone Development Corporation, permit S-5029-98. Each of these proposed operations received a General Permit under Section 404 of the CWA. One additional operation with valley fills, Evergreen Mining Company, S-0240-76, received all necessary approvals/permits for a revision to their existing mining permit. Patriot Mining Company, permit S-1006-98, has received the necessary SMCRA permit and the CWA Sections 401 and 402 approval/permit. Approval of a CWA Section 404 permit is pending final approval.

WVDEP has completed the surface mine application review process for six mine sites which will likely be eligible for a CWA Section 404 Nationwide permit from the COE. These six applications are pending final action in WVDEP headquarters.

There are currently 37 SMCRA mine applications for proposed operations and seven SMCRA revision applications for previously permitted operations needing at least one of the four necessary approvals/permits. As a general matter, any mining operation that proposes to discharge fill material into waters of the United States draining a watershed of 250 acres or more (measured from the toe of the fill) would be considered to have more than minimal adverse environmental effects and be required to obtain an Individual Permit under Section 404 of CWA. Three proposed operations have already applied for Section 404 Individual Permits. They are Vandalia Resources, Inc., S-2012-98; Appalachian Mining, S-3002-96; and Elk Run Coal Company, Inc., S-5028-98.

A complete listing of the 38 surface mine applications and seven revision applications currently

pending with WVDEP can be found in *Section IV. Appendix*, following. The listing also contains the current status of reviews for each of the required approvals/permits and identifies the recently issued permits and approvals.

III. SIGNIFICANT MONTHLY ACTIVITIES

Since signing the MOU on April 7, 1999, the five agencies have formed an interagency team to ensure the timely issuance of technically adequate permits and approvals. On April 22, an interagency meeting was held in Nitro, West Virginia, to organize the unified agency structure needed to meet both the short- and long-term goals of the MOU. At the meeting, each agency identified points-of-contact for the coordinated interagency process. The agencies reached agreement that building on the foundation of the SMCRA permit application is a logical basis for creating an effective permitting process for the necessary CWA permits and approvals.

The desired outcome of the interagency team review and assistance to WVDEP under the MOU will be a WVDEP SMCRA application and decision package that can also be used for CWA Section 402 and 404 permitting decisions, including NEPA requirements. OSM and WVDEP are conducting a joint technical review of pending SMCRA applications that might require a CWA Section 404 Individual Permit. In order to accomplish these reviews, OSM has assigned a manager and eight specialists full time to assist in this technical assistance effort.

In response to the requirements of the MOU, WVDEP is sending all signatory agencies a notification of receipt of new mining applications proposing to place fill material in the waters of the United States. This notification will facilitate early coordination among the agencies consistent with the terms and objectives of the MOU.

COE recently published Public Notices requesting comment on three proposed operations which may require an Individual Permit. Public comments have been received for two of the proposed mining operations stating that an Environmental Impact Statement (EIS) is required. The comment period for the third proposed operation closes on May 13 and no comments have been received.

Analysis of the issues raised in the public comments requesting an EIS is under review by the interagency team. If an EIS is required, actions of the interagency team relating to its preparation will be dictated by the provisions of NEPA.

During the week of April 26, the five agencies participated in a coordinated site visit for the three proposed operations that have applied for Individual Permits under CWA Section 404. The agencies will become familiar with the sites and identify any issues which may not be apparent from the written applications for the CWA permit. Information obtained while reviewing the surface mining permit applications will be shared by all signatory agencies for use in their individual decision making processes.

IV. APPENDIX

See attached table titled, *Pending Surface Mining Applications with Valley Fills - Statewide*

**ISSUED SURFACE MINING APPLICATIONS WITH VALLEY FILLS
REMOVED FROM PENDING LIST**

COMPANY NAME	SMCRA PERMIT	ISSUE DATE	NUMBER OF FILLS	LARGEST VF W/S (ACRES)	401 & 402 ISSUE DATE	404 ISSUE DATE	COUNTY
MEPCO Inc.	S100896	Mar 29, 1999	1	195.00	Mar 29, 1999	GP Issued	Monongalia
Evergreen Mining Co IBR3	S024076	Feb 8, 1999	1	120.00	Mar 23, 1999	GP Issued	Webster
Vandalia Resources	S200798	Mar 15, 1999	2	295.00	Apr 15, 1999	GP Issued	Clay
Triple B Leasing Corp.	S300998	Apr 6, 1999	4	78.00	Apr 21, 1999	GP Issued	Raleigh
Marrowbone Dev.	S502998	Apr 27, 1999	2	152.00	Mar 23, 1999	GP Issued	Mingo

PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

I = Issued Permit

PH = Pending Final Decision - DEP Headquarters

IP = Individual 404

PC = Pending Company Action

PR = Pending DEP review

GP = Gen. Nationwide 404

Corps Application not received if blank

COMPANY NAME	SMCRA PERMIT	* ESTIMATED DECISION DATE	NUMBER OF FILLS	LARGEST VF W/S (ACRES)	* 401 & 402 EST DECISION DATE	404 STATUS	COUNTY
Mountain View	S300195	I	3	380.00	Sep-99 PC		Kanawha
Appalachian Mining	S300296	I	5	350.00	Jul-99 PR	IP Pending	Fayette
Buffalo Mining	S503295	I	3	279.00	Jul-99 PR		Boone/Logan
Patriot Mining Co	S100698	I	1	65.00	I	GP Pending	Monongalia
CC Coal Co	S500999	Nov-99 PC	13	104.00	Nov-99 PR		Mingo
Evergreen Mining Co	O201198	Jun-99 PC	1	342.00	Jun-99 PC		Webster
Alex Energy Inc.	S300598	Jun-99 PC	9	246.00	Jun-99 PC		Nicholas
Cannelton Industries	S301297	Jun-99 PC	5	202.00	Jun-99 PC		Kanawha
Uphold Trucking	S100595	May-99 PH	1	92.00	I		Preston
Vandalia Resources	S201298	Jul-99 PH	2	435.00	Jul-99 PR	IP Pending	Clay
Road Fork Dev.	S501798	Jul-99 PH	5	631.00	Jul-99 PR		Logan
Catenary Coal Co.	U300198	Jun-99 PH	2	332.00	Jun-99 PC		Kanawha
Eastern Assoc. Coal	U500898	Jun-99 PH	1	467.00	Jun-99 PR		Boone
Fola Coal	S201398	Jul-99 PC	4	237.00	Jul-99 PC		Clay/Nicholas
Mid-Vol Leasing Inc.	S400198	May-99 PC	3	178.00	I		McDowell
Independence Coal	S502597	Jul-99 PR	6	291.00	Jul-99 PR		Boone
Pen Coal	S502698	May-99 PR	11	105.00	May-99 PR		Lincoln
Paynter Branch Mining	S401298	Jun-99 PC	2	186.00	Jun-99 PH		Wyoming
Quintain Dev. Co	U502498	Jun-99 PC	1	41.00	Jun-99 PC		Mingo
Marrowbone Dev.	S502598	Aug-99 PR	7	143.00	Aug-99 PC		Mingo
Aracoma Coal Co	U500699	Jun-99 PR	1	125.00	Jun-99 PC		Logan
Aracoma Coal Co	U500499	Jul-99 PC	1	66.00	Jul-99 PC		Logan
Cumberland River Coal	O500797	Aug-99 PR	3	317.00	Aug-99 I		Mingo
Mingo Logan Coal Co	S501598	Oct-99 PR	5	142.00	Oct-99 PR		Logan

*These decision dates are estimates of WVDEP and, as estimates, are subject to change.

Last update May 5, 1999

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COMPANY NAME	SMCRA PERMIT	* ESTIMATED DECISION DATE	NUMBER OF FILLS	LARGEST VF W/S (ACRES)	* 401 & 402 EST DECISION DATE	404 STATUS	COUNTY
Mingo Logan Coal Co	S501998	Oct-99 PR	6	174.00	Oct-99 PR		Logan
Mingo Logan Coal Co	S502297	Oct-99 PR	5	839.00	Oct-99 PR		Logan
Independence Coal	S502798	Oct-99 PR	1	383.00	Oct-99 PC		Boone
Elk Run Coal Co	S502898	Nov-99 PC	5	854.00	Nov-99 PC	IP Pending	Boone
Alex Energy Inc.	S300199	Sep-99 PC	3	183.00	Sep-99 PC		Nicholas
Tom L. Scholl	S300499	Sep-99 PR	4	152.00	Sep-99 PR		Kanawha
Princess Beverly	S300599	Sep-99 PR	2	189.00	Sep-99 PC		Kanawha
Patriot Mining Co	S100797	Oct-99 PR	3	149.00	Oct-99 PR		Monongalia
Bluestone Coal Corp.	S400399	Oct-99 PR	10	158.00	Oct-99 PC		Wyoming
Bluestone Coal Corp.	S400899	Dec-99 PC	3	235.00	Dec-99 PC		Wyoming
Bear Cub Coal Co Inc	S400998	Dec-99 PR	2	61.00	Dec-99 PC		Mercer
Bluestone Coal Co	S400199	Mar-00 PR	2	>250.00	Mar-00 PR		McDowell
Consol of Kentucky	S501597	May-00 PC	6	571.00	May-00 PC		Mingo
Baystar Coal Co	S400698	Jun-99 PC	1	37.00	I		McDowell

PENDING REVISIONS TO EXISTING PERMITS WITH VALLEY FILLS - STATEWIDE

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Corps Application not received if blank

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Catenary Coal Co. Amd 1	S300495	May-99 PH	1	206.00	May-99 PR		Boone
Aracoma Coal Co Amd 1	S501390	Jun-99 PR	1	89.00	Jun-99 PC		Logan
Mingo Logan Coal Co Amd 1	U504491	Jun-99 PC	1	31.00	Jun-99 PC		Mingo/Logan
Mingo Logan Coal Co IBR 1	S507492	I			NA		Mingo
Chicopee Coal Co IBR 3	S500395	I	1		May-99 PR		Logan
Pen Coal IBR 5	S502797	I			May-99 PC		Mingo/Logan
Elk Run Amd 1	S505792	Jul-99 PC	3	88.00	Jul-99 PC		Boone

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