

April 2000 Monthly Report

West Virginia Permitting Activities

May 10, 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 April 1, 2000, through April 30, 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 sixty-seven SMCRA applications for proposed operations and nine revision/amendment applications for previously permitted operations, two applications for proposed operations, Mid-Vol Leasing S-4001-98 and Fork Creek Mining U-5037-98, have received all of the necessary approvals to begin operations.

In addition, previous reports have listed Mid-Vol Leasing U-4004-99 as a pending application when, in fact, CWA Section 402 and SMCRA approvals were issued in July and November 1999, respectively. A CWA Section 404 approval and a Section 401 certification are not required for this operation. Therefore, this application now is included on the issued permits listings on pages one and five of Appendix I.

Two applications for new mining operations were received in April. The number of pending applications for proposed new operations is now sixty-six and the number of revision/amendment applications remains at nine. These seventy-five applications need at least one of the four approvals necessary to begin operations.

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

- Baystar Coal S-4006-98 Pending receipt of corrections from the applicant and revision of the CHIA. The estimated decision date is now April 2001.

- Bluestone Coal U-4009-99 Pending receipt of corrections from the applicant. The estimated decision date is now July
- Bluestone Coal U-4017-99 Pending receipt of corrections from the applicant. The estimated decision date is now July.
- Alex Energy S-3001-99 The application has been put on hold at the request of the applicant. The estimated decision date is now November.
- CC Coal S-5009-99 Pending WVDEP Headquarters review. The estimated decision date is now May.
- Aracoma Coal S-5013-90, Amd 1 Pending receipt of corrections from the applicant. The estimated decision date is now June.
- Catenary Coal S-3004-95, Amd 2 Pending WVDEP Headquarters review. The estimated date is now May.

III. SIGNIFICANT MONTHLY ACTIVITIES AND EVENTS

On April 17, the U.S. Department of Justice, on behalf of the involved Federal agencies, filed a brief with the Fourth Circuit Court of Appeals in the appeal of Judge Charles Haden s October 1999 decision on stream buffer zones.

On April 17, in consultation with other involved federal agencies, OSM informed WVDEP that CWA Section 404(b)(1) guidelines do not establish standards that are equivalent to those found in OSM s stream buffer zone rule. Since August 1999, WVDEP has implemented the terms of a MOU signed by COE, EPA, OSM, and WVDEP which provided that the Section 404 analysis, together with a CWA Section 401 water quality certification, would be the basis for determining if the stream buffer zone variance requirements had been met. In an April 20 reply, WVDEP asked OSM how they should make the findings necessary for a stream buffer zone variance. OSM is currently preparing a response.

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 - APRIL 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
Mid-Vol Leasing Inc.	S400198	Dec 17, 1999	3	178.00	Jun 4, 1997	Jun 18, 1998	GP Apr 18, 2000	McDowell
Fork Creek Mining	U503798	Mar 13, 2000	4	536.00	Jul 9, 1999	Jan 14, 2000	GP ¹ Apr 7, 2000	Lincoln
Mid-Vol Leasing Inc.	U400499	Nov 19, 1999	1	40.00	NA	Jul 7, 1999	NA	McDowell

¹ Stream relocation

PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

I = Issued Permit
PC = Pending Company Action

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

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
Appalachian Mining	S300296	Issued I	5	350.00	Issued I	IP Pending	Fayette
Uphold Trucking	S100595	Issued I	1	92.00	Issued I		Preston
Riverside Energy Inc	U401697	Issued I	1	100.00	Issued I		Wyoming
Spartan Mining Co	U503998	Issued I	2	40.00	Issued I		Logan
Buffalo Mining	S503295	Issued I	3	279.00	Dec-00 PC		Boone/Logan
Stollings Trucking	S501499	Issued I	1	184.00	May-00 PC		Logan
Mountain View	S300195	Issued I	3	380.00	Jul-00 PC		Kanawha
Independence Coal	S502597	May-00 PC	6	223.00	Jan-01 PC		Boone
CC Coal Co	S500999	May-00 PC	13	104.00	May-00 PC		Mingo
Vandalia Resources	S201298	May-00 PR	4	192.00	May-00 PR	IP Pending	Clay
CC Coal Co	O500299	May-00 PC	1	35.00	May-00 PC		Mingo
Consol of Kentucky	S501597	May-00 PC	6	571.00	May-00 PC		Mingo
Marfork Coal Co	U300299	May-00 PC	1	254.00	May-00 PC		Raleigh
Pen Coal	S501299	May-00 PC	5	68.00	May-00 PC		Wayne/Linc.
Tom L. Scholl	S300499	Jun-00 PC	4	152.00	Jun-00 PC		Kanawha
Bluestone Coal Corp.	S400399	Jun-00 PR	10	158.00	Jun-00 PC		Wyoming
Huff Creek Energy	U400299	Jun-00 PC	1	110.00	Jun-00 PC		Wyoming
JMAC Leasing Inc	S401499	Jun-00 PR	2	191.00	Jun-00 PR		Wyoming
Independence Coal	S502798	Jun-00 PC	1	383.00	May-00 PC	IP Pending	Boone
Bluestone Coal Corp.	U400999	Jul-00 PR	1	149.00	Issued I		Wyoming
Bluestone Coal Corp.	U401799	Jul-00 PC	1	246.00	Issued I		McDowell
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
Fola Coal Co LLC	S201199	Jul-00 PR	5	176.00	Jul-00 PR		Nicholas
Mid-Vol Leasing Inc.	S401999	Jul-00 PC	5	220.00	Jul-00 PC		McDowell
Evergreen Mining Co	O201198	Aug-00 PR	1	232.00	Aug-00 PR		Webster
Fola Coal Co LLC	S201398	Aug-00 PC	4	237.00	Aug-00 PC		Clay
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	GP Issued ¹	Boone
Hobet Mining	S502799	Oct-00 PC	6	141.00	Oct-00 PC		Boone
Marrowbone Dev.	U502999	Oct-00 PC	2	150.00	Oct-00 PC	GP Issued ²	Mingo
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
Coastal Coal WV LLC	U200900	Oct-00 PR	1	32.00	Oct-00 PR		Webster
Coastal Coal WV LLC	U201400	Oct-00 PR	1	459.00	Oct-00 PR		Braxton
Elk Run Coal Co	S502898	Nov-00 PC	5	854.00	Issued I	IP Pending	Boone
Alex Energy Inc.	S300199	Nov-00 PR	3	183.00	Nov-00 PR		Nicholas

PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

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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	* 404 ESTIMATED DECISION DATE	404 STATUS	COUNTY
Independence Coal	S301299	Nov-00 PC	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
Vandalia Resources	S200599	Dec-00 PR	5	411.00	Dec-00 PR		Nicholas
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	S502297	Feb-01 PR	5	839.00	Feb-01 PR		Logan
Independence Coal	S301999	Feb-01 PC	1	249.00	Feb-01 PR		Raleigh
Terry Eagle	S300400	Feb-01 PR	4	245.00	Feb-01 PR		Fayette
Powellton Coal Co LLC	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
Marrowbone Dev.	S500700	Mar-01 PR	7	83.00	Mar-01 PR		Mingo
Catenary Coal Co	S300800	Mar-01 PR	3	338.00	Mar-01 PR		Boone
Baystar Coal Co	S400698	Apr-01 PC	1	37.00	Issued I		McDowell
Callisto Coal	S500900	Apr-01 PR	5	217.00	Jun-00 PR		Boone
Mingo Logan Coal Co	S501998	Apr-01 PR	4	149.00	May-00 PH		Mingo
Fola Coal Co LLC	S200499	May-01 PR	3	1863.00	May-01 PR		Clay
Bluestone Coal Corp.	S400199	Jun-01 PC	2	1000.00	Jun-01 PC	IP Pending	McDowell
Bluestone Coal Corp.	S400899	Jun-01 PR	3	235.00	Jun-01 PR		Wyoming
CC Coal Co	S501799	Sep-01 PC	19	87.00	Sep-01 PC		Mingo

¹ Nationwide 26 permit for stream relocation.

² Nationwide 26 permit for creation of a stockpile area.

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.	IBR 5	U500597	Issued I	1	43.00	NA	Mingo
US Steel Mining	Amd 1	S400397	Issued I	2	89.00	Jun-00 PR	GP Pending Wyoming
Catenary Coal Co.	Amd 2	S300495	May-00 PR	1	207.00	May-00 PR	Boone
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
Aracoma Coal Co	Amd 1	S501390	Jun-00 PC	1	89.00	Issued I	IP Pending ¹ Logan
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
Delbarton Mining Co.	IBR 4	U501996	Aug-00 PR	1	310.00	Aug-00 PR	GP Issued ² Mingo

¹ 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.

² Nationwide 26 permit for an extension of a temporary fill (culvert placement) which will be removed when mining is completed.

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
Mid-Vol Leasing Inc.	S400198	Apr 18, 2000	McDowell
Fork Creek Mining	U503798	Apr 7, 2000	Lincoln
Marrowbone Dev. Amd 1	S500692	Mar 24, 2000	Mingo
Alex Energy Inc.	S300598	Mar 24, 2000	Nicholas
Pine Ridge Coal Co.	S503095	Mar 10, 2000	Boone
Pine Ridge Coal Co.	S502496	Mar 10, 2000	Boone
Bluestone Coal IBR 3	U401587	Jan 31, 2000	Wyoming
Marrowbone Dev	S502598	Dec 7, 1999	Mingo
Mid-Vol Leasing Inc.	U400499	Nov 19, 1999	McDowell
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.