



Public Notice

**U.S. Army Corps
of Engineers**

Pittsburgh District

In Reply Refer to
Notice No. below

US Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Application No. 2016-130

Date: June 24, 2020

Notice No. 20-17

Closing Date: July 24, 2020

1. TO ALL 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.
2. APPLICANT: Eric Barto
The Marshall County Coal Company
46226 National Road
St. Clairsville, Ohio 43950
3. LOCATION: Conner Run Impoundment, 10.4 miles south of Moundsville, Marshall County, West Virginia (39° 49' 43.14"N, 80° 47' 41.028"W)
4. PURPOSE AND DESCRIPTION OF WORK: The applicant proposes to continue operating and maintaining an existing fly ash and coal refuse impoundment by obtaining an after-the-fact permit; further, to permit ongoing and future operations up through and concluding with the capping and covering of the impoundment at an elevation of 1070 feet above mean sea level as authorized by West Virginia Mining Permit No. O-1023-92 (1070 Abandonment Plan). Associated impacts are as follows:

<i>Dates</i>	<i>Fill Impacts in Waters of the U.S.</i>
<i>01/01/1982 To 12/06/2016</i>	<i>Approximately 11,000 Linear Feet</i>
<i>12/07/2016 Through 12/31/2022</i>	<i>Projected Total of 1,506 Linear Feet</i>
<i>01/01/2023 Through 12/31/2024</i>	<i>Projected Total of 456 Linear Feet</i>
<i>01/01/2025 through Abandonment Plan</i>	<i>Projected Total of 7,460 Linear Feet</i>

The above projected estimates are based on current rates of fly ash and refuse disposal. Active operations at the facility are expected to continue beyond 2024 and under the 1070 Abandonment Plan. The total fill resulting from full build out is 20,422 linear feet. The applicants proposed mitigation plan for unavoidable impacts to Waters of the U.S. is as follows:

<i>Impact Dates & Total</i>	<i>Mitigation</i>
<i>01/01/1982 To 12/31/2022: 12,506 linear feet</i>	<i>Permittee Responsible Mitigation through onsite stream restoration and establishment of 17,001 linear feet</i>
<i>01/01/2023 To 12/31/2024: 7,916 linear feet</i>	<i>Mitigated through the purchase of credits from mitigation banks and/or the West Virginia In-lieu Fee Program.</i>

Drawings of the refuse area and proposed mitigation are attached.

5. WEST VIRGINIA CERTIFICATION: This permit decision will not be made until the State of West Virginia, Division of Environmental Protection (WVDEP), issues, denies, or waives State Certification. This public notice does not serve as application to the WVDEP for certification required by Section 401 of the Clean Water Act. An individual 401 water quality certification (WQC) may be required for this proposed activity in conjunction with the Section 10 of the Rivers and Harbors Act permit and/or Section 404 of the Clean Water Act permit. The applicant must apply directly to the WVDEP for an individual 401 WQC. The WVDEP will also consider whether or not the proposed activity will comply with sections 301, 302, 303, 306, 307 of the Clean Water Act or any other appropriate State laws. Please contact the below to determine if an individual 401 WQC is required for this proposed activity:

Mr. Robert Hudnall, 401 Program Manager (Coal)
Phone: 304-926-0499 ext. 1533
E-mail: Robert.B.Hudnall@wv.gov

6. IMPACT ON NATURAL RESOURCES: The District Engineer has consulted the most recently available information and has determined that the project may affect, but is not likely to adversely affect endangered species or threatened species, or result in destruction or adverse modification of habitat of such species which has been determined to be critical. 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). If the U.S. Fish and Wildlife Service concurs with the may affect, not likely to adversely affect determination please respond with written concurrence.

7. IMPACT ON CULTURAL RESOURCES: The National Register of Historic Places has been consulted, and it has been determined that there are no properties

currently listed on the register which would be directly affected by the proposed work. Additionally, correspondence with West Virginia Culture and History was provided for FR# 13-497-MR dated April 17, 2013 which indicates that the incidental boundary revision No. 17 would have no adverse effect on historic properties. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archeological, 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).

8. PUBLIC INVOLVEMENT: Any person may request, in writing, within the comment period specified in the paragraph below entitled "RESPONSES," that a public hearing be held to consider this application. The requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

9. EVALUATION: 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 which reasonably may be expected to accrue from the proposals must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain 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.

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. 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 overall public interest of the proposed activity. The evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act (40 CFR Part 230).

10. RESPONSES: A permit will be granted unless its issuance is found to be

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contrary to the public interest. Written statements concerning the proposed activity should be received in this office on or before the closing date of this Public Notice in order to become a part of the record and to be considered in the final determination, comments can be mailed to:

U.S. Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186
Re: Public Notice CELRP-RG No. 20-17

Any objections which are received during this period may be forwarded to the applicant for possible resolution before the determination is made whether to issue or deny the requested DA Permit. All responses to this notice should be directed to the Regulatory Division, attn. Jared N. Pritts at the above address, by telephoning (412) (412) 395-7251, or by e-mail at jared.n.pritts@usace.army.mil Please refer to CELRP-RG 2016-130 in all responses.

A handwritten signature in black ink, appearing to be 'Jon T. Coleman', written over a horizontal line.

Jon T. Coleman
Chief, South Branch
Regulatory Division