



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

2007-488-TUG

Issuance Date:

MAY 2 2008

STREAM: POWDERMILL BRANCH

Closing Date:

MAY 29 2008

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States (U.S.), including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Powdermill Processing, Inc.
31 Emerald Lane
Louisa, KY 41230

LOCATION: The proposed project would impact Powdermill Branch, a tributary of Tug Fork. The project area is located on the Louisa, Kentucky USGS quadrangle at approximate latitude 38° 02' 51", longitude 82° 30' 54", approximately 6.2 miles southeast of Fort Gay, Wayne County, West Virginia. A location map is attached to this public notice as **Exhibit A**.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes direct impacts to a total of 6,441 linear feet (LF) of streams and 1.0 acre of an adjacent emergent wetland in conjunction with their proposed Stone #1 Deep Mine, Powdermill Branch Haulroad, coal preparation plant and dry coal refuse disposal area. Additionally, the project would have secondary impacts to 529 LF of intermittent stream between the toe of the proposed dry refuse fill and the sediment control ponds. The federal action being considered is the issuance of a Department of the Army individual permit for placement of dredged and fill material into waters of the U.S. during construction of the deep mine portal, preparation plant area, dry refuse disposal area and haulroad. The attached **Exhibits B and C** show the location of each proposed activity that would require a Department of the Army permit. The proposed haulroad would impact 410 LF of intermittent streams, 263 LF of perennial stream and 0.1 acre of emergent wetland. The proposed coal refuse disposal area would impact 3,292 LF of intermittent stream and 500 LF of ephemeral stream and would affect a drainage area of approximately 98 acres. The mine portal and preparation plant area would impact 1,515 LF of intermittent stream and 0.9 acre of adjacent wetland. Temporary in-stream sediment control Ponds 1, 2 and 2A would impact 1,063 LF of intermittent stream. Total permanent impacts would be to 3,309 LF of stream and 1.0 acre of emergent wetland. Total temporary impacts would be to 3,132 feet of stream. The proposed temporary fills within waters of the U.S. would remain in place for an anticipated 12 years.

The West Virginia Department of Environmental Protection is reviewing the applicant's Surface Mining Permit applications (SMA) O-5008-07 (Haulroad) and a yet unassigned SMA, pursuant to the Surface Mining Control and Reclamation Act of 1977. Details regarding the mining operation can be found in the applicant's SMA on file with the WVDEP.

ALTERNATIVES ANALYSIS: The applicant's stated overall project purpose is the efficient extraction of high quality coal in a safe, cost effective and environmentally sound manner. This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall purpose. The applicant has provided an alternatives analysis, which is currently being reviewed. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available and practicable to achieve the overall project purpose.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan (CMP) to compensate for the proposed impacts to waters of the U.S. regulated by the USACE. To compensate for permanent, temporary and temporal stream impacts, the applicant would perform off-site mitigation concurrent with stream impacts. First, 7,000 LF of intermittent Bull Branch would be enhanced by rehabilitating riparian areas, stabilizing banks and establishing appropriate in-stream structures. The applicant would also create 1.0 acre of forested wetland in an area abutting a portion of Bull Branch, upstream of an existing pond. The area presently shows early-stage emergent wetland characteristics. Upon completion of mining, each stream temporarily impacted would be restored to achieve appropriate stable hydro-geomorphic configurations and pre-project habitat conditions.

WATER QUALITY CERTIFICATION: An individual Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: By letter dated July 3, 2007, the State Historic Preservation Officer (SHPO) stated there are no archaeological or historical properties within the proposed project area that are listed or eligible for listing in the National Register of Historic Places (NRHP). The USACE has determined the proposed project is not likely to impact historic properties listed on or eligible for listing on the NRHP, based on the fact any effects would be authorized as part of the WVDEP's permitting process under the SMCRA. This public notice will serve as coordination with the SHPO concerning any additional information they may have on the project's potential impacts on historic properties listed on or eligible for listing on the NRHP.

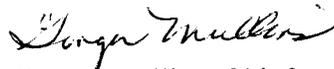
ENDANGERED/THREATENED SPECIES REVIEW: The proposed project lies within the natural range of the endangered Indiana bat (*Myotis sodalis*). The applicant conducted a bat species inventory of the project area and found no federally listed threatened or endangered species and found no man-made structures in the project area suitable for roosting bats. The USACE has determined the proposed project is not likely to adversely affect any Federally-listed threatened or endangered species, based on the fact any effects would be authorized as part of the WVDEP's permitting process under the SMCRA. This public notice will serve as coordination with the U.S. Fish and Wildlife Service concerning threatened or endangered species. If the Service believes any potential effects to federally listed species would be attributable to the Huntington District's proposed permitting action, it is requested the Service provide additional information pursuant to Section 7 of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

This application will be reviewed in accordance with 33 CFR 320-331, the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

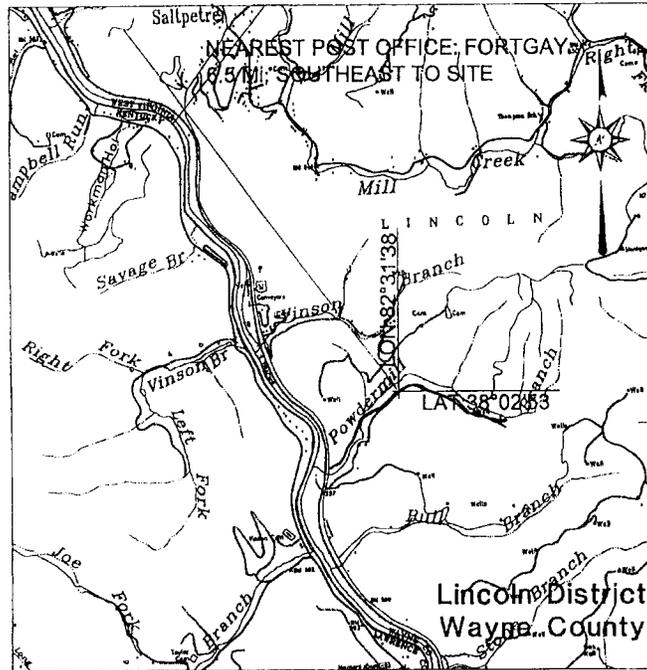
SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Richard Berkes, Regulatory Specialist, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Richard Berkes of the South Regulatory Section at 304-399-5610.



Ginger Mullins, Chief
Regulatory Branch

(W)



LOCATION MAP-Wayne County, Lincoln District
 Scale: 1" = 1 Mile
 Receiving Streams: Unnamed Tributaries of/and
 Powdermill Branch
 Major Sub-Basin: Tug River
 Nearest Post Office: Fort Gay
 Direction to Operation from Nearest Post Office: 6.5
 Miles Southeast of Fort Gay
 Permit No. : O-5008-07
 NPDES No. : Pending
 Quadrangle: Louisa, Ky
 Lat: 38°02'53" Long: 82°31'38"

EXHIBIT A
 PN 2007-488-TUG

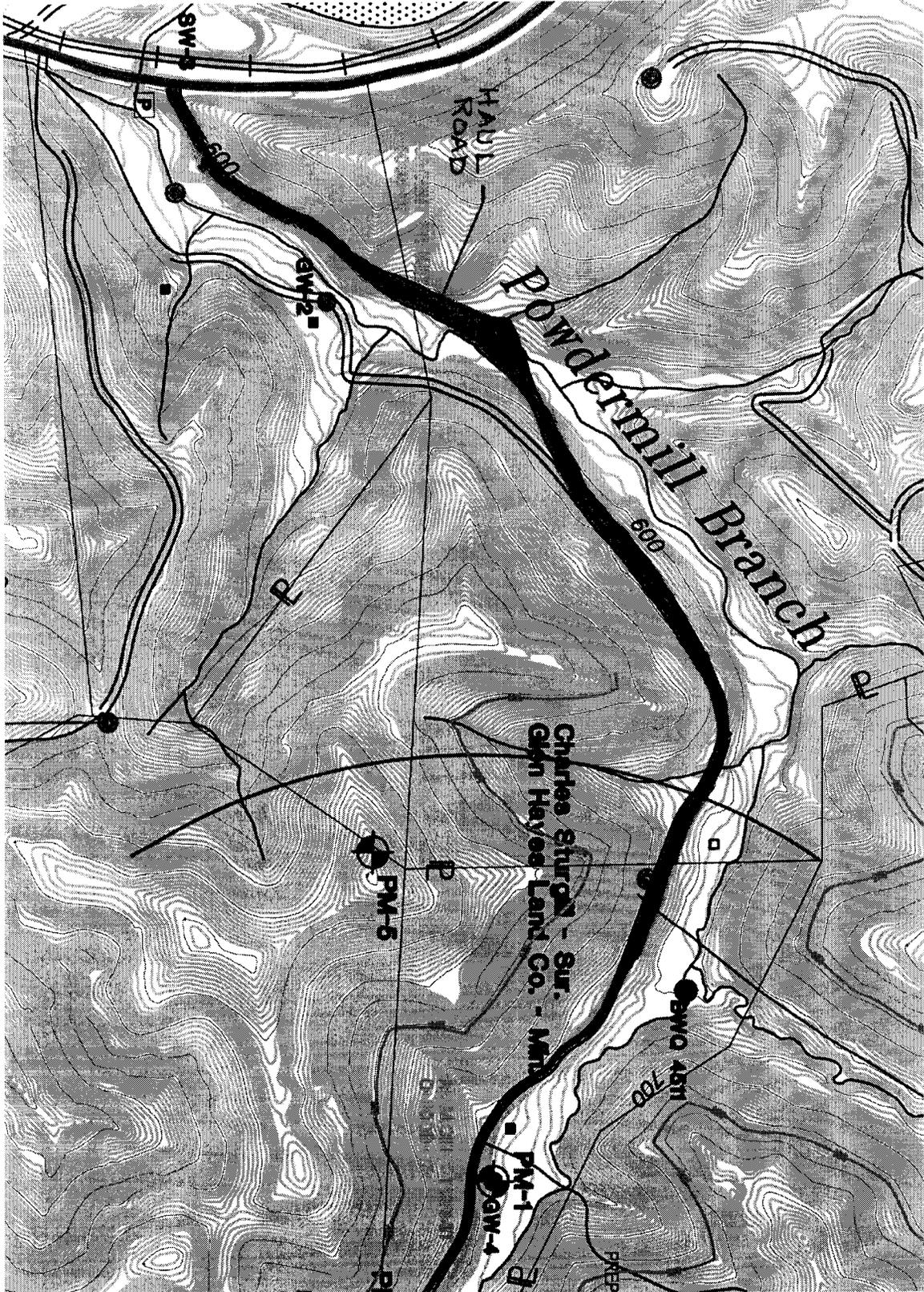


EXHIBIT C
PN 2007-488-TUG

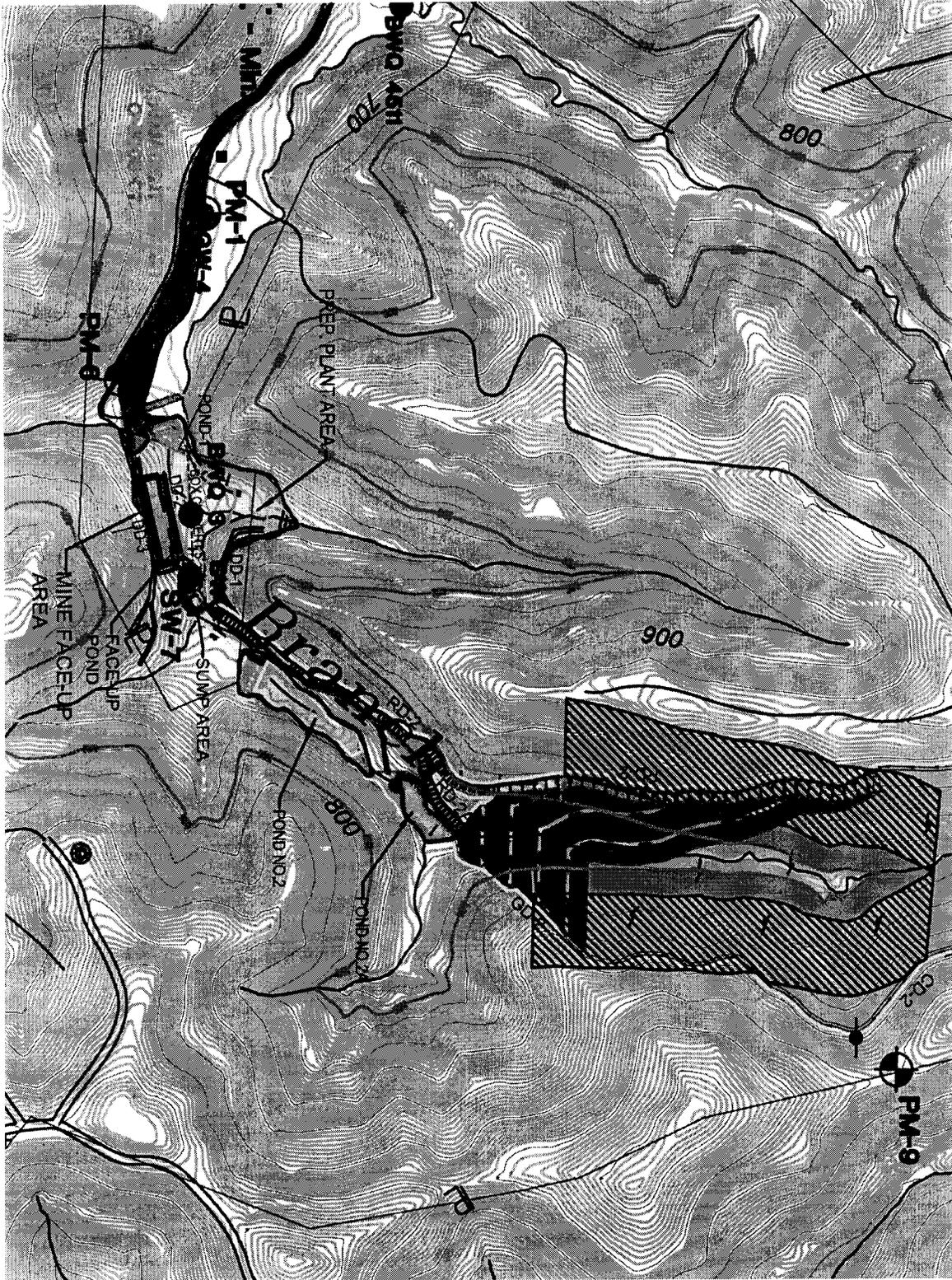


EXHIBIT D
PN 2007-488-TUG