



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to: Public Notice No. 211000672	Issuance Date: October 6, 2004
Stream: UT Fork Creek	Expiration Date: November 4, 2004
Address comments to:	US Army Corps of Engineers, Huntington District 502 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: Loadout, LLC
Suite 100
1 Carbon Center
Chesapeake, West Virginia 25315

LOCATION: The proposed project is located in unnamed tributaries to Fork Creek approximately 4.5 miles northwest of Ashford in Peytona District of Boone County, West Virginia. The location of the site has been depicted on the attached map entitled "Figure 1 - General Location Map." The proposed project area is located on the Julian USGS quadrangle. All unnamed tributaries on-site to be impacted by the proposed project exhibit surface water connections to Fork Creek, a perennial stream. Fork 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 United States in conjunction with the construction of the Cherry Tree Hollow Refuse Facility. The proposed refuse facility would be a combined coal refuse impoundment to be used for disposal of coarse and fine coal refuse material generated at the Fork Creek Preparation Plant. Construction of the proposed impoundment would permanently impact 5,680 linear feet (0.7 acre) of intermittent streams and 3,725 linear feet (0.28 acre) of ephemeral streams. In total, the proposed project would involve impacts to 9,405 linear feet and 1.09 acres of intermittent and ephemeral jurisdictional waters of the United States. The locations of the jurisdictional waters that would be impacted by construction of the proposed impoundment have been identified on the attached map entitled "Figure 2 Stream Measurement and Delineation Map." The mandatory sediment control would be provided by the existing Sediment Pond A.

Sediment Pond A was constructed at the toe of the proposed embankment 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) approved August 23, 2001. Construction of this pond involved dredging and filling of approximately 500 linear feet and 0.172 acre of intermittent stream on the main channel of the unnamed tributary to Fork Creek known as Cherry Tree Hollow. The material used to construct the embankment of the sediment pond consisted of soil dredged from the pool area of the pond.

All impacts, including the activities previously authorized and constructed under 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. **Table A** of this public notice summarizes the temporary and permanent impacts to waters of the United States.

The footprint of the proposed impoundment has been identified on **Figure 3** of this public notice and is entitled "Plan View Proposed Cherry Tree Hollow Refuse Facility." The footprint of the entire complex, including the impoundment and the existing Sediment Pond A, contains approximately 98 acres. The entire watershed upstream of and including the impoundment and sediment structures is approximately 183 acres. Approximately 7.0 million cubic yards of coarse coal refuse and 7.0 million cubic yards of fine coal refuse slurry would be permanently stored at this site.

Construction of the proposed impoundment would involve the filling of jurisdictional waters of the United States with overburden and coarse coal refuse to construct the embankment. The material discharged into waters of the United States during construction of the starter embankment would consist of sandstone and shale from the Kanawha Formation of the Pottsville Group of the Lower Pennsylvania Age. The material used to construct the embankment and the material to be stored in the impoundment would be coarse and fine coal refuse from coal seams that would be mined on the subject property and processed at the Fork Creek Preparation Plant. The coal seams being processed at the Fork Creek Preparation Plant include, but are not limited to, the following: No. 5 Block, Stockton, Cedar Grove, and No. 2 Gas. Fine coal refuse slurry would be pumped behind the embankment. Other than the material needed to construct the embankment during the Starter Phase of construction, no excavation is proposed within the footprint of the impoundment.

The proposed refuse facility would be completed in five phases: Starter Phase, Phase I, Phase II, Final Phase, and Abandonment Phase. Construction, abandonment and reclamation of the proposed refuse facility are discussed below.

FOUNDATION PREPARATION: The foundation of the proposed impounding structure consists of the existing valley floor and hillsides. All areas would be cleared and grubbed according to specifications prior to any fill placement. All topsoil that is economically recoverable would be stockpiled in those areas designated by the design Engineer and/or Owner as topsoil storage areas. All work within the foundation area would be accomplished under constant geotechnical observation by the design Engineer's field representative to obtain an acceptable foundation.

STARTER PHASE: The Starter Phase would consist of construction of the embankment to a crest elevation of 860 mean sea level (msl). This would require approximately 455,373 cubic yards of earthen and rock borrow and coarse coal refuse material to complete. The Starter Phase embankment would be constructed from: acceptable earthen borrow material placed in 8 inch maximum lifts; rock borrow material placed in 3 feet maximum lifts; and, coarse coal refuse material placed in 12 inch maximum lifts compacted to 95% of the material standard Proctor maximum dry density. Soil borrow material would only be borrowed from areas designated by the field representative of the design engineer. The Starter Phase would be constructed with acceptable soil and rock borrow material excavated from the proposed access road, decant pipe template and Sediment Pond A, and coarse coal refuse from the coal preparation plant currently under construction. The portion of the Starter Phase embankment made from earthen or rock borrow material would be constructed to approximate elevation of 750 msl, as shown on Figure 4 of this public notice. This embankment would have a 63 foot wide earthen or coarse coal refuse seal at the upstream portion of the embankment. The remaining phases would be constructed with coarse coal refuse production. The upstream slope of the embankment would be three horizontal to one vertical (3h:1v). The downstream slope would be two horizontal to one vertical (2h:1v). Keyway Trench No. 1 located at Baseline Station 8+37 would be constructed during this phase along the right and left abutments as embankment construction dictates. The embankment construction would be completed within 0.32 of a year and would be fully operational. The Starter Phase embankment would have the capacity to store approximately 0.66 of a year of fine coal refuse. Part of the Starter Phase construction would consist of a rock blanket drain at its downstream toe from a perpendicular projection to Baseline Station 8+50 to Baseline Station 9+11 as embankment construction dictates under constant geotechnical observation of design Engineer's field representative. The soil cover, approximately 1.5 feet thick, over the existing ground would be stripped to bedrock before placement of the blanket drain.

PHASE I: Phase I would consist of construction of the embankment to a crest elevation of 880 msl. This would require approximately 489,994 cubic yards of coarse coal refuse to complete. This would take approximately 0.35 of a year of coarse coal refuse production to construct. The refuse material would be placed in 1-foot lifts and compacted to 95% of its standard Proctor maximum dry density. The upstream slope of the embankment would be three horizontal to one vertical (3h:1v) or flatter depending on the availability of material. During this phase, a decant

system would be installed and would consist of a concrete thrust block, 592 feet of the lower transport section of the decant pipe, and 5 feet of the upper transport section of the decant system. The maximum inlet elevation would be 867.5 msl. The impoundment at the completion of this phase would be capable of storing approximately an additional 0.58 of a year of fine coal refuse slurry production in addition to the routed runoff from one half Probable Maximum Flood (PMF) storm event. Ninety percent of this storm event would be discharged through the decant system in 2.08 days. During this phase, the rock blanket drain would be installed from a perpendicular projection to Baseline Station 9+11 to Baseline Station 11+80 as embankment construction dictates under the constant geotechnical observation of design Engineer's field representative. The keyway trench would be extended along the right and left abutments as required.

PHASE II: Phase II would consist of construction of the embankment to a crest elevation of 920 msl. This would require approximately 998,083 additional cubic yards of coarse coal refuse to complete. This would take approximately 0.7 of a year of coarse coal refuse production for a total cumulative construction time of 1.37 years. The impoundment at the completion of this phase would be capable of storing approximately 0.86 of a year of additional slurry production in addition to the routed runoff from one PMF storm event. The decant system would be capable of discharging 90% of this storm event in 4.66 days. The refuse material would be placed in 1-foot lifts and compacted to 95% of its standard Proctor dry density. The upstream slope of the embankment would be three horizontal to one vertical (3h:1v) or flatter depending on the availability of material. During this phase, 114 feet of the upper transport section of the decant system would be installed. The maximum inlet elevation would be 903.5 msl. The blanket drain would be completed during this phase from a perpendicular projection to Baseline Station 11+80 to Baseline Station 12+00 as embankment construction dictates under constant geotechnical observation by the design Engineer's field representative. A rock underdrain from a perpendicular projection to Baseline Station 12+00 to Baseline Station 15+98 would also be completed as embankment construction dictates under constant geotechnical observation by design Engineer's field representative. The minimum cross-sectional area of the underdrain would be 50 square feet.

FINAL PHASE: Final Phase would consist of construction of the embankment to a crest elevation of 988 msl. This would require approximately 2,975,128 cubic yards of coarse coal refuse to complete. The refuse material would be placed in one foot lifts and compacted to 95% of its standard Proctor dry density. The upstream slope of the embankment would be three horizontal to one vertical (3h:1v) and the downstream slope would be two horizontal to one vertical (2h:1v) or flatter depending on the availability of material. During this phase, 299 feet of the lower transport section decant pipe and 235 feet of the upper transport section would be installed. The maximum inlet elevation would be at 978 msl. The impoundment at the completion of this phase would be capable of storing approximately an additional 2.38 years of fine coal refuse slurry production in addition to the routed runoff from 1 PMF storm event. Ninety percent of this storm would be discharged through the decant system in approximately 6.51 days. The underdrain from a perpendicular projection to Baseline Station 15+98 to Baseline Station 20+50 would be completed as embankment construction dictates under constant geotechnical observation by the design Engineer's field representative during this phase. The minimum cross-sectional area of the underdrain would be 50 square feet.

ABANDONMENT PHASE: The Abandonment Phase would consist of eliminating the potential to impound and crowning of the coarse coal refuse placed in the impoundment pool area to drain to the perimeter ditches. This would require approximately 1.12 years of coarse and fine coal refuse production or 2,097,732 cubic yards of coarse and fine coal refuse to complete. The perimeter ditches are to be installed on a one percent minimum grade over the pool area that would be capable of discharging a 100 year - 24 hour storm event. All ditches would be constructed with the proper channel protection. The abandonment cap would be covered with a minimum of four feet of non-toxic earthen material, and then revegetated.

The applicant's purpose for the proposed project is the cleaning of impurities from coal to produce an economically marketable product, with the disposal of said impurities at the proposed refuse facility and to provide retention time for runoff from the impoundment to allow the sediment in the runoff to settle before the clarified effluent is discharged into waters of the United States in a safe, cost efficient and environmentally sound manner.

On November 24, 1998, the West Virginia Department of Environmental Protection (WVDEP) issued the applicant the required National Pollutant Discharge Elimination System (NPDES) permit. On July 30, 2001, the WVDEP approved the applicant's surface mining permit application (Permit O-5018-00) pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On July 30, 2001, the applicant also received its certification for the construction of the proposed dam.

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

CURRENT SITE CONDITIONS: The applicant retained the services of R.E.I. Consultants, Inc. to perform a benthic macroinvertebrate and fishery surveys. The physical habitat of each station was also evaluated. A total of four stations were evaluated in Cherry Tree Hollow. Measurements of flow, physical water quality and chemical water quality were collected.

The station located at the mouth of Cherry Tree Hollow received sub-optimal to optimal scores for substrate and in-stream cover, sub-optimal to optimal channel morphology ratings, and poor to sub-optimal riparian and bank structure ratings. The station located downstream from the confluence of the right and left forks received sub-optimal scores for substrate and in-stream cover, marginal to optimal channel morphology ratings, and poor to sub-optimal riparian and bank structure ratings. The station located in the right fork received marginal to suboptimal scores for substrate and in-stream cover, marginal to optimal channel morphology ratings, and optimal riparian and bank structure ratings. The station located in the left fork received marginal to optimal scores for substrate and in-stream cover, marginal to optimal channel morphology ratings, and optimal riparian and bank structure ratings. The habitat scores revealed desirable habitat is present at each of the sampling stations, with only a few parameters considered limiting. Available substrate was somewhat limiting in the right and left fork stations, and embeddedness and deposition affected each of the stations to some degree.

The macroinvertebrate findings revealed Cherry Tree Hollow is not impaired. No single physical or chemical water quality parameter appeared to be limiting to the benthic communities. This was reflected in the relatively high total station abundances, the high numbers and taxa of

EPT individuals, the very desirable representation of almost all functional feeding groups, and the diversity and abundances of mayflies and stoneflies. Each of these stations contained very healthy macroinvertebrate populations and is indicative of desirable water quality. Although physical and chemical water quality, and fisheries habitat and cover were good, no fisheries resources were observed during the surveys.

In addition, the surveys conducted in the main stem of Fork Creek indicated near-neutral pH levels, desirable flow, DO, temperature, and productivity. The water chemistry results depicted undetectable levels of acidity, higher, but, desirable alkalinity, low hardness, low nitrate/nitrites, low sulfates and chlorides, somewhat elevated solids, and fairly low levels of most metals. However, no single physical or chemical water quality parameter appeared to be limiting to the benthic communities at any of the stations. This was reflected in the extremely high total station abundances, the high total station diversity, the high numbers and taxa of EPT individuals, the very desirable representation of almost all functional feeding groups, and the diversity and abundances of mayflies and stoneflies. The habitat scores indicated fairly desirable habitat is present at each of the stations, with only a few parameters considered limiting, and the overall habitat is considered to be fairly good. In addition, abundant fisheries resources were observed at all of the stations. Overall, physical and chemical water quality was good, and fish habitat and cover were sufficient at most stations. Although past stream channelization activities had occurred at some of the stations, artificially placed boulders have provided good fish cover.

Further, surveys were conducted in the River Fork as well as its tributaries, downstream from the existing refuse disposal facility. Although this watershed has experienced recent human disturbance and stream channelization activities, the surveys revealed the stream still contains benthic macroinvertebrates, ranging from somewhat unhealthy to very healthy. From the data collected, it appears the farthest upstream stations were the healthiest based on the total abundances, taxa diversity, EPT and functional feeding group representation. Some of the stations located in River Fork's tributaries contained very large total abundances and diversities of aquatic insects, and good representation from EPT taxa and almost all functional feeding groups, thereby indicating healthy streams, while other tributaries were considered to be unhealthy. Overall, the headwaters and tributaries of River Fork have good physical and chemical water quality and good fish habitat and cover. However, poor fisheries resources were observed in River Fork.

MITIGATION PLAN: The applicant is required to submit a compensatory mitigation plan (CMP) to compensate for the proposed permanent impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. According to the applicant, they are working with the WVDEP and the West Virginia Division of Natural Resources (WVDNR) in developing a mitigation plan to restore and enhance a section of the Little Coal River near the confluence of Long Shoal Branch.

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 would be sent to the State Historic Preservation Office for their review. A Phase 1 Archaeological Survey of the proposed site was conducted by Cultural Resource Analysts, Inc., of Hurricane, WV. The survey did not identify any historic or prehistoric archaeological sites. Based on the data generated by the study, it was determined the proposed project would not impact any known historic properties or archaeological sites listed on or eligible for nomination to the National Register of Historic Places. By letter dated July 20, 2000, SHPO determined no further consultation was necessary. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the endangered Bald eagle (*Haliaeetus leucocephalus*), Indiana Bat (*Myotis sodalis*), and Virginia Big-eared Bat (*Plecotus townsendii virginianus*) may use the proposed project area. The Huntington District has determined this project is not likely to jeopardize the continued existence of any endangered or threatened species. Any habitat modifications affecting threatened and endangered species are authorized as part of the WVDEP's permitting process under SMCRA. This notice will serve as coordination with the U. S. Fish and Wildlife Service regarding threatened or endangered species. 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).

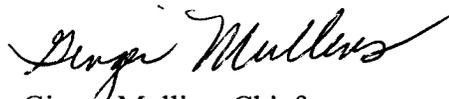
PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the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

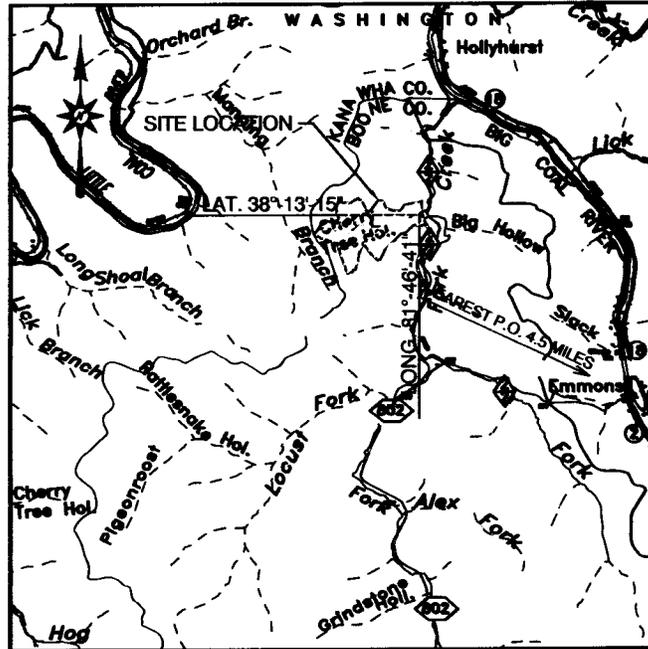

Ginger Mullins, Chief
Regulatory Branch

(W)

TABLE A
Temporary and Permanent Impacts
to Waters of the United States as a result of the
Cherry Tree Hollow Refuse Facility

Valley Fill	Temporary Impact (linear feet)*			Permanent Impact (linear feet)			
	Intermittent		Ephemeral	Intermittent		Ephemeral	
	Feet	Acres	Feet	Feet	Acres	Feet	Acres
Main Channel	500	0.172	0	3,020	0.479	530	0.037
1 st Left Fork	0	0	0	570	0.024	530	0.044
2 nd Left Fork	0	0	0	0	0	160	0.013
1 st Right Fork	0	0	0	435	0.025	725	0.063
2 nd Right Fork	0	0	0	750	0.083	525	0.047
1 st Right Fork of 2 nd Right Fork	0	0	0	280	0.021	720	0.039
3 rd Right Fork	0	0	0	625	0.070	335	0.026
1 st Left Fork of 3 rd Right Fork	0	0	0	0	0	200	0.012
TOTAL IMPACT:	500	0.172	0	5,680	0.702	3,725	0.28

* Temporary Impacts are from construction of Pond A. These impacts were previously authorized on NWP 21 authorization (200100672). Cumulative impacts include construction of the pond, but the applicant's authorization request is for limited to the impacts associated with the impoundment.



**GENERAL LOCATION MAP
PROPOSED CHERRY TREE HOLLOW REFUSE FACILITY**

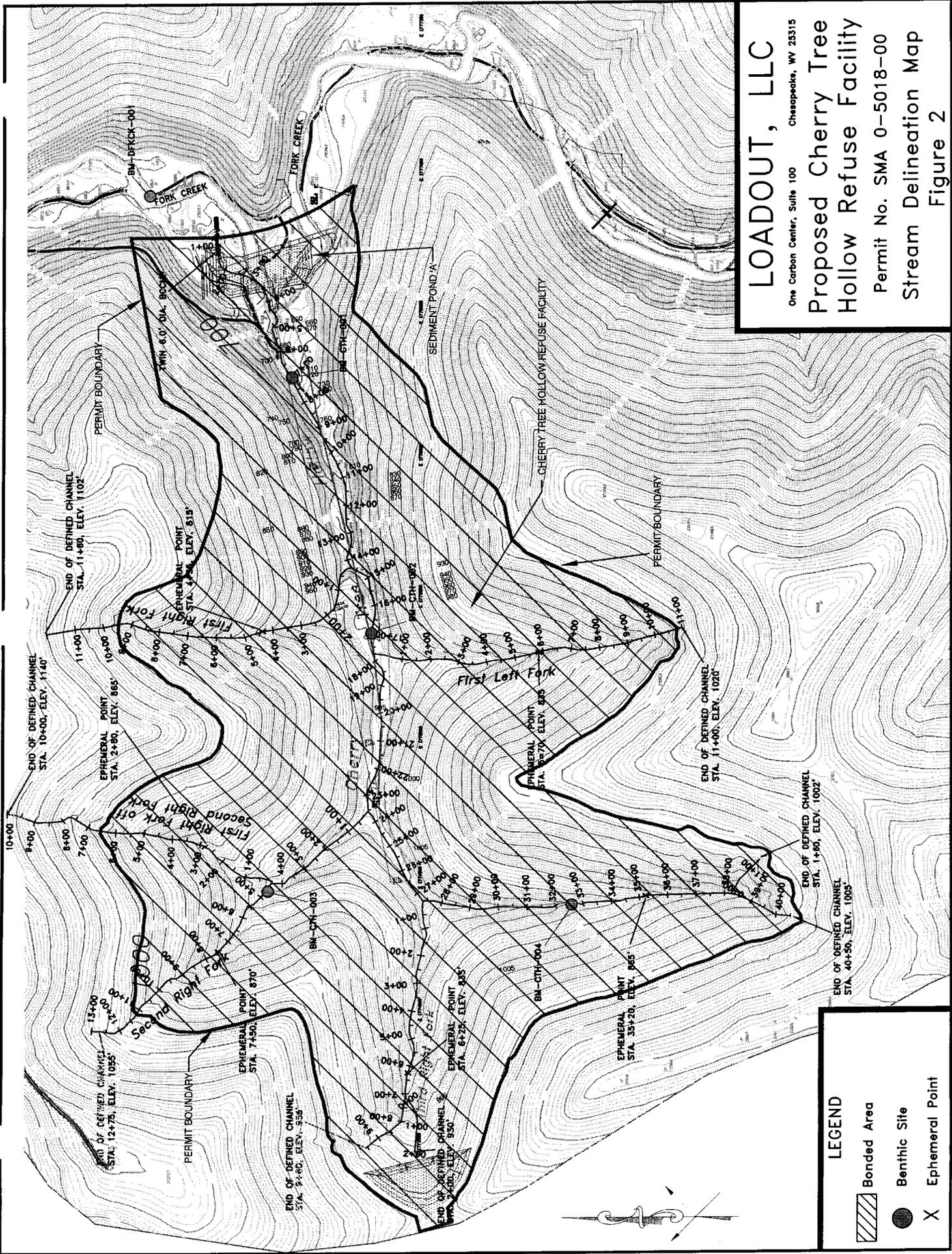
Figure 1

Loadout, LLC

One Carbon Center, Suite 100
Chesapeake, WV 25315

Operator:	Coal River Processing, LLC P.O. Box 79 Alum Creek, WV 25003
WV General Highway Map County: Boone District: Peytona Watershed: Kanawha	Scale 1" = One Mile Nearest P.O.: Ashford, WV (4.5 miles) Nearest Town: Hollyhurst, WV (1.0 miles) Quadrangle: Julian
Receiving Streams: Fork Creek of Big Coal River of Coal River of Kanawha River. Manning Branch of Little Coal River of Coal River of Kanawha River.	

LOADOUT, LLC
 One Carbon Center, Suite 100 Chesapeake, WV 25315
**Proposed Cherry Tree
 Hollow Refuse Facility**
 Permit No. SMA 0-5018-00
 Stream Delineation Map
 Figure 2



LEGEND

-  Bonded Area
-  Benthic Site
-  Ephemeral Point



Loadout, LLC
 One Carbon Center, Suite 100
 Chesapeake, WV 25815

County: Boone	Nearest P.O.: Ashford, WV (4.5 miles)
City: Boone	Nearest P.O.: Ashurst, WV (1.0 miles)
Waterstrainer: Julian	Waterstrainer: Julian
Receiving Stream: Fork Creek of Coal River of Coal River of Kanawha River, Manning Branch of Little Coal River of Coal River of Kanawha River.	
Permit No.: SMA 0-501-8-00	Contour Interval: 20'
	Scale: 1" = 2000'
Operator: Coal River Processing, LLC	
	P.O. Box 79
	Alum Creek, WV 26003

PLAN VIEW
 PROPOSED CHERRY TREE HOLLOW REFUSE FACILITY
 Figure 3

