



**US Army Corps
of Engineers**
Louisville District ®

Public Notice

Public Notice No.
LRL-2013-0444-rjb

Open Date:
8 Aug 2014

Close Date:
8 Sep 2014

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Louisville District
ATTN: Mr. Robert J. Brown, CELRL-OP-FW
6855 W SR 66

Newburgh, IN 47630

Phone: (812) 853-7632

Email: robert.j.brown@usace.army.mil

This notice announces an application submitted for a Department of the Army (DA) Permit, subject to Section 404 of the Clean Water Act:

APPLICANT: United Minerals Company, LLC
P.O. Box 400
409 North Van Buren Street
Huntingburg, Indiana 47542

LOCATION: Unnamed tributaries and adjacent wetlands and open waters to Big Creek and Clear Branch-Pigeon Creek in Warrick County, Indiana

Latitude: 38.1347 North
Longitude: -87.3726 West
7.5 Minute Quad(s): Boonville, Daylight, Elberfeld & Lynnville

PURPOSE: To relocate wetlands, open waters and streams to facilitate the removal of subsurface coal deposits.

DESCRIPTION OF WORK: The proposed project would result in the discharge of fill and/or dredged material into "waters of the United States" on a majority of a 3084.6-acre site. The site is pending approval by Indiana Department of Natural Resources (IDNR), Division of Reclamation (DOR), Surface Mining Control and Reclamation Act (SMCRA) Permit No. S-00374.

This proposal area is located southeast of the town of Elberfeld in Warrick County, Indiana. The area extends from New Harmony Road on the south to just north of Seven Hills Road on the north. The western boundary extends just west of Wasson Road. The eastern boundary follows Weyerbacher Road north of Greenbriar Road (Figure #1). The purpose of this disturbance is to produce bituminous coal by surface mining methods to contribute to power production for the United

States. These disturbances would include, but are not limited to, surface mining operations via open pit method, coal stockpiles, road construction for coal haulage and access, mine management and maintenance facilities, and on-site topsoil and subsoil piles.

The recovery of coal would require excavation of the overlying soil and rock materials, and mining through wetlands and streams as the operation advances across the 3084.6-acre site. Sediment basins would be developed as close to the mining area as possible to effectively induce sedimentation from surface runoff of the disturbed areas. Mining and reclamation generally would occur simultaneously as mining pits are backfilled with overburden and re-soiled as the next cut is made. The re-soiled area is then revegetated, and returned to the approved post-mining land uses. It should be noted that a majority of this proposed permit area has been previously disturbed by similar but earlier mining and associated activities. Approximately 2,238.3 of the 3084.6 acres or about 73% of the proposed area of this mine have been previously mined and reclaimed per Surface Mining Control and Reclamation Act (SMCRA) requirements.

This proposed mine and its related activity would impact 1.65 total acres of palustrine forested wetlands (PFO), 1.63 acres of palustrine scrub shrub wetlands (PSS) and 42.42 acres of palustrine emergent wetlands (PEM). The proposed mine would also impact 1,820 linear feet of perennial streams, 24,088 linear feet of intermittent streams and 33,439 linear feet of ephemeral streams (Figure #2).

AVOIDANCE, MINIMIZATION, AND MITIGATION MEASURES: The applicant's preferred alternative, has taken into consideration various mining methods to maximize the opportunities for avoidance and minimization measures.

The project site was identified and located due to the proximity to existing geological resources, mining operations and associated infrastructures to economically mine, process and produce bituminous coal. The permit boundary has been restricted to the maximum extent possible to allow efficient and effective mining of the reserve.

After reclamation, the jurisdictional streams and wetlands proposed for disturbance would be mitigated on-site. Wetland mitigation is proposed as in-kind and based on proposed disturbance size and ratio replacement. Ratios are based by the impacted wetland type and if the wetlands are existing on a "natural" or "reclaimed" landscape. Palustrine forested wetlands currently existing in natural conditions would be replaced at a 3:1 ratio. Palustrine scrub-shrub, and emergent wetlands currently existing in natural conditions would use a 2:1 replacement. Palustrine scrub-shrub wetlands of the reclaimed portion of the proposed mine boundary would be replaced at 2:1 and emergent

wetlands as 1:1. Wetlands would be constructed adjacent and hydrologically connected to constructed mitigation streams (Figure #3).

A total of 51.9 acres would be constructed to mitigate for all jurisdictional wetlands that are disturbed by mining. Of the 51.9 acres, 4.89 would be constructed as PFO, 3.3 as PSS and 43.73 PEM. The mitigated wetlands would be measured for success by following the 1987 Corps of Engineers Wetland Delineation Manual along with the Midwest Regional Supplement.

Perennial and intermittent stream mitigation is proposed as in-kind and based on proposed disturbance length. Stream mitigation would consist of 1,820 linear feet of perennial streams and 24,088 linear feet of intermittent. A minimum 100-foot riparian buffer would be planted on each side of the natural design intermittent and perennial stream mitigation. The majority of the mitigated streams would be constructed in a post mine forested land use. It is likely that these streams would display both the required riparian buffer widths and transition directly to forested land use.

Approximately 33,439 total linear feet of ephemeral streams would be filled across the proposed mine. Mitigation for the lost functions and services of these ephemeral channels would be re-establishment of connectivity to downstream waters for waters currently isolated. These isolated waters consist of 15,065 linear feet of ephemeral streams and 1,469 linear feet of intermittent streams. Also, one 0.24 acre PFO wetland and one 0.61 acre open water feature would be connected. The streams were hydrologically disconnected from receiving waters by past mining activities and were never impacted through past mining. The 0.24 acre PFO wetland and 0.61 acre open water feature exist at the base of Big Ditney Hill and are remnant of past mining activities. The streams exist in natural condition on the proposed avoidance area and would provide functions and services to downstream constructed aquatic features and the downstream receiving watershed. Currently, these streams flow through non-jurisdictional riprap lined chutes. These chutes would be upgraded and constructed as 2,808 linear feet of jurisdictional step pool channels.

It is noted that this proposed mitigation plan is open to comment and subject to change. The Corps would make a determination of appropriate mitigation, upon review of all submitted information.

REVIEW PROCEDURES: A DA Permit, if otherwise warranted, would not be issued on this project until a State of Indiana Section 401 Water Quality Certification (WQC) from the Indiana Department of Environmental Management (IDEM) is on file in this office or it is considered waived. This Public Notice serves as the notice for a

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Clean Water Act Section 401 application for water quality certification from the IDEM. IDEM will review this proposal for compliance with the applicable provisions of Section 301, 302, 303, 306 and 307 of the CWA, including the state water quality standards currently set forth at 327 IAC 2. They will consider comments regarding this proposal postmarked by the closing date of this notice. Comments to IDEM should be addressed to: IDEM, Office of Water Quality; Section 401 WQC Program; 100 North Senate Avenue, Room 1255; P.O. Box 6015; Indianapolis, Indiana 46206-6015. The applicant is responsible for obtaining the certification from IDEM.

Copies of this notice are sent to the appropriate Federal and State Fish and Wildlife Agencies. Their views and comments are solicited in accordance with the Fish and Wildlife Coordination Act of 1956. Based on available information, the proposed activity will not destroy or endanger any Federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. A request for a public hearing must state the specific interest, which might be damaged by issuance of the DA Permit.

The National Register of Historic Places has been examined, and it has been determined that there are no properties currently listed on the Register which would be directly affected by the proposed work. An archaeological reconnaissance survey was completed. These surveys are currently being reviewed to determine if the proposed project would affect any identified archaeological sites. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archaeological, scientific, prehistorical, or historical sites or structures which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetic values, general environmental concerns, historic values, fish and wildlife values, flood damage

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prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and in general, the needs and welfare of the public. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines (40 CFR Part 230) promulgated by the Administrator, United States Environmental Protection Agency, under authority of Section 404(b) of the CWA.

The Corps of Engineers 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. It is presumed that all interested parties and agencies will wish to respond; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed project. Any comments received will be considered by the Corps of Engineers 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.

Written statements received in this office on or before the closing date will become a part of the official record and will be considered in the determination on this permit request. Any objections which are received during this period will be forwarded to the applicant for possible resolution before the determination is made whether to issue or deny the requested DA Permit. A permit will be granted unless its issuance is found to be contrary to the public interest.

Information pertaining to this application is available for public examination during normal business hours upon prior request. Drawings are available on Louisville District's Internet site at <http://www.lrl.usace.army.mil/Missions/Regulatory.aspx>. All comments regarding this proposal should be addressed to Mr. Robert J. Brown, CELRL-OP-FW at the address noted above and should refer to the Public Notice Number LRL-2013-444-rjb.

If you desire to submit your comments by email, you must comply with the following:

a) In the subject line of your email, type in **ONLY** the Public Notice ID No. LRL-2013-444-rjb.

Example:

Subject: LRL-2013-0444-rjb

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b) Provide your physical mailing address and telephone number.

c) Send your email to: lrl.regulatorypubliccomment@usace.army.mil.

d) If you are sending attachments greater than 1 Mb in size with your email, you must send a hard copy (CD or paper) to the Corps' physical address as well.