

August 2000 Monthly Report
West Virginia Permitting Activities
September 15, 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 August 1, 2000, through August 31, 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-nine SMCRA applications for proposed operations and eight revision/amendment applications for previously permitted operations, one application, Pen Coal S-5012-99, has received all of the necessary approvals to begin operations.

One application for a new operation was submitted in August and one application, Independence S-5027-98, was removed from the list as all fills were removed from the application. The CWA Individual Permit application which was pending for the operation was withdrawn by the applicant. The number of pending applications for proposed new operations is now sixty-eight and the number of revision/amendment applications remains at eight. These seventy-six applications need at least one of the four approvals necessary to begin operations.

Revisions were made to the August estimated decision dates for four SMCRA applications for new operations and three revision/amendment applications. The following is a list of the applications and an explanation of why the estimated decision date was revised:

- " CC Coal O-5002-99 Pending submission of bond and WVDEP headquarters review. The estimated decision date is now December.

- " Fola Coal S-2013-98 The applicant has requested an extension. The estimated decision date is now December.

- " Coastal Coal U-2002-00 Pending review in WVDEP headquarters office. The estimated decision date is now October.

- " Evergreen O-2011-98 Pending review of corrections submitted by the applicant. The estimated decision date is now September.
- " Alex Energy 5-80, IBR 1 Pending submission of corrections by the applicant. The estimated decision date is now November.
- " Aracoma Coal S-5013-90, Amd 1 Pending submission of corrections by the applicant. The estimated decision date is now November.
- " Delbarton Mining U-5019-96, IBR 4 Pending submission of corrections by the applicant. The estimated decision date is now November.

III. 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 2000
[SMCRA, 401, 402 AND 404 APPROVAL]

APD - Amendment IP - Individual 404
 IEP - Incidental Boundary Reversion GP - General Nakuwida 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	S-5012-99	Aug 5, 2000	5	68.00	Aug 28, 2000	Aug 17, 2000	GP Aug 28, 2000	WayneLincoln

PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

I - Issued Permit

PH - Pending Final Decision - DEP Headquarters P - Individual 404

PC - Pending Company Action

PR - Pending DEP Review

GP - Gen. Authorizations 404 404 Application not received / blank

COMPANY NAME	S/MCRA PERMIT	* ESTIMATED DECISION DATE	NO. of FILLS	LARGEST VF W/6 ACRES	* 404 ESTIMATED DECISION DATE	404 STATUS	COUNTY		
Uhold Trucking	S100595	Issued	I	1	92.00	Issued	Preston		
Appalachian Mining	S300296	Issued	I	5	350.00	Issued	Fayette		
Hobet Mining Inc	S501397	Issued	I	5	100.00	Issued	Logan		
Riverside Energy Inc	U401897	Issued	I	1	100.00	Issued	Wyoming		
Fola Coal Co LLC	S201198	Issued	I	5	229.00	Issued	W. Va.		
Mountain View	S300196	Issued	I	3	380.00	Sep-00	PC	Kanawha	
Pine Ridge	U500200	Issued	I	1	250.00	Sep-00	PC	GP Issued ²	Boone
Bu'falo Mining	S503295	Issued	I	3	278.00	Dec-00	PC		Boone/Logan
Vandalia Resources	S201298	Sep-00	PR	4	192.00	Sep-00	PR	IP Pending	Clay
CC Coal Co	S500999	Sep-00	PR	13	104.00	Sep-00	PR		Mingo
Independence Coa.	S502597	Sep-00	PH	6	223.00	Sep-00	PC		Boone
Tom L. Schell	S300499	Sep-00	PR	4	152.00	Sep-00	PR		Kanawha
Mid-Voi Leasing Inc.	S401999	Sep-00	PC	5	220.00	Sep-00	PC		McDowell
Marfork Coal Co	U300299	Sep-00	PC	1	254.00	Sep-00	PC		Raleigh
Evergreen Mining Co	Q201198	Sep-00	PR	1	232.00	Issued	I		Webster
Bluestone Coal Corp.	U400999	Sep-00	PH	1	149.00	Issued	I		Wyoming
Coastal Coal WV LLC	U200200	Oct-00	PH	2	22.00	Oct-00	PH		Webster
Road Fork Dev.	S501798	Oct-00	PC	5	157.00	Oct-00	PC		Logan
Premium Energy	S400400	Oct-00	PC	3	125.00	Oct-00	PC		Mingo
Mingo Logan Coal Co	S502399	Oct-00	PC	4	164.00	Oct-00	PC		Mingo/Logan
Hobet Mining	S502799	Oct-00	PC	6	141.00	Oct-00	PC		Boone
Coastal Coal WV LLC	U200900	Oct-00	PR	1	31.00	Oct-00	PR		Webster
Coastal Coa. WV LLC	U201400	Oct-00	PR	1	459.00	Oct-00	PR		Braxton
Premium Energy Inc	S502399	Oct-00	PC	11	244.00	Issued	I		Mingo
Alex Energy Inc.	S300199	Nov-00	PR	3	183.00	Nov-00	PR		Nicholas
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
Elk Run Coal Co	S502898	Nov-00	PC	5	864.00	Issued	I	IP Pending	Boone
CC Coal Co	Q500299	Dec-00	PC	1	35.00	Dec-00	PC		Mingo
Fola Coal Co LLC	S201398	Dec-00	PC	4	237.00	Dec-00	PC		Clay
Pen Coa.	S501899	Dec-00	PR	3	91.00	Dec-00	PR		Lincoln
Vandalia Resources	S200599	Dec-00	PR	7	228.00	Dec-00	PR		Nicholas
Upper Kan. Valley Dev.	S301300	Dec-00	PR	9	31.00	Dec-00	PR		Kanawha
Consol of Kentucky	S501597	Dec-00	PC	6	571.00	Dec-00	PC		Mingo
Little Boyd Coal	S400500	Dec-00	PR	3	145.00	Dec-00	PR		Mingo
Cumberland River Coal	Q500797	Dec-00	PH	3	317.00	Issued	I		Mingo
Black Wolf Mining	S400200	Jan-01	PR	3	40.00	Jan-01	PR		McDowell
Bear Cub Coal Co Inc	S400898	Jan-01	PR	2	61.00	Jan-01	PR		Mercer
Mingo Logan Coal Co	S501598	Jan-01	PC	5	142.00	Jan-01	PH		Logan
Guyandotte Pocanomas	J402199	Jan-01	PR	1	1127.00	Jan-01	PR		Raleigh

PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

I = Issued Permit

P = Pending Final Decision DEP Headquarters IP = Individual 404

PC = Pending Company Action

PR = Pending DEP review

GP = State 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	S400500	Jan-01 PR	5	102.00	Jan-01 PR		Boone
Vandalia Resources	O300100	Feb-01 PR	1	593.00	Feb-01 PR		Kanawha
Powellton Coal Co LLC	O300500	Feb-01 PR	1	343.00	Feb-01 PR	GP Issued ³	Fayette
Kanawha Energy Co	O302199	Feb-01 PC	1	2609.00	Feb-01 PC		Kanawha
Patriot Mining Co. Inc	S100200	Feb-01 PR	2	249.00	Feb-01 PR		Monongalia
Terry Eagle	S300400	Feb-01 PR	4	245.00	Feb-01 PR		Fayette
Independence Coal	S301999	Feb-01 PC	1	249.00	Feb-01 PR		Raleigh
CC Coal Co	S302289	Feb-01 PR	2	218.00	Feb-01 PR		Fayette
Mingo Logan Coal Co	S502297	Feb-01 PR	5	839.00	Feb-01 PR		Logan
Kanawha Energy Co	L301899	Feb-01 Pr	3	1542.00	Feb-01 PR		Kanawha
Catenary Coal Co	S300800	Mar-01 PR	3	338.00	Mar-01 PR	IP Pending	Boone
Catenary Coal Co	S301000	Mar-01 PR	3	558.00	Mar-01 PR	IP Pending	Boone
Marrowbone Dev.	S500700	Mar-01 PR	7	83.00	Mar-01 PR		Mingo
Mingo Logan Coal Co	S501998	Apr-01 PR	4	149.00	May-00 PH		Mingo
Callisto Coal	S500900	Apr-01 PR	5	217.00	Jun-00 PR		Boone
Baystar Coal Co	S400698	Apr-01 PC	1	37.00	Issued I		McDowell
Fola Coal Co LLC	S200489	May-01 PR	3	1863.00	May-01 PR		Clay
Pritchard Mining Co	S301400	May-01 PR	3	105.00	May-01 PR		Kanawha
Bluestone Coal Corp.	S400399	Jun-01 PR	10	158.00	Jun-01 PC		Wyoming
Bluestone Coal Corp.	S400999	Jun-01 PR	3	235.00	Issued I		Wyoming
JMAC Leasing Inc	S401499	Jun-01 PR	2	191.00	Issued I		Wyoming
Huff Creek Energy	U400299	Jun-01 PC	1	110.00	Issued I		Wyoming
Bluestone Coal Corp.	J401799	Jun-01 PC	1	246.00	Issued I		McDowell
Independence Coal	S400800	Jul-01 PR	2	136.00	Jul-01 PR		Boone
Independence Coal	S501400	Jul-01 PR	1	42.00	Jul-01 PR		Boone
Mustang Mining	S501700	Aug-01 PR	5	247.00	Aug-01 PR		Boone
CC Coal Co	S501799	Sep-01 PC	19	87.00	Sep-01 PC		Mingo
Bluestone Coal Corp.	S400199	Jun-02 PC	2	1000.00	Jun-02 PC	IP Pending	McDowell

¹ Approval of the State 404 Certification is pending

² Nationwide 23 permit for creation of a stockpile area.

³ Nationwide 26 permit for creation of a processing facility

PENDING REVISIONS TO EXISTING PERMITS WITH VALLEY FILLS - STATEWIDE

COMPANY NAME	SMCRA PERMIT	* ESTIMATED DECISION DATE	NO. of FILLS	LARGEST VF W/IS ACRES	* ** ESTIMATED DECISION DATE	404 STATUS	COUNTY			
Marrowbone Dev.	IBR 5	U500597	Issued	I	1	43.00	NA	Mingo		
Catenary Coal Co.	Air 62	S300495	Issued	PR	1	207.00	Issued	I	Boone	
Falcon Land	BR 8	P-606	Issued	PR	1	70.00	NA		Logan	
Wyoming Pocahontas	IBR 9	U401994	Sep-00	PR	1	40.00	Issued	I	Raleigh	
CC Coal Co	IBR 1	S300798	Sep-00	PH	6	89.00	Sep-00	PH	Kanawha	
Alex Energy	IBR 7	5-80	Nov-00	PC	1	114.00	NA		Logan	
Aracoma Coal Co	Air 4	S501390	Nov-00	PC	1	89.00	Issued	I	IP Pending	Logan
Delbarton Mining Co.	IBR 4	U601996	Nov-00	PC	1	310.00	Issued	I	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 This is an extension of a temporary fill (over) which will be removed when mining is completed.

ISSUED PERMITS WITH VALLEY FILLS

(SMCRA, 401, 402 AND 404 APPROVAL)

Amc = Amendments

DR = Incidental Boundary Rejection

COMPANY NAME	SMCRA PERMIT	ISSUE DATE OF FINAL PERMIT	COUNTY
Pen Coal	S501299	Aug 28, 2000	Wayne/Lincoln
Marfork Coal Co	U301398	Jun 27, 2000	Raleigh
Stallings Trucking	S501499	Jun 13, 2000	Logan
Marrowbone Dev	J502999	Jun 14, 2000	Mingo
Spartan Mining Co	U503998	Jun 1, 2000	Logan
JS Steel Mining	Amc 1 S400397	May 25, 2000	Wyoming
Snap Creek Mining	S501386	May 11, 2000	Logan
Mid-Vol Leasing Inc.	S400188	Apr 18, 2000	McDowell
Fork Creek Mining	U503798	Apr 7, 2000	Lincoln
Marrowbone Dev.	Amc 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	SR 2 S505692	Nov 2, 1999	Mingo/Logan
Marrowbone Dev.	SR 4 U500587	Nov 1, 1999	Mingo
Aracoma Coal Co	U500499	Oct 16, 1999	Logan
Aracoma Coal Co	U500695	Oct 12, 1999	Logan
Chicopee Coal Co	IBR 3 S500895	Sep 21, 1999	Logan
Patriot Mining Co	S100698	Sep 10, 1999	Monongalia
Catenary Coal Co.	J300198	Aug 31, 1999	Kanawha
Paynter Branch	S401298	Aug 25, 1999	Wyoming
Catenary Coal Co.	SR 3 U300693	Aug 23, 1999	Kanawha
ODS Leasing Inc	U400798	Aug 20, 1999	McDowell
Pen Coal	S502698	Jul 23, 1999	Lincoln
Habet Mining	IBR 1 S003882	Jul 23, 1999	Boone
Mingo Logan Coal Co	Amc 1 U504491	Jun 30, 1999	Mingo/Logan
Eastern Assoc Coal	U500898	Jun 21, 1999	Boone
Catenary Coal Co.	Amc 1 S300485	Jun 10, 1999	Boone
Bluestone Coal	U401398	Jun 4, 1999	Wyoming
Pen Coal	IBR 5 S502787	Apr 30, 1999	Mingo/Logan
Marrowbone Dev.	S502998	Apr 27, 1999	Mingo
Tripp 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

ISSUED PERMITS WITH VALLEY FILLS

(SMCRA, 401, 402 AND 404 APPROVAL)

Amc = Amendment

IBP = Incidental Boundary Revision

Evergreen Mining Co	IBR3	S024076	Mar 28, 1999	Webster
MEPCO Inc.		S100886	Mar 28, 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.