



U S Army Corps  
of Engineers  
Huntington District

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## Public Notice

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In reply refer to Public Notice No. 200500145 Issuance Date:  
February 25, 2005

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Stream: Peachorchard Branch Closing Date:  
March 25, 2005

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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

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

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

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

**SECTION 404:** The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, 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 to act on Section 401 Water Quality Certification for the following application.

**APPLICANT:** Fola Coal Company, Inc.  
Post Office Box 180  
Bickmore, West Virginia 25019

**LOCATION:** The proposed project is located in the in Jefferson District of Nicholas County and in Henry District of Clay County, West Virginia at Latitude 38°20'31" and Longitude 81°03'20" on the United States Geological Survey 7.5-minute Lockwood Quadrangle. The proposed project area would be located in Peachorchard Branch watershed approximately 5 miles southeast of Bickmore, Clay County, West Virginia. Peachorchard Branch is tributary of Twentymile Creek. Twentymile Creek ultimately flows into Gauley River, a navigable (Section 10) water of the United States.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant proposes to place fill material into approximately 19,208 linear feet (2.37 acres) of waters of the U.S. in conjunction with the construction, operation and reclamation of the Surface Mine No. 5 [Surface Mining Control and Reclamation Act (SMCRA) Permit S-2013-98]. The applicant's Surface Mine Application (SMA) S-2013-98 was submitted to the West Virginia Department of Environmental Protection (WVDEP) on August 17, 1998. The proposal would involve the construction of four valley fills and four in-stream sediment ponds. The construction of the proposed valley fills would result in the discharge of fill material into approximately 17,695 linear feet (2.02 acres) of intermittent and ephemeral streams. Of this total impact, approximately 15,549 linear feet would be impacts to ephemeral streams and approximately 2,146 linear feet would be impacts to intermittent streams. Further, approximately 1,149 linear feet (0.3 acre) of intermittent streams and 225 linear feet (0.05 acre) of ephemeral streams would be temporarily impacted by the construction of the proposed sediment ponds. Adverse impacts associated with the proposed sediment pond construction would be temporary in nature. Lastly, an additional 95 linear feet of intermittent streams and 44 linear feet of ephemeral stream could be indirectly impacted by sediment transportation between the proposed valley fills and sediment ponds. **Table A** of this public notice details the proposed mining activities and corresponding information with respect to the proposed impact locations and adverse impacts to waters of the U.S. (linear feet / acreage). The proposed valley fills would drain contributing watersheds ranging from 59.28 acres to 235.68 acres as detailed on **Table B** of this public notice. Nearly 88,000 cubic yards of unspecified, non-toxic, durable material would be permanently discharged within the USACE regulatory jurisdiction as a result of the proposed valley fill construction.

The proposed surface mining operation would be affected 487.33 acres of surface area, including 379.75 acres of mineral removal. Mining and reclamation activities would take place over the course of five phases approximately 69-month period. Excavated overburden material generated during mining in excess of that material that would be placed on the benches would be used to progressively construct the regraded backfill in the proposed project area in accordance with the designated post-mining configuration. Backfilling and regrading activities would be performed in accordance with contemporaneous reclamation requirements established by the WVDEP. Highwalls would be eliminated. Revegetation would be kept current by establishing a temporary or permanent cover on these areas by the end of the first growing season and a permanent cover on these areas by the end of the second growing season. Details regarding the proposed mining plans can be found in Section N of the applicant's Surface Mining Applications on file at the WVDEP.

According to the applicant, the purpose of the project is to recover the bituminous coal reserves from all splits of Clarion, Coalburg, and Stockton coal seams. Incidental coal may be removed from the Winifrede seams. To accomplish this, the applicant proposes to construct, operate and reclaim the Surface Mine No. 5. Reserves from the project site would be sold on the market to satisfy a currently high demand for coal. Plans for the proposed Surface Mine No. 5 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:** To date, the applicant has not submitted a compensatory mitigation plan to this 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 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 SHPO 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. Two options are available to the applicant in order to address Indiana bat concerns. The applicant may conduct a mist net survey from May 15 to August 15 using the mist net protocol outlined in the draft Indiana bat Recovery Plan. If this option is chosen, the applicant must provide the United States Fish and Wildlife Service (Service) with their survey plan for review and approval prior to conducting the survey. Another option is to presume Indiana bats are present and conduct all timber removal on the project area from November 15 to March 31. If this option is chosen, an analysis of the post-project Indiana bat summer habitat must be performed within a two-mile radius of the center point of the project area. If the Service determines the extent of disturbance is not significant to affect the Indiana bat, the project may proceed with seasonal restrictions. Conversely, if the Service determines the extent of disturbance is significant and would likely adversely affect the Indiana bat, a mist net survey can be conducted to determine if the Indiana bats are present. Additionally, abandoned mine portals could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. The applicant must survey the project area for old, abandoned mine portals. If portals appear to have suitable bat habitat characteristics, a Phase I Portal Survey must be prepared for each portal by a qualified mammalogist. Based on the above, the USACE cannot make a determination regarding the effect the proposed project could potentially have on the aforementioned endangered species. This public notice serves as a request to the 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 USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and

conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

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

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, 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 may be made publicly available. Thank you for your interest in our nation's water resources.

  
Ginger Mullins, Chief  
Regulatory Branch

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**Table A**  
**Impact Summary for Surface Mine No. 5**

Fill	Permanent Impacts										Permanent Surface Water Impacted in Acres	
	Length Impacted			Volume of US waters Filled				Total (ft <sup>3</sup> )	Total (ft <sup>3</sup> )	Surface Water Impacted in Acres		
	Perennial (ft)	Intermittent (ft)	Ephemeral (ft)	Total (ft)	Perennial (ft <sup>3</sup> )	Intermittent (ft <sup>3</sup> )	Ephemeral (ft <sup>3</sup> )					
1	0	822	6,520	7,342	0	4,590.00	26,572.25	31,162.25	0.715			
2	0	140	1,880	2,020	0	9,948.00	1,115.00	11,063.00	0.254			
3	0	1,184	4,599	5,783	0	12,919.40	2,1634.10	34,553.50	0.793			
4	0	0	2,550	2,550	0	0	11,197.50	11,197.50	0.257			
<b>Total</b>	<b>0</b>	<b>2,146</b>	<b>15,549</b>	<b>17,695</b>	<b>0</b>	<b>27,457.40</b>	<b>60,518.50</b>	<b>87,976.25</b>	<b>2.019</b>			
Pond	Temporary Impacts										Total Temporary Impacts	Surface Water Impacted in Acres
	Primary Impacts			Secondary Impacts				Total (ft <sup>3</sup> )	Total Temporary Impacts	Surface Water Impacted in Acres		
	Perennial (ft)	Intermittent (ft)	Ephemeral (ft)	Total (ft)	Perennial (ft <sup>3</sup> )	Intermittent (ft <sup>3</sup> )	Ephemeral (ft <sup>3</sup> )					
Pond 1	0	487	0	487	0	25	0	25	512	0.087		
Pond 2	0	181	0	181	0	35	0	35	216	0.041		
Pond 3	0	481	0	481	0	35	0	35	516	0.174		
Pond 4	0	0	225	225	0	0	44	44	269	0.053		
<b>Total</b>	<b>0</b>	<b>1149</b>	<b>225</b>	<b>1374</b>	<b>0</b>	<b>95</b>	<b>44</b>	<b>139</b>	<b>1513</b>	<b>0.355</b>		
<b>Grand Total</b>	<b>19,208(2.374)</b>											

**Table A**  
**Impact Summary for Surface Mine No. 5**

Item	Permanently Impacted				Temporary Impacted				Permanently Available Water Impacted in Acres		
	Land		Vegetation		Land		Vegetation				
	Acres (A)	Estimated (B)	Total (C)	Estimated (D)	Acres (E)	Estimated (F)	Total (G)	Estimated (H)			
1	0	822	6,520	7,342	0	4,590.00	26,572.25	31,162.25	0.715		
2	0	140	1,880	2,020	0	9,948.00	1,115.00	11,063.00	0.254		
3	0	1,184	4,599	5,783	0	12,919.40	2,1634.10	34,553.50	0.793		
4	0	0	2,550	2,550	0	0	11,197.50	11,197.50	0.257		
<b>Total</b>	<b>0</b>	<b>2,146</b>	<b>15,549</b>	<b>17,695</b>	<b>0</b>	<b>27,457.40</b>	<b>60,518.50</b>	<b>87,976.25</b>	<b>2.019</b>		
<b>Temporary Impacted</b>											
Pond	Land		Vegetation		Land		Vegetation		Total (I)	Total (J)	Permanently Available Water Impacted in Acres
	Acres (K)	Estimated (L)	Total (M)	Estimated (N)	Acres (O)	Estimated (P)	Total (Q)	Estimated (R)			
Pond 1	0	487	0	487	0	25	0	25	25	0.087	
Pond 2	0	181	0	181	0	35	0	35	35	0.041	
Pond 3	0	481	0	481	0	35	0	35	35	0.174	
Pond 4	0	0	225	225	0	0	44	44	44	0.053	
<b>Total</b>	<b>0</b>	<b>1149</b>	<b>225</b>	<b>1374</b>	<b>0</b>	<b>95</b>	<b>44</b>	<b>139</b>	<b>1513</b>	<b>0.355</b>	
<b>Grand Total</b>	<b>19,208(2.374)</b>										

**Table B**  
**Surface Mine No. 5**  
**Affected Drainage Areas**

Valley Fill 1	235.68
Valley Fill 2	59.28
Valley Fill 3	182.79
Valley Fill 4	63.60