

Monthly Report

West Virginia Permitting Activities

November 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 October 1, 1999, through October 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 fifty SMCRA applications for proposed operations and ten revision/amendment applications for previously permitted operations, two applications for proposed operations received all necessary approvals. The two proposed operations are Aracoma Coal Company's U-5004-99 and U-5006-99. In addition, one application for a revision to an existing operation which received all necessary approvals in September was inadvertently omitted from last month's report. Chicopee Coal Company S-5003-95, IBR 3 is now included in the cumulative list of issued permits on page four of Appendix I.

No new applications or revision applications for SMCRA permits were submitted in October. However, one revision application, Marrowbone Development U-5005-97, IBR 4 was erroneously omitted from previous reports and has been added to the pending permits section on page three of Appendix I. This brings the number of pending applications for proposed new operations to forty-eight and the number of revision/amendment applications to ten. These fifty-eight applications need at least one of the four approvals necessary to begin operations.

Revisions were made to the October estimated decision dates for seven SMCRA applications for proposed operations and one revision/amendment application. The following is a list of the applications and an explanation of why the estimated decision date was revised:

Marrowbone Development S-5025-98 Review is continuing on the latest revision to the application and the CHIA is being finalized. The estimated decision date is now November.

CC Coal Company O-5002-99 The company has failed to submit required corrections to WVDEP. The estimated decision date is now November.

Spartan Mining Company U-5039-98 WVDEP findings are being prepared by the Regional Office. The estimated decision date is now November.

CC Coal Company S-3007-96, IBR #1 Outstanding company corrections and questions regarding landowners and right-of-entry exist. The estimated decision date is now January.

Tom L. Scholl S-3004-99 The application is being redesigned according to AOC enhancement guidelines. The new estimated decision date is January.

Fola Coal Company, LLC S-2013-98 Outstanding company corrections exist. The estimated decision date is now February.

Vandalia Resources S-2012-98 Outstanding company corrections exist. The estimated decision date is now December.

Independence Coal S-5025-97 Outstanding company corrections exist. The estimated decision date is now January.

Two corrections have been made to permit numbers included in Appendix I of previous reports. CC Coal Company permit numbers S-5002-99 and O-5009-99 are now correctly reported as O-5002-99 and S-5009-99, respectively.

III. SIGNIFICANT MONTHLY ACTIVITIES

On October 6 WVDEP Director Mike Castle and OSM Director Kathy Karpan met with representatives of the West Virginia Coal Association and the West Virginia Mining and Reclamation Association to discuss the joint WVDEP/OSM permit review process. Both agencies committed to ensuring that permits were reviewed as timely as possible. Director Karpan reiterated that OSM's review efforts are the result of the State's request for technical assistance and, as envisioned by SMCRA's primacy provisions, WVDEP retains complete authority for all decisions under the approved program.

On October 13 OSM requested public comment on Draft Policy Guidelines on Postmining Land Uses for Mountaintop Mining. The proposed guidelines address mountaintop removal and steep slope mining operations where operators seek a variance to the requirement to restore disturbed lands to approximate original contour. They clarify the requirements regarding allowable postmining land uses acceptable for the variances. OSM will accept comments on the draft guidelines through December 17.

On October 20 U.S. District Chief Judge Charles Haden ruled on legal issues related to valley fills. The ruling held that the buffer zone requirement protects the entire length of intermittent and perennial streams, not just portions; that the placement of valley fills in intermittent and perennial streams violate Federal and State water quality standards by eliminating the buried stream segments for the primary purpose of waste assimilation; and that overburden or excess spoil is a pollutant and waste material, not "fill material" subject to COE authority under CWA Section 404 when it is discharged into waters of the United States for the primary purpose of waste disposal.

Upon reviewing the Judge's ruling, WVDEP issued an Order stating that no new fill permits will be approved and no existing or permitted fills can be advanced in intermittent or perennial streams. On November 1 WVDEP suspended the Order after Judge Haden granted a Stay of his ruling pending appellate action in the US Court of Appeals for the 4th Circuit.

On October 21 WVDEP's geology/hydrology staff met with OSM counterparts to discuss issues commonly observed during joint application reviews completed to date. The purpose of the discussion was to develop ways to inform applicants of these common issues so they can be addressed as applications are being prepared for submission to WVDEP. The goal is to reduce the amount of time required for WVDEP to reach a decision on applications by eliminating the need for time-consuming correction letters. Further discussions will be necessary before the guidance will be ready for distribution to applicants.

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 - OCTOBER 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
Aracoma Coal Co	U500499	Sep 10, 1999	1	66.00	Oct 16, 1999	Sep 13, 1999	GP Oct 16, 1999	Logan
Aracoma Coal Co	U500699	Sep 10, 1999	1	125.00	Oct 12, 1999	Jul 1, 1999	GP Oct 12, 1999	Logan

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
Hobet Mining Inc	S501397	Issued I	5	1100.00	Issued I	IP Pending	Logan
Princess Beverly	S300599	Issued I	2	189.00	Issued I	GP Pending	Kanawha
Appalachian Mining	S300296	Issued I	5	350.00	Nov-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
Cumberland River Coal	O500797	Nov-99 PH	3	317.00	Issued I		Mingo
Mid-Vol Leasing Inc.	S400198	Nov-99 PC	3	178.00	Issued I		McDowell
Spartan Mining Co	U503998	Nov-99 PR	2	40.00	Nov-99 PH		Logan
Marrowbone Dev.	S502598	Nov-99 PC	7	143.00	Nov-99 PH		Mingo
Evergreen Mining Co	O201198	Nov-99 PC	1	342.00	Nov-99 PC		Webster
CC Coal Co	O500299	Nov-99 PC	1	35.00	Dec-99 PC		Mingo
Road Fork Dev.	S501798	Nov-99 PC	5	157.00	Dec-99 PC		Logan
Mingo Logan Coal Co	S501598	Dec-99 PC	5	142.00	Nov-99 PH		Logan
Mingo Logan Coal Co	S501998	Dec-99 PC	6	174.00	Nov-99 PH		Logan
Vandalia Resources	S201298	Dec-99 PC	4	192.00	Dec-99 PC	IP Pending	Clay
Alex Energy Inc.	S300598	Dec-99 PC	9	246.00	Dec-99 PC		Nicholas
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 I		Wyoming
Independence Coal	S502597	Jan-00 PC	6	223.00	Jan-00 PC		Boone
Tom L. Scholl	S300499	Jan-00 PR	4	152.00	Jan-00 PR		Kanawha
Alex Energy Inc.	S300199	Jan-00 PC	3	183.00	Jan-00 PC		Nicholas
Independence Coal	S502798	Jan-00 PC	1	383.00	Jan-00 PC		Boone
Pen Coal	S501299	Jan-00 PC	5	68.00	Jan-00 PC		Wayne/Linc.
Uphold Trucking	S100595	Jan-00 PH	1	92.00	Issued I		Preston
Baystar Coal Co	S400698	Jan-00 PC	1	37.00	Issued I		McDowell
Fola Coal Co LLC	S201398	Feb-00 PC	4	237.00	Feb-00 PC		Clay/Nicholas
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	254.00	Feb-00 PC		Raleigh
Mingo Logan Coal Co	S502297	Mar-00 PC	5	839.00	Jan-00 PC		Logan
Bluestone Coal Corp.	U400999	Apr-00 PR	1	149.00	Apr-00 PR		Wyoming
Mid-Vol Leasing Inc.	U400499	Apr-00 PC	1	40.00	Apr-00 PC	NA	McDowell
Bluestone Coal Corp.	U401799	Apr-00 PC	1	246.00	Apr-00 PC		McDowell
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

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

Last update November 1, 1999

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PENDING SURFACE MINING APPLICATIONS WITH VALLEY FILLS - STATEWIDE

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GP = Gen. Nationwide 404

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COMPANY NAME	SMCRA PERMIT	* ESTIMATED DECISION DATE	NO. of FILLS	LARGEST VF W/S ACRES	* 402 ESTIMATED DECISION DATE	404 STATUS	COUNTY
Bluestone Coal Corp.	S400899	Jun-00 PC	3	235.00	Jun-00 PC		Wyoming
Bluestone Coal Corp.	S400199	Jun-00 PC	2	1000.00	Jun-00 PC	IP Pending	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 PC	4	183.00	Sep-00 PC		Raleigh
Fola Coal Co LLC	S201199	Oct-00 PC	5	176.00	Oct-00 PC		Nicholas
Premium Energy Inc	S502099	Oct-00 PC	11	244.00	Oct-00 PC		Mingo
Fola Coal Co LLC	S200499	May-01 PR	3	1863.00	May-01 PR		Clay
CC Coal Co	S501799	Sep-01 PC	19	87.00	Sep-01 PC		Mingo

PENDING REVISIONS TO EXISTING PERMITS WITH VALLEY FILLS - STATEWIDE

Amd = Amendment

IBR = Incidental Boundary Revision

IP = Individual 404

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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
Mingo Logan Coal	IBR 2 S506692	Issued I	1	113.00	Issued I	GP Pending	Mingo/Logan
Bluestone Coal	IBR 3 U401587	Issued I	1	176.00	Nov-99 PR	GP Issued	Wyoming
Marrowbone Dev.	IBR 4 U500597	Issued I	1	43.00	Dec-99 PC	GP Pending	Mingo
Aracoma Coal Co	Amd 1 S501390	Nov-99 PR	1	89.00	Issued I		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 PH		Mingo
Tri County Mining	Amd 1 S500997	Dec-99 PR	2	55.00	Dec-99 PC		Mingo
Marrowbone Dev.	IBR 5 U500597	Jan-00 PR	1	43.00	NA		Mingo
CC Coal Co	IBR 1 S300796	Jan-00 PC	6	69.00	Jan-00 PC		Kanawha

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

Last update November 1, 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
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.