

Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. 2007-000284 -- BCR

Issuance Date:

MAY 16 2008

Stream: Locust Fork

Closing Date:

JUN 16 2008

Please address all comments and inquiries to:

U.S. Army USACE 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 US 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. 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, 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 USACE request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: LoadOut LLC
One Carbon Center, Suite 100
Chesapeake, West Virginia 25315

LOCATION: The proposed project is located approximately 5.2 miles northeast of Julian, Boone County West Virginia. The project area can be found at latitude 38°12'05" and longitude 81°47'48" on the Julian USGS 7.5-minute quadrangle. The proposed project would result in disturbances to Locust Fork and unnamed tributaries, Rattlesnake Hollow, and Pigeonroost Hollow. The streams flow into Fork Creek, a tributary of the Big Coal River, a navigable Section 10 waterway of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge fill material into waters of the United States in conjunction with construction, operation and reclamation activities at the Locust Creek Surface Mine. The applicant has received the required Surface Mining Control and Reclamation Act (SMCRA) Permit S-5023-01, which was issued on June 9, 2004.

The proposal would include the placement of fill material into waters of the United States in conjunction with the construction of four valley fills and ten sediment control structures. Construction of the four valley fills (Valley Fills No. 1 – 4) would permanently impact approximately 9,890 feet of intermittent stream channel and 1,546 feet of ephemeral stream channel. Construction of the ten sediment control structures (Ponds 1A & 1, 3A & 3, 5A & 5, 7A & 7, and 9A & 9) would temporarily impact 6,601 feet of intermittent stream channel and 1,378 feet of ephemeral stream channel. The proposal would also result in secondary impacts to approximately 48 feet of intermittent stream channel (See Table 1). A total of 11,436 feet (1.045 acres) of stream channel would be permanently impacted and 8,027 feet (0.674 acres) of stream channel would be temporarily impacted by the proposed contour and highwall-mechanical mining activities.

The purpose of the stream filling activities is to construct attendant and associated features (i.e. overburden disposal, sediment control, etc.) to allow the efficient and cost-effective recovery of coal located in three coal seams, including riders and splits, at the 247 acre SMCRA permitted area for a period of four years. The applicant proposes to utilize a combination of contour and highwall-mechanical mining to recover approximately 5.75 million tons of coal resources at the site. Coal removed from the project area would be processed and moved offsite for delivery to customers. Plans for the proposed facility are attached to this public notice.

ALTERNATIVE ANALYSIS: 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 project purpose. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

MITIGATION PLAN: The applicant has submitted a preliminary Compensatory Mitigation Plan to compensate for temporary and permanent impacts to waters of the United States that are regulated by the USACE. To off-set the permanent loss of 11,436 feet of intermittent and ephemeral stream channel, the applicant proposes to conduct stream rehabilitation activities on approximately 12,205 linear feet of Locust Fork and an unnamed tributary of Locust Fork located adjacent to the project area. Locust Fork is the receiving stream for the streams proposed for impact associated with the project. According to the applicant, the stream channels proposed for rehabilitation exhibit high sedimentation and embeddedness, poor bank stability, and minimal riparian vegetative buffer width. At a minimum, the applicant proposes to enhance the riparian zone with native vegetation, establish riffle/run pool sequences, provide vegetative and riprap bank stabilization (where required), install in-stream structures such as cross-vanes, w-weirs, j-hooks, and rootwads (where required). The applicant anticipates these measures would improve stability of the riparian buffer, improve the streams ability to transport sediment, improve stream aquatic and riparian habitat, and stream morphology.

The applicant also proposes to restore approximately 8,027 feet of intermittent and ephemeral stream channel that would be temporarily impacted by sediment pond construction and operation. Upon completion of the mining activities at the sites, the temporary sediment structures would be removed and the stream channels would be restored to their approximate original contours, based upon pre-mining information. Natural stream channel design techniques would be employed to ensure the reconstructed channels obtain the appropriate hydro-geomorphic configuration for their setting. The stream reconstruction activities would include in-stream habitat enhancement structures such as step/pools, meanders, rootwads, boulders, etc. The riparian buffer would be re-established along each stream channel and would measure 50 feet from the top of each bank. A minimum of 400 native tree species and 100 native shrub species per acre would be established within the buffer. The applicant has indicated the stream mitigation sites would be protected via a deed restriction, conservation easement, or some other protective covenant, in their natural state, in perpetuity. A copy of the preliminary Compensatory Mitigation Plan is available for review in the Huntington District Office.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the WVDEP.

HISTORIC AND CULTURAL RESOURCES: The proposed mining plans was reviewed by the West Virginia Division of Culture and History (WVDCH) to determine if the proposal would result in impacts to properties listed or eligible for the National Register of Historic Places. WVDCH indicated that based on the information provided in the Phase I Archeological Survey conducted by the applicant no known archeological sites listed on or eligible for the Register would be affected by the proposed undertaking. A copy of this public notice will be sent to the WVDCH for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

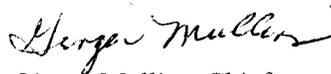
ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. The applicant retained the services of REIC Inc. to complete a bat-mist net survey to determine presence or probable absence of the Indiana bat within the proposed project area. The required survey was conducted between July 7, 2006 and July 10, 2006. No Indiana bats or Virginia big-eared bats were captured during this survey. The bat-mist net survey also indicates the proposed project area was surveyed for abandoned mine portals that could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. As a result, no old, abandoned mine portals were found within the proposed project area. This public notice serves as a request to the USFWS and WVDEP for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the ESA 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 Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the United States 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 Kimberly Courts-Brown, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE 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 become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning the above, please contact Kimberly Courts-Brown of the South Regulatory Section at (304) 399-5610.

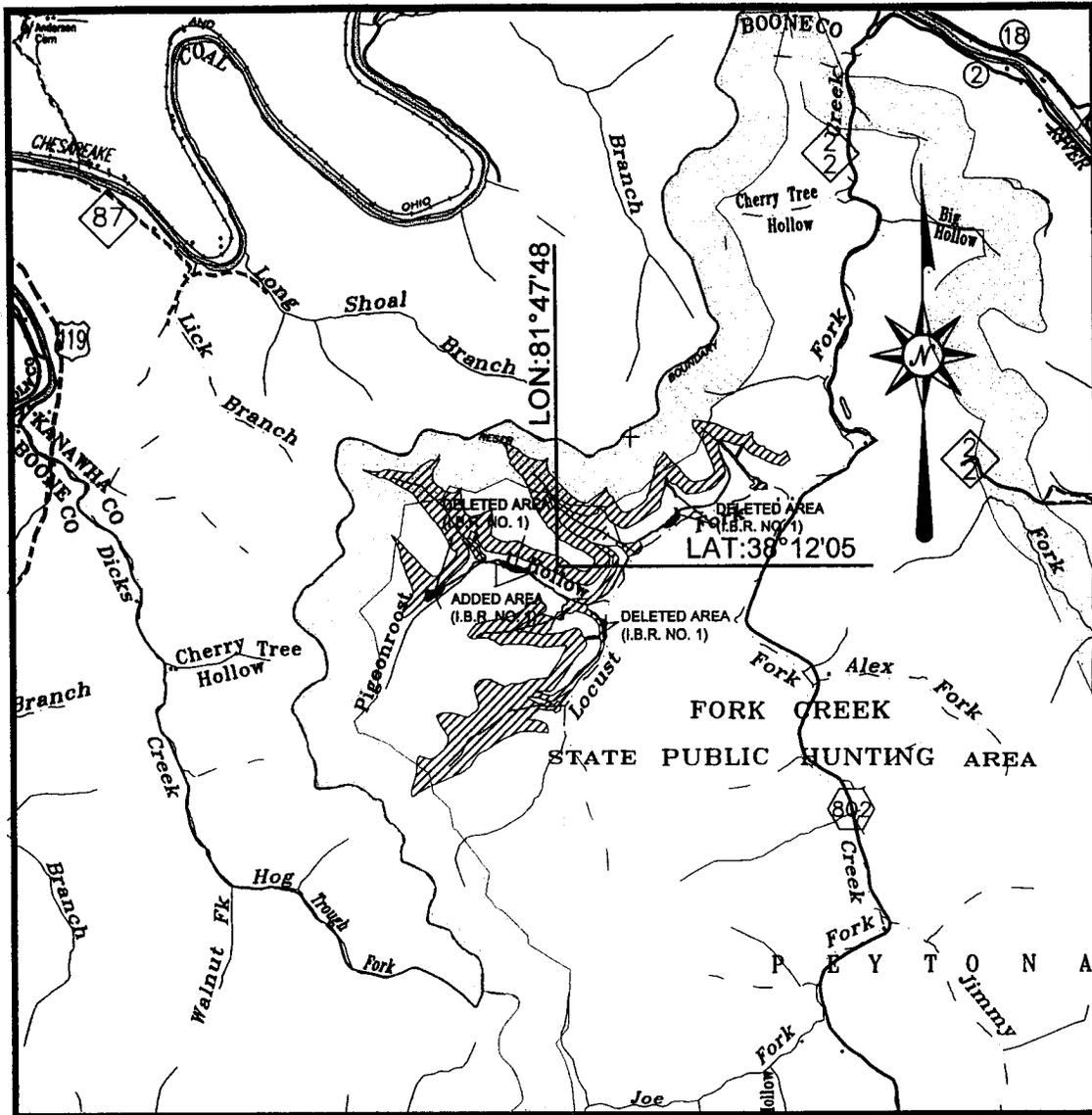

Ginger Mullins, Chief
Regulatory Branch

(W)

Table 1A - LOCUST FORK SURFACE MINE JURISDICTIONAL WATERS IMPACT SUMMARY

The following chart represents the total project, including all tributaries

Structure	(ft)	(acres)	CY	(ft)	(acres)	(ft)	(acres)	(ft)	(acres)	(ft)	(acres)	CY	(ft)	(acres)	(ft)	(acres)	(acres)	(ft)	(acres)	(ft)	(acres)	(ft)	(acres)	(ft)	(acres)																											
Stream #1 (1st Left UNT of Rattlesnake Hollow of Locust Fork)	571	0.038	6.12	11	0.001	100	0.003	-	-	1,226	0.097	15.67	-	-	-	-	-	-	-	-	-	-	-	-	-																											
Stream #2 (5th Right UNT of Locust Fork)	300	0.049	8.25	19	0.003	150	0.002	-	-	2588	0.258	41.59	150	0.004	-	-	-	-	-	-	-	-	-	-	-																											
Stream #3 (1st Right UNT of Pigeonroost of Rattlesnake Hollow of Locust Fork)	1132	0.122	19.64	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-																											
Stream #4 (Rattlesnake Hollow (4th Right Tributary) of Locust Fork)	770	0.093	16.98	18	0.003	324	0.023	-	-	2212	0.246	39.69	-	-	-	-	-	-	-	-	-	-	-	-	-																											
Stream #5 (2nd Right UNT of Rattlesnake Hollow of Locust Fork)	-	-	-	-	-	179	0.009	-	-	200	0.01	1.71	260	0.011	-	-	-	-	-	-	-	-	-	-	-																											
Stream #6 (1st Right UNT of Rattlesnake Hollow of Locust Fork)	754	0.054	8.69	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-																											
Stream #7 (3rd Right UNT of Locust Fork)	436	0.057	9.17	-	-	276	0.009	-	-	2,764	0.305	51.09	205	0.009	-	-	-	-	-	-	-	-	-	-	-																											
Stream #8 (Second Right UNT of the 3rd Right UNT of Locust Fork)	-	-	-	-	-	186	0.008	-	-	100	0.012	1.94	114	0.009	-	-	-	-	-	-	-	-	-	-	-																											
Stream #9 (1st Right UNT of the 3rd Right UNT of Locust Fork)	-	-	-	-	-	-	-	-	-	200	0.024	3.89	300	0.022	-	-	-	-	-	-	-	-	-	-	-																											
Stream #10 (2nd Right UNT of Locust Fork)	379	0.027	4.34	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-																											
Stream #11 (1st Right UNT of Locust Fork)	1659	0.117	17.75	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-																											
Stream #12 (1st Right UNT of the 1st Right UNT of Locust Fork)	600	0.052	8.42	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-																											
Stream #13 (2nd Right UNT of the 5th Right UNT of Locust Fork)	-	-	-	-	-	151	0.004	-	-	300	0.013	2.04	249	0.007	-	-	-	-	-	-	-	-	-	-	-																											
Stream #14 (1st Right UNT of the 5th Right UNT of Locust Fork)	-	-	-	-	-	12	0	-	-	300	0.011	1.85	268	0.007	-	-	-	-	-	-	-	-	-	-	-																											
Totals	6,601	0.609	99.36	48	0.007	1,378	0.058	0	0	9,890	0.976	7	3,515	0.063	0																																					
Total Temporary Impact	feet												8,027	acres												0.674	feet												11,436	acres												1.045



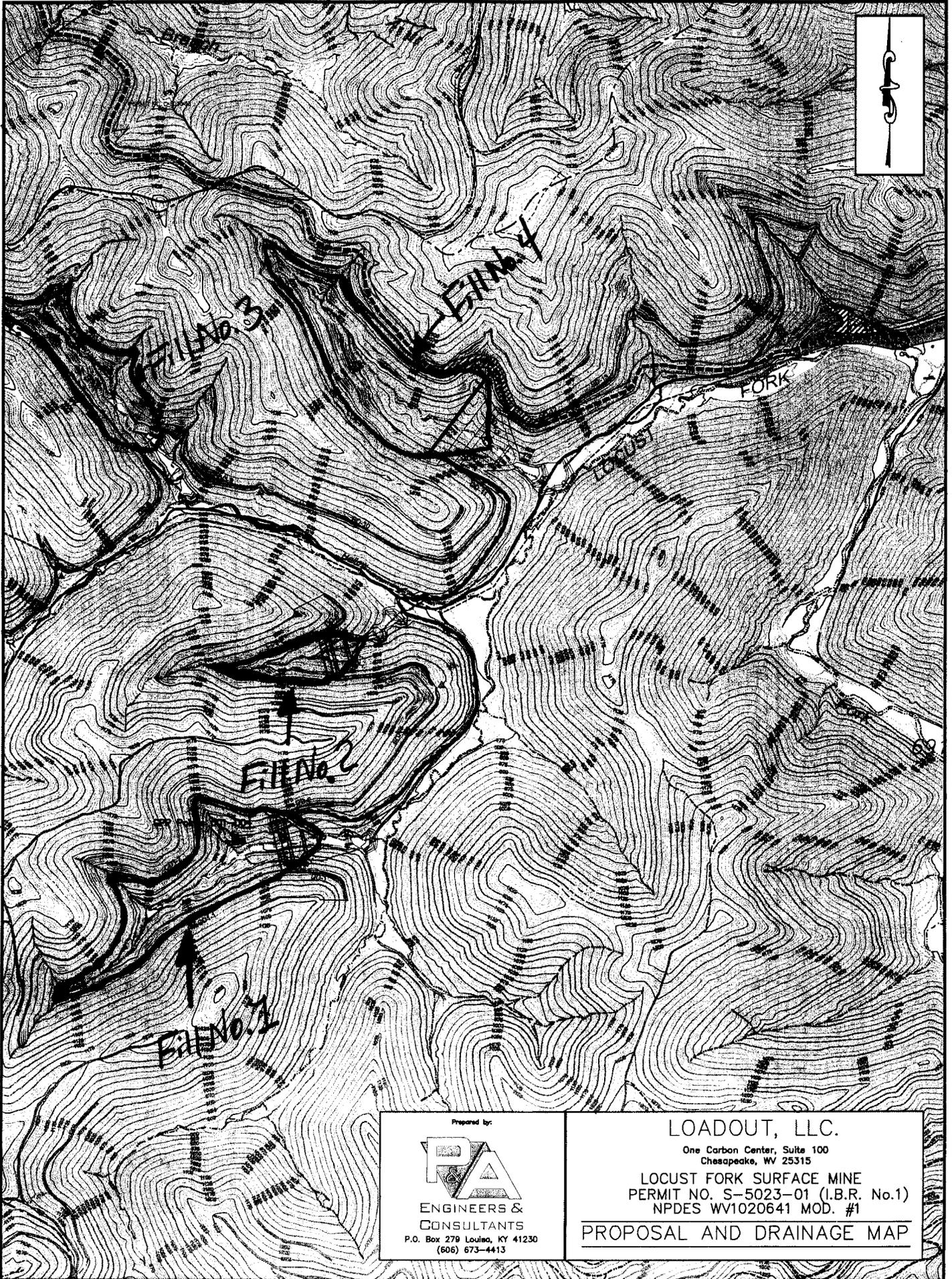
LOCATION MAP

JULIAN QUADRANGLE, PEYTONA DISTRICT, BOONE COUNTY
 RECEIVING STREAM: RATTLESNAKE HOLLOW, PIGEONROOST
 HOLLOW, UNNAMED TRIBUTARIES of LOCUST FORK, and
 LOCUST FORK, all of FORK CREEK of the BIG COAL RIVER
 of the KANAWHA RIVER

NEAREST POST OFFICE: 3.8 miles northeast of Julian, WV

Permit No. S-5023-01 (I.B.R. No. 1)

Scale: 1" = 1 Mile



Prepared by:



ENGINEERS &
CONSULTANTS

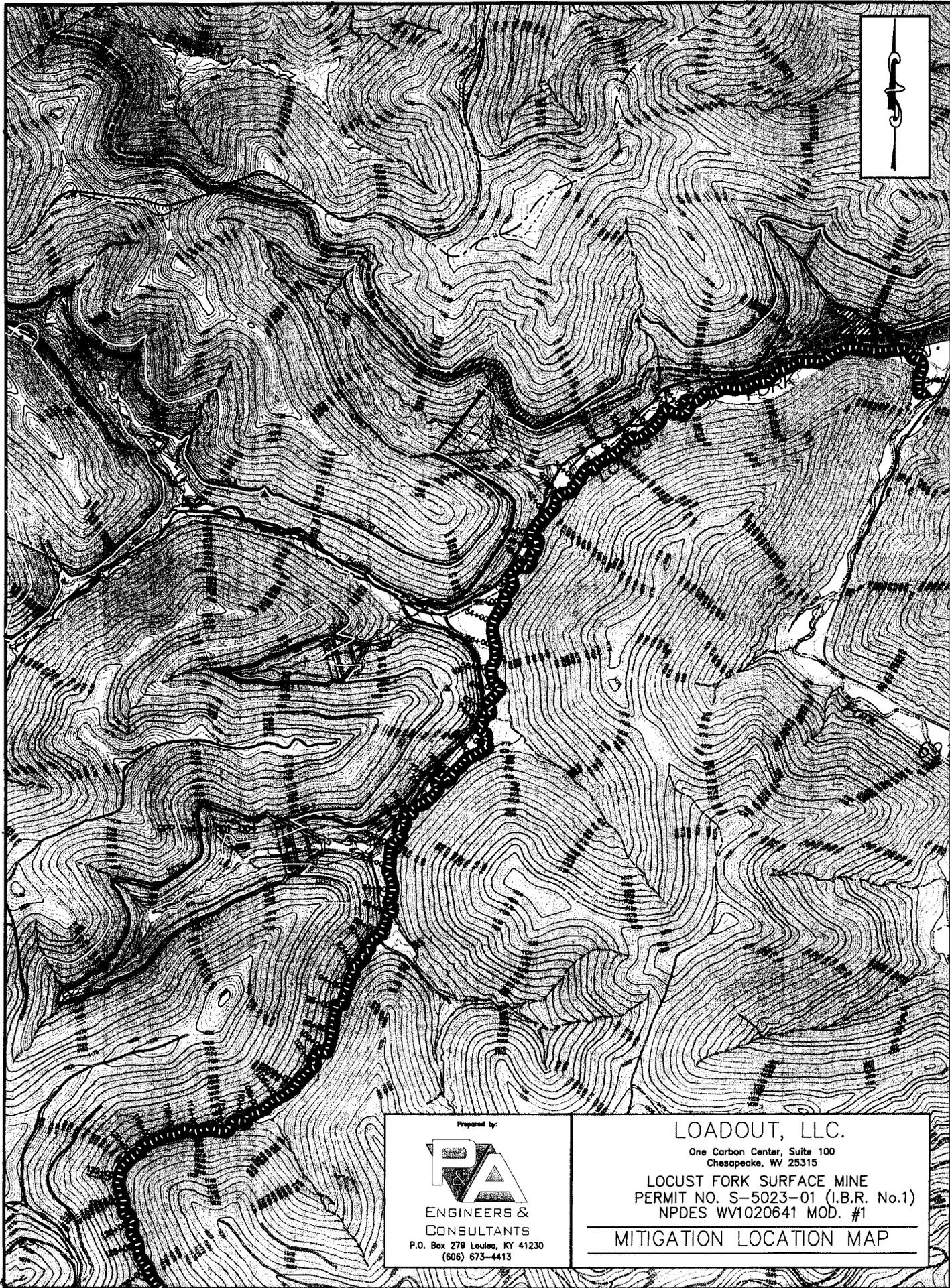
P.O. Box 279 Louisa, KY 41230
(606) 673-4413

LOADOUT, LLC.

One Carbon Center, Suite 100
Chesapeake, WV 25315

LOCUST FORK SURFACE MINE
PERMIT NO. S-5023-01 (I.B.R. No.1)
NPDES WV1020641 MOD. #1

PROPOSAL AND DRAINAGE MAP



Prepared by:



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CONSULTANTS

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LOCUST FORK SURFACE MINE
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MITIGATION LOCATION MAP