

Monthly Report

West Virginia Permitting Activities

September 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 August 1, 1999, through August 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 listing 49 SMCRA applications for proposed operations and 11 revision/amendment applications for previously permitted operations, three applications for proposed operations and one revision application for an existing operation received all necessary approvals. The proposed operations are Catenary Coal Company U-3001-98, DDS Leasing U-4007-98, and Paynter Branch S-4012-98. The revision application is Catenary Coal Company U-3036-93, IBR #3.

One application, Pen Coal S-5027-97, IBR #5, was moved to the "Issued Permits" list of Appendix I since it was determined that the revision did not require modification of a previously issued CWA Section 401 certification and Section 404 permit. Two applications were terminated and removed from the Appendix, Quintain Development U-5024-98 and Elk Run S-5057-92, AMD 1. One application, Terry Eagle UO-288, IBR #4, was removed from the Appendix because it involves coal refuse disposal and should not have appeared on the list. One application, Hobet Mining S-5013-97, was added to the "Pending" list of Appendix I showing that a CWA Section 404 Individual Permit is pending. Three new SMCRA applications for proposed operations and two revision applications for existing operations were submitted in August and also added to the Appendix. This brings the number of pending applications for proposed new operations to forty-nine and the number of revision/amendment applications to nine. These fifty-eight applications need at least one of the four approvals necessary to begin operations.

Revisions were made to the August 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 Certain written findings are being reviewed in the WVDEP Headquarters for both applications and the applicant is currently blocked by the Federal Applicant Violator System due to unresolved non-respondent violations. The new estimated decision date is September.

Marrowbone Development S-5025-98 Application revisions have been submitted and review is continuing. The estimated decision date is now September.

CC Coal Company S-5002-99 This application is undergoing review in WVDEP Headquarters. The new estimated decision date is September.

Spartan Mining U-5039-98 This application will be sent to WVDEP Headquarters for review in the near future. The estimated decision date is now September.

Cumberland River O-5007-97 Outstanding company corrections exist and the Cumulative Hydrologic Impact Assessment (CHIA) is being upgraded to comply with current WVDEP guidelines. The new estimated decision date is September.

III. SIGNIFICANT MONTHLY ACTIVITIES

Efforts by the interagency team to develop a National Environmental Policy Act (NEPA) guidance document are continuing. The document is being designed to assist applicants and permit reviewers in the preparation and processing of applications requiring a CWA Section 404 Individual Permit.

On August 9, 1999, a stream buffer zone Memorandum of Understanding (MOU) between OSM, COE, EPA, and WVDEP became effective. The purpose of the MOU is to clarify the application of regulations related to stream buffer zone requirements under the Surface Mining Control and Reclamation Act for surface coal mining operations that result in valley fills.

On August 17, 1999, WVDEP notified the industry that a Pre-Application Meeting with Federal agencies was scheduled for September 21 and 22. The meeting will allow companies planning operations with larger valley fills to individually discuss information and data needs for the permits required to begin operations. Interested companies can contact WVDEP to schedule an appointment.

On August 26, 1999, at the request of the West Virginia Coal Association, a meeting was held by OSM, EPA, COE, FWS, and WVDEP with the Association's Environmental Committee. The meeting was attended by environmental managers from the mining companies and mining consultants responsible for permit application preparation. The discussion centered on WVDEP and COE permitting procedures, regulatory requirements, baseline data collection requirements, concerns over delays in obtaining permits, and industry participation in technical studies on mountaintop mining/valley fill impacts that are integral to the EIS.

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 - AUGUST 1999
(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	NO. of FILLS	LARGEST VF W/S ACRES	401 CERT. DATE	402 ISSUE DATE	404 PERMIT TYPE & ISSUE DATE	COUNTY
Catenary Coal Co.	U300198	May 18, 1999	2	332.00**	Aug 31, 1999	May 21, 1999	GP Jul 14, 1999	Kanawha
DDS Leasing Inc	U400798	Aug 20, 1999	1	44.00	Jan 28, 1999	Apr 4, 1999	GP Jan 28, 1999	McDowell
Paynter Branch	S401298	Jul 30, 1999	2	163.00	Jul 30, 1999	May 26, 1999	GP Aug 25, 1999	Wyoming
Catenary Coal Co.	IBR 3 U303693	Jul 19, 1999	1	48.00	Jul 14, 1999	Aug 23, 1999	GP Jul 14, 1999	Kanawha

** Stream Relocation

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

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
Patriot Mining Co	S100698	Issued	1	65.00	Issued	GP Pending	Monongalia
Hobet Mining Inc	S501397	Issued	5	1100.00	Issued	IP Pending	Logan
Appalachian Mining	S300296	Issued	5	350.00	Oct-99 PH	IP Pending	Fayette
Mountain View	S300195	Issued	3	380.00	Dec-99 PC		Kanawha
Buffalo Mining	S503295	Issued	3	279.00	Apr-00 PC		Boone/Logan
Marrowbone Dev.	S502598	Sep-99 PR	7	143.00	Sep-99 PR		Mingo
Aracoma Coal Co	U500499	Sep-99 PH	1	66.00	Sep-99 PH		Logan
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
CC Coal Co	S500299	Sep-99 PR	1	35.00	Oct-99 PC		Mingo
Spartan Mining Co	U503998	Sep-99 PC	2	40.00	Oct-99 PH		Logan
Aracoma Coal Co	U500699	Sep-99 PH	1	125.00	Issued		Logan
Cumberland River Coal	O500797	Sep-99 PC	3	317.00	Issued		Mingo
Mid-Vol Leasing Inc.	S400198	Sep-99 PH	3	178.00	Issued		McDowell
Princess Beverly	S300599	Oct-99 PC	2	189.00	Oct-99 PC		Kanawha
Tom L. Scholl	S300499	Oct-99 PC	4	152.00	Oct-99 PC		Kanawha
Fola Coal	S201398	Oct-99 PC	4	237.00	Oct-99 PC		Clay/Nicholas
Mingo Logan Coal Co	S501598	Oct-99 PC	5	142.00	Oct-99 PH		Logan
Mingo Logan Coal Co	S501998	Oct-99 PC	6	174.00	Oct-99 PH		Logan
Vandalia Resources	S201298	Oct-99 PH	4	192.00	Oct-99 PR	IP Pending	Clay
Road Fork Dev.	S501798	Oct-99 PR	5	157.00	Nov-99 PC		Logan
Independence Coal	S502597	Oct-99 PC	6	223.00	Jan-00 PC		Boone
Evergreen Mining Co	O201198	Nov-99 PC	1	342.00	Nov-99 PC		Webster
CC Coal Co	S500999	Dec-99 PC	13	104.00	Dec-99 PC		Mingo
Bear Cub Coal Co Inc	S400998	Dec-99 PC	2	61.00	Dec-99 PC		Mercer
Independence Coal	S301299	Dec-99 PC	2	497.00	Dec-99 PC		Raleigh
Stollings Trucking	S501499	Dec-99 PC	1	184.00	Dec-99 PC		Logan
Riverside Energy Inc	U401698	Dec-99 PC	1	100.00	Issued		Wyoming
Independence Coal	S502798	Jan-00 PR	1	383.00	Jan-00 PC		Boone
Mingo Logan Coal Co	S502297	Jan-00 PC	5	839.00	Jan-00 PC		Logan
Pen Coal	S501299	Jan-00 PR	5	68.00	Jan-00 PR		Wayne/Linc.
Uphold Trucking	S100595	Jan-00 PH	1	92.00	Issued		Preston
Baystar Coal Co	S400698	Jan-00 PC	1	37.00	Issued		McDowell
Elk Run Coal Co	S502898	Feb-00 PR	5	854.00	Feb-00 PC	IP Pending	Boone
Marfork Coal Co	U300299	Feb-00 PC	1	254.00	Feb-00 PC		Raleigh
Bluestone Coal Corp.	U400999	Apr-00 PR	1	149.00	Apr-00 PR		Wyoming
Mid-Vol Leasing Inc.	U400499	Apr-00 PH	1	40.00	Apr-00 PH	NA	McDowell
Bluestone Coal Corp.	U401799	Apr-00 PC	1	246.00	Apr-00 PC		McDowell

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

Last update September 1, 1999

Appendix I Page 2 of 4

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
Consol of Kentucky	S501597	May-00 PC	6	571.00	May-00 PC		Mingo
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
Bluestone Coal Corp.	S400899	Jun-00 PC	3	235.00	Jun-00 PC		Wyoming
Bluestone Coal Corp.	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 PC	1	284.00	Aug-00 PC		Raleigh
Kingston Resources	S301599	Sep-00 PR	4	183.00	Sep-00 PR		Raleigh
Fola Coal	S200499	May-01 PR	3	1863.00	May-01 PR		Clay
CC Coal Co	S501799	Sep-01 PR	19	87.00	Sep-01 PR		Mingo

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
Chicopee Coal Co	IBR 3 S500395	Issued I	1	60.00	Dec-99 PH	GP Pending	Logan
CC Coal Co	IBR 1 S300796	Sep-99 PR	6	69.00	Sep-99 PR		Kanawha
Bluestone Coal	IBR 3 U401587	Sep-99 PR	1	176.00	Sep-99 PR		Wyoming
Aracoma Coal Co	Amd 1 S501390	Sep-99 PR	1	89.00	Issued I		Logan
Mingo Logan Coal	IBR 2 S506692	Nov-99 PC	1	113.00	Nov-99 PC		Mingo/Logan
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 PC		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 September 1, 1999

Appendix I Page 3 of 4

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
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.