

Monthly Report

West Virginia Permitting Activities

August 10, 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 July 1, 1999, through July 31, 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 49 SMCRA mine applications for proposed operations and 12 revision/amendment applications for previously permitted operations, two applications received all necessary approvals. One, Pen Coal S-5026-98, was a proposed operation and the other was a permit revision for Hobet Mining S-38-82, IBR #1.

One proposed surface mining operation, Paynter Branch S-4012-98, received both SMCRA and CWA Section 402 approvals in July. A CWA Section 401 certification and a CWA Section 404 permit are still needed.

One application, Fork Creek O-5010-99, was removed from the pending list as it was a permit application for a refuse impoundment and two new SMCRA applications received in July were added. Currently the total number of pending applications for proposed operations remains at 49 and the number of revision/amendment applications is 11. These 60 applications need at least one of the four approvals necessary to begin operation.

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

- Aracoma Coal Company U-5004-99 and U-5006-99 Both applications are in WVDEP Headquarters and the decision will be made on these applications in early August.
- Fola Coal S-2013-98 This application has deficiencies which need to be addressed by the applicant. The estimated decision date is now October.

- Road Fork Development S-5017-98 This application is undergoing review of company submitted corrections by the WVDEP and OSM. The estimated decision date is now October.
- Uphold Trucking S-1005-95 The applicant has not addressed certain water well issues and is blocked from receiving a permit by OSM's Applicant Violator System. These problems could take an indefinite period of time to resolve.
- Mid-Vol Leasing S-4001-98 The Cumulative Hydrologic Impact Assessment (CHIA) is being upgraded to comply with current WVDEP guidelines. The new estimated decision date is September.

Other changes made to the Tables in Appendix I include the correction of Independence S-3013-99 to the correct number S-3012-99. A new Table was also added identifying the permits containing valley fills which received all required permits/approvals since late March 1999. This Table is on page 4 of Appendix I.

III. SIGNIFICANT MONTHLY ACTIVITIES

On July 9, 1999, the interagency team met with Vandalia Resources to discuss revised plans for their operation proposed under SMA S-2012-98. The applicant proposed to eliminate mining of the lowest coal seam in order to reduce the size of its valley fills and possibly qualify for a CWA Section 404 General Permit. The revised proposal created three smaller fills from one originally proposed larger fill and provided for other spoil to be taken to an existing adjacent site for disposal. Further discussion was held with Vandalia on July 16 on a proposed stream mitigation agreement designed to compensate for environmental impacts from the operation. As a result of this discussion, the applicant agreed to certain changes in the agreement and submitted a revised version for interagency review on August 3.

On July 13, the interagency team met with Marrowbone Development Company to discuss SMA S-5025-98. At the meeting the applicant submitted revisions to the SMCRA application intended to address previously identified issues. The revisions are currently being reviewed. On July 22 additional discussion was held with the applicant concerning the request for an AOC variance. Information to justify the landowners request for the AOC variance is currently being developed by the applicant.

On July 22, Elk Run Coal Company met with the interagency team to discuss biological testing to address concerns raised in the review of their application for a CWA Section 404 Individual Permit. The applicant completed biological sampling at numerous locations and wanted to reach agreement on which would be the best sites for continued sampling. Based on the discussions, Elk Run is currently drafting a sampling protocol for review.

The comment period on the CWA Section 404 Individual Permit application for Hobet Mining's Spruce No. 1 Mine closed on July 29. Several comments were received and have been forwarded to the applicant for a response. Prior to the close of the comment period, the applicant requested

that COE proceed with the preparation of an Environmental Impact Statement for the proposed operation.

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. The proposed mid-July meeting to discuss the document with industry was postponed and will be rescheduled at a later date.

On behalf of the interagency team, EPA completed and issued for 30-day comment a guidance document containing recommended protocols for water quality and biological monitoring. This guidance harmonizes monitoring improvements suggested by several Federal and State agencies. The recommended protocols are to assist permit applicants in developing the kinds of water-related and biological assessments that will facilitate the review of each of the four required approvals.

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 - JULY 1999 (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 |
|--------------|--------------|--------------|--------------|----------------------|----------------|----------------|------------------------------|---------|
| Pen Coal | S502698 | Jun 30, 1999 | 11 | 105.00 | Jul 23, 1999 | Jun 30, 1999 | GP Jul 23, 1999 | Lincoln |
| Hobet Mining | S003882 | Jun 17, 1999 | 2 | 49.00 | Jul 23, 1999 | NA | GP Jul 23, 1999 | Boone |

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.

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 |
|-----------------------|--------------|---------------------------|--------------|----------------------|-------------------------------|------------|---------------|
| 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 |
| Paynter Branch Mining | S401298 | Issued I | 2 | 163.00 | Issued I | | Wyoming |
| 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 | Aug-99 PH | 1 | 125.00 | Issued I | | Logan |
| Aracoma Coal Co | U500499 | Aug-99 PH | 1 | 66.00 | Issued I | | Logan |
| 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 |
| Mid-Vol Leasing Inc. | S400198 | Sep-99 PH | 3 | 178.00 | 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 |
| Fola Coal | S201398 | Oct-99 PC | 4 | 237.00 | Oct-99 PC | | Clay/Nicholas |
| Road Fork Dev. | S501798 | Oct-99 PR | 5 | 157.00 | Oct-99 PH | | Logan |
| Independence Coal | S502597 | Oct-99 PC | 6 | 223.00 | Oct-99 PC | | Boone |
| 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 | NA | 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 | 4 | 192.00 | 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 PC | 2 | 61.00 | Dec-99 PC | | Mercer |
| Bluestone Coal Corp. | S400899 | Dec-99 PC | 3 | 235.00 | Dec-99 PC | | Wyoming |
| Independence Coal | S301299 | Dec-99 PC | 2 | 497.00 | Dec-99 PC | | Raleigh |
| Riverside Energy Inc | U401698 | Dec-99 PC | 1 | 100.00 | Issued I | | Wyoming |
| Stollings Trucking | S501499 | Dec-99 PC | 1 | 184.00 | Dec-99 PC | | Logan |
| 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. ** Stream Relocation

Last update August 2, 1999

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PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

I = Issued Permit

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

PC = Pending Company Action

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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 |
|--------------------|--------------|---------------------------|--------------|----------------------|-------------------------------|------------|----------|
| 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 |
| Uphold Trucking | S100595 | Jan-00 PH | 1 | 92.00 | Issued I | | Preston |
| Elk Run Coal Co | S502898 | Feb-00 PC | 5 | 854.00 | Feb-00 PC | IP Pending | Boone |
| Marfork Coal Co | U300299 | Feb-00 PR | 1 | 254.00 | Feb-00 PC | | Raleigh |
| 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 |
| Marfork Coal Co | U301399 | Aug-00 PR | 1 | 284.00 | Aug-00 PR | | Raleigh |
| 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

IP = Individual 404

I = Issued Permit

PH = Pending Final Decision - DEP Headquarter GP = Gen. Nationwide 404

404 Application not received if blank

PC = Pending Company Action

PR = Pending DEP review

| 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 |
| Chicopee Coal Co | IBR 3 S500395 | Issued I | 1 | 60.00 | Aug-99 PH | GP Pending | Logan |
| Catenary Coal Co. | IBR 3 U303693 | Issued I | 1 | 48.00 | Aug-99 PH | GP Issued | Kanawha |
| Aracoma Coal Co | Amd 1 S501390 | Oct-99 PC | 1 | 89.00 | Aug-99 PC | | Logan |
| Terry Eagle Coal Co | IBR 4 U028800 | Sep-99 PR | 1 | 265.00 | Aug-99 PR | | Fayette |
| CC Coal Co | IBR 1 S300796 | Sep-99 PR | 6 | 69.00 | Sep-99 PR | | Kanawha |
| Elk Run | Amd 1 S505792 | Oct-99 PC | 3 | 88.00 | Oct-99 PC | | Boone |
| Peerless Eagle | Amd1 S302193 | Nov-99 PC | 6 | 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. ** Stream Relocation

Last update August 2, 1999

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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 |
|---------------------------|--------------|----------------------------|---------------|
| 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 |
| 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 |
| MEPCO Inc. | S100896 | Mar 29, 1999 | Monongalia |
| Evergreen Mining Co IBR3 | S024076 | Mar 29, 1999 | Webster |