



**US Army Corps  
of Engineers**  
Huntington District

# Public Notice

In reply refer to:

Issuance Date:

**Public Notice No.** 199800372--7 September 29, 2004

**Stream:**

Expiration Date:

UT Right Fork White Oak Creek October 29, 2004

Address comments to:

US Army Corps of Engineers, Huntington District  
602 Eighth Street  
ATTN: CELRHE  
Huntington, West Virginia 25701-2070

**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 (Corps) 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 Corps Regulatory Program.

**SECTION 10:** The Corps 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 Corps 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 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:** Catenary Coal Company  
5914 Cabin Creek Road  
Eskdale, West Virginia 25075

**LOCATION:** The proposed project is located in four unnamed tributaries of the Right Fork of White Oak Creek approximately 3.27 miles northeast of Whitesville, in Sherman Creek District of Boone County, West Virginia as depicted on **Drawing 1** of this public notice. The proposed project area is located on the Sylvester USGS quadrangle. All streams to be impacted by the proposed project exhibit surface water connections to Right Fork of White Oak Creek. White Oak Creek then flows into the Big Coal River, a navigable water of the U.S.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant proposes to place fill material into waters of the U.S. in conjunction with its existing Samples Surface Mine. The applicant's proposed activities (Valley Fill 5 and Sediment Ponds 5A and 5B) as well as the completed activities (Valley Fills 2AB, 2C, 2D, 3D, 3E, 3F and 6) and activities not proposed (Valley Fill No. 4 and Sediment Pond Nos. 4A and 4B) were previously authorized by the Huntington District under the December 13, 1996 Federal Register, Final Notice of Issuance, Reissuance and Modification of the Nationwide Permits (61 FR 65874), Nationwide Permit 21 (NWP 21). The applicant has requested authorization of the uncompleted activities (Valley Fill 5 and Sediment Pond 5A and 5B) under the Corps' individual permit process.

The proposal involves the construction of one valley fill (No. 5) and two associated sediment ponds (No. 5A and 5B). Valley Fill 5 would affect a contributing watershed area of approximately 292 acres. Valley Fill 5 would permanently impact 4,495 linear feet (0.91 acre) of intermittent stream channel and 2,200 linear feet (0.22 acre) of ephemeral stream channel. Sediment Ponds 5A and 5B would temporarily impact 1,800 linear feet (0.34 acre) of intermittent stream channel. In total, the proposed project would involve impacts to 8,495 linear feet (1.47 acres) of jurisdictional ephemeral and intermittent stream channels. All impacts, including the activities previously authorized by NWP 21, would be cumulatively evaluated as part of the Huntington District Corps of Engineers' analysis of this proposal pursuant to the National Environmental Policy Act of 1969.

Material to be placed within waters of the U.S. at this site would include durable, non-toxic rock and earthen material. Approximately 49 cubic yards of fill material would be discharged in conjunction with the construction of Sediment Pond 5A. Likewise, approximately 53 cubic yards of fill material would be discharged in conjunction with the construction of Sediment Pond 5B. Valley Fill 5 would result in the discharge of approximately 1,572 cubic yards within the Corps' regulatory jurisdiction.

The West Virginia Department of Environmental Protection (WVDEP) has approved the applicant's Surface Mining Permit application (S-3004-95 and Amendment 4) pursuant to the Surface Mining Control and Reclamation Act (SMCRA) of 1977. The National Pollution Elimination Discharge System Permit (NPDES) for the facility is WV0096962. The Miners Health and Safety Administrative permit is 46-07178. The Samples Mine as permitted under S-3004-95 is an active permit for the applicant. The original permit application was approved by WVDEP in October 1996. There have been four amendments to the original permit approved. This mine is currently an active portion of the surface mining activities at the Samples Mine Complex. The Samples Mine under Amendment 4 encompasses a total of 2,230.66 acres. Of this total, 1,625.66 acres consist of coal removal. The operation was originally permitted for 1,919.27 acres, but through three amendments and Amendment 4 the total acreage was increased to the current amount as detailed on **Table A** of this public notice. Amendment 4 amended the permit boundaries and added coal removal areas (with Highwall Mining) in currently approved coal seams (Coalburg and splits thereof). The approved post-mining land use for the permit area is Rangeland. It is noted in an effort to further minimize impacts to waters of the United States, the applicant does not intend to construct Valley Fill 4, which would impact approximately 8,600 linear feet (1.02 acres) of jurisdictional waters of the United States.

The purpose for the proposed project is to surface mine bituminous coal reserves and to provide mandatory sediment control for the site to allow for the continued operation and mineral extraction of an existing surface mine.

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 the proposed permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. To compensate for stream impacts, the applicant proposes to mitigate on-site through in-kind enhancement and restoration of aquatic resources. The applicant also proposes to use previously constructed on- and off-site in-kind establishment, restoration and enhancement of aquatic resources projects under their executed mitigation agreement with the West Virginia Department of Environmental Protection. The mitigation agreement provided compensation for 4.66 acres of permanent impact and 6.64 acres of temporary impacts to water resources of the State in the amount of \$1,329,860.00. This compensation fee was used for aquatic resource mitigation. The constructed mitigation was performed in conjunction with the Tenmile Fork Reclamation Project and included, but was not limited to, the installation of wetlands and regrading and topsoiling of the old refuse pile. Further, the applicant proposes to restore approximately 6,600 linear feet of stream channel currently impacted by sediment ponds.

The reconstruction of the original channels in areas where existing (Pond Nos. 3I, 4A, 6A and 6B of Permit No. S-3004-95 and Pond Nos. 3A, 3B, 3J and 3L of Permit No. S-3024-90) and proposed sediment control structures would begin once the structures are removed, which is a minimum of two years after final seeding of the mined area. The channels would consist of two channels, a primary channel and a secondary channel. The primary channel and secondary channels would be constructed according to pre-mining data dimensions of bankfull and floodprone measurements and would have similar geomorphological characteristics (i.e. depth, width, sinuosity, and slope).

The following is a list of steps that would be taken during the reconstruction/restoration or enhancement of temporarily impacted areas.

- Install appropriate bank protection measures, such as rock riprap, revegetation, other acceptable clean non-contaminated material or native grasses and forbs, in channel or barren areas requiring erosion control.
- Use Rosgen-type or other natural stream restoration techniques to determine the appropriate hydrogeomorphic configuration of the reconstructed and/or restored stream channel.
- Incorporate in-stream enhancement measures such as riffle/pool complexes, eddy rocks, aquatic habitat structures and meanders within the reconstructed stream channel to provide habitat for future aquatic diversity.
- Construct areas in a manner that is expected to provide stable stream channels with in-stream structures to provide aquatic habitat for future aquatic diversity.
- A minimum of a 50-foot vegetated buffer zone (25' on each stream side), consisting of native riparian grasses, shrub and tree species, would be planted along the reconstructed and/or restored stream segments, where possible.
- Incorporate a planting plan consisting of native grasses, shrub, and tree species into the mitigation plan. The native plantings would consist of a minimum of 70% woody tree stems and no more than 25% of these trees should be soft mast producers. The riparian zone would be revegetated in a random or scattered method planted at a density of at least 30 to 100 trees and 20 to 50 shrubs per acre, but planting densities could be in the lower range if large

sampling size stems are used. Woody stems would be irregularly placed along the corridor and low growing shrubs should be planted between trees. The riparian or buffer zone would be revegetated to ensure succession of 80% of the planted native species. The use of chicken wire, hardware cloth, repellants or other materials could be potentially utilized to prevent beaver damage.

Proposed structures to be installed would include rootwad log spurs, vortex rock weirs, bank placed boulders, boulder clusters, and rootwad-boulder revetments.

Aquatic habitat improvement would be the end result of the restoration and enhancement proposed in this plan. Stream bank and bed stabilization would have immediate and long-term effects upon reducing siltation. Stream bank vegetation would provide overhead and in-stream (nursery) cover, which would assist in regulating water temperatures, dissolved oxygen, and pH. Input of organic matter from the streamside stabilization measures, where used, would provide feeding and resting habitat.

To reduce the immediate threat and minimize the long-term potential of degradation, no exotic species would be utilized in the revegetation plan. This elimination would reduce the amount of competition the plants must endure in order to survive. Only plant materials indigenous to the region shall be used. Species not specified in the mitigation plan would not be utilized without prior approval from the Corps. Monitoring of the completed project sites is expected to ensure controlling of exotic plant invasion to the project area. The applicant has predicted habitat assessment values (HAV) would improve upon completion of the proposed mitigation efforts. HAV scores were in the suboptimal range for every site within the White Oak Creek watershed biostations. The HAV scores ranged from 57 and 134.

The applicant has indicated they would assess whether their mitigation efforts are achieving their planned goals by conducting annual inspections. A functional assessment would be conducted at the completion of the mitigation efforts and each following year in order to ensure the mitigation site is developing, or has developed into the desired habitat, and also if any adjustments are necessary to assure success. Like pre-mining procedures, the mitigation sites would be measured for detailed morphology, habitat, substrate, and riparian parameters. The primary attributes measured for success of stream enhancement projects included bank stability, riparian quality, substrate composition, elevation and slope, quantity of in-stream structures, and in-stream habitat types. These detailed and quantitative measurements are expected to provide the data to assure the proposed enhancements are improving abundances and taxa diversity for both benthic macroinvertebrate and fish populations inhabiting these jurisdictional waters. Additionally, annual benthic macroinvertebrate and water chemistry studies would be conducted to determine the project's success.

The objective of the applicant's mitigation plan is to replace those functions of the resources temporarily impacted by the activities associated with Ponds 5A and 5B, and to offset those functions temporarily impacted by providing jurisdictional water enhancements on-site following removal of those structures and replace those functions of resources permanently impacted by the activities associated with the construction of Valley Fill 5 by providing jurisdictional waters enhancements on-site following removal of existing sediment control structures (Pond Nos. 3I, 4A, 6B, and 6A from Permit No. S-3004-95 and Pond Nos. 3A, 3B, 3J, and 3L from Permit No. S-3024-90). The goals are to restore the sections of jurisdictional waters previously impacted by returning those sections of jurisdictional waters to their original state.

**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. In a letter dated January 14, 2004, the SHPO concluded no known historical, architectural or archaeological sites listed on or eligible for inclusion in the NRHP would be affected by the proposed project. 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 BHE Environmental, Inc. to conduct a mist net survey of the proposed project area. Two sites were established and surveyed during May 17-20, 2004. Nine bats of four species were captured in the proposed project area. Species encountered included the big brown bat (*Eptesicus fuscus*), northern long-eared bat (*Myotis septentrionalis*), eastern pipistrelle (*Pipistrellus subflavus*), and evening bat (*Nycticeius humeralis*). No Indiana bats were captured during the survey. The proposed project area was also surveyed for the presence of old, open abandoned mine portals that could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. The survey identified no such features within the proposed project area.

Based on the fact no Indiana bats were captured during the mist net survey and no old, abandoned mine portals are located within proposed project area, the Corps has determined the proposed project will have no effect on endangered or threatened species or their critical habitat. Therefore, neither a biological assessment nor further consultation under Section 7 of the Endangered Species Act is warranted.

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.

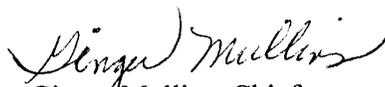
This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency 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 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. 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 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.

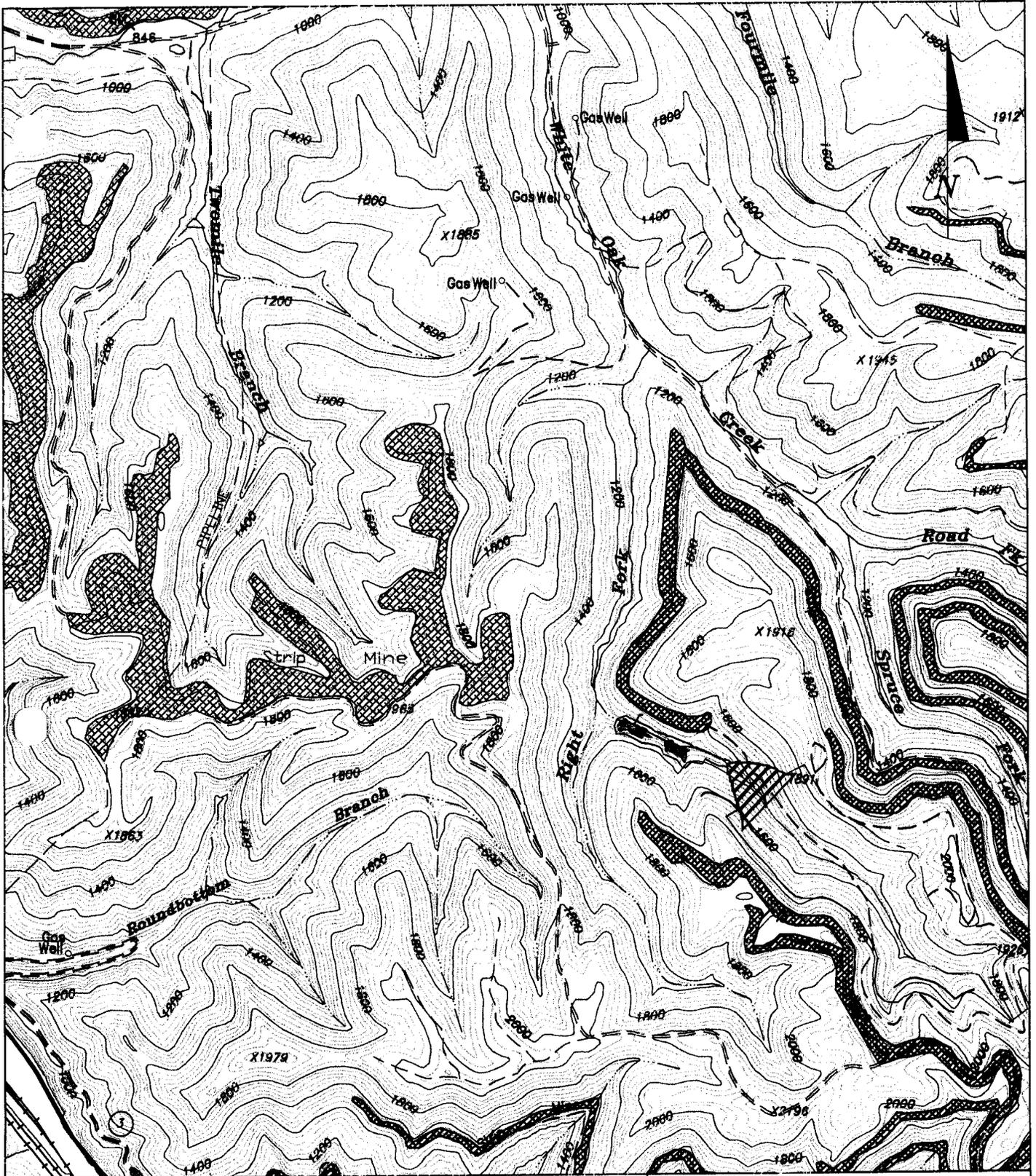
**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, 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 Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.

  
Ginger Mullins, Chief  
Regulatory Branch

(W)



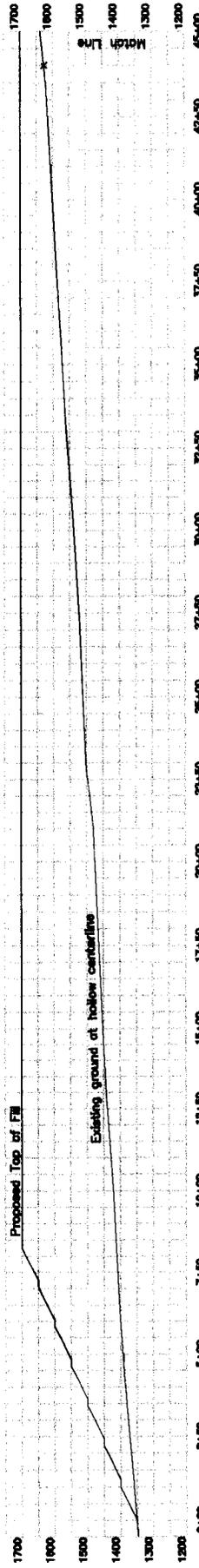


Facility: Catenary Coal Company  
 Samples Mine Complex  
 Unnamed Tributary of  
 Right Fork of White Oak Creek

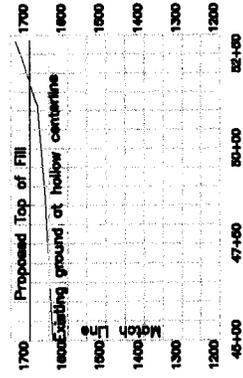
PLAN VIEW

0      1000      2000  
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 Scale: 1" = 2000'

CATENARY COAL COMPANY  
 Samples Mine Complex  
 General Location  
 Proposed Valley Fill No. 5 and  
 Pond Nos. 5A and 5B  
 Sylvester, WV USGS Map  
 Date: 08-12-04



Valley Fill No. 5 Profile  
1" = 500'



Purpose: Install permanent durable rock fill and install temporary sediment control ponds

Facility: Catenary Coal Company Samples Mine Complex Unnamed trib. of Right Fork of White Oak Creek

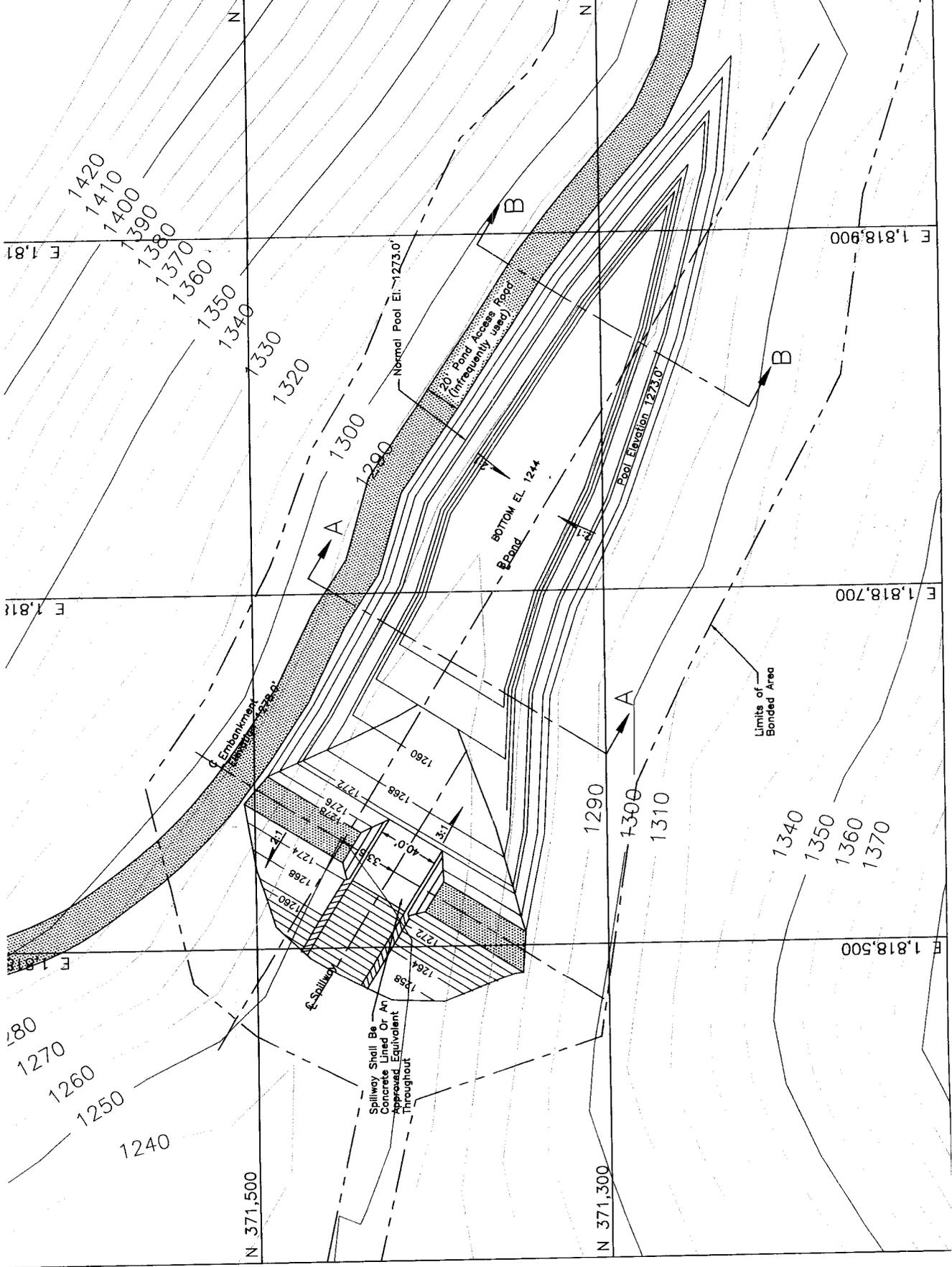
PLAN VIEW



CATENARY COAL COMPANY  
Samples Mine Complex

Valley Fill No. 5  
Profile

# Pond 5A





# Table A

## Detailed Permit Revision Description

Original Approved Permit Acreage = 1,919.27 acres

Amendment No. 1

 Added Area = 246.77 acres  
 Deleted Area = 284.04 acres

Revised Permit Acreage - Amend. No. 1 = 1,882.00 acres

Amendment No. 2

 Added Area = 284.00 acres  
 Deleted Area = 000.00 acres

Revised Permit Acreage - Amend. No. 2 = 2,166.00 acres

Amendment No. 3 WITHDRAWN

 Added Area = 16.00 acres  
 Deleted Area = 00.00 acres

Revised Permit Acreage - Amend. No. 3 = 2,182.00 acres

Amendment No. 4

 Added Area = 64.66 acres  
 Deleted Area = 0.00 acres

Revised Permit Acreage - Amend. No. 1 = 2,230.66 acres