



Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. 200500718 Issuance Date:

AUG 28 2006

Stream: Littles Creek

Closing Date:

SEP 27 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: Stirrat Coal Company
PO Box 484
Omar, West Virginia 25638

LOCATION: The proposed project area is located on the Barnabus USGS quadrangle at latitude 37° 43' 33" and longitude 82° 00' 21" in the Island Creek District of Logan County, West Virginia. The proposed project would result in disturbances to the first right unnamed tributary to Littles Creek. Littles Creek is a tributary of the Guyandotte River. The Guyandotte River ultimately flows into the Ohio River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place coarse coal refuse fill material and dredged and fill material into 2,448 linear feet (0.102 acre) of waters of the U.S in conjunction with the construction of one coarse coal refuse fill and one drainage control pond (Refuse Pond No. 2) associated with the Stirrat Preparation Plant and Refuse Facility (Surface Mining Control and Reclamation Act Permit O-44-84, IBR No. 10). For details regarding the proposed stream impacts please reference the below table.

<u>Proposed Structure</u>	<u>Stream Description/Locatio</u>	<u>Type of Impact, Type of Channel</u>	<u>Impact</u>	
			<u>Feet</u>	<u>Acres</u>
Proposed Added Refuse Area	Unnamed Tributary of Littles Creek	Permanent,	1,345	0.049
		Intermittent Permanent, Ephemeral	725	0.034
Refuse Pond No. 2	Unnamed Tributary of Littles Creek	Temporary, Intermittent	378	0.019

The proposed refuse facility, access road, and drainage control pond are a 48.00 acre surface disturbance addition (Incidental Boundary Revision) to the existing WVDEP Surface Mining Control and Reclamation Act Permit O-44-84. The refuse to be placed into the facility would be produced at the existing operating Stirrat Coal Preparation Plant. The coal that would be processed at the preparation plant is or would be produced at the S-5017-98 Rockhouse Branch Surface Mine, the U-5023-98 "Double D" Deep Mine, and the U-5011-00 Diamond Energy Deep Mine. The seams from the S-5017-98 permit are the Coalburg, Lower Stockton "B", Lower Stockton "B" Rider, Upper Stockton "B", Lower Stockton Leader, Lower Stockton, and the Lower Stockton Riders. The coal mined at the Double D and Diamond Energy Deep Mines is the Williamson seam.

Construction/operation of the proposed facility would take place over a period of approximately ten years. Site preparation for the facility would commence with the construction of Refuse Access Road 1. This road would be used to transport material to the construction area during fill development. The road would also be utilized for the construction of Refuse Pond 2. This proposed pond would be constructed and certified prior to the construction of the refuse area. The lower portion of the rock underdrain would then be constructed as well as the diversion and groin ditches. Once the drainage structures are in place, clearing and grubbing operations would then take place, followed by the placement of coal refuse.

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 proposes to utilize excess mitigation credits that have been proposed and partially created on Middle Fork of Island Creek to compensate for the permanent and temporary impacts to waters of the U.S. that are regulated by the USACE. The mitigation work plan on Middle Fork was designed for and intended to compensate for the impacts of the Road Fork Development's Rockhouse Branch Surface Mine (S-5017-98). The mitigation proposal was submitted to the USACE along with the Pre-Construction Notification. The mitigation proposal as well as the proposed impacts to waters of the U.S. was subsequently reviewed by the respective resource agencies via the USACE Pre-Construction Notification procedures. On May 24, 2004, the USACE made a determination that the proposed discharge met the criteria for Nationwide Permit #21 under the January 15, 2002 Federal Register, Final Notice of Issuance of Nationwide Permits (67 FR 2020). The proposed mitigation site has been impacted by road construction, which is severely degrading the stream banks and surrounding riparian vegetation. These impacts have resulted in poor in-stream substrates, increased sediment deposition and runoff. The mitigation proposal would utilize a linear- and habitat-based approach and would incorporate existing benthic and fisheries data to provide suggestions for improving the Middle Fork watershed. The mitigation sites would be permanently protected via a "Declaration of Restrictive Covenants" dated April 5, 2004. As a result of these mitigation efforts, approximately 22,440 linear feet of mitigation credits have been or would be accrued. The Rockhouse Branch Surface Mine would utilize approximately 11,429 linear feet of these mitigation credits, leaving approximately 11,011 available for this and other projects proposed by Road Fork Development or its subsidiaries. Upon completion of refuse fill construction, additional on-site mitigation would be provided by re-establishment and restoration of 378 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 West Virginia Division of Cultural and History (SHPO) reviewed the proposed project and reported their findings in a letter dated July 27, 2006. In their letter, the SHPO evaluated the project area with respect to both potential architectural and archaeological resources. With respect to architectural resources, the response letter states, "...It is our opinion that the project will have no effect on architectural resources that are eligible for or listed in the National Register of Historic Places. No further consultation is required." With respect to archaeological resources, the response letter states, "...it is, therefore, our opinion that no archaeological resources eligible for or listed in the National Register of Historic Places will be affected by this 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.

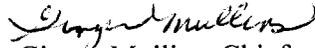
ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. A Mist-net survey was completed within the proposed project area on June 13 and June 29, 2006. 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, 2009. 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.

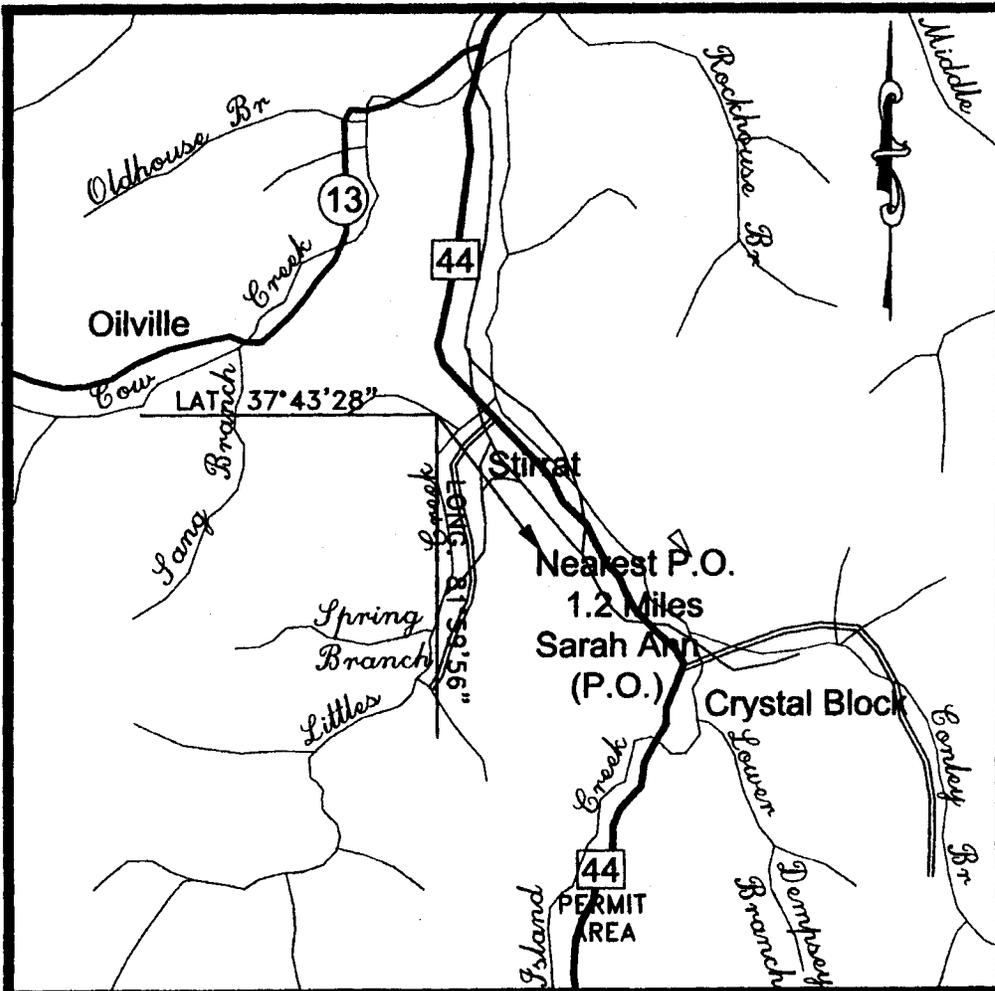
The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably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

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GENERAL LOCATION MAP

Logan County Highway Map
 See USGS - Topo Map (7.5' Series)
 Barnabus and Man Quads
 Island Creek District Logan County
 RECEIVING STREAM: ROCKHOUSE BRANCH OF ISLAND CREEK
 AND ISLAND CREEK OF GUYANDOTTE RIVER
 SCALE 1" = 1 MILE

Map 1 – Project Location Map

