



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:	Issuance Date:
Public Notice No. 200200265	July 29, 2004
Stream:	Expiration Date:
Spring Branch	August 28, 2004
Address comments to:	US Army Corps of Engineers, Huntington District 602 Eighth Street ATTN: CELRHE Huntington, West Virginia 25701-2070

PUBLIC NOTICE

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: Coal Mac, Inc.
Post Office Box 436
1628 West 3rd
Williamson, West Virginia 25661

LOCATION: The proposed project is located in an unnamed tributary of Littles Creek, Sang Branch of Cow Creek and Spring Branch of Littles Creek near Sarah Ann, in Logan County, West Virginia as depicted on **Drawing 1** of this public notice.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the U.S. in conjunction with the Phoenix Surface Mine No. 3. The proposal involves the construction of one valley fill (No. 4) and one associated in-stream sediment pond (No. 4). The proposed valley fill and sediment pond as well as two other valley fills (No. 2 and 3) and two sediment ponds (No. 2 and 3) were authorized on May 27, 2003 by the Huntington District under the January 15, 2002 Federal Register, Final Notice of Issuance of Nationwide Permits (67 FR 2020), Nationwide Permit 21. Valley Fills 2 and 3 and the associated sediment ponds have resulted in the placement of fill material within 2,224 linear feet of intermittent streams and 2,415 linear feet of ephemeral streams. Valley Fill 4 and Sediment Pond 4 have not been constructed to date.

The United States District Court for the Southern District of West Virginia at Huntington issued a Memorandum Opinion and Injunctive Order in the case of Ohio Valley Environmental Coalition, et al. v. William Bulen, Colonel, District Engineer, U.S. Army Corps of Engineers, Huntington District, et al. (Civil Action No. 3:03-2281). In this Order, the Court enjoined the Corps "from issuing authorizations pursuant to NWP 21 in the Southern District of West Virginia." Additionally, regarding the eleven specific mining authorizations challenged by the Plaintiffs in the case, the Court ordered the Corps "to suspend those authorizations for valley fills and surface impoundments on which construction has not commenced as of July 8, 2004." Therefore, Coal Mac's NWP 21 authorization for its Phoenix No. 3 Surface Mine was suspended for "valley fills and surface impoundment on which construction has not commenced as of July 8, 2004."

The construction of the Valley Fill 4 would result in the discharge of fill material into approximately 2,131 linear feet or 0.23 acre of ephemeral stream channel. Further, approximately 469 linear feet or 0.09 acre of ephemeral stream channel would be temporarily impacted by the construction of the Sediment Pond 4. With the incremental impacts associated with the proposed activities when combined with the completed activities, the Phoenix No. 3 Surface Mine would result in total impacts to approximately 7,239 linear feet or 0.97 acre of waters of the U.S. **Attachment A** of this public notice details the proposed mining activities and corresponding information with respect to the proposed impact locations and stream loss (linear feet and acres). Each of the valley fills affect contributing watersheds of less than 250 acres and range from 75.79 acres to 134.74 acres and are detailed on **Attachment A** of this public notice.

The proposal is a mountaintop removal operation that is expected to recover approximately 8.4 million tons of the Upper Kittanning, Middle Kittanning, No. 5 Block, Clarion, Stockton A, Stockton, Coalburg Rider, Coalburg and associated rider seams in roughly equal annual increments over a ten year life. The proposed operation would generate approximately 56.6 million cubic yards of overburden, of which over 24.5 million cubic yards would be excess spoil that would be placed in the proposed valley fill sites as detailed on **Attachment B** of this public notice. The type of material placed in the valley fills would consist of rock and soil overburden that is excavated during the mining operation. The remaining 32.1 million loose cubic yards would be placed on the backstack of the coal removal area. Approximately 469.74 acres of land would be disturbed.

No coal or coal waste would be placed in the fills. No wetlands would be affected by any portion of this proposed project. All disturbed areas would be seeded and mulched immediately after the mining operations. Runoff from all disturbed areas would be routed through the sediment control structures and monitored before leaving permitted areas.

The post-mining land use is Agricultural/Light Industrial. Upon reclamation, the landowner intends to construct and operate a winery with associated grape orchards on the regraded surface mine area. The decks of proposed Valley Fills 2, 3 and 4 would be utilized for this purpose as well.

The West Virginia Department of Environmental Protection (WVDEP) approved the applicant's Surface Mining Permit application (S-5015-98) on March 6, 2003 pursuant to the Surface Mining Control and Reclamation Act of 1977.

The proposed project would be accomplished in six general phases over a period of 58 months as detailed on **Attachment C** of this public notice. A discussion of each phase follows:

Phase 1: Phase 1 began with the construction and certification of Ponds 2 and 3 and the subsequent clearing and grubbing in the areas of Valley Fill 2 and 3. Mining began with contour mining of the Coalburg seam in the southern portion of the permitted area, adjacent to Permit S-5066-92, Amendment 1. Mountaintop mining of the higher seams continued in the areas between Valley Fills 2 and 3.

For this and remaining phases of the permit, on-bench sediment control would be established when sufficient room is made available for construction. Temporary bench drainage and sediment control would be accomplished by leaving a 15' undisturbed solid berm along the outcrop.

		3	
Disturbed Area	=	154.36	32.86%
Ancillary Area	=	10.35	2.20%
Regraded Area	=	0.00	0.00%
Undisturbed Area	=	305.03	64.94%
<u>Total Permit Area</u>	=	<u>469.74</u>	<u>100.00%</u>

Phase 2: In Phase 2, mountaintop mining continued in the areas adjacent to Valley Fill 3 and contour mining of the Coalburg seam would extend northward on the west side of Valley Fill 3 and east of Valley Fill 3 toward Valley Fill 4. As mining progressed, the excess material was placed into Valley Fills 2 and 3. As Valley Fill 3 is developed, its top would be established as an ancillary area until a future phase. This area would be used as a launching area for personnel and equipment that service this mine.

Reclamation would begin adjacent to Permit S-5066-92, Amendment 1, and be completed in the areas north of Valley Fill 2.

Disturbed Area	=	154.36	32.86%
Ancillary Area	=	42.22	8.99%
Regraded Area	=	32.16	6.85%
Undisturbed Area	=	241.00	51.30%
<u>Total Permit Area</u>	=	<u>469.74</u>	<u>100.00%</u>

Phase 3: In Phase 3, Pond 4 would be constructed and certified. Once the pond is certified, Valley Fill 4 would be cleared and grubbed in preparation for spoil placement. Clearing operations would commence in the Valley Fill 4 area. Mining would continue, first with contour mining, followed by mountaintop mining of higher seams, and advancing around the eastern and southern sides of Valley Fill 4.

Reclamation would be completed for Valley Fill.2. This fill and its associated drainage structures would be certified. Reclamation would continue up to the southern end of Valley Fill 3, around both sides of the fill, and start at the toe of the fill.

Disturbed Area	=	154.38	32.87%
Ancillary Area	=	46.57	9.91%
Regraded Area	=	122.95	26.17%
Undisturbed Area	=	145.84	31.05%
<u>Total Permit Area</u>	=	<u>469.74</u>	<u>100.00%</u>

Phase 4: In Phase 4, mining would conclude in the point north of Valley Fill 3, and continue with first contour mining of the Coalburg seam and then mountaintop removal of higher seams in the area north of Valley Fill 4.

Reclamation activities would continue in the mining areas north of Valley Fill 3 and would continue up the fill itself. The area east of Valley Fill 3 towards Valley Fill 4 would be the next to undergo reclamation, as well as the toe of Valley Fill 4

		4	
Disturbed Area	=	154.74	32.94%
Ancillary Area	=	49.03	10.44%
Regraded Area	=	180.72	38.47%
Undisturbed Area	=	85.25	18.15%
<u>Total Permit Area</u>	=	<u>469.74</u>	<u>100.00%</u>

Phase 5: In Phase 5, mining would advance northward of Valley Fill 4 and continue northward to the extent of the mining permit, first with contour mining of the Coalburg seam, followed by mountaintop removal of the remaining higher seams. The end of this phase would conclude the mining part of this permit.

The ancillary area that was established on the top of Valley Fill 3 would be retained until the completion of reclamation activities.

Reclamation would be completed for the remainder of Valley Fill 3, minus the ancillary area at the top, and in the mined area of the point north of Valley Fill 3. This Fill and its associated drainage structures would be certified. Reclamation would continue along the southern area around Valley Fill 4 and begin at the toe of this fill.

Disturbed Area	=	151.18	32.18%
Ancillary Area	=	50.49	10.75%
Regraded Area	=	268.07	57.07%
Undisturbed Area	=	0.00	0.00%
<u>Total Permit Area</u>	=	<u>469.74</u>	<u>100.00%</u>

Phase 6: This is the final phase. Reclamation would be completed for Valley Fills 3 and 4 as well as the area around the top of Valley Fill 4 and the mining area north to the extent of the mining permit. These Fills and their associated drainage structures would be certified.

The permit would thus be totally reclaimed; preparations would be made for Phase I bond release.

Disturbed Area	=	0.00	0.00%
Ancillary Area	=	0.00	0.00%
Regraded Area	=	469.74	100.00%
Undisturbed Area	=	0.00	0.00%
<u>Total Permit Area</u>	=	<u>469.74</u>	<u>100.00%</u>

According to the applicant, the purpose of the project is to construct valley fills to dispose of excess overburden spoil generated by surface mining operations into waters of the United States in order to achieve optimal recovery of available coal reserves within the project area and to provide the mandatory sediment control and access.

Plans for the proposed project are attached to this public notice.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan (CMP) to compensate for permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. To compensate for permanent impacts to waters of the United States, the applicant proposes to mitigate off-site through in-kind establishment of aquatic resources.

The proposed mitigation site is located in an unnamed tributary of Cow Creek of Island Creek of the Guyandot River. Mitigation would take place before or concurrently with the mining activities to minimize temporal losses of aquatic resources. The proposed mitigation site would be monitored for a five-year period to ensure achievement of the performance standards. The objective of the CMP is to practicably offset the permanent losses of aquatic resources resulting from the authorized activities by the construction/establishment of aquatic resources.

The CMP would consist of the establishment of 3,650 linear feet ephemeral stream channel (Segment 1) and 1,500 linear feet of intermittent stream channel (Segment 2) on a reclaimed surface mine. David L. Rosgen's stream classification system would be used in the design of the mitigation channels. The mitigation work plan would consist of three construction phases. These phases would include the construction of a primary and secondary channel, the placement of inorganic and organic substrate placement and compositions, and the reestablishment of vegetation along established channels. The CMP focuses on rapid creation and/or improvement of terrestrial organics composition.

A vegetated buffer consisting of native plant species would be established along the established channels. Reestablishment of vegetation in riparian areas would generally comply with the established and acceptable guidelines and recommendations set forth by the Natural Resources Conservation Service (NRCS) CPS Code 342 for the "Establishment of Vegetation." All of the above mitigation sites would be monitored annually for five years following the proposed mitigation measures to ensure success. The applicant proposes to permanently protect the mitigation sites via a "Declaration of Restrictive Covenants (DRC)" dated October 1, 2003.

To compensate for temporary stream impacts, the stream channels (2,218 linear feet) affected by sediment pond construction would be restored and reconstructed in accordance with the approximate pre-mining contours. Rosgen natural stream design techniques would be used to ensure the reconstructed stream channels obtain the appropriate hydrogeomorphic configuration (i.e. meander, entrenchment, grade, bank-full width and etc...). Restoration and reconstruction efforts would utilize bioengineering materials to the maximum extent practicable. A vegetated buffer consisting of native plant species would be reestablished along the restored channels.

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 West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: The Huntington District has consulted the most recently available information and has determined the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species, which has been determined to be critical. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may

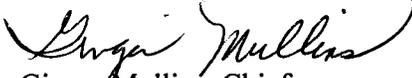
be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

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.

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. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. 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.

The Corps of Engineers 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. Any comments received will be considered by the Corps of Engineers 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.

If you have any questions concerning this public notice, please call Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)

Attachment A

Mingo Logan Coal Company

Phoenix No. 3 Surface Mine

SMCRA Permit No. S-5015-98

Jurisdictional Waters Impact Summary

Mining Activities	Location	Extent of PERMANENT Impacts (Linear Feet)			Extent of TEMPORARY Impacts (Linear Feet)			Surface Water Acres of Impact	Drainage Area (acres measured from the toe of the proposed valley fill)	
		Perennial	Intermittent	Ephemeral	Perennial	Intermittent	Ephemeral			
Valley Fill 2	U/T of Littles Creek	•	•	851	•	•	•	0.08	75.79	
Sediment Pond 2	U/T of Littles Creek	•	•	•	•	89	815	0.14	•	
Valley Fill 3	Sang Branch of Cow Creek	•	1,290	749	•	•	•	0.25	134.24	
Sediment Pond 3	Sang Branch of Cow Creek	•	•	•	•	845	•	0.18	•	
Valley Fill 4	Spring Branch of Littles Creek	•	•	2,131	•	•	•	0.23	106.45	
Sediment Pond 4	Spring Branch of Littles Creek	•	•	•	•	•	469	0.09	•	
Total (Permanent and Temporary Impacts)		•	1,290	3,731	•	934	1,284	0.97		
			5,021			2,218				
		7,239								

Attachment B
Mingo Logan Coal Company
Phoenix No. 3 Surface Mine
SMCRA Permit No. S-5015-98

Total Fill Volume/Valley Fill Disposal Site

Disposal Site	Fill Volume Cubic Yards
Valley Fill 2	5,186,657
Valley Fill 3	12,518,658
Valley Fill 4	6,771,162
Total	24,476,477

Attachment C
Mingo Logan Coal Company
Phoenix No. 3 Surface Mine
SMCRA Permit No. S-5015-98
Mining and Reclamation Schedule

PHASE	MINING			RECLAMATION			UNRECLAIMED ACRES
	START	END	ACRES	START	END	ACRES	
I	Month 1	Month 9	164.71	N/A	N/A	0.00	164.71
II	Month 10	Month 18	196.58	Month 10	Month 18	32.16	196.58
III	Month 19	Month 27	200.95	Month 19	Month 27	90.79	200.95
IV	Month 28	Month 36	203.77	Month 28	Month 36	57.77	203.77
V	Month 37	Month 45	201.67	Month 37	Month 45	87.35	201.67
VI	N/A	N/A	0.00	Month 46	Month 58	201.67	0.00

Total Permit Acreage = 469.74

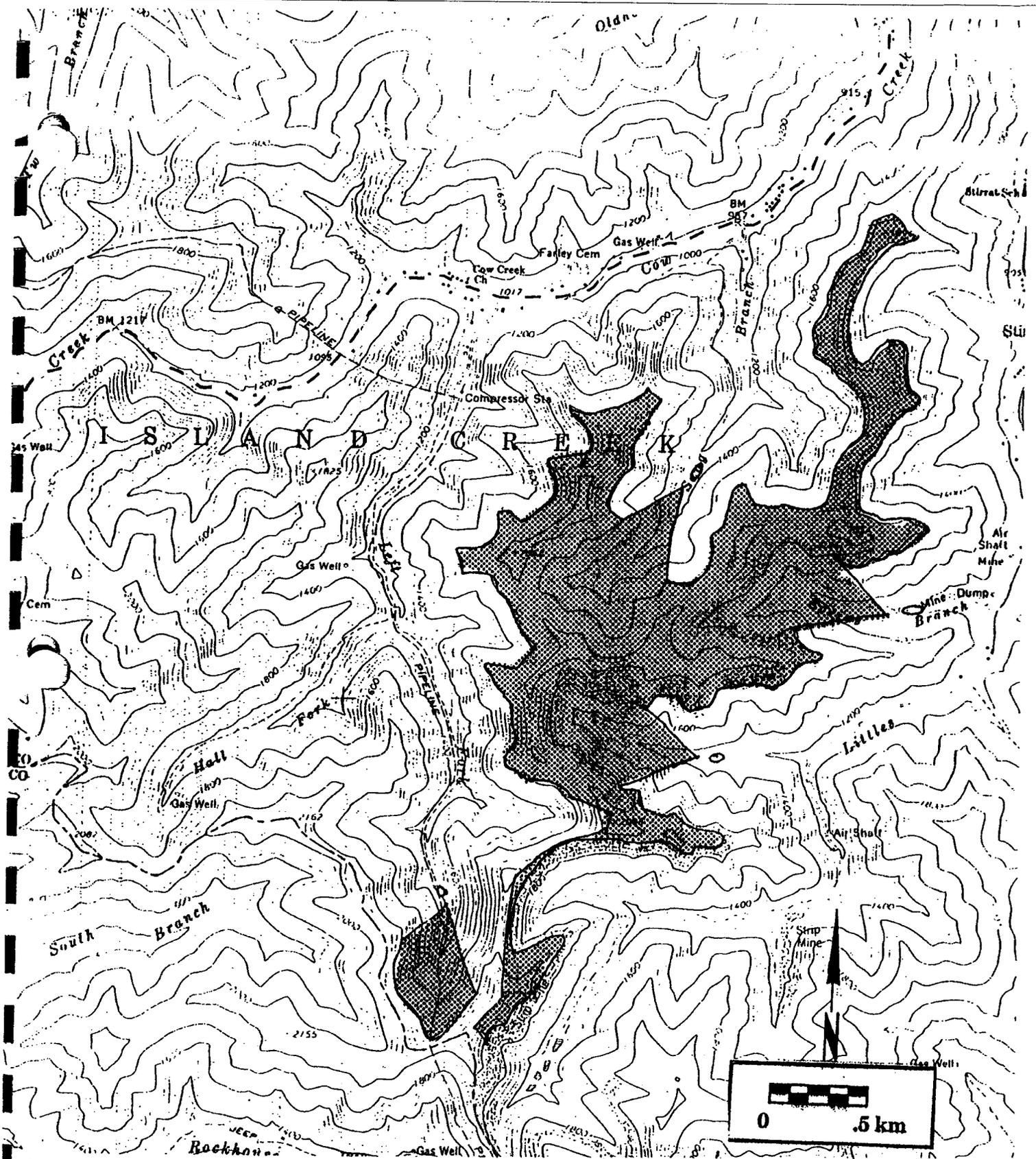
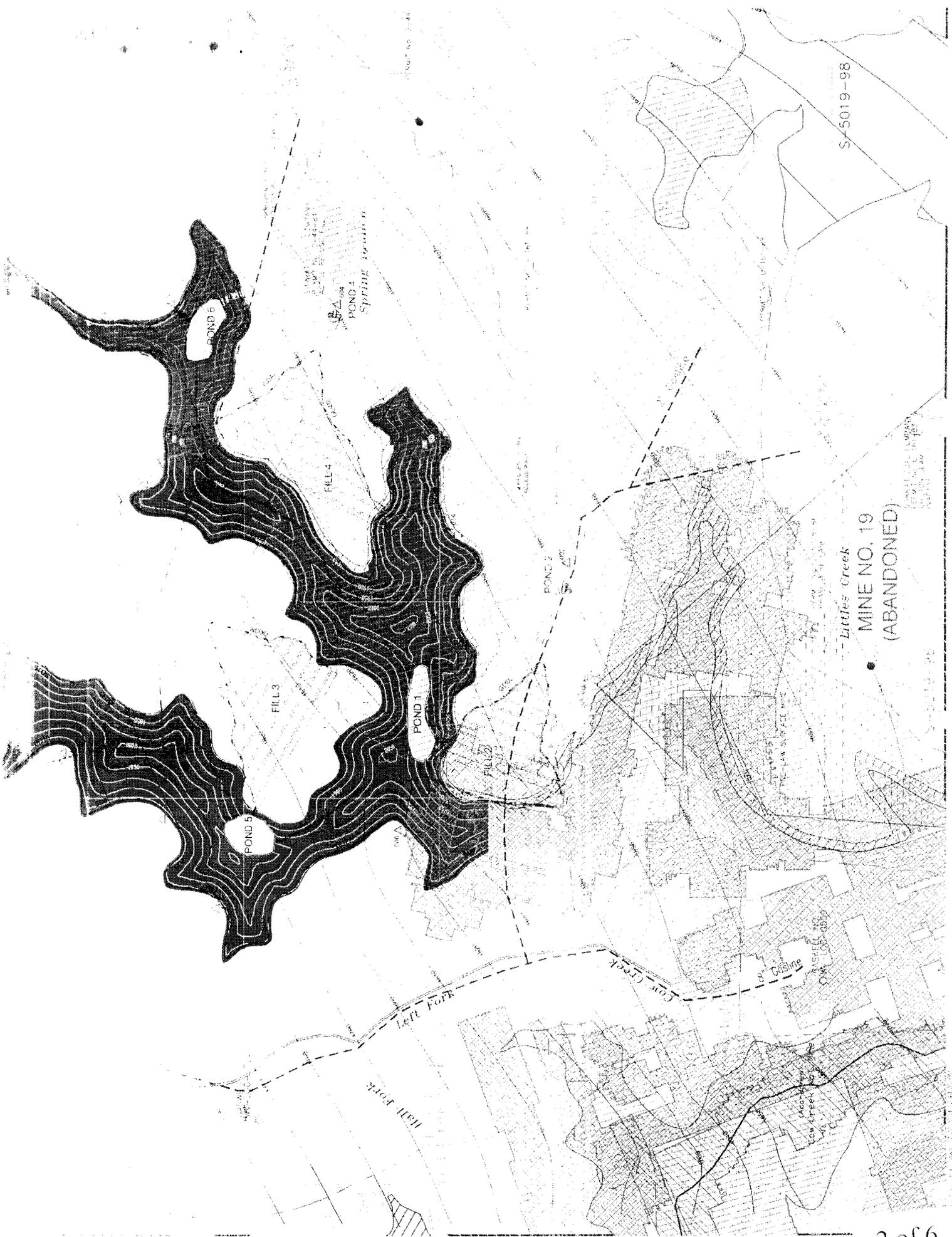
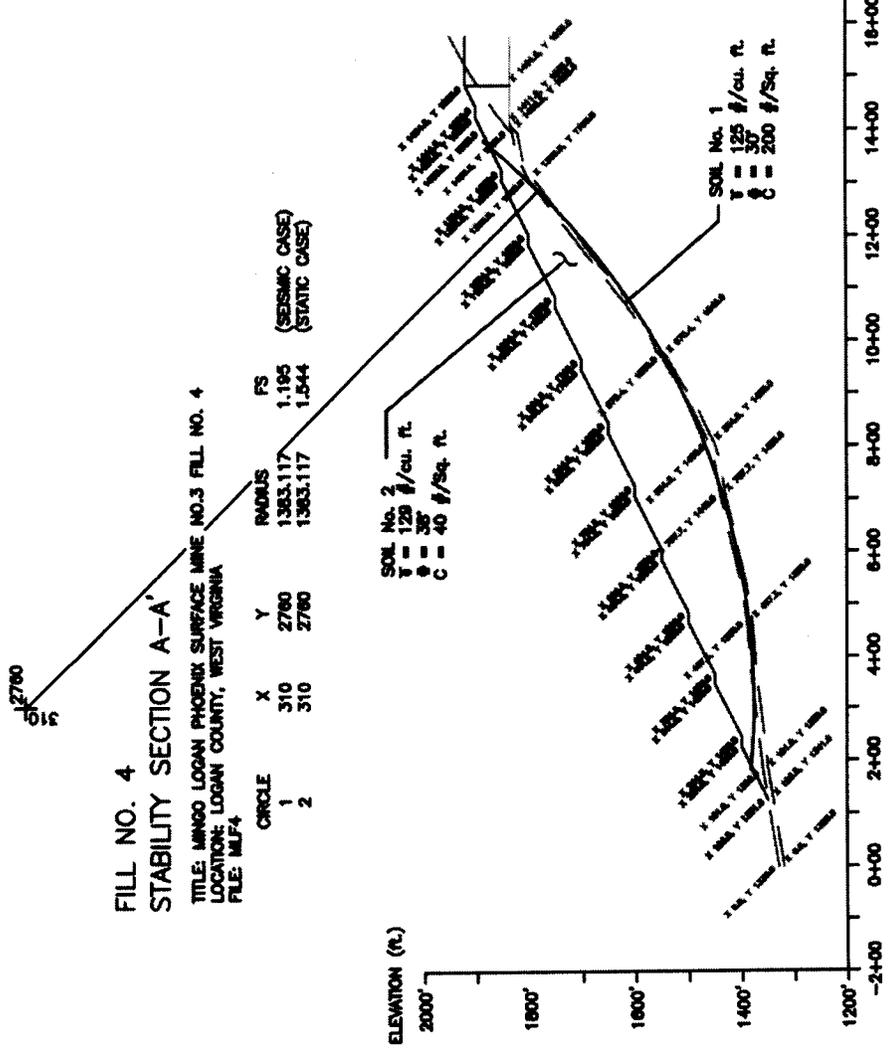
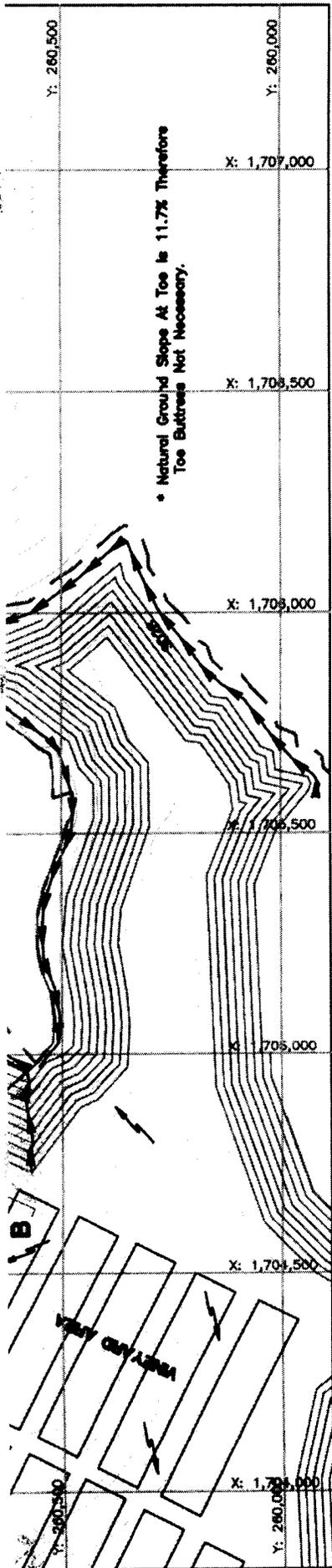


Figure 2. Project area location (USGS Barnabus, W. VA. Quad).



S-5019-98

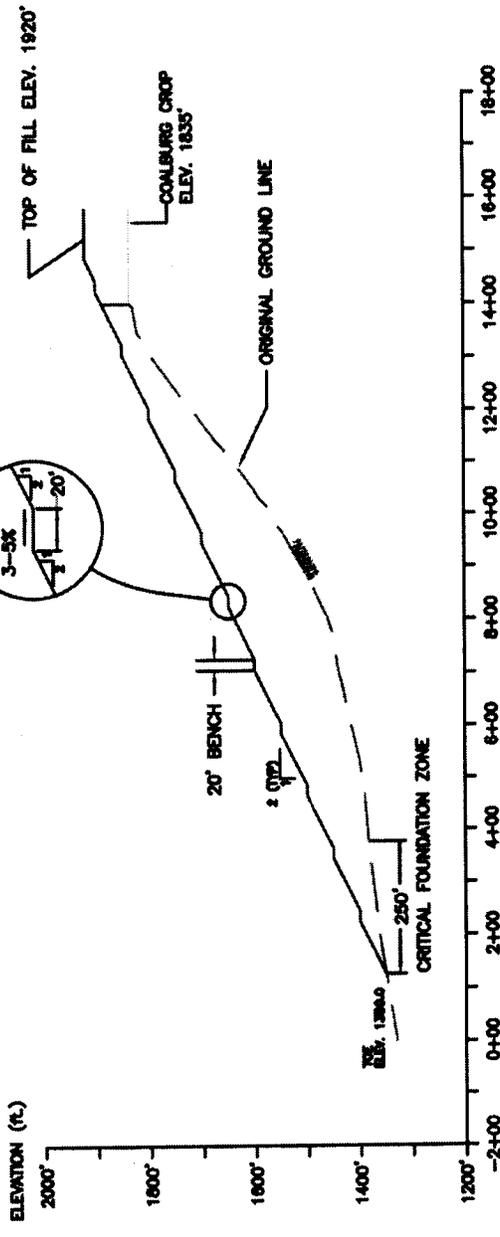
Little's Creek
MINE NO. 19
(ABANDONED)



FILL NO. 4
 STABILITY SECTION A-A'
 TITLE: MANGO LOGAN PHOENIX SURFACE MINE NO.3 FILL NO. 4
 LOCATION: LOGAN COUNTY, WEST VIRGINIA
 FILE: MJFA

CIRCLE	X	Y	RADIUS	FS
1	310	2760	1363.117	1,195
2	310	2760	1363.117	1,244

FILL NO. 4
PROFILE VIEW A-A'



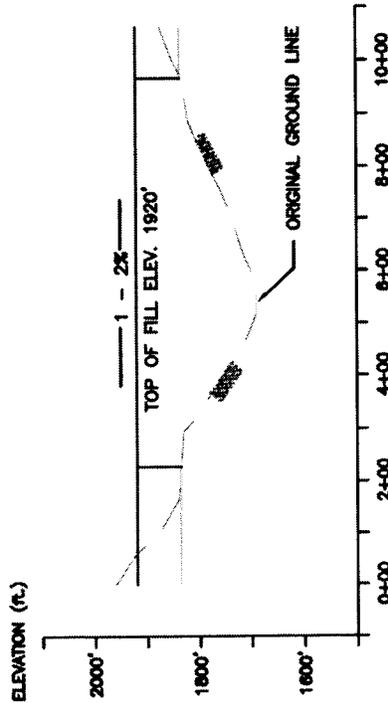
CRITICAL FOUNDATION AREA
ORIGINAL GROUND
PERMIT BOUNDARY



Y: 260,500

Y: 260,000

CROSS-SECTION VIEW B-B' FILL NO.4



Volume Report FILL 4 09/24/2002 09:04
 Comparing GRID file: C:\acad\mi\DATA\P3_F4-T.grd
 and GRID file: C:\acad\mi\DATA\P3_F4-F.grd
 Grid corner locations: 1704248.46, 260511.79 to 1706584.14, 262417.81
 Grid resolution X: 150, Y: 150 Grid cell size X: 15.58, Y: 12.71
 Area in Cut : 315.6 S.F., 0.01 Acres
 Area in Fill: 1,560,436.8 S.F., 35.62 Acres
 Total inclusion area: 1,580,752.4 S.F., 35.83 Acres
 Cut to Fill ratio: 0.00
 Average Cut Depth: 0.46 Average Fill Depth: 117.16
 Cut (C.Y.) / Area (acres): 0.15
 Fill (C.Y.) / Area (acres): 188980.54
 Cut volume: 143.9 C.Y., 5.40 C.T.
 Fill volume: 182,821,384.6 C.F., 6,771,162.40 C.Y.

CRITICAL FOUNDATION AREA
 ORIGINAL GROUND
 PERMIT BOUNDARY

LOCATION OF TOE:
 LAT. 37° 42' 47" LONG. 82° 00' 51"

I, the undersigned, do hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the West Virginia surface mining laws.

By: Agent for P & A Engineers and Consultants, Inc.
 No. _____



Toler, subscribed, and sworn to me this _____ day of _____, _____



My commission expires _____
 Notary Public

SEAL
 P. A. Engineers and Consultants, Inc. is a firm of professional engineers and architects who are duly licensed in the State of West Virginia. The undersigned is a duly licensed professional engineer in the State of West Virginia. The undersigned hereby certifies that the information shown on this map is true and correct to the best of his knowledge and belief, and that he is not aware of any facts or circumstances which would render this information false or misleading.

No.	Date	Revision	By	File Name
1	10/15/02	Original Drawing Preparation	GRS	P\3_F\4_grape.dwg
2				Created by CAM
3				GRS
4				Date: 09/24/02
5				Scale: 1" = 200'
6				Sheet No: 1 OF 1
7				Client: Barnhart
8				Sheet: Island Creek
9				Client: Logan

Prepared by

ENGINEERS & CONSULTANTS
 PO Box 579 Lewis, KY 40328
 (606) 754-4110

MINGO LOGAN
 1500 High Lanes Avenue, Mingo, WV 26042
PHOENIX SURFACE MINE No. 3
PERMIT NO. 8-6016-06
DURABLE ROCK FILL NO.4
 Attachment P-3