



Public Notice

U S Army USACE
of Engineers
Huntington District

In reply refer to Public Notice No. 200300245 Issuance Date:
April 14, 2005

Stream: Browning Fork Closing Date:
May 14, 2005

Please address all comments and inquiries to:
U.S. Army USACE of Engineers, Huntington District
ATTN: CELRH-OR-F Public Notice No. (*reference above*)
502 Eighth Street
Huntington, West Virginia 25701-2070 Phone: (304) 399-5710

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

REGULATORY PROGRAM: Since its early history, the 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: Hampden Coal Company, Inc.
 P. O. Box 1398
 Gilbert, West Virginia 25621

LOCATION: The proposed project would be located approximately 6.05 miles northwest of Gilbert, in Stafford District of Mingo County, West Virginia. The proposed project would result in disturbances to Browning Fork. Browning Fork ultimately flows into the Guyandotte River, a navigable (Section 10) water of the U.S.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and/or fill material into approximately 1,152 linear feet (0.203 acre) of waters of the U.S. in conjunction with the construction, operation and reclamation of the Hernshaw Deep Mine No. 1 [Surface Mining Control and Reclamation Act (SMCRA) Permit U-5011-02]. Impacts to waters of the U.S. would involve the construction of a valley fill (No. 1), a sediment pond (No.1) and a stockpile/loadout area. The proposed project would facilitate the recovery of approximately 3.2 million tons of bituminous coal available in the Hernshaw seam. Development of the proposed deep mine would entail cut and fill operations to facilitate the construction of coal stockpile/loadout area with associated sediment control pond. Development of the proposed complex would affect approximately 8.34 acres of surface area. Mineral extraction would be accomplished using the underground mining techniques (i.e. room and pillar methods). The proposed project was previously approved under the January 15, 2002 Federal Register, Final Notice of Issuance of Nationwide Permits (67 FR 2020) Nationwide Permit 21 in 2002.

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 Hampden Coal Company’s NWP 21 authorization for its Hernshaw Deep Mine No. 1 was suspended for “valley fills and surface impoundments on which construction has not commenced as of ...July 8, 2004.” A site investigation performed by the Regulatory Branch on August 31, 2004 confirmed no placement of dredged and fill material into waters of the U.S. had commenced as of July 8, 2004.

The Hernshaw Deep Mine No. 1 would include the construction of the proposed Valley Fill 1, a coal stockpile/loadout area and a sediment pond. This proposed development would require the placement of 166 cubic yards of dredged and fill material in waters of the U.S. The construction of the proposed valley fill would result in the discharge of dredged and/or fill material into approximately 500 linear feet of ephemeral stream. The construction of the proposed stockpile/loadout area and the associated sediment pond would result in the temporary discharge of dredged and/or fill material into approximately 652 linear feet of intermittent streams.

This proposed complex would be accomplished in three general phases over a 5-year life of mine. According to the applicant, the purpose of the project is to recover the bituminous coal reserves from the Hernshaw seam. Through construction and operation of the proposed project, the applicant seeks to recover approximately 3.2 million tons of coal from the above mentioned coal seam. Reserves from the project site would be sold on the market to satisfy a currently high

demand for coal. Plans for the proposed Hernshaw Deep Mine No. 1 are attached to this public notice.

The applicant's Surface Mine Applications (SMA) U-5011-02 was approved by the West Virginia Department of Environmental Protection (WVDEP) under the SMCRA on December 19, 2002.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall project purpose. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

MITIGATION PLAN: The applicant has submitted a conceptual 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 impacts to waters of the U.S., the stream segments temporarily impacted by the proposed construction activities would be restored to their pre-mining conditions. For permanent impacts to waters of the U.S., the applicant has proposed to enhance Horsepen Creek by removing debris, stabilizing banks, installing rock and wood structures and reestablishing the riparian vegetation within the 50-foot buffer zone.

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

HISTORIC AND CULTURAL RESOURCES: The 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. The United States Fish and Wildlife Service, West Virginia Field Office (USFWS) has stated if a total of less than 17 acres of Indiana bat summer habitat would be removed as a result of a proposed project, tree removal can occur at any season of the year. However, if 17 acres or more would be disturbed, the USFWS has recommended one of two options to avoid incidental take of the Indiana bat. Although each proposed deed mine site would disturb less than 17 acres individually the proposed complex cumulatively would result in disturbances to a total of nearly 51 acres. Therefore, the USACE has determined two options are available to the applicant to address potential adverse effects to the Indiana bat. 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. 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 USFWS determines the extent of disturbance is not significant to affect the Indiana bat, the project may proceed with seasonal restrictions. Conversely, if the USFWS 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. The applicant's proposed project area must also be surveyed to determine the presence of old abandoned mine portals to determine their presence and likelihood to support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. Upon receipt of the required surveys and/or analyses, a determination of effect will be made by the Huntington District concerning compliance with Section 7(c) of the Endangered Species Act of 1972 (as amended). 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 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. Sarah Workman, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources.

Yurisa D. Spagna
for Ginger Mullins, Chief
Regulatory Branch

(W)

GAS WELL 437 DA 1

DURING MINING ON BENCH SED. CONTR

DA 3

DA 2

PRO

400-0

RESTORED CHANNEL
FLUME NO. 1

DA FIL

FACE UP 1

ainage area 52.31 acres

EPHEMERAL/INTERMITTENT
CONVERSION ZONE
37-40-22/81-57-10
pond 1

Cleatout Storage Area

48" GMP WITH 60" RISER

RESTORED CHANNEL

al drainage area 130.7 acres

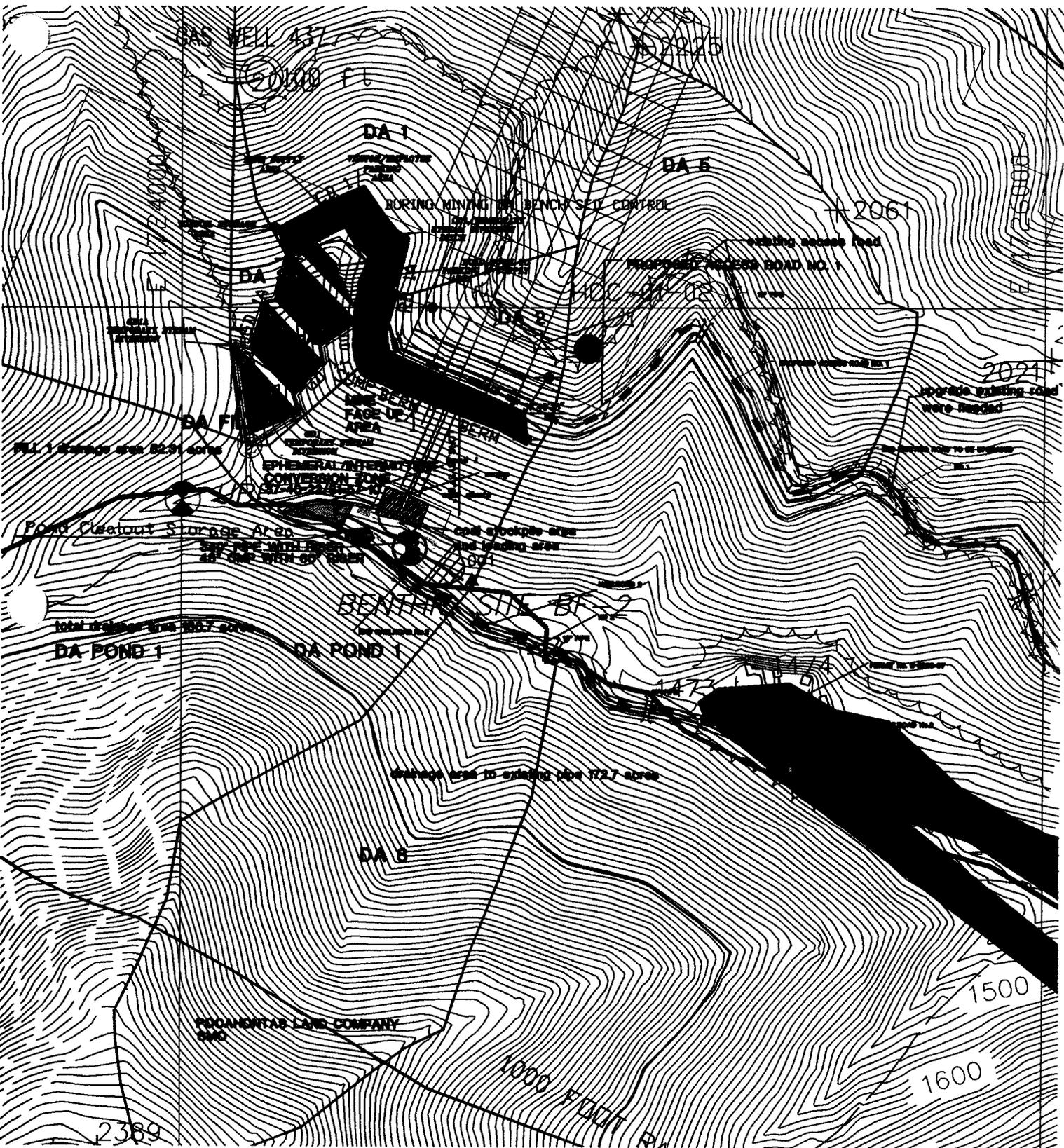
BENTHIC SITE BT-1

DA POND 1

END WALLROAD No.2

18" PIPE

drainage area to existing pipe 172.7 acre



Gas Well 437
2000 FT

20225

DA 1

DA 5

2061

BORING/MINING BENCH SET CONTROL

DA

DA F

2024

Pond Cleatout Storage Area
240' dia with 60' radius

BENTONITE SAND BR-2

total drainage area 185.7 acres

DA POND 1

DA POND 1

drainage area to existing pipe 172.7 acres

DA 6

POCAHONTAS LAND COMPANY
2000

2000
1400

1500

1600

2389