



Public Notice

**U S Army USACE
of Engineers**
Huntington District

In reply refer to Public Notice No. 200501031	Issuance Date:
	September 9, 2005
Stream: Brown Creek	Closing Date:
	October 9, 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: Greenbrier Smokeless Coal Mining, LLC
P. O. Box 0
Rupert, West Virginia 25984

LOCATION: The proposed project would be located approximately 4.3 miles northeast of Rupert, in the Meadow Bluff District of Greenbrier County, West Virginia. The proposed project would result in disturbances to a wetland adjacent to Brown Creek. Brown Creek flows into Big Clear Creek of Meadow River. Meadow River ultimately flows into the Gauley River, a navigable Section 10 waterway of the U.S.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and fill material into 1.631 acres of waters of the U.S. in conjunction with the construction, operation and reclamation of the Mountaineer No. 1 Load-out Facility [Surface Mining Control and Reclamation Act (SMCRA) Permit O-3006-05]. Approximately 11 acres of surface would be disturbed as a result of the proposed operation, including 1.19 acres of drainage control. Nearly 42,000 cubic yards of soil and overburden material would be handled during the proposed cut and fill activities associated with site preparation via dozers, loaders, drilling, blasting, and overburden haulers. Approximately 33,000 cubic yards of the generated material would be used in the development of the load-out pad that would create an adequate working surface for the construction of the proposed load-out facility, clean coal and raw coal stockpile storage areas, rail car storage areas, truck dump and scales, conveyor, and drainage control structures, including one pond (No. 1), two sumps (No. 3 and 4), and four diversion ditches (No. 1-4). Approximately 6,600 cubic yards of this material would be placed within 1.631 acres of emergent and shrub-scrub wetlands. An estimated 8,458 cubic yards of the generated material would be used in the construction of Haulroad No. 1 and its associated culverts (No. 1-5) and haulroad ditches (No. 1A, 1B and 1C). Adverse impacts to waters of the U.S. associated with the proposed project would be permanent in nature. This proposed facility would be accomplished in three general phases over a 20-year period. Coal from the Beckley, Fire Creek and Pocahontas No. 6 and No. 8 would be handled and stockpiled at the proposed facility prior to transporting it via an existing C&O railroad line. Plans for the proposed facility are attached to this public notice. The applicant's Surface Mine Application (SMA) O-3006-05 is under review by the West Virginia Department of Environmental Protection (WVDEP) pursuant to the SMCRA and the WV implementing mining reclamation regulations.

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, a compensatory mitigation plan has not been submitted.

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.

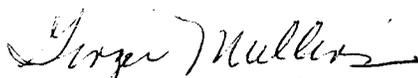
ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. The United States Fish and Wildlife Service, West Virginia Field Office (USFWS) has stated 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. The proposed project would result in the loss of approximately 10 acres of potential Indiana bat summer habitat. The applicant will be advised the proposed project area must be investigated for abandoned mine portals or other features that could provide summer and winter habitat for the Virginia big-eared bat or hibernaculum for the Indiana bat. At this time, the USACE cannot determine compliance with the ESA until additional information is provided by the applicant. 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. 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 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.


Ginger Mullins, Chief
Regulatory Branch

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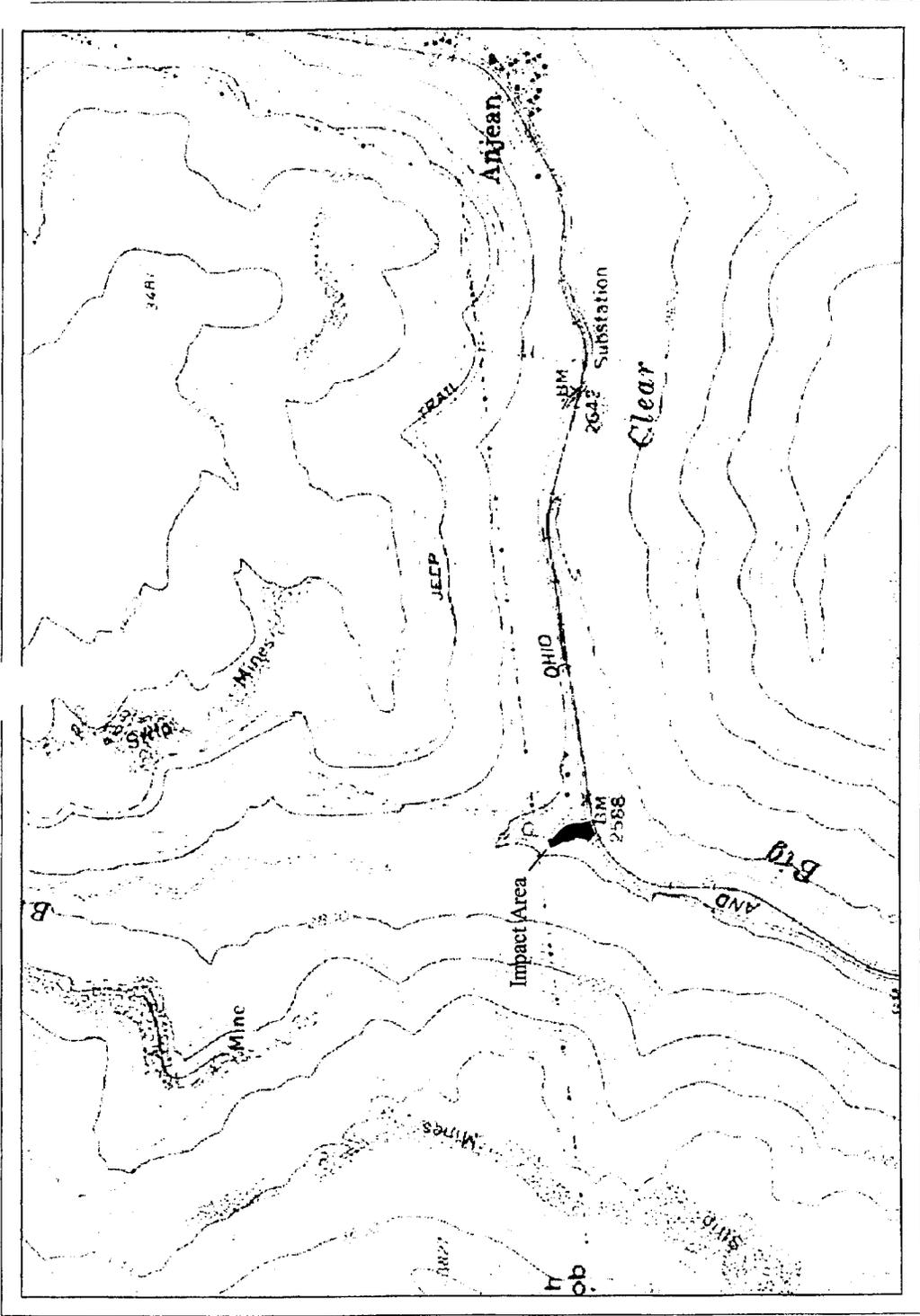
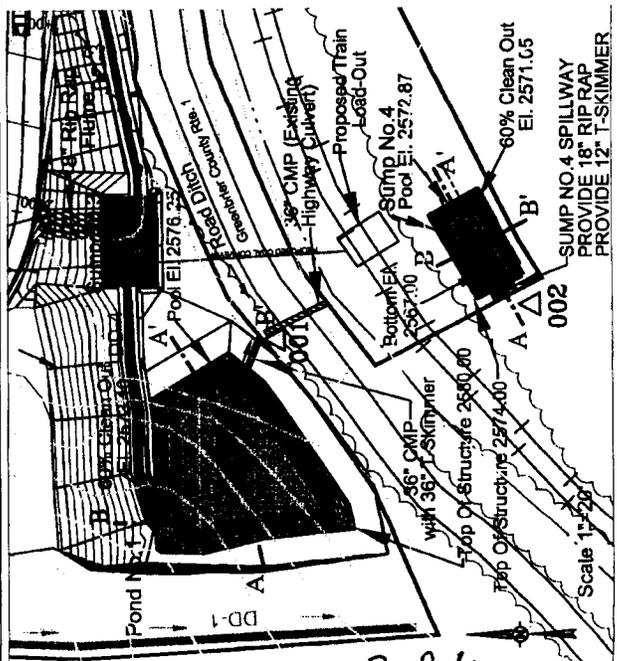


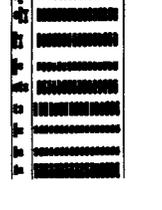
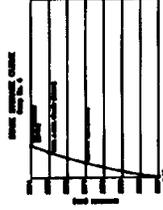
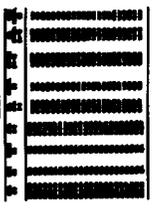
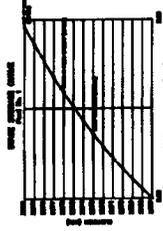
FIGURE 1. Topographic map showing overall impact area for Greenbrier Project, REI Consultants, Inc., November 2004.

Wetland determination & delineation for the "Greenbrier Project" for Greenbrier Smokeless Coal Mining, LLC.
 REI Consultants, Inc., December 2004.

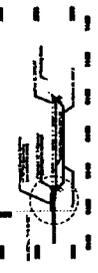
1 of 4



Scale 1"=50'



Sump No. 4 Section A-A'

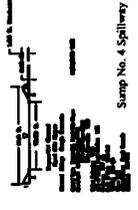


Scale 1"=20'

Sump No. 4 Section B-B'



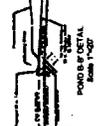
Scale 1"=20'



N.T.S.

POND NO. 1
 Design Capacity = 1.22 ac-ft
 Design Quantity = 1.22 ac-ft

SUMP NO. 4
 Design Capacity = 0.75 ac-ft
 Design Quantity = 0.75 ac-ft



Material Schedule and Association

Material	Association
Concrete	ACI 308
Rebar	ACI 308
Gravel	ACI 308
Asphalt	ACI 308
Steel	ACI 308
Timber	ACI 308
Paint	ACI 308
Other	ACI 308

Pond No. 1 and Sump No. 4 Detail

Prepared by: [Name]
 Checked by: [Name]
 Date: [Date]

