

## Haberman, Marcia H LRP

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**From:** Plassio, William [wplassio@state.pa.us]  
**Sent:** Tuesday, June 01, 2010 11:28 AM  
**To:** Roberts, Jay Scott; Terretti, Michael; Morrison, Richard S; 'Pachter, Jonathan'; Haberman, Marcia H LRP  
**Cc:** Burda, Craig; Koricich, Joel; Heilman, Michael; Kernic, John  
**Subject:** 401 certification - Bailey refuse area - sediment pond  
**Attachments:** CWA\_Section401\_Certification.pdf

The 401 certification has been issued for the sediment pond, please contact me with any questions.

William S. Plassio | District Mining Manager Department of Environmental Protection District  
Mining Operations California District Office  
25 Technology Drive | Coal Center, Pa. 15423  
Phone: 724.769.1100 | Fax: 724.769.1102  
[wplassio@state.pa.us](mailto:wplassio@state.pa.us)

# CWA Section 401 Certification and Written Findings

## Mining / Coal Refuse Disposal Permit No. 30080701

The applicant requested CWA Section 401 Certification for:

- X An individual 404 permit
- Modification to an existing 404 permit
- Authorization to operate under Nationwide Permit No. \_\_\_\_\_

**Project description:** [Describe the activity which requires the 401 Certification]

*New coal refuse disposal permit to operate the Bailey Central Mine Complex Coal Refuse Disposal Area no.5 (#30080701), located in Richhill Township, Greene County and related NPDES permit (#PA0235806) for refuse disposal area water treatment. This 401 water quality certification is for initial site and sedimentation/treatment impoundment development only. Additional 401 water quality certifications will be required for the no.5 coal refuse slurry impoundment and no.6 coarse refuse disposal area, which are subject to permit applications currently pending with the Pennsylvania Department of Environmental Protection (PADEP). The three phase 401 water quality certification plan was accepted by the Army Corps of Engineers (ACOE) in a phone call with Marcia Haberman on May 11, 2010. The ACOE will issue a provisional 404 permit for coal refuse disposal areas no.5 and no.6. ACOE authorization to commence refuse disposal activities in each of the three phases (PADEP permit for coal refuse disposal area no.5 initial site and sediment/treatment impoundment development, PADEP permit revision for no.5 coal refuse slurry impoundment, and PADEP permit revision for coal refuse disposal area no.6) will only occur when a 401 certification is provided to the ACOE by the PADEP for each respective phase of refuse area development.*

### Review checklist:

- X The Department has reviewed the coal refuse disposal permit application that describes the proposed project.
- X The Department has ascertained that the scope of activities (including any mitigation to be performed as compensation for unavoidable impacts of fill placement) proposed under the under the Federal Section 404 permit application is the same as the scope of activities proposed under the state permit application.
- X The Department has published public notice of the applicant's request for a Section 401 certification in the *Pennsylvania Bulletin*, and considered all relevant comments received in response to that publication.

### Findings:

The Department finds that the applicant has demonstrated that the proposed project will comply with the provisions of sections 301-303, 306, and 307 of the Federal Water Pollution Control Act and will not violate applicable federal and state water quality standards.

The basis for this finding is: (see end notes for guidance in completing this section)

*Detailed site development staging plans and adequate erosion and sedimentation controls are designed to prevent pollutional discharges from the site. Development of the sediment/treatment impoundment must be supervised by a registered professional engineer and the completed impoundment must be certified upon*

completion. The existing stream will be collected and discharged downstream of the impoundment by a system of drains and pipes. The impoundment is equipped with a constructed flexible membrane liner to prevent uncontrolled surface and groundwater discharges. The liner will be protected from equipment damage by covering with soil and rock. Water in the impoundment will be treated to meet effluent limitations established by PADEP Water Management designed to prevent impairment of receiving streams unnamed tributary to Owens Run and Owens Run. The impoundment includes additional excess capacity to address previous treatment difficulties due to the presence of clays resulting from earth disturbances. Chemical addition and other treatment methods will be employed when required to achieve the effluent standards. Surface and ground water quality monitoring will be conducted in and around the site to ensure adverse water quality impacts do not occur. Biological monitoring of Owens Run will also be conducted to ensure downstream stream uses are not impacted.

Adverse impacts to wetlands and streams resulting from construction of the facilities will be mitigated by constructing replacement wetlands and by conducting stream restoration in the Templeton Fork watershed. Templeton Fork and Owens Run (impacted stream) are both tributaries to Enlow Fork.

**Additional comments:**

Public notice requirements are addressed by the request for a water quality certification and notice of the coal refuse disposal application published in the Pennsylvania Bulletin on March 28, 2009. Public notice of the coal refuse disposal area application was also published in the Observer-Reporter on February 28, March 7, 14, 21, and September 4, 11, 18, 25, 2009.

A performance bond is secured to ensure that stream and wetland mitigation plans are constructed and maintained in accordance with the approved permit. Mitigation areas are protected from outside intervention by recorded landowner agreements and are enforceable by Consol, the PADEP and the ACOE. A reclamation bond is secured for the restoration of surface areas and streams impacted by initial site and sediment/treatment impoundment development, if the coal refuse disposal area no.5 slurry impoundment is not approved.

**Supporting information:**

All supporting information for these findings is described in the following parts of the permit application:

Refer to coal refuse disposal permit application modules 8 (hydrology/baseline biology), 11 (erosion and sedimentation controls), 12 (treatment systems), 13 (sediment/treatment pond design), 14 (liners), 15 (streams/wetlands), 19 (bonding), supporting information, and permit special conditions. Refer also to the water quality pollution report issued by the PADEP Water Management Program dated 5/11/10.

**Statement of certification:**

**The Department has determined that the proposed project complies with the provisions of sections 301-303, 306, and 307 of the Federal Water Pollution Control Act and will not cause a violation of the state Water Quality Standards and hereby grants CWA Section 401 Certification.**

SIGNATURE Wm. S. Plassis  
~~Paul Chisler~~ District Mining Manager

DATE 6/1/10

**Note:** The basis for the Department's findings should document the following:

- 1) The measures or technology which will be used to protect surface water quality (e.g., installation of erosion and sedimentation controls designed in accordance with the requirements of chapters 87, 88, 89, 90, or 102; installation of groundwater and surface water protection systems meeting the requirements of Chapter 90; minimizing disturbance of acid forming materials; etc.)
- 2) The quality of the surface water that may be affected by project activities.
- 3) The demonstrated effectiveness of the proposed protection measures or technology. (For example, water quality sampling results showing that application of the proposed measures or technology in similar settings was effective in preventing violations of federal or state water quality standards)
- 4) Compensatory measures that will be used to offset any unavoidable adverse effects resulting from the placement of the fill, if applicable.



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
CALIFORNIA DISTRICT MINING OFFICE

JUN 07 2010

**Certified Mail # 7006 0810 0000 6864 1155**

Edward Suter  
Consol Pennsylvania Coal Company, LLC  
1525 Pleasant Grove Road  
Claysville, PA 15323

Re: Permittee: Consol Pennsylvania Coal Company, LLC  
Permit No.: 30080701  
Operation Name: Coal Refuse Disposal Area No. 5  
Richhill Township, Greene County

Dear Mr. Suter:

We have enclosed the above referenced coal refuse disposal permit accepted on February 18, 2009. Please review the permit conditions carefully. By copy of this letter, we are notifying those listed below of our decision to issue the permit.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board, 35 P.S. Section 7514, and the Administrative Agency Law, 2 PA C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, 717.787.3483. TDD users may contact the Board through the Pennsylvania Relay Service, 1.800.654.5984. Appeals must be filed with the Environmental Hearing Board within thirty (30) days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at 717.787.3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you have any questions or comments, please contact me at 724.769.1100.

Sincerely,

Joel Koricich  
Environmental Group Manager  
District Mining Operations

JK/JDK/be: g2(W) f(W) a(W) JPW (L)

bc: Greensburg District Office File (W)  
MCI Tim Hamilton (W)  
Mine Safety (W)  
**Hbg. Monitoring and Compliance [ I or C ] (\*\*\*)**  
Licensing & Bonding  
Hbg. Environmental Analysis/Support (\*\*\*)  
Manager, Bureau of Oil and Gas - Pittsburgh (W)  
PA Fish Commission (L)  
PA Game Commission (L)  
PA Historical Museum Commission (L)  
Greene County Planning Commission (L)  
Greene County Conservation District (L)  
PennDOT District 12-0 (L)  
Richhill Township Supervisors (L)  
US Fish & Wildlife Service (PG1 & all Part B)  
Army Corps of Engineers (L) ✓  
EPA Region III (L)  
Division of Dam Safety (L)  
MSHA District 2 (L)

**See Enclosed Attendance List from Informal Conference Dated June 4, 2009 (L & list) 27**

recd 6/11/10  
# 62-20/311  
1680125878  
7/1/11

**DEPARTMENT OF THE ARMY PERMIT**

**PERMITTEE:** Consol Pennsylvania Coal Company, LLC

**PERMIT NUMBER:** 2007-463

NOTE: The term you and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**PROJECT DESCRIPTION:** Consol Pennsylvania Coal Company, LLC., P.O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323 IS HEREBY AUTHORIZED BY THE SECRETARY OF THE ARMY TO: place fill material in 25,835 feet of stream channel and 5.68 acres of wetlands jurisdictional under Section 404 of the Clean Water Act on the 706 acre project site to facilitate development of the Bailey Central Mine Complex Coal Refuse Disposal Area No. 5 & 6 project and to construct stream restoration activities on 40,413 feet of stream channel and construct a minimum of 6.27 acres of wetlands IN ACCORDANCE WITH THE GENERAL AND SPECIAL CONDITIONS, AND THE PLANS AND DRAWINGS AND ANY ADDITIONAL SPECIAL CONDITIONS ATTACHED HERETO WHICH ARE INCORPORATED IN AND MADE A PART OF THIS PERMIT.

**PROJECT LOCATION:** THE PROJECT IS LOCATED in unnamed tributaries and adjacent wetlands to Owens Run, located in Richhill Township, Greene County, Pennsylvania. (39°56'52.81"N/ -80°25 12.34W). The stream restoration and wetland creation activities will take place along Templeton Fork and unnamed tributaries located in East Findley Township, Greene County, Pennsylvania. (40°2'43.77"N/-80°23'23.25"W).

**PERMIT CONDITIONS**

**GENERAL CONDITIONS:**

1. The time limit for completing the work authorized ends on **December 31, 2020**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved

**RECORD  
FILE**

of this requirement if you abandon the permitted activity, although you must make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you may obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
7. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
8. A copy of this permit must be kept at the work site at all times and made available to all contractors and subcontractors.

**SPECIAL CONDITIONS:**

1. The Bailey Mine Coal Refuse Disposal Area No. 5 and 6 Final Stream and Wetland Mitigation Plan dated May 25, 2010 will be implemented as compensatory mitigation for the adverse impacts to the streams and wetlands. Stream and wetland mitigation must be constructed prior to or during the same year as impacts to waters of the United States occur.

2. A report will be submitted to this office annually by December 31 identifying the phases of stream and wetland impacts that have occurred and the corresponding stream and wetland mitigation that has been constructed. The resources will be identified by resource identification number as listed in the Department of the Army permit application and mitigation final plan with stream length and wetland acreage.
3. Annual mitigation monitoring reports will be submitted to this office by December 31 for the completed compensatory mitigation constructed to date and will include the documentation as outlined in the Final Plan. After year five of monitoring, which may be different for individual components of the proposed mitigation, this office will determine if additional monitoring is required for any portion of the stream and wetland mitigation sites. If we determine that the compensatory mitigation has not attained the performance goals projected and/or fails to adequately replace the lost functions of the impacted resources, the monitoring period may be extended and additional mitigation may be required.
4. No work may be done at the compensatory wetland stream mitigation areas until clearance letters from the Pennsylvania Historical and Museum commission are received in this office.
5. Verification of the recordation of the Corps of Engineers approved long term protection documents for the stream and wetland mitigation areas must be received in this office within 90 days of issuance of this permit.
6. Prior to any impacts to aquatic resources at the project area, chemical and biological sampling must be conducted on Owens Run downstream of the project area and on Enlow Fork downstream of the confluence with Owens Run to document pre-project baseline conditions. The biological sample will include macro invertebrate and fish surveys. The chemical sampling will include; water sampling of alkalinity, acidity, iron, manganese, specific conductance, sulfate, selenium and total suspended solids; additionally, sediment sampling will be done for selenium. A report with the findings must be submitted to this office within 90 days of acceptance of this permit. The report should include a map with the sampling stations identified with latitude and longitude, the water and sediment data, the field data sheets identifying the benthic and fish species gathered, and an IBI score for each station based on the PADEP Index of Biotic Integrity for Wadeable Freestone Stream in PA (PA IBI).
7. On June 1, 2010 the Pennsylvania Department of Environmental Protection, California District Mining Office, issued a conditioned Clean Water Act Section 401 Water Quality Certification for Mining/Coal Refuse Disposal Permit No. 30080701 and NPDES Permit # PA0235806 for initial site and sedimentation/treatment impoundment development, Phase 2 of the Coal Refuse Disposal Area (CRDA) project, subject to conditions which are attached to and

made special condition of this permit.

8. This permit is a provisional permit for Phase 3, fine coal refuse impoundment, and Phase 4, coarse refuse disposal area, of the proposed coal refuse disposal area project and will not be valid for any additional impacts to waters of the United States beyond those authorized by the CWA 401 WQC for Phase 2 until the Pennsylvania Department of Environmental Protection, California District Mining Office, issues the CWA 401 WQC for the additional phases of the proposed project, Phase 3, CRDA #5, fine refuse impoundment, and Phase 4, CRDA #6, coarse refuse disposal area.

9. This permit is a provisional permit for the compensatory mitigation proposed to replace the lost aquatic resource functions and will not be valid until a Clean Water Act Section 401 Water Quality Certification is issued by the Pennsylvania Department of Environmental Protection for the impacts that will occur during construction of the mitigation plan and a copy is received in this office.

**FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to: Section 404 of the Clean Water Act.

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Kerry L. Goodwin  
(PERMITEE)

6-11-10  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

*APC*  
Michael P. Crall Chief, Regulatory Branch  
(DISTRICT COMMANDER)  
MICHAEL P. CRALL, COL

6-11-10  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)

DATE: June 11, 2010

FILE NO: 2007-463

**NOTIFICATION OF APPLICANT OPTIONS (NAO)  
FOR PARTIES ISSUED A DEPARTMENT OF THE ARMY  
INDIVIDUAL PERMIT**

You are hereby advised that the following options are available to you in your evaluation of the enclosed permit:

(1) You may sign the permit and return to the District Engineer for final authorization. Your signature on the permit means that you accept the permit in its entirety, and waive all rights to appeal the permit or its terms and conditions.

(2) You may decline to sign the permit because you object to certain terms and conditions therein, and you may request that the permit be modified accordingly. You must outline your objections to the terms and conditions of the permit in a letter to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this NAO, or you will forfeit your right to request changes to the terms and conditions of the permit. Upon receipt of your letter, the District Engineer will evaluate your objections, and may: (a) modify the permit to address all of your concerns, or (b) modify the permit to address some of your objections, or (c) not modify the permit, having determined that the permit should be issued as previously written. In any of these three cases, the District Engineer will send you a final permit for your reconsideration, as well as a Notification of Appeal (NAP) form and a Request for Appeal (RFA) form. Should you decline the final proffered permit, you can appeal the declined permit under the Corps of Engineers Administrative Appeal Process by submitting the completed RFA form to the Division Engineer. The RFA must be received by the Division Engineer within 60 days of the date of the NAP that was transmitted with the second proffered permit.

**CONSTRUCTION NOTIFICATION – BAILEY CRDA PROJECT**

FILE NO: 2007-463

APPLICANT: Consol Pennsylvania Coal Company, LLC. P.O. Box J, 1525  
Pleasant Grove Road, Claysville, PA

PROJECT LOCATION: unnamed tributaries and adjacent wetlands to Owens  
Run, located in Richhill Township, Greene County, Pennsylvania.  
(39°56'52.81"N, -80°25 12.34W).

Construction will start on 6-12-10 and will be completed on  
12-31-17.  
(date) (date)

Signature: Kenny L Goodbolet  
Title: ENVIRONMENTAL SERVICES PERMITTING SUPERVISOR

NOTE: You must return this form to the following address prior to commencement  
of the work.

U. S. Army Corps of Engineers, Pittsburgh District  
ATTN: CELRP-OP-F  
2200 William S. Moorhead Federal Bldg.  
1000 Liberty Avenue  
Pittsburgh, PA 15222-4186

**CONSTRUCTION NOTIFICATION – STREAM AND WETLAND  
MITIGATION**

FILE NO: 2007-463

APPLICANT: Consol Pennsylvania Coal Company, LLC. P.O. Box J, 1525  
Pleasant Grove Road, Claysville, PA

PROJECT LOCATION: The stream restoration and wetland creation activities  
will take place along Templeton Fork and unnamed tributaries located East  
Findley Township, Greene County, Pennsylvania. (40°2'43.77"N/-  
80°23'23.25"W).

Construction will start on \_\_\_\_\_ and will be completed on  
\_\_\_\_\_.  
(date) (date)

Signature: \_\_\_\_\_

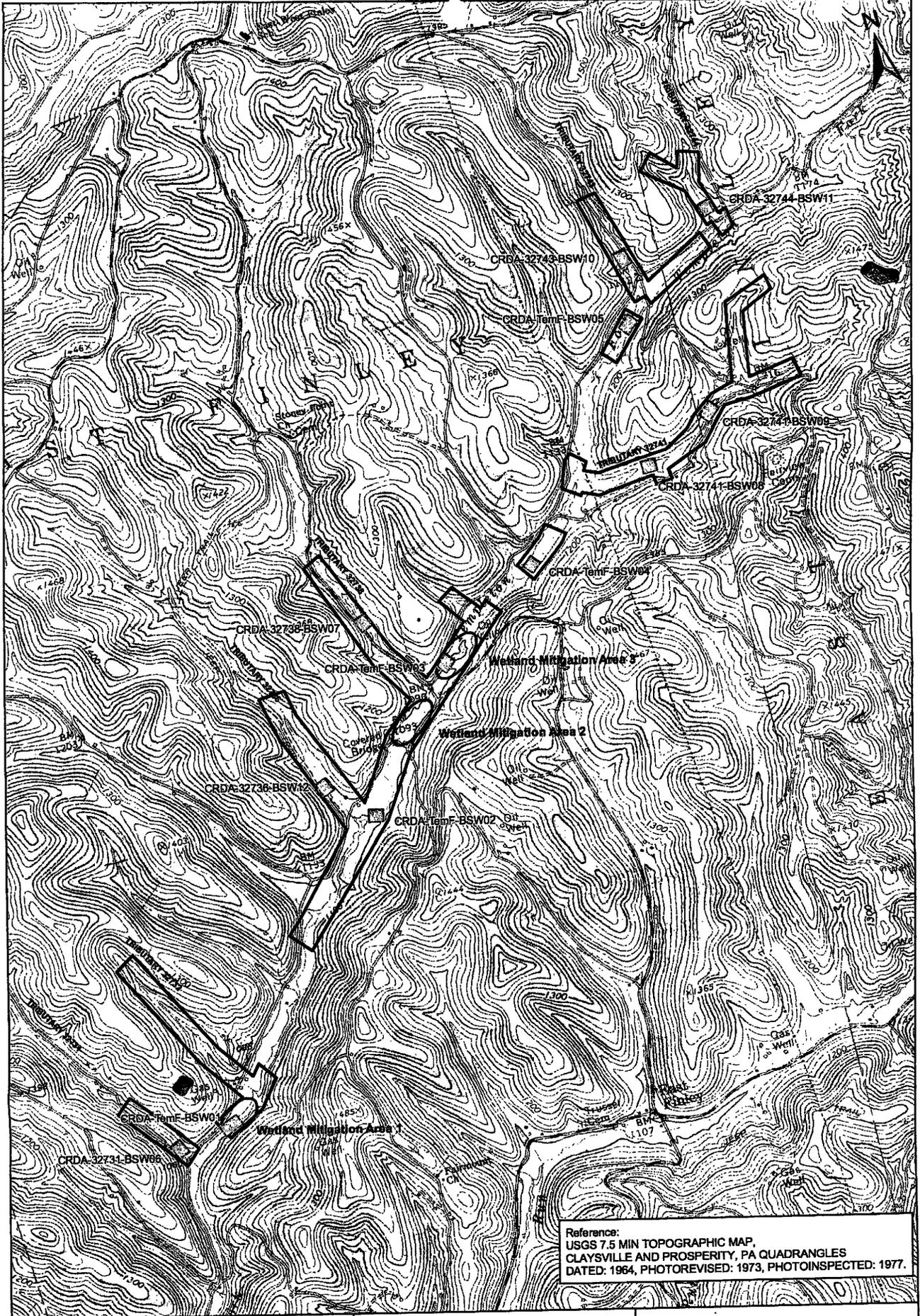
Title: \_\_\_\_\_

NOTE: You must return this form to the following address 10 days prior to  
commencement of the work.

U. S. Army Corps of Engineers, Pittsburgh District  
ATTN: CELRP-OP-F  
2200 William S. Moorhead Federal Bldg.  
1000 Liberty Avenue  
Pittsburgh, PA 15222-4186



USGS 7.5 Minute Topographic Map Wind Ridge, PA Quadrange Dated 1984, Photorevised 1984		ISSUED FOR 	$39^{\circ}57'27.5''N, 80^{\circ}27'31''W$
DWN BY: CLC CHK BY: MRH* 1 inch equals 2,000 feet DATE 12/3/2008	<b>Legend</b> Project Boundary (706 Acres)	ISSUED BY CIVIL & ENVIRONMENTAL CONSULTANTS, INC. 333 Baldwin Road Pittsburgh, PA 15205-9702 1-800-365-2324 <small>Columbus OH * Cincinnati OH * Indianapolis IN * Nashville TN * Chicago IL * St. Louis MO * Export PA * Detroit MI</small>	USGS SITE LOCATION MAP BAILEY COAL REFUSE DISPOSAL AREAS NO. 5 AND 6 CONSOL PENNSYLVANIA COAL COMPANY LLC GREENE COUNTY, PENNSYLVANIA <b>DA # 2007-463</b> PROJECT NO.: 071-522.0005      FIGURE: 1



Reference:  
 USGS 7.5 MIN TOPOGRAPHIC MAP,  
 CLAYSVILLE AND PROSPERITY, PA QUADRANGLES  
 DATED: 1964, PHOTOREVISED: 1973, PHOTOINSPECTED: 1977.

DRAWN BY: CLC  
 CHECKED BY: MLS  
 APPROVED BY: MRH\*  
 SCALE: 1" = 1,500'  
 DATE: 5/12/2010

**Legend**

- Stream Restoration Areas
- Wetland Mitigation Areas
- Biological Monitoring Station
- Soil Disposal Area

\*Hand signature on file.

ISSUED FOR: **CONSOL ENERGY**

ISSUED BY: **CEC**  
 CIVIL & ENVIRONMENTAL CONSULTANTS, INC.  
 333 Baldwin Road  
 Pittsburgh, PA 15205-9702  
 1-800-365-2324

Columbus, OH \* Cleveland, OH \* Cincinnati, OH \* Indianapolis, IN \* Knoxville, TN \* Louisville, KY \* St. Louis, MO \*  
 Denver, CO \* Phoenix, AZ

**BIOLOGICAL MONITORING STATION  
 SITE LOCATION MAP  
 BAILEY CRDA NO. 5 AND 6  
 CONSOL PENNSYLVANIA COAL COMPANY LLC  
 GREENE COUNTY, PENNSYLVANIA**

PROJECT NO.: 071-522.0013

DA# 2007-463

# CWA Section 401 Certification and Written Findings

## Mining / Coal Refuse Disposal Permit No. 30080701

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**Statement of certification:**

**The Department has determined that the proposed project complies with the provisions of sections 301-303, 306, and 307 of the Federal Water Pollution Control Act and will not cause a violation of the state Water Quality Standards and hereby grants CWA Section 401 Certification.**

SIGNATURE Wm. S. Plassis  
~~Tom Clifton~~ District Mining Manager

DATE 6/1/10

Note: The basis for the Department's findings should document the following:

- 1) The measures or technology which will be used to protect surface water quality (e.g., installation of erosion and sedimentation controls designed in accordance with the requirements of chapters 87, 88, 89, 90, or 102; installation of groundwater and surface water protection systems meeting the requirements of Chapter 90; minimizing disturbance of acid forming materials; etc.)
- 2) The quality of the surface water that may be affected by project activities.
- 3) The demonstrated effectiveness of the proposed protection measures or technology. (For example, water quality sampling results showing that application of the proposed measures or technology in similar settings was effective in preventing violations of federal or state water quality standards)
- 4) Compensatory measures that will be used to offset any unavoidable adverse effects resulting from the placement of the fill, if applicable.

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Consol Pennsylvania Coal Company File  
Number: 2007-463 Date: June 11, 2010

Attached is:

See Section Below

INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)

A

PROFFERED PERMIT (Standard Permit or Letter of Permission)

B

PERMIT DENIAL

C

APPROVED JURISDICTIONAL DETERMINATION

D

PRELIMINARY JURISDICTIONAL DETERMINATION

E

**SECTION I:** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/appeals.htm> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II:**

**REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

The Project Manager Identified In Your Jurisdictional  
Determination Letter

or

Appeal Review Officer, Ms. Pauline Thorndike

U.S. Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street, Room 10032  
Cincinnati, OH 45202-3222  
(513) 684-6212

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

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(\_\_\_\_) \_\_\_\_\_  
Signature of appellant or agent  
Date

Telephone Number