

Monthly Report

West Virginia Permitting Activities

July 9, 1999

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 June 1, 1999, through June 30, 1999. 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 which listed 47 SMCRA applications for proposed operations and 12 revision/amendment applications for previously permitted operations, two proposed operations, two permit amendments, and one permit revision received all necessary approvals. The proposed operations are Bluestone Coal U-4013-98 and Eastern Associated U-5008-98. The permit amendments are Mingo Logan U-5044-91, amendment 1 and Catenary Coal S-3004-95, amendment 1, and the revision is Pen Coal, IBR 1. For the proposed revision/amendment operations, Section 404 authorization or modification of an existing 404 permit was not necessary. A revised 401 certification was not needed for the Mingo Logan operation.

One proposed surface mining operation, Pen Coal S-5026-98, received both SMCRA and CWA Section 402 approvals in June. A CWA Section 401 certification is still needed and a CWA Section 404 General Permit application has not been submitted.

Four new SMCRA mine applications for proposed operations and two revision applications for previously permitted operations were submitted in June. These bring the number of pending applications for proposed operations to 49 and the number of revision/amendment applications remains at 12. One revision application, Hobet Mining S-38-82, IBR 1, was omitted from previous reports but is now included. These 61 applications need at least one of the four approvals necessary to begin operations.

Revisions were made to the June estimated decision dates for five SMCRA applications for proposed operations and one amendment application. The following is a list of the applications and an explanation of why the estimated date was revised:

- Alex Energy S-3005-98 The proposed operation was redesigned with valley fills in less than

- 250 acre watersheds to minimize impacts and possibly qualify for a CWA Section 404 General Permit. Additional information is also necessary to develop the cumulative hydrologic impact assessment (CHIA) under the WVDEP guidelines now in place.
- Uphold Trucking S-1005-95 The estimated decision date for this application has been revised, for the second time, because the applicant has not addressed certain concerns related to water wells or submitted required production reports for other existing operations to remove the company from OSM's Applicant Violator System (AVS) block list.
 - Paynter Branch S-4012-98 The SMCRA application will be approvable once an acceptable recommendation is received from AVS and a West Virginia Workers' Compensation clearance is received. A SMCRA permit decision is expected in July.
 - Baystar Coal S-4006-98 The applicant is not in compliance with West Virginia Workers' Compensation requirements. January 2000 has been entered as the new estimated SMCRA decision date due to the unpredictable period of time needed for the company to rectify their Workers' Compensation issues.
 - Aracoma U-5006-99 The applicant submitted required corrections to the WVDEP on June 30. These corrections are being reviewed. The estimated SMCRA decision date is now July.
 - Aracoma S-5013-90, Amendment 1 The applicant has not submitted required SMCRA correction information to WVDEP.

A new column has been added to the Issued Permits table in Appendix I. The column is titled "401 CERT. DATE". The Issued Permits table has also been revised to show only the permits approved during the reporting month.

III. SIGNIFICANT MONTHLY ACTIVITIES

On June 14, the interagency team met with Vandalia Resources on S-2012-98 to discuss comments received in response to their application for a CWA Section 404 Individual Permit. Vandalia discussed information already developed that could be used to address some concerns and suggestions were made on additional information which could be developed. Since the meeting, Vandalia has proposed to reduce the size of their valley fills if the reduction would allow the operation to qualify for a General Permit under CWA Section 404.

On June 17, the interagency team met with Alex Energy on S-3005-98 to discuss corrections requested to the SMCRA permit application. Following the discussions, Alex estimated that information to address the corrections would be submitted near the end of the month.

At WVDEP's regularly scheduled quarterly meeting with industry on June 15, each of the five agencies provided a summary of their statutory and regulatory responsibilities and addressed questions concerning the coordinated process now being used to process permit applications proposing to construct valley fills. Actions the industry can take to facilitate the permit review process were also discussed. A similar meeting was held with citizens and environmental groups

on June 16.

On June 24, COE notified Hobet Mining that their application for a CWA Section 404 General Permit for the Spruce No. 1 mine (S-5013-97) could not be approved. Hobet was informed that the proposed operation would require an Individual Permit. Following this action, Hobet applied for an Individual Permit but also asked Chief U.S. District Judge Charles Haden to prevent COE from withdrawing its proposed approval of the General Permit. Judge Haden has not ruled on the request. COE issued a public notice on the application for the Individual Permit on June 29, with the comment period expiring on July 29, 1999.

The interagency team is continuing to develop a National Environmental Policy Act (NEPA) guidance document to assist applicants and permit reviewers in the processing of applications requiring a CWA Section 404 Individual Permit. A mid-July meeting with industry is being planned to discuss the document.

IV. APPENDICES

Appendix I - Pending Surface Mining Applications with Valley Fills - Statewide

Appendix II - Background and Agency Responsibilities and Coordination

Appendix I

ISSUED PERMITS WITH VALLEY FILLS - REMOVED FROM PENDING LIST (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
Mingo Logan Coal Co Amd 1	U504491	Jun 30, 1999	1	31.00	NA*	Jun 30, 1999	NA*	Mingo/Logan
Eastern Assoc. Coal	U500898	May 18, 1999	1	**	Jun 21, 1999	May 25, 1999	GP Jun 21, 1999	Boone
Catenary Coal Co. Amd 1	S300495	May 18, 1999	1	206.00	Jun 10, 1999	May 21, 1999	NA*	Boone
Bluestone Coal	U401398	May 14, 1999	1	124.00	Jun 4, 1999	Apr 30, 1999	GP Jun 4, 1999	Wyoming
Pen Coal	S503996	Apr 6, 1999	3	120.00	Mar 4, 1999	Apr 21, 1999	NA*	Lincoln/Logan

* Did not require a 404 authorization or did not require modification to a previously issued 401 or 404 approval.

** The stream disturbance resulted from the placement of a pipe in the stream and covering it with developmental spoil. It did not involve a traditional valley fill.

PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

I = Issued Permit

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

401 Certification not issued if blank

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
Catenary Coal Co.	U300198	Issued I	2	332.00	Issued I	GP Pending	Kanawha
Patriot Mining Co	S100698	Issued I	1	65.00	Issued I	GP Pending	Monongalia
Pen Coal	S502698	Issued I	11	105.00	Issued I		Lincoln
Appalachian Mining	S300296	Issued I	5	350.00	Oct-99 PH	IP Pending	Fayette
Mountain View	S300195	Issued I	3	380.00	Dec-99 PC		Kanawha
Buffalo Mining	S503295	Issued I	3	279.00	Apr-00 PC		Boone/Logan
Aracoma Coal Co	U500699	Jul-99 PR	1	125.00	Jul-99 PC		Logan
Aracoma Coal Co	U500499	Jul-99 PC	1	66.00	Jul-99 PC		Logan
Fola Coal	S201398	Jul-99 PC	4	237.00	Jul-99 PC		Clay/Nicholas
Road Fork Dev.	S501798	Jul-99 PH	5	157.00	Jul-99 PR		Logan
Mid-Vol Leasing Inc.	S400198	Jul-99 PH	3	178.00	Issued I		McDowell
Paynter Branch Mining	S401298	Jul-99 PC	2	186.00	Issued I		Wyoming
Uphold Trucking	S100595	Jul-99 PH	1	92.00	Issued I		Preston
Independence Coal	S502597	Aug-99 PC	6	223.00	Aug-99 PC		Boone
Marrowbone Dev.	S502598	Aug-99 PR	7	143.00	Aug-99 PC		Mingo
CC Coal Co	S500299	Aug-99 PC	1	35.00	Oct-99 PC		Mingo
Spartan Mining Co	U503998	Aug-99 PC	2	40.00	Oct-99 PC		Logan
Cumberland River Coal	O500797	Aug-99 PR	3	317.00	Issued I		Mingo
DDS Leasing Inc	U400798	Aug-99 PC	1	44.00	Issued I		McDowell
Alex Energy Inc.	S300598	Sep-99 PC	9	246.00	Sep-99 PC		Nicholas
Alex Energy Inc.	S300199	Sep-99 PC	3	183.00	Sep-99 PC		Nicholas
Evergreen Mining Co	O201198	Sep-99 PC	1	342.00	Sep-99 PC		Webster
Princess Beverly	S300599	Sep-99 PR	2	189.00	Sep-99 PC		Kanawha
Tom L. Scholl	S300499	Sep-99 PC	4	152.00	Sep-99 PC		Kanawha
Bluestone Coal Co	U400999	Oct-99 PR	1	149.00	Oct-99 PR		Wyoming
Bluestone Coal Corp.	S400399	Oct-99 PR	10	158.00	Oct-99 PC		Wyoming
Huff Creek Energy	U400299	Oct-99 PC	1	110.00	Oct-99 PC		Wyoming
Mid-Vol Leasing Inc.	U400499	Oct-99 PH	1	40.00	Oct-99 PH		McDowell
Mingo Logan Coal Co	S501598	Oct-99 PR	5	142.00	Oct-99 PR		Logan
Mingo Logan Coal Co	S501998	Oct-99 PR	6	174.00	Oct-99 PR		Logan
Vandalia Resources	S201298	Oct-99 PH	2	435.00	Oct-99 PR	IP Pending	Clay
CC Coal Co	S500999	Nov-99 PC	13	104.00	Nov-99 PR		Mingo
Bear Cub Coal Co Inc	S400998	Dec-99 PR	2	61.00	Dec-99 PC		Mercer
Bluestone Coal Corp.	S400899	Dec-99 PC	3	235.00	Dec-99 PC		Wyoming
Independence Coal	S301399	Dec-99 PR	2	497.00	Dec-99 PR		Raleigh
Riverside Energy Inc	U401698	Dec-99 PC	1	100.00	Issued I		Wyoming
Independence Coal	S502798	Jan-00 PR	1	383.00	Jan-00 PC		Boone
Mingo Logan Coal Co	S502297	Jan-00 PR	5	839.00	Jan-00 PR		Logan
Pen Coal	S501299	Jan-00 PR	5	68.00	Jan-00 PR		Wayne/Linc.

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

Last update July 1, 1999

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PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

I = Issued Permit

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COMPANY NAME	SMCRA PERMIT	* ESTIMATED DECISION DATE	NO. of FILLS	LARGEST VF W/S ACRES	* 402 ESTIMATED DECISION DATE	404 STATUS	COUNTY
Quintain Dev. Co	U502498	Jan-00 PC	1	41.00	Jan-00 PC		Mingo
Baystar Coal Co	S400698	Jan-00 PC	1	37.00	Issued I		McDowell
Elk Run Coal Co	S502898	Feb-00 PC	5	854.00	Feb-00 PC	IP Pending	Boone
Marfork Coal Co	U300299	Feb-00 PC	1	280.00	Feb-00 PC		Raleigh
Fork Creek Mining	O501099	May-00 PR	1	63.00	Dec-99 PR		Boone
Consol of Kentucky	S501597	May-00 PC	6	571.00	May-00 PC		Mingo
Bluestone Coal Co	S400199	Jun-00 PR	2	1000.00	Jun-00 PR		McDowell
JMAC Leasing Inc	S401499	Jun-00 PR	2	191.00	Jun-00 PR		Wyoming
Vandalia Resources	S200599	Jul-00 PC	5	411.00	Jul-00 PC		Nicholas
Fola Coal	S200499	May-01 PR	3	1863.00	May-01 PR		Clay

PENDING REVISIONS TO EXISTING PERMITS WITH VALLEY FILLS - STATEWIDE

Amd = Amendment

IBR = Incidental Boundary Revision

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COMPANY NAME	SMCRA PERMIT	* ESTIMATED DECISION DATE	NO. of FILLS	LARGEST VF W/S ACRES	* 402 ESTIMATED DECISION DATE	404 STATUS	COUNTY
Pen Coal	IBR 5 S502797	Issued I	4	31.00	Issued I		Mingo/Logan
Hobet Mining	IBR 1 S-38-82	Issued I	2	49.00	NA NA	GP Pending	Boone
Chicopee Coal Co	IBR 3 S500395	Issued I	1	60.00	Jul-99 PR		Logan
Catenary Coal Co.	IBR 3 U303693	Jul-99 PC	1	48.00	Jul-99 PC		Kanawha
Aracoma Coal Co	Amd 1 S501390	Aug-99 PC	1	89.00	Aug-99 PC		Logan
Terry Eagle Coal Co	IBR 4 UO-288	Sep-99 PR	1	265.00	Aug-99 PR		Fayette
CC Coal Co	IBR 1 S300796	Sep-99 PR	6	69.00	Sep-99		Kanawha
Elk Run	Amd 1 S505792	Oct-99 PC	3	88.00	Oct-99 PC		Boone
Peerless Eagle	Amd1 S302193	Nov-99 PC	7	116.00	Nov-99 PC		Clay/Nicholas
Catenary Coal Co.	Amd 2 S300495	Dec-99 PC	1	207.00	Dec-99 PC		Boone
Marrowbone Dev.	Amd 1 S500692	Dec-99 PR	4	76.00	Dec-99 PR		Mingo
Tri County Mining	Amd 1 S500997	Dec-99 PR	2	55.00	Dec-99 PR		Mingo

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

Last update July 1, 1999

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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.