



U S Army Corps
of Engineers
Huntington District

Public Notice

In reply refer to Public Notice No. 200500903 Issuance Date August 7, 2006

Stream: Brushy Fork Closing Date: Sept. 6, 2006

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 (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Apogee Coal Company, LLC
HC 61 Box 156 Rum Creek Road
Yolyn, West Virginia 25654

LOCATION: The proposed project area is located on the Amherstdale USGS quadrangle at latitude 37° 49'38" and longitude 81° 48'16" in the Logan and Tridelpia Districts of Logan County, West Virginia. The proposed project would result in disturbances to Fitzwater Hollow and an unnamed tributary of Brushy Fork. The four unnamed tributaries of Brushy Fork (UTBF0, UTBF1, UTBF2 and UTBF3) are tributaries of Brushy Fork. The three unnamed tributaries of Fitzwater Hollow (F1, F2 and F3) are tributaries of Fitzwater Hollow. Brushy Fork and Fitzwater Hollow are tributaries of Garland Fork. Garland Fork is a tributary of Spruce Fork of the Little Coal River. Little Coal River ultimately flows into the Coal River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and fill material into 10,899 linear feet (1.99 acres) of waters of the U.S in conjunction with the construction of two valley fills (No. 2 and 3) and two drainage control ponds (No. 2 and 3) associated with the Rum Creek Surface Mine (Surface Mining Control and Reclamation Act Permit S-5006-05). For details regarding the proposed stream impacts please reference the below table.

<u>Proposed Structure</u>	<u>Stream Description/Location</u>	<u>Type of Impact, Type of Channel</u>	<u>Impact</u>	
			<u>Feet</u>	<u>Acres</u>
Valley Fill No. 3	F, Fitzwater Hollow	Permanent, Intermittent	7216	1.616
		Permanent, Ephemeral	754	0.011
Drainage Control 3 Embankment	F, Fitzwater Hollow	Temporary, Intermittent	154	0.033
Fill No. 3 EPZ	F, Fitzwater Hollow	Temporary, Intermittent	216	0.054
Valley Fill No. 3	F1 Right Bank Unnamed Tributary of Fitzwater Hollow	Permanent, Intermittent	335	0.028
		Permanent, Ephemeral	365	0.024
Fill No. 3 EPZ	F2 Left Bank Unnamed Tributary of Fitzwater Hollow	Temporary, Intermittent	142	0.017
Valley Fill No. 3	F3 Left Bank Unnamed Tributary of Fitzwater Hollow	Permanent, Intermittent	100	0.011
		Permanent, Ephemeral	500	0.049
Valley Fill No. 2	UTBF0 Unnamed Tributary of Brushy Fork	Permanent, Intermittent	77	0.022
		Permanent, Ephemeral	987	0.102
Drainage Control 2 Embankment	UTBF0, Unnamed Tributary of Brushy Fork	Temporary, Intermittent	53	0.019
	Total Impacts	Permanent, Intermittent	7728	1.677
		Permanent, Ephemeral	2606	0.186
		Temporary, Intermittent	565	0.123

The North Rum Surface Mine is a proposed contour and area mining operation that would recover identified reserves in the 5-Block, Stockton, and Coalburg coal seams, with the Coalburg as the primary base seam proposed to be area mined. In addition to these areas targeted for complete ridge-top (area) mining, the proposed operation would include evaluation of potential recovery of isolated seams, such as the Buffalo seam within the confines of one of the proposed remote fill areas (Valley Fill 3). Surface disturbance associated with the WVDEP Surface Mine Application (SMA), which is currently under review, is 800.53 acres. The proposed mine plan would be implemented in 6 phases over a period of six years.

Under Phase 1, development of the project would begin with the construction of access/haul roads and the installation of Drainage Control Pond 1, which would be constructed in an area containing no waters of the U.S. Immediately following construction of the pond, Valley Fill 1 area would be cleared and grubbed and development of the box cut at the head of the fill would begin. Valley Fill 1 would be constructed in an area not containing waters of the U.S. Mining would advance through the box cut into the Brushy Fork watershed. After the box cut has been completed, mining would advance to both the north and south on the Brushy Fork Stockton/Access contour. As development to the south advances towards Valley Fill 2, the embankment associated with the construction of Drainage Control Pond 2 would be installed in 53 linear feet of intermittent stream channel (UTBF0-Unnamed Tributary of Brushy Fork) and the fill area would be cleared and grubbed. Mining would continue to advance to the north and south through the phase with excess overburden being placed in both Valley Fills 1 and 2. Construction of Valley Fill 2 would result in permanent placement of approximately 101 cubic yards of durable rock material into 987 linear feet (0.102 acre) of ephemeral stream channel and 77 linear feet (0.022 acre) of intermittent stream channel (UTBF0 Unnamed Tributary of Brushy Fork).

By the end of the Phase I, mining to the north would have advanced through the box cut in the head of Fitzwater Hollow and mining to the south would have advanced into and through the point removal beyond Valley Fill 2. The installation of the embankment associated with the construction of Drainage Control Pond 3 would be constructed in 154 linear feet (0.033 acre) of intermittent stream channel (F, Fitzwater Hollow) during Phases I or II. By the end of Phase V, construction of Valley Fill 3 would result in permanent placement of approximately 2,719 cubic yards of durable rock material into 7,651 linear feet (1.655 acres) of intermittent stream channels (F, Fitzwater Hollow, F1 Right Bank Unnamed Tributary of Fitzwater Hollow, F2 Left Bank Unnamed Tributary of Fitzwater Hollow) and 1,619 linear feet (0.0847 acre) of ephemeral stream channels. The erosion protection zone associated with the proposed Valley Fill 3 would impact 142 linear feet (0.017 acre) of intermittent stream channel (F2 Left Bank Unnamed Tributary of Fitzwater Hollow).

Plans for the proposed facility 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: The applicant has submitted a Compensatory Mitigation Plan (CMP) to compensate for permanent and temporary impacts to waters of the U.S. that are regulated by the USACE. In order to compensate for construction-related impacts, the applicant has proposed on-site mitigation in the installation of habitat enhancement structures in constructed diversions along permanent portions of fills as well as in diversion channels constructed on-bench along the down-dip side of the mined area. These constructed segments would be installed concurrent with final site reclamation and would coincide with reclamation of the temporary ponds. As a result of these mitigation efforts, approximately 5,265 linear feet of ephemeral stream channels and 12,158 linear feet of intermittent stream channels would be established in the landscape. Upon completion of mining, additional on-site mitigation would be provided by re-establishment and restoration of 1,849 linear feet of temporarily impacted intermittent stream segments as near as

practicable, to pre-construction lines and grades. Restoration of temporarily-impacted segments would include installation of natural stream structures to restore the re-established morphological characteristics of these stream segments and would also include appropriate riparian vegetation in the stream buffer areas.

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 report entitled "Abbreviated Technical Report for Phase I Archaeological Survey of the Proposed Guyan Ridge 1 and 2 Surface Mine, Logan District, Logan County, West Virginia" was completed for the proposed project. Systematic survey and shovel of the project area located no previously unrecorded historic or prehistoric sites. The West Virginia Division of Cultural and History (SHPO) concurred with this finding in a letter dated May 18, 2004. The SHPO stated the report addressed their concerns regarding the presence of archaeological resources within the project area and stated this project would have no effect on any known historic, architectural or archaeological resources. However, in this same letter the SHPO stated they require additional information regarding the presence of three resources (LG516, LG499 and LG515) recorded in the Coal Heritage Survey. 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. A Mist-net survey was completed within the proposed project area during May 21-28, 2004. No Indiana bats were captured during the survey efforts. The proposed project area was investigated for the presence of open, abandoned portals or other features that could provide summer and winter habitat for the Virginia big-eared bat or hibernaculum for the Indiana bat. No portals or other features were identified within the proposed project area that provide habitat for these endangered bats. The USACE has determined the proposed project is not likely to adversely affect threatened or endangered species or their critical habitat. The survey will remain valid until May 15, 2007. The USFWS concurred with the survey findings in a letter dated September 28, 2005. Section 7 requirements under the Endangered Species Act (ESA) have been fulfilled. 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 ESA 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.

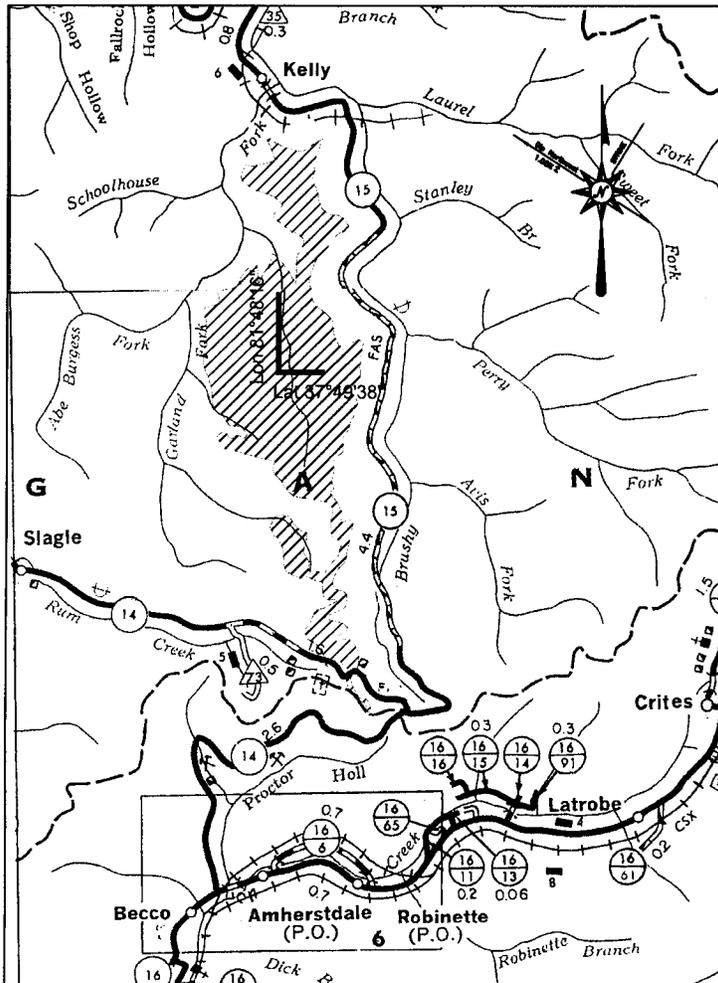
The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably 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 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

(W)

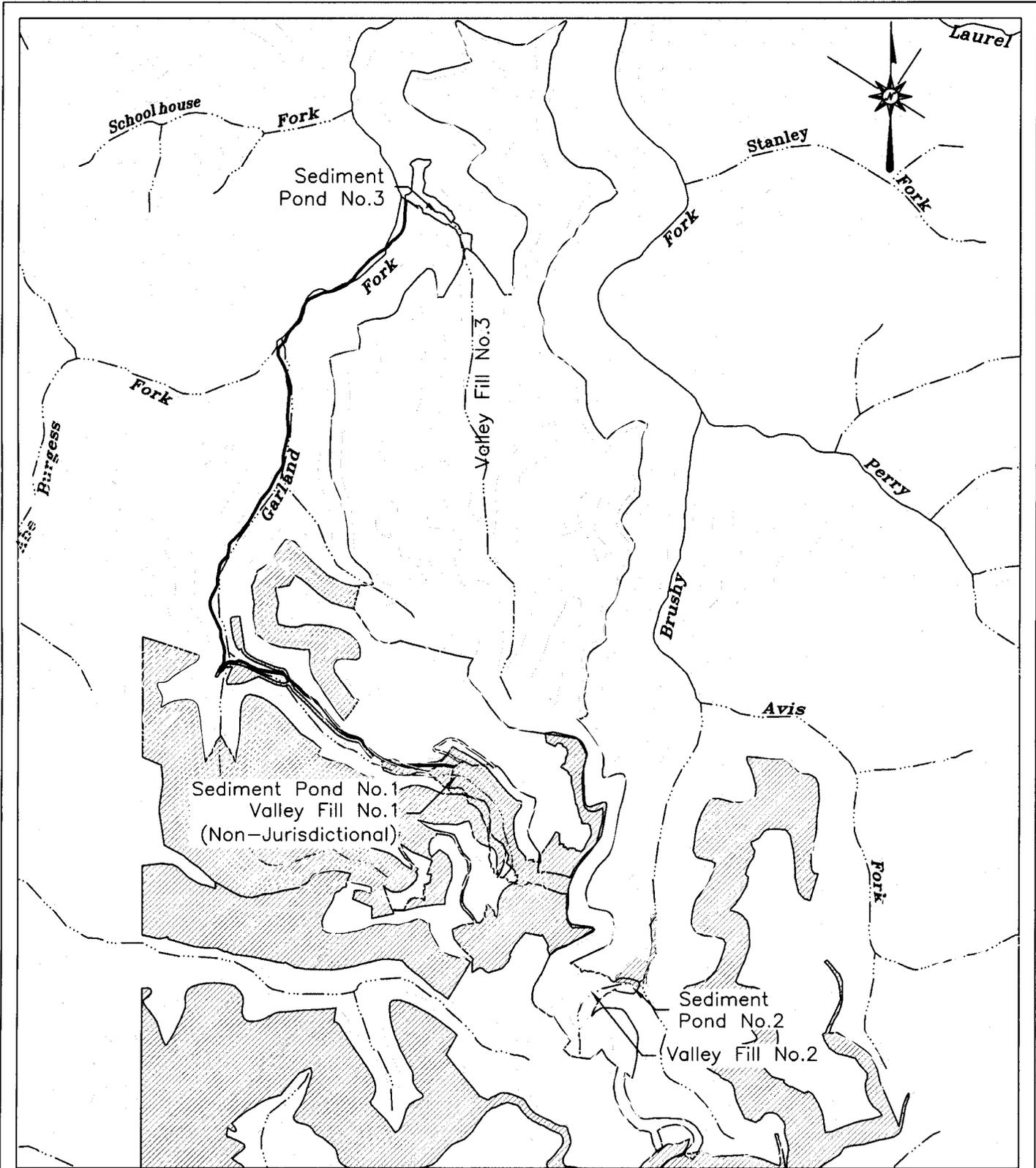


Location Map

NPDES No. 1022792; SMA No. S-5006-05

WV General Highway Map
 Scale: 1" = 1 Mile
 Amherstdale Quadrangle
 Nearest Post Office: Amherstdale
 Logan & Triadelphia Districts
 Logan County

Receiving Streams:
 Fitzwater Hollow off/and Garland Fork and
 Unnamed tributary off/and Brushy Fork off/and
 Spruce Fork of Little Coal of Coal River of
 Kanawha River;
 Rum Creek of Guyandotte River of Ohio River



Purpose: Permanent overburden placement and temporary drainage control ponds

Facility: Apogee Coal Company, LLC
 North Rum Surface Mine
 Tributaries of and Garland Fork and Brushy Fork of Spruce Fork

Plan View

0 1000 2000

 Scale 1"=2000'

Legend

Adjacent Permit

Bonded Area

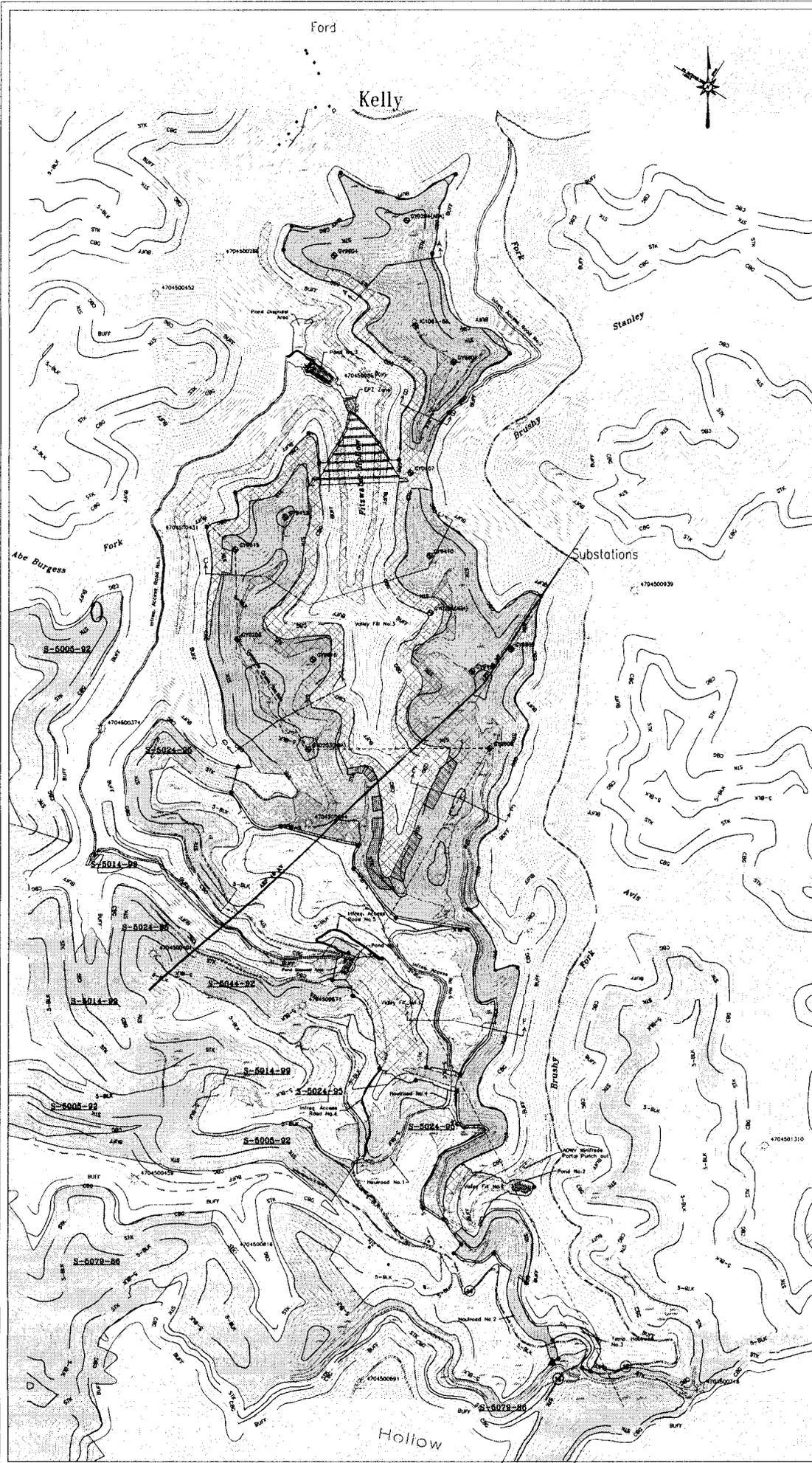
APOGEE COAL COMPANY, LLC

North Rum Surface Mine

General Location Map

Date: 03-30-06 Sheet 1 of 7

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1. There are no known cemeteries within 100 feet of the proposed permit area.
2. There are no known water supply intakes or surface water uses within or adjacent to the proposed permit area.
3. The location and extent of subsurface water within the proposed permit area or adjacent areas, including depth and vertical distribution of water and potential seasonal differences in head in different aquifers can be found on the "Geologic Map".
4. There are no air pollution monitoring and control facilities and substance monitoring devices prepared for this operation.
5. The location of an explosion storage and handling facility shall be determined when subsurface work is developed within the permit area.
6. The sequence of mining and reclamation are shown on the "Phase Map" in Section H of the application.
7. There are no wells, springs, or surface water bodies other than those shown within the permit area or adjacent to the proposed permit area in the National Register of Historic Places or otherwise known to the applicant.
8. The pre-mining land use for the area or adjacent to the proposed permit area is (1) Forest land (2) previously surface mined and not reclaimed.
9. There are no known habitats for threatened or endangered species located on or within 1000 feet of the proposed permit area.
10. Structures located within 1000 feet of the proposed permit area are shown on this map. To see all known man-made structures within 500 feet from the proposed permit area see the Base Map in Section I.
11. No known or probable cultural, historic or archeological sites listed or eligible for listing in the National Register of Historic Places are within the proposed permit area or adjacent areas.
12. No parts of the proposed permit area are within or adjacent to the boundaries of a National Park System, National Forest, National Wildlife Refuge System, National System of Public Lands, National Wilderness Preservation System, National Wild and Scenic River System, National Recreation Area, or area under study for inclusion in the systems, or any public park.
13. All known man-made structures are shown on this map. To see all known man-made structures within 500 feet from the proposed permit area see the Base Map in Section I.
14. All known previous surface mining in the Section, 5-back, Contour, and Westside areas conducted prior to 1977 (PHE-SACRA) are shown on this map. Contour and other mining activities were conducted in these areas.
15. Boundaries of affected watersheds are shown on the Drainage Map.
16. Valley Fill spoil storage areas are permanent. Topsoil storage areas are temporary and will be distributed when back-hauling operations begin.
17. All proposed roads are temporary.
18. No topsoil borrow areas are proposed.
19. Including Valley Fills and their diversion systems. No permanent structures will remain other than mining.
20. There are no permanent or temporary solid waste fill and treatment facilities proposed for the operation.
21. There are no gravity transport areas presently proposed for this permit.
22. All information pertaining to the proposed drainage and sediment control system is shown on the "Drainage Map".
23. For underground mine workings see "Geologic Map".

Legend

- Bandied Area
- Mineral Remnant
- Overburden
- Previous Mapping
- Proposed Subdivision
- Adjacent Parcel
- Contour Outline
- Station Outline
- 5-Back Outline
- Contour Location (LMA)
- Contour Location
- Contour
- Permanent Monument
- Particular Marker
- Cross Section Line
- Surface Owner
- Mineral Owner

ACRES

Disturbed Area	326.704
Mineral Remnant	50.88
Settlement Ponds	2.17
Non/Affected Areas (Excludes)	22.43
Total Area	802.23

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THIS MAP IS CORRECT AND SHOWS TO THE BEST OF MY KNOWLEDGE AND BELIEF THE INFORMATION REQUIRED BY THE SURFACE MINING LAWS OF THIS STATE.

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA
I, _____, COMMISSIONER, DO HEREBY CERTIFY THAT THE INFORMATION REQUIRED BY THE SURFACE MINING LAWS OF THIS STATE WAS FILED FOR RECORD ON THIS _____ DAY OF _____, 2000.

NOTARY
MY COMMISSION EXPIRES _____

APOGEE COAL COMPANY
ARCH OF WEST VIRGINIA
1000 Main Street
Martinsburg, West Virginia 25401

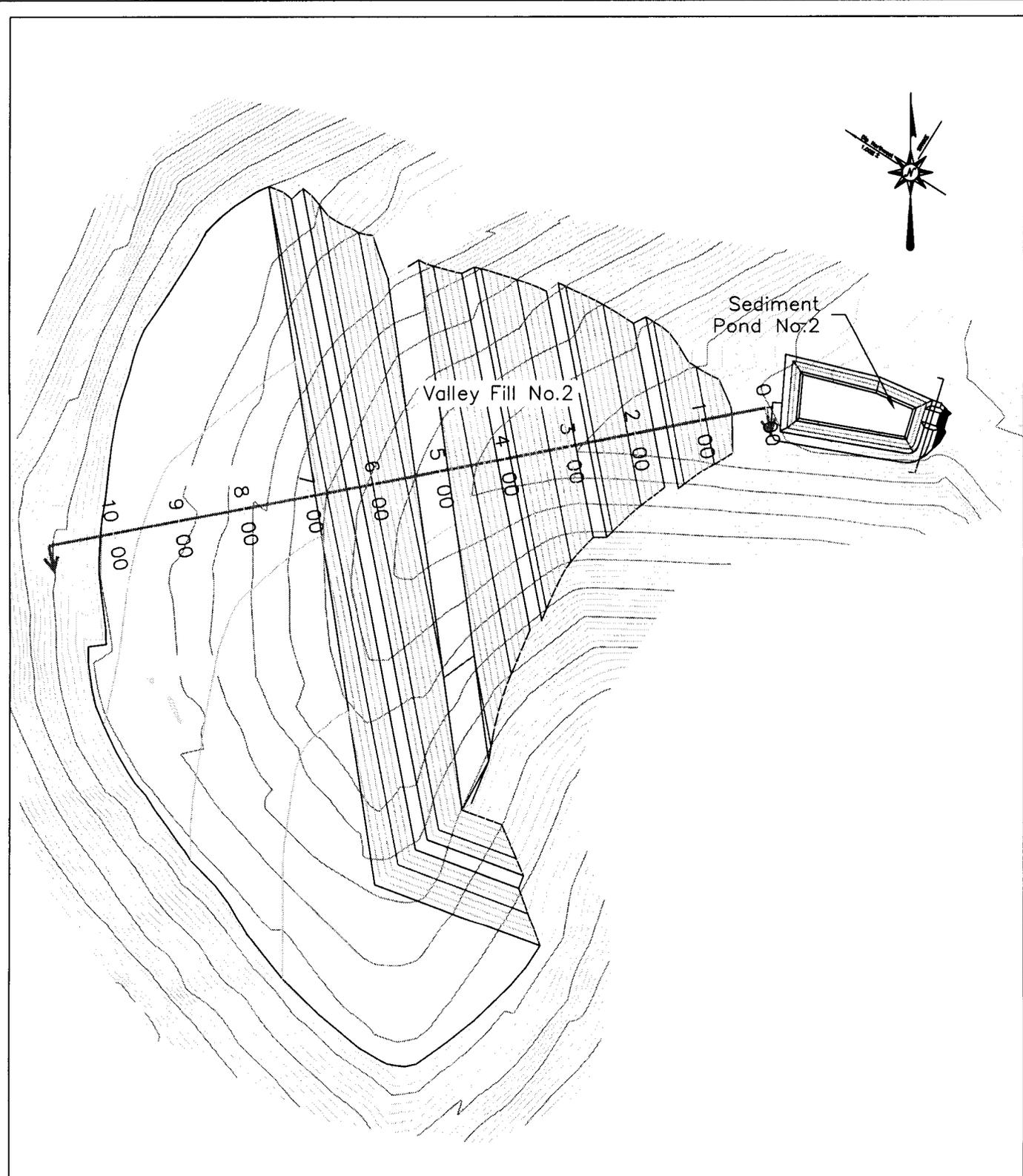
North Rum Surface Mine
Proposal Map

DRAWN BY: [Name]
DATE: [Date]
REVISIONS: [List]
SCALE: [Scale]
SHEET: [Number] of [Total]

APPROVED BY: [Name]
DATE: [Date]

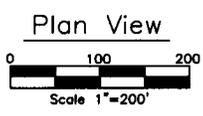
Produced by
BECOTA CONSULTING COMPANY, INC.
2024 West Washington Street
Wheelersburg, West Virginia 25653

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Purpose: Permanent overburden placement and temporary drainage control ponds

Facility: Apogee Coal Company, LLC
North Rum Surface Mine
Tributaries of and Garland Fork
and Brushy Fork of Spruce Fork



APOGEE COAL COMPANY, LLC

North Rum Surface Mine

ValleyFill No.2

Date: 03/30/06 Sheet 2 of 7

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2100

2100

1900

1900

1700

1700

1500

1500

0+00

2+00

4+00

6+00

8+00

10+00

Profile

Sediment Ditch
SD\Div-31

1.5%

2:1 TYP

Existing Ground

2000

1800

1600

1.0%

1.0%

1.0%

Sediment Ditch SD-31

Proposed Haulroad

1.0%

Groin Ditch
GD 30-B-2

Existing Ground

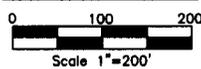
Temporary Sediment
Ditch (During Mining)

Section 6+32

Purpose: Permanent overburden
placement and temporary
drainage control ponds

Facility: Apogee Coal Company, LLC
North Rum Surface Mine
Tributaries of and Garland Fork
and Brushy Fork of Spruce Fork

Section View



APOGEE COAL COMPANY, LLC

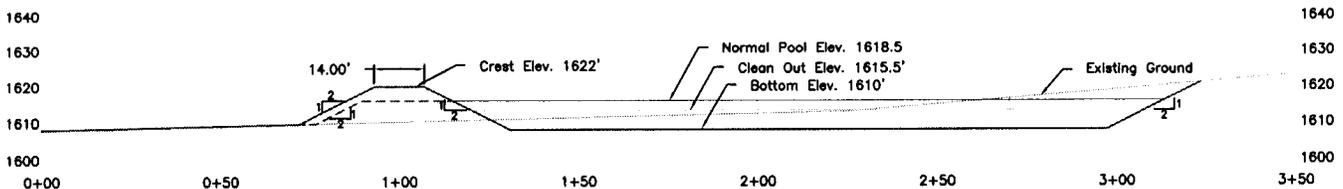
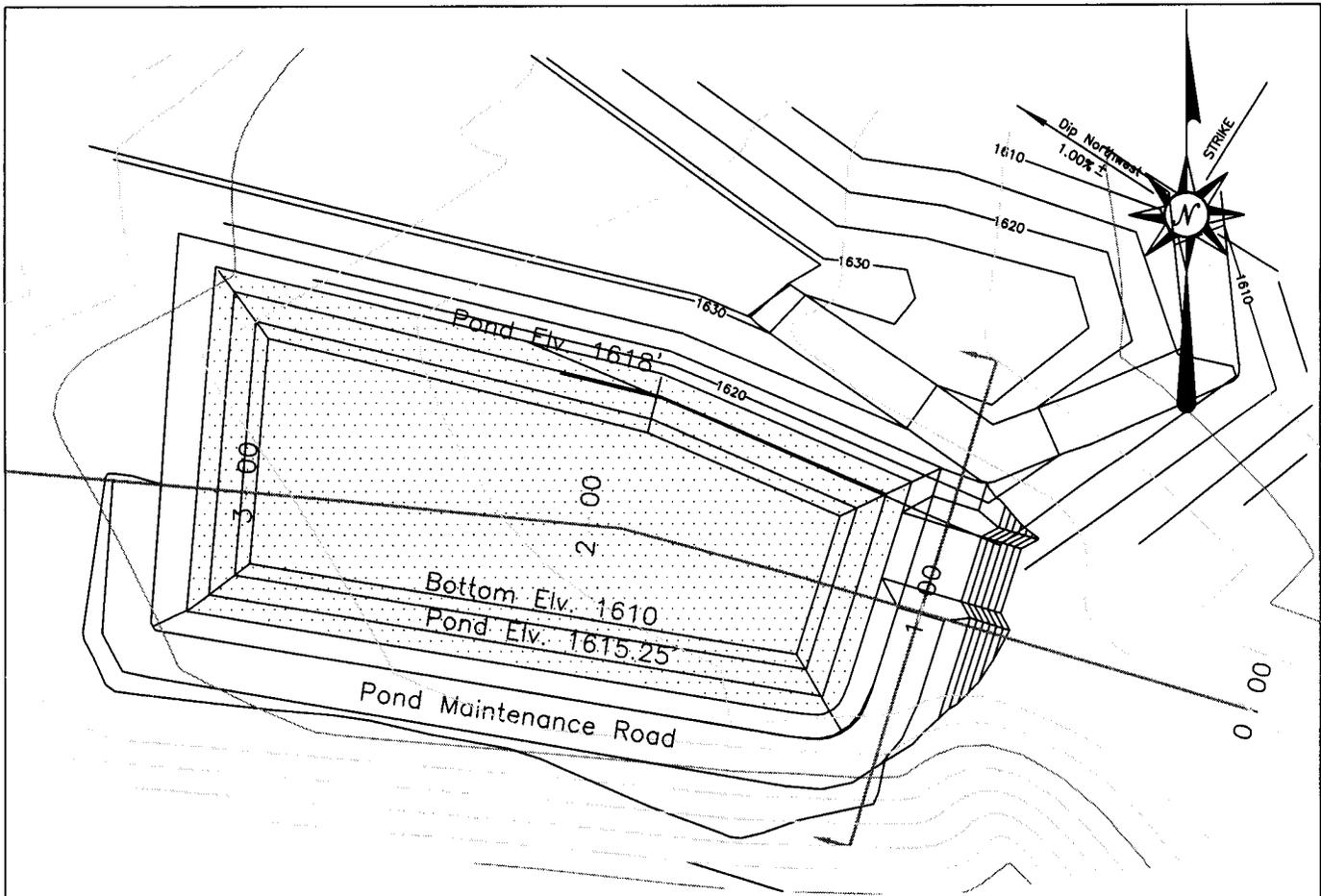
North Rum Surface Mine

Valley Fill No.2

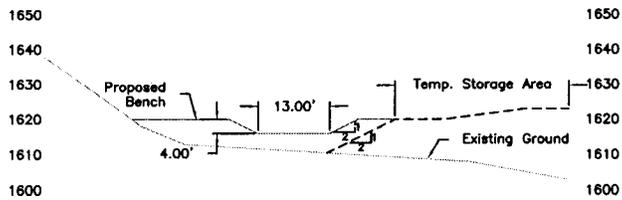
Date: 03/30/06

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Profile



Section @ 1+00

Purpose: Permanent overburden placement and temporary drainage control ponds

Facility: Apogee Coal Company, LLC
North Rum Surface Mine
Tributaries of and Garland Fork
and Brushy Fork of Spruce Fork

Plan View
Section View

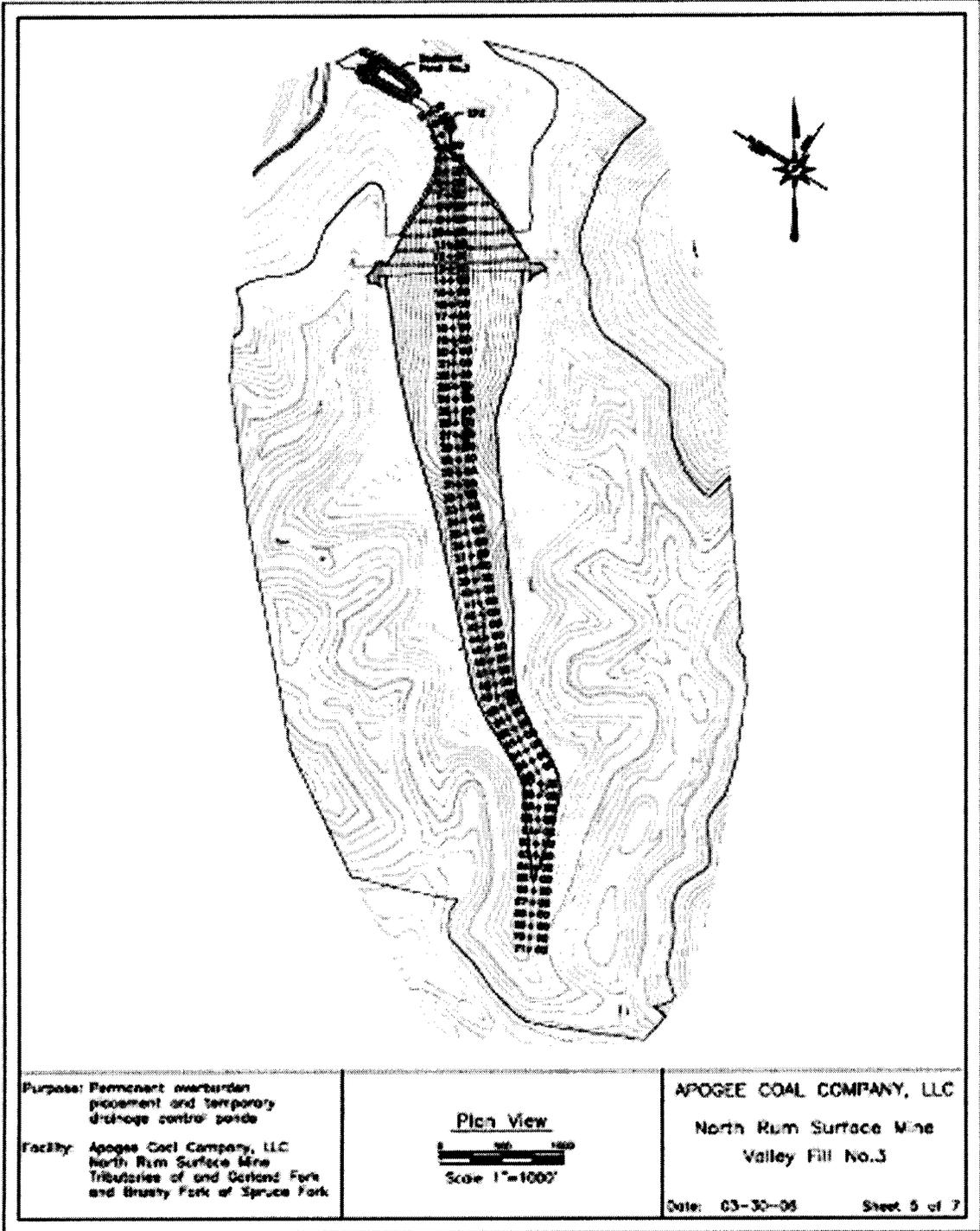


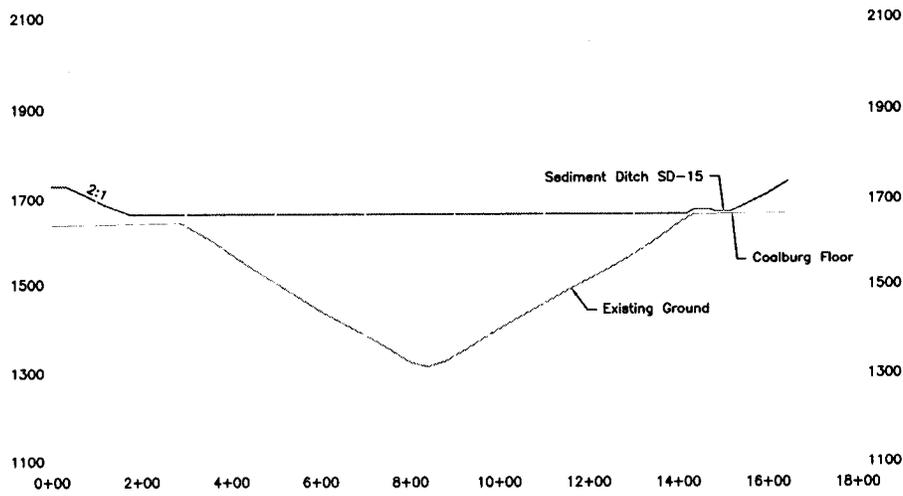
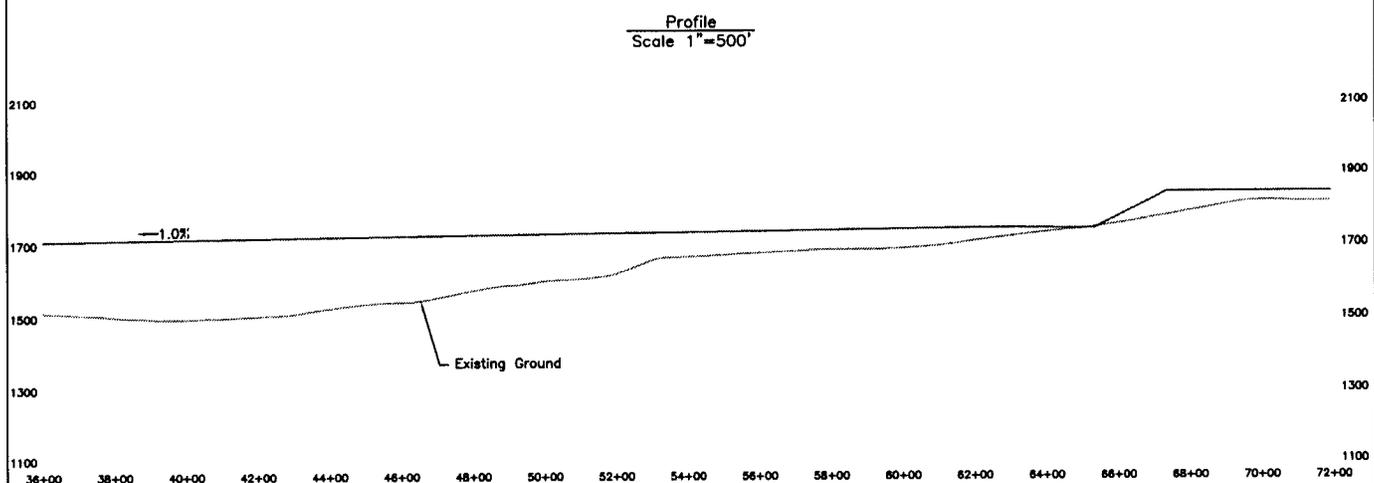
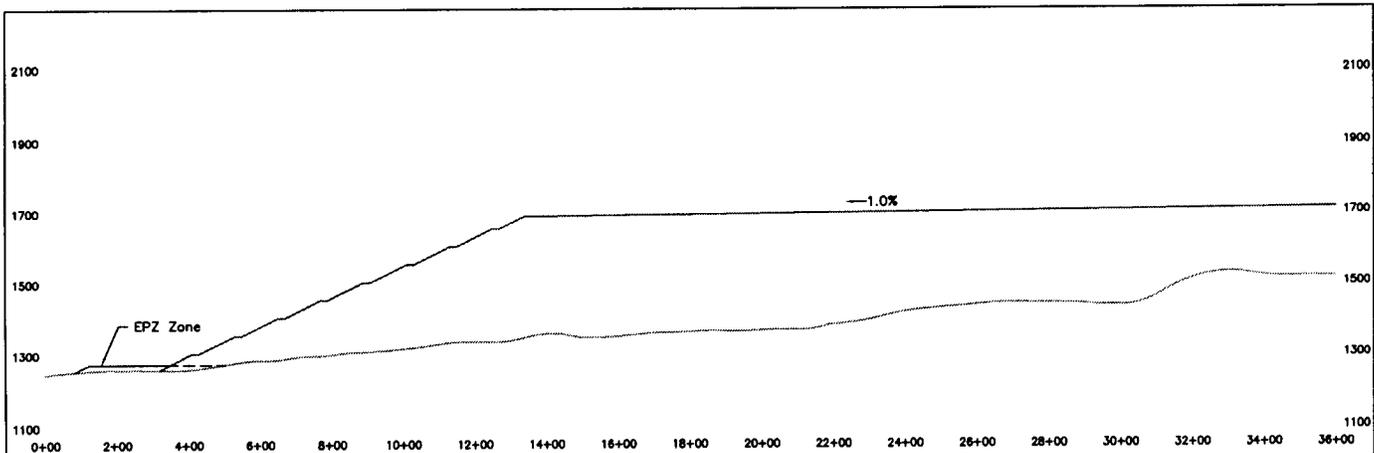
APOGEE COAL COMPANY, LLC
North Rum Surface Mine
Sediment Pond No.2

Date: 03-30-06

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Purpose: Permanent overburden placement and temporary drainage control ponds

Facility: Apogee Coal Company, LLC
North Rum Surface Mine
Tributaries of and Garland Fork
and Brushy Fork of Spruce Fork

Section View

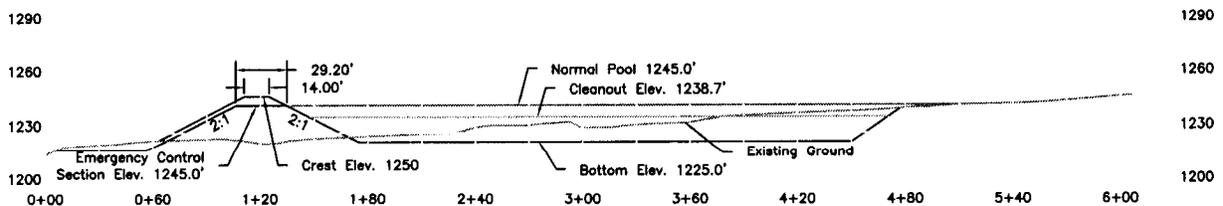
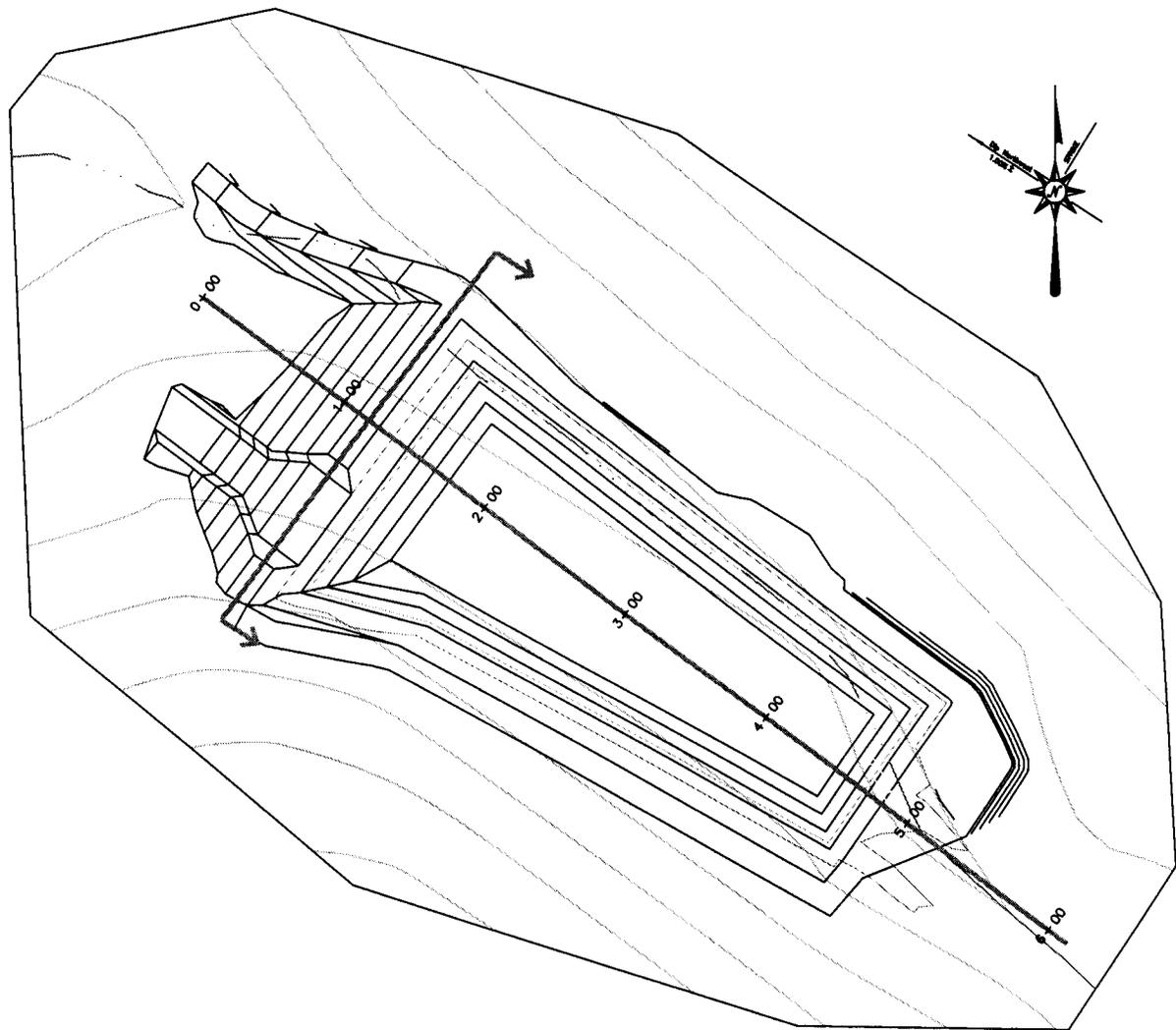
Scale = As Shown
Plot 1"=1000'

APOGEE COAL COMPANY, LLC

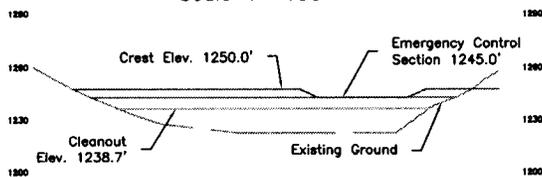
North Rum Surface Mine
Valley Fill No.3

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Profile
Scale 1"=100'



Embankment Section @ 1+18
Scale 1"=100'

Purpose: Permanent overburden placement and temporary drainage control ponds

Facility: Apogee Coal Company, LLC
North Rum Surface Mine
Tributaries of and Garland Fork
and Brushy Fork of Spruce Fork

Plan View
Section View



APOGEE COAL COMPANY, LLC
North Rum Surface Mine
Sediment Pond No.3

Date: 03-30-06

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