



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

September 20, 2011

Operations and Readiness Division  
Regulatory Branch  
Reylas Fork of Bandmill Hollow-200700663 (GUY)  
SMCRA Permit No. S-5015-06, IBR #1

**NOTICE OF DEPARTMENT OF THE ARMY PERMIT REINSTATEMENT**

Highland Mining Company  
119 North South 2 Road  
Holden, West Virginia 25625

Dear Sir or Madam:

I refer to your Department of the Army (DA) Clean Water Act Section (CWA) 404 permit dated March 4, 2011 authorizing you to place dredged and fill material into waters of the United States (U.S.) in conjunction with the construction, operation and reclamation of the Reylas Surface Mine. The proposed project area is located approximately 1.5 miles south of Ethel, Logan County, West Virginia and will result in disturbances within the watersheds of Reylas Fork of Bandmill Hollow.

On April 19, 2011, the Section 404 permit for the proposal was suspended by this office in order to re-evaluate the permit. Our reevaluation of the Section 404 permit is complete and it has been determined that all terms and conditions of the permit issued on March 4, 2011 remain valid with no changes.

In accordance with 33 CFR 325.7(c), the Section 404 permit referenced above is hereby reinstated. If you have any questions concerning the above, please contact Ms. Ginger Mullins of my Regulatory Branch at 304-399-6900

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Peterson", written over a horizontal line.

Robert D. Peterson  
Colonel, Corps of Engineers  
District Engineer



US Army Corps  
of Engineers  
Huntington District

**OPERATIONS AND READINESS DIVISION  
REGULATORY BRANCH**

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**DEPARTMENT OF THE ARMY  
INDIVIDUAL PERMIT  
SUPPLEMENT TO THE  
COMBINED DECISION DOCUMENT**

**FOR**

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**APPLICANT: Highland Mining Company  
Post Office Box 1098  
Holden, WV 25625**

**PROJECT: Reylas Surface Mine (S-5015-06 I.B.R 1)**

**FILE NUMBER: 200700099-Reylas Fork of Bandmill  
Hollow**

**A. Introduction:** The United States Army Corps of Engineers (USACE) may authorize and will regulate the discharge of dredged and fill material into waters of the United States (U.S.) in accordance with Section 404 of the Clean Water Act (CWA) and 33 Code of Federal Regulations (CFR) Parts 320-332 and regulate all work or structures in or affecting the course, conditions, or capacity of navigable waters of the U.S. under Section 10 of the Rivers and Harbors Act. In the *Ohio Valley Environmental Coalition, Inc., et al., v. United States Army Corps of Engineers et al., Civil Action No. 3:11-0149.*, the plaintiffs have challenged the USACE's March 4, 2011 decision to issue a Section 404 CWA permit to Highland Mining Company (applicant) for the disposal of fill material into waters of the U.S. in conjunction with the construction of one valley fill and associated sediment pond and mine through activities at the Reylas Surface Mine (S-5015-06 - IBR 1) near Ethel, Logan County, West Virginia. In order to clarify certain aspects of the permit decision, the USACE requested that the Court remand the permit back to the District for re-evaluation. The decision was remanded back to the USACE by the United States District Court (SDWV) on April 20, 2011. The supplement to the original Combined Decision Document (CDD) dated March 4, 2011 provides clarification of two issues.

This supplement to the original CDD has been prepared in accordance with the guidance governing the USACE Regulatory Program (33 CFR 330-332) and 33 CFR 325, Appendix B, which describes the National Environmental Protection Act (NEPA) implementation procedures for the USACE Regulatory Program. The supplement contains only the re-evaluation and/or clarification of issues that were determined to be unclear in the original CDD. All other sections of the original CDD remain as they are presented in the March 4, 2011 document. The sections of the CDD that require re-evaluation and/or clarification are indicated below.

**B. Topics of Re-evaluation and/or Clarification**

**Original CDD Section 2.4 - Project Description – Discrepancy in the stream impact numbers:** Public Notice No. 200700099 was issued for this proposal on March 25, 2008. The public notice provided a description of the proposed permanent and temporary placement of approximately 1740 cubic yards of fill material into a total of 13,174 feet (2.16 acres) of stream channel in conjunction with the construction of the under-drain system for Valley Fill No.1, Sediment Pond 1, mine-through areas, and an erosion protection zone. As a part of the re-evaluation by this office it was determined that the linear feet of stream impacts in the written project description of the public notice (page 2 – Description of Proposed Work) did not precisely correspond to the impacts described in Table A (12,510 feet) provided with the public notice.

Additionally, the linear feet of stream impacts discussed in Section 2.4 of the CDD (13,478 feet) did not correspond to the description of stream impacts in the public notice. In an email dated June 8, 2011, the applicant was contacted to verify and determine the amount of impacts associated with the permit and the applicant was requested to provide an explanation regarding the discrepancies in the information provided to this office.

In an email response dated June 8, 2011, the applicant stated that inconsistent stream impact numbers were provided to this office throughout the evaluation of the permit application due to the numerous people who were involved in providing information. The applicant also indicated that errors may have occurred in transposing of numbers, miscalculations, omission, etc. Further, the applicant indicated the stream impact numbers changed as a result of the revision of their original SMCRA Permit (S-5015-06 I.B.R. No.1), which deleted 11.55 acres from the original permit area and eliminated permanent impacts to 400 feet of perennial stream channel. As part of the re-evaluation, this office requested and the applicant provided an up-to-date impact table

describing the impacts to waters of the U.S. associated with their proposed project on June 22, 2011.

The impact numbers, indicated in Table 1, correspond to the Section 401 water quality certification and SMCRA mining permit (IBR No. 1) which were issued on October 1, 2008 and July 9, 2009, respectively. The proposal would result in the permanent placement of 1,623 cubic yards of fill material into 1,200 feet of perennial stream channel and 5,010 feet of intermittent stream channel in conjunction with the construction of Valley Fill No. 1. The mine-through activities would result in the permanent excavation of 2,800 feet of intermittent stream channel and 3,214 feet of ephemeral stream channel. Construction of the embankment for Sediment Pond 1 would result in the temporary placement of approximately 29 cubic yards of fill material into 104 feet of intermittent stream channel. Approximately 1,050 feet of perennial stream channel would be temporarily impounded as a part of Sediment Pond No. 1. The revised total estimated impact for the proposed project includes approximately of 12,224 feet of perennial, intermittent, and ephemeral stream channel that would be permanently impacted and 1,154 feet of perennial and intermittent stream channel that would be temporarily impacted by the proposal. Instead of the original length of 12,510 feet listed in original PN and 13,478 feet of impact in the CDD, a total of 13,378 feet of waters of the U.S. would be impacted by the activities described above. The USACE has determined the minor increase in the amount of stream impacts described in this supplement does not warrant re-notification of this proposal. Further, the USACE has determined the compensatory mitigation plan described in the CDD, and the required terms and conditions of the permit, is sufficient to off-set the loss of stream length and function associated with this proposal. The original CDD is modified to reflect the stream impacts and acreages described above and listed in Tables 1 and 2 and all citations and references in the original CDD for this proposal. Section 7.0 of the CDD describes the compensatory mitigation plan and concludes that the proposed mitigation is sufficient to offset the loss of waters of the U.S. at the site.

**Table 1**  
**Reylas Surface Mine**  
**Impacts to Waters of the U.S.**

Stream Name	Structure and/or Type of Impact	Permanent Perennial Impacts	Permanent Intermittent Impacts	Permanent Ephemeral Impacts	Temporary Perennial Impacts	Temporary Intermittent Impacts	Temporary Ephemeral Impacts
Reylas Fork	Valley Fill 1	1,200'	4,600'	0'	0'	0'	0'
	Sed. Pond 1	0'	0'	0'	1,050'	0'	0'
	Mine-through	0'	0'	500'	0'	0'	0'
UNT 1 <sup>st</sup> R Trib Reylas Fork	Valley Fill 1	0'	0'	0'	0'	0'	0'
	Sed. Pond 1	0'	0'	0'	0'	104'	0'
	Mine-through	0'	0'	0'	0'	0'	0'
UNT 2 <sup>nd</sup> R Trib Reylas Fork	Mine-through	0'	2,400'	0'	0'	0'	0'
UNT 4 <sup>th</sup> R Trib Reylas Fork	Valley Fill 1	0'	410'	0'	0'	0'	0'
	Sed. Pond 1	0'	0'	0'	0'	0'	0'
	Mine-through	0'	0'	290'	0'	0'	0'
UNT 1 <sup>st</sup> Left UN Trib Reylas	Valley Fill 1	0'	0'	0'	0'	0'	0'
	Mine-through	0'	400'	737'	0'	0'	0'

Fork							
UNT 1 <sup>st</sup> L of 1 <sup>st</sup> L	Valley Fill 1	0'	0'	0'	0'	0'	0'
UNT Reylas Fork	Mine- through	0'	0'	876'	0'	0'	0'
UNT 1 <sup>st</sup> L UNT of 1 <sup>st</sup> L UNT of Reylas Fork	Valley Fill 1	0'	0'	0'	0'	0'	0'
	Mine- through	0'	0'	380'	0'	0'	0'
UNT 1 <sup>st</sup> UNT Bandmill Hollow	Mine- through	0'	0'	431'	0'	0'	0'
		1,200'	7,810'	3,214'	1,050'	104'	0'

### Section 6.0 – Alternatives Analysis – Clarification of fill minimization as it relates to the Post Mine Land Use

This section constitutes the re-evaluation of the alternatives analysis as it pertains to the location of Valley Fill No. 1 and the effect that the designated post-mine land use (PMLU) of residential/industrial had on the USACE evaluation of fill minimization within waters of the U.S. The USACE relied upon information provided by the applicant to determine if impacts to waters of the U.S. had been minimized to the maximum extent practicable but utilized its discretion to determine if the information was sufficient to conclude that the applicant's preferred alternative would be the least environmental damaging practicable alternative (LEDPA). The information is reviewed independently by the USACE and a determination is made as to whether the analysis presented is comprehensive and presents reasonable conclusions.

Throughout Section 6.0 of the original CDD (pages 16, 17, 18, 20) the post mine land use (PMLU) of the site was discussed. The applicant determined that the site would have a mixed PMLU of residential/industrial on the flatter portions of the reclaimed area in order to support emergency FEMA housing and a fish and wildlife habitat land use on the sloped areas of the reclaimed area. This determination was made during the WVDEP SMCRA permitting process, prior to the USACE involvement. The PMLU is not typically considered as a separate alternative in the alternatives analysis and/or separate consideration under the Section 404 (b)(1) Guidelines. As a result, in Section 6.0 there were several statements that implied because of the PMLU, the site would not be reclaimed to AOC and that stream impacts may not have been minimized to the maximum extent practicable. Those statements were included in the CDD based on misinformation provided by the applicant during the evaluation process of the original application.

During the evaluation of the alternative analysis for the proposal, the USACE requested additional information regarding minimization of impacts to the perennial segment of Reylas Fork associated with the construction of Valley Fill No. 1. In an email to the applicant from this office dated September 4, 2008, they were asked to provide an explanation regarding the siting of the valley fill within the perennial section of Reylas Fork and whether they had evaluated moving the fill back into the intermittent segments of the stream channel. In an email dated September 8, 2008, the applicant provided a response which stated that *"in order to comply with the Approximate Original Contour (AOC) variance, develop the proposed industrial/residential post-mine land use, and comply with reclamation requirements, additional material cannot be*

*placed in the mineral removal area. Thus, the fill has been moved upstream to the maximum extent practicable. Pulling the fill further upstream will conflict with the approved post-mining land use".* The response further stated the *"project has an AOC variance for a portion of the area to be mined to develop a FEMA housing area on a portion of the reclaimed project area".* Based on this information, the USACE was under the impression that the applicant required an AOC variance to accomplish the designated PMLU of emergency FEMA housing.

As indicated above, the USACE requested that the applicant evaluate minimizing stream impacts, in particular, permanent perennial stream impacts, associated with Valley Fill No. 1 in September 2008. Although the applicant replied that they were unable to reduce impacts as indicated in their September 8, 2008 response, the USACE continued to work with the applicant regarding minimization of impacts to waters of the U.S. and had made some progress with the applicant regarding minimizing permanent impacts to Reylas Fork. Although USEPA did not provide written comments on the original public notice, in March 2009 USEPA expressed renewed interest in the project and echoed the USACE concern regarding minimization of impacts to perennial sections of Reylas Fork. As a result, the applicant indicated they could minimize permanent impacts to the perennial segment of Reylas Fork by moving the toe of the fill approximately 400 feet upstream. The minimization activities required a minor change in their SMCRA approved mining permit so they were required to obtain an Incidental Boundary Revision (IBR) to their original SMCRA permit. As a part of the IBR process, the applicant ran the AOC+ model to determine if they could maximize the storage volume of the valley fill while still ensuring safety and stability of the fill. The applicant indicated to the USACE that they would optimize (over-stack) the deck of the valley fill by raising it approximately 100 feet above the lowest coal seam being mined. Based on the WVDEP SMCRA approved AOC+ model results, the USACE determined that utilization of the backfill storage area had been optimized and impacts to waters of the U.S. were minimized to the maximum extent practicable. However, the applicant failed to properly notify the USACE that they did not request or receive an AOC variance from the WVDEP during this process. Therefore, the USACE believed that the minimization could be accomplished without conflict with the PMLU and the AOC variance based on the statement provided on September 8, 2008. The discussion of minimization of impacts to waters of the U.S. associated with Valley Fill No. 1 described in the CDD was based on this incorrect assumption. The Section 404 permit was issued and the statement provided by the applicant on September 8, 2008 regarding PMLU and AOC variance was included verbatim within the CDD and was discussed throughout the document.

During the remand and our reevaluation of the CDD for the Reylas proposal, the applicant was asked to provide clarification regarding the statements in the original CDD regarding minimization of stream impacts as they pertained to the PMLU and AOC variance. In letters dated June 1, 2011 and June 22, 2011, the applicant provided clarification regarding these issues as described in the following sections.

**Fill Minimization:** The applicant stated that the Reylas Surface Mine SMCRA permit approves a combination of contour, highwall, and area mining and the mined area is proposed to be returned to Approximate Original Contour (AOC) with approved PMLU of residential/industrial and fish and wildlife habitat. The applicant indicated AOC and PMLU requirements are determined in the early stages of the WVDEP SMCRA permitting process. They stated the original submittal of the SMCRA permit application as well as the Section 404 permit application erroneously indicated an AOC variance was being requested. However, the proposal did not require an AOC variance and the SMCRA permit was approved as AOC compliant (no AOC variance was requested).

As a part of the reevaluation of the proposal, a meeting between this office and Highland Mining Company and Logan County Mining Services (subsidiaries of Alpha Natural Resources) was held on June 23, 2011 to discuss the applicant's response to the USACE concerns. At that time a representative of Alpha stated that erroneous information was provided to the USACE regarding fill minimization and compliance with an AOC variance (email from Natalie Ferrell of Logan County Mining Services dated September 8, 2008). Again, it should be noted that during the initial evaluation of the permit, prior to their submittal of the revised permit application IBR, the applicant clearly indicated in their original permit application (February 2008) and the email dated September 8, 2008 that an AOC variance was necessary to accomplish the PMLU of FEMA emergency housing.

In response to the USACE request to further investigate minimization of impacts to the perennial segment of Reylas Fork, the applicant made a request to WVDEP to revise their original SMCRA permit to accommodate this request. During the revision, the applicant utilized the AOC+ process model to determine if further fill minimization could be accomplished. Based on the results, the applicant determined that by over-stacking (placing more overburden) the deck of the valley fill by raising it approximately 100 feet above the lowest coal seam being mined, the toe of the valley fill could be relocated approximately 400 feet upstream from its previous location. On July 9, 2009, the applicant received the IBR to their SMCRA permit which reflected the fill minimization without the need for an AOC variance. In reference to the PMLU of emergency FEMA housing impacting the location of the toe of the valley fill or even the amount of stream impacts associated with the valley fill, the applicant indicated the proposed PMLU does not affect the WVDEP SMCRA approved valley fill toe location. They indicated that no matter what the PMLU designation, after reclamation, the site would still have a flat area and this area would be large and flat enough to accommodate the emergency FEMA housing. In other words, neither the final configuration of the valley fill, the location of the valley fill toe, or the proposed impacts to waters of the U.S. were influenced by the approved PMLU (See attached letters dated June 1, 2011 and June 22, 2011 from Highland Mining Company).

The applicant has stated they would receive no economic benefit from the designated PMLU as the site would be deeded to the Logan County Commission to be utilized as emergency FEMA housing. This land use is considered a positive benefit as a part of the USACE public interest review factors (land use, flood hazards, and needs and welfare of the people).

Based on the USACE independent evaluation of information provided by the applicant and the approved WVDEP SMCRA permit, it has been determined that the PMLU of emergency FEMA housing was independent of and not relevant to the USACE determination of the least environmentally damaging practicable alternative (LEDPA). Impacts to waters of the U.S. associated with the proposal have been minimized to the maximum extent practicable regardless of the designated PMLU.

### **Section 6.3 – Clarification and evaluation of the overburden haulage distance**

The criteria selected by the applicant regarding haul distances (1/2 mile) associated with transporting excess overburden to off-site disposal areas, are typically set by the mining industry and are dependent on the location of the mine site, topography, the availability of roads, safety considerations, equipment, and costs.

Typical off-site haul distances range between ½ to one mile, depending on topography, geographic location, infrastructure, etc. In this case, the applicant originally evaluated a ½ mile haul distance. As a part of the USACE review of potential upland off-site disposal areas, the

applicant was asked to examine potential disposal areas within a one mile radius of their mine site. The applicant provided the requested information and it was discussed on pages 16 and 17 of the CDD. Based on the information provided, USACE determined there were no practicable upland disposal areas within the one mile haulage distance.

During the remand, the applicant was asked to provide additional information regarding how they assess their haul distance criteria and the practicability of hauling excess overburden to off-site locations. In response letters dated June 1, 2011 and August 5, 2011, the applicant provided a detailed discussion of how the haul distances are selected, an analysis of the off-site disposal sites that were evaluated, and a cost analysis associated with hauling overburden off-site over designated haul distances (less than ½ mile, ½ mile, and 1 mile). The applicant indicated the haulage distance is predicated on several factors including safety, logistics, production rates, efficiency, and economics. Based on these factors, costs and potential safety hazards associated with hauling the overburden increases significantly as the haulage distance between the removal site and the disposal site increases. Production rates and efficiency typically decreases as the haulage distance increases.

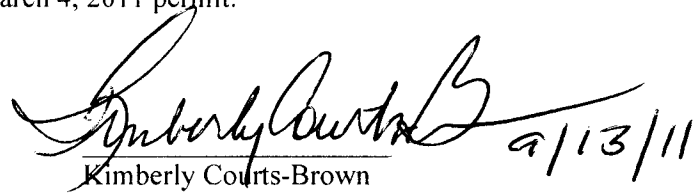
According to the applicant, the costs associated with operating a “haulage spread”, which includes the excavator/front-end loader and its companion rock truck(s), are directly correlated to the haul distance. As the haulage distance increases, more trucks are needed to achieve the required production rate at the mine site. In order to be cost effective, an adequate number of trucks must be available so that excavating equipment at the mine site is not waiting on trucks to transport the overburden to off-site disposal areas. For example, it may take four trucks for a ½ mile haulage run as compared to six to eight trucks for one mile haulage run. In order to be profitable, a certain amount of coal must be removed at the site within an allotted period of time. If the haulage distance is too great, it takes the trucks more time to move overburden to the disposal site thereby decreasing production and efficiency as the excavators have to wait on the trucks. To alleviate this problem, the company would have to utilize more haulage trucks which increase the overall cost to move the overburden because of the additional fuel, labor, and equipment requirement. This increases the cost per ton of coal mined and decreases the production and efficiency of the mine. Based on the applicant’s economic analysis and the topography and infrastructure present within the general area, they determined, and the USACE concurred, that hauling the overburden greater than ½ mile from the mine site is economically impracticable.

**C. Conclusion:** Based on the USACE evaluation of the additional information provided by the applicant, we have determined the applicant has adequately addressed and clarified the information regarding the PMLU and haulage distance. The discharge of fill material into 13,378 feet of waters of the U.S. represents the least environmentally damaging practicable alternative. The applicants compensatory mitigation plan has been determined to be sufficient to off-set the loss of functions associated with the impacted waters of the U.S. The USACE has determined that there is a public and private need for the proposal and that the applicant has considered reasonable alternatives and methods to accomplish the proposal. The proposal is located in an area that has been used in the past for coal removal activities and the extent and permanence of the beneficial impacts outweigh the detrimental impacts associated with the proposal.

The USACE has considered and relied upon information provided by the applicant, state and Federal resource agencies, the general public, and in-house resources. Based on this information, including the new information provided by the applicant regarding the PMLU and haulage distance, the reasonably foreseeable benefits expected to accrue from the proposal have been

balanced against its reasonably foreseeable detriments and it has been determined this project is not contrary to the public interest. Based on our review of the project during the remand and the final Environmental Assessment, the USACE has reaffirmed the CDD's conclusion that the project does not significantly affect the quality of the human environment and an environmental impact statement need not be prepared. Additionally, it has been determined this project is in compliance with the Section 404(b)(1) Guidelines. Therefore, the permit for the proposed activity will be re-instated without modifications. The existing terms and special conditions for this authorization remain valid as written in the March 4, 2011 permit.

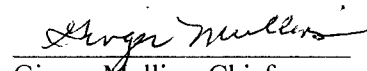
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9/13/11

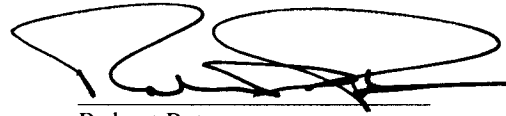
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9/19

Reviewed By:

  
Ginger Mullins, Chief  
Regulatory Branch

9-19-11

Approved By:

  
Robert Peterson  
Colonel, Corps of Engineers  
District Engineer