

Monthly Report

West Virginia Permitting Activities

June 10, 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. 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 April 28, 1999, through May 31, 1999. The background for the activities covered by the report and the individual agency responsibilities are discussed in Appendix II.

II. PERMIT REVIEW STATUS SUMMARY

There are currently forty-seven Surface Mining Control and Reclamation Act (SMCRA) mine applications for proposed operations and twelve revision applications for previously permitted SMCRA operations, for a total of fifty-nine pending applications with valley fills. These fifty-nine applications need at least one of the four necessary approvals [SMCRA, Clean Water Act (CWA) Section 401 Certification, CWA Section 402 permit and CWA Section 404 permit] to begin operations.

Three underground applications with developmental fills received state approval for SMCRA and CWA Section 402 permits. The applications were Catenary Coal Company U-3001-98, Eastern Associated U-5008-98, and Bluestone Coal U-4013-98. CWA Section 404 permit reviews are underway for two of the operations and one application was returned to the applicant to complete missing information. (Note: A CWA Section 404 general permit was issued by COE to Bluestone Coal on June 4. The Tables in Appendix I will be updated to reflect this information for the next reporting period.)

Several changes have been made to the information in the Tables attached as Appendix I to the May 5 Monthly Report. The changes include:

One application, Cannelton Industries (S-3012-97) was terminated by the WVDEP since the May 5, 1999, report. This application was not diligently pursued by Cannelton and was removed.

One application, Patriot Mining's S-1007-97, was removed since all proposed fills were eliminated from the application.

Seven underground applications with valley fills, three surface mines with valley fills, and five revisions/amendments were added.

Road Fork Development (S-5017-98) and Independence Coal (S-5025-97) have watershed acreage changes, as the proposed fills for these applications have been reduced.

In Appendix I, the column titled "401 & 402 ISSUE DATE" in the Issued Permits section has been changed to reflect only the 402 issue date. In addition, the "404 ISSUE DATE" column has been changed to include both the issue date and type of 404 permit issued. In the Pending Applications and Pending Revisions sections, the column titled "401 & 402 EST DECISION DATE" has been changed to address only the 402 estimated decision date. Separate estimated or issued dates for the 401 certification are not necessary because it occurs in conjunction with a CWA Section 404 Individual Permit decision.

Several estimated decision dates for SMCRA and CWA Section 402 permits have been revised since the last monthly report. Estimated decision dates will be continually revised as the review processes progress and more current information becomes available.

Revisions were made to the May estimated decision dates for three SMCRA applications (Pen Coal, Uphold Trucking, and Mid-Vol Leasing) and one CWA Section 402 application (Chicopee). The revised dates for Pen Coal and Chicopee are due to delays by the applicants in submitting additional information. The estimated decision date for Uphold Trucking was revised because required production reports for existing operations owned or controlled by the applicant have not been submitted to OSM. Other concerns related to water wells and blasting are also being addressed. Mid-Vol Leasing was revised because the applicant has not updated required ownership and control information and other concerns have been identified that must be addressed.

The public comment period has closed for the three CWA Section 404 Individual Permit applications received by COE. Comments requested additional information about alternatives and impact minimization, additional testing and studies to address cumulative impacts, studies of new reforestation techniques, and expanded mitigation plans. Separate comments on two of the applications requested that an endangered species survey be done, and an Environmental Impact Statement was requested on each of the three applications. No new applications were received by COE for Individual Permits during May.

III. SIGNIFICANT MONTHLY ACTIVITIES

In addition to the permit review activities previously discussed in Section II of this report, the five agencies have continued to work to improve communication and coordination. To that end, interagency meetings were held on May 19 in Elkins, West Virginia and on May 26 and 27 in Nitro, West Virginia.

At the May 19 meeting in Elkins, the agencies concurred on a process to ensure earlier communication between the mining applicant and the FWS. This will facilitate compliance with the Endangered Species Act and the Fish and Wildlife Coordination Act and minimize the possibility of unidentified issues developing at a later date.

On May 26 and 27, the agencies continued to develop coordination and permit process improvements. The agencies agreed on a process which should help mining applications to progress along more concurrent, parallel tracks. The agencies also agreed to coordinate more closely with the COE on the preliminary notification to applicants of the type of Clean Water Act, Section 404 permit the applicant may be required to obtain. The agencies also began developing an interagency NEPA guidance document for use by the applicant during preparation of the SMCRA permit application and by technical staff during the permit review process.

At WVDEP's regularly scheduled quarterly meeting with industry on June 15, each of the five agencies will provide information on changes that are occurring and being planned for processing permit applications involving valley fills. Information will be provided on the various agency responsibilities and how they will be involved in the permitting process. Suggestions as to actions industry can take to facilitate the permit review process will also be provided. Following this meeting, a similar meeting will be held on June 16 with citizens to explain the interagency efforts as they relate to citizen involvement.

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

IP = Individual 404

IBR = Incidental Boundary Revision

GP = General Nationwide 404

COMPANY NAME	SMCRA PERMIT	ISSUE DATE	NUMBER OF FILLS	LARGEST VF W/S (ACRES)	402 ISSUE DATE	404 PERMIT TYPE & ISSUE DATE	COUNTY
Marrowbone Dev.	S502998	Apr 27, 1999	2	152.00	Mar 23, 1999	GP Mar 16, 1999	Mingo
Triple B Leasing Corp.	S300998	Apr 6, 1999	4	78.00	Apr 21, 1999	GP Apr 20, 1999	Raleigh
MEPCO Inc.	S100896	Mar 29, 1999	1	195.00	Mar 29, 1999	GP May 13, 1999	Monongalia
Vandalia Resources	S200798	Mar 15, 1999	2	295.00	Apr 15, 1999	GP Apr 15, 1999	Clay
Evergreen Mining Co	IBR3 S024076	Feb 8, 1999	1	120.00	Mar 23, 1999	GP Mar 29, 1999	Webster

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	* 402 ESTIMATED DECISION DATE	404 STATUS	COUNTY
Catenary Coal Co.	U300198	Issued I	2	332.00	Issued I		Kanawha
Eastern Assoc. Coal	U500898	Issued I	1	467.00	Issued I		Boone
Patriot Mining Co	S100698	Issued I	1	65.00	Issued I	GP Pending	Monongalia
Bluestone Coal	U401398	Issued I	1	124.00	Issued I	GP Pending	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
Alex Energy Inc.	S300598	Jun-99 PC	9	246.00	Jun-99 PC		Nicholas
Baystar Coal Co	S400698	Jun-99 PC	1	37.00	I		McDowell
Paynter Branch Mining	S401298	Jun-99 PC	2	186.00	Jun-99 PH		Wyoming
Uphold Trucking	S100595	Jun-99 PH	1	92.00	Issued I		Preston
Pen Coal	S502698	Jun-99 PR	11	105.00	Jun-99 PH		Lincoln
Aracoma Coal Co	U500699	Jun-99 PR	1	125.00	Jun-99 PC		Logan
Fola Coal	S201398	Jul-99 PC	4	237.00	Jul-99 PC		Clay/Nicholas
Aracoma Coal Co	U500499	Jul-99 PC	1	66.00	Jul-99 PC		Logan
Mid-Vol Leasing Inc.	S400198	Jul-99 PH	3	178.00	Issued I		McDowell
Road Fork Dev.	S501798	Jul-99 PH	5	157.00	Jul-99 PR		Logan
CC Coal Co	S500299	Aug-99 PC	1	35.00	Oct-99 PC		Mingo
Independence Coal	S502597	Aug-99 PC	6	223.00	Aug-99 PC		Boone
Spartan Mining Co	U503998	Aug-99 PC	2	40.00	Oct-99 PC		Logan
Cumberland River Coal	O500797	Aug-99 PR	3	317.00	Aug-99 I		Mingo
Marrowbone Dev.	S502598	Aug-99 PR	7	143.00	Aug-99 PC		Mingo
Evergreen Mining Co	O201198	Sep-99 PC	1	342.00	Sep-99 PC		Webster
Alex Energy Inc.	S300199	Sep-99 PC	3	183.00	Sep-99 PC		Nicholas
Tom L. Scholl	S300499	Sep-99 PC	4	152.00	Sep-99 PC		Kanawha
Princess Beverly	S300599	Sep-99 PC	2	189.00	Sep-99 PC		Kanawha
Huff Creek Energy	U400299	Oct-99 PC	1	110.00	Oct-99 PC		Wyoming
Vandalia Resources	S201298	Oct-99 PH	2	435.00	Oct-99 PR	IP Pending	Clay
Bluestone Coal Corp.	S400399	Oct-99 PR	10	158.00	Oct-99 PC		Wyoming
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
Bluestone Coal Co	U400999	Oct-99 PR	1	149.00	Oct-99 PR		Wyoming
Mid-Vol Leasing Inc.	U400499	Oct-99	1	40.00	Oct-99 PH		McDowell
CC Coal Co	S500999	Nov-99 PC	13	104.00	Nov-99 PR		Mingo
Bluestone Coal Corp.	S400899	Dec-99 PC	3	235.00	Dec-99 PC		Wyoming
Riverside Energy Inc	U401698	Dec-99 PC	1	100.00	Issued I		Wyoming
Bear Cub Coal Co Inc	S400998	Dec-99 PR	2	61.00	Dec-99 PC		Mercer
Quintain Dev. Co	U502498	Jan-00 PC	1	41.00	Jan-00 PC		Mingo

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

Last update June 1, 1999

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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	* 402 ESTIMATED DECISION DATE	404 STATUS	COUNTY
Mingo Logan Coal Co	S502297	Jan-00 PR	5	839.00	Jan-00 PR		Logan
Independence Coal	S502798	Jan-00 PR	1	383.00	Jan-00 PC		Boone
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
Consol of Kentucky	S501597	May-00 PC	6	571.00	May-00 PC		Mingo
Fork Creek Mining	O501099	May-00 PR	1	63.00	Dec-99 PR		Boone
Bluestone Coal Co	S400199	Jun-00 PR	2	1000.00	Jun-00 PR		McDowell
Vandalia Resources	S200599	Jul-00 PC	5	411.00	Jul-00 PC		Nicholas
Fola Coal	S200499	May-01 PR	3		May-01 PR		Clay

PENDING REVISIONS TO EXISTING PERMITS WITH VALLEY FILLS - STATEWIDE

Amd = Amendment

IBR = Incidental Boundary Revision

I = Issued Permit

PH = Pending Final Decision - DEP Headquarters

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PC = Pending Company Action

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COMPANY NAME	SMCRA PERMIT	* ESTIMATED DECISION DATE	NUMBER 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
Catenary Coal Co.	Amd 1 S300495	Issued I	1	206.00	Issued I		Boone
Pen Coal	IBR 1 S503996	Issued I	3	120.00	Issued I		Lincoln/Logan
Chicopee Coal Co	IBR 3 S500395	Issued I	1	60.00	Jul-99 PR		Logan
Mingo Logan Coal Co	Amd 1 U504491	Jun-99 PC	1	31.00	Jun-99 PC		Mingo/Logan
Aracoma Coal Co	Amd 1 S501390	Jun-99 PR	1	89.00	Jun-99 PC		Logan
Elk Run	Amd 1 S505792	Jul-99 PC	3	88.00	Jul-99 PC		Boone
Catenary Coal Co.	IBR 3 U303693	Jul-99 PC	1	48.00	Jul-99 PC		Kanawha
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 June 1, 1999

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.