

# 6 *Facts and Findings*

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(MR-2A)

MR-4     MR-19     MR-19A     MR-19Q     MR-25     Amendment

REGION \_\_\_\_\_ PERMIT NO. \_\_\_\_\_ MSHA NO. \_\_\_\_\_

*If Joint Application, filed in permit* \_\_\_\_\_

APPLICANT \_\_\_\_\_

DATE RECEIVED IN REGION \_\_\_\_\_

DATE SMA ISSUED \_\_\_\_\_

DATE SENT TO HEADQUARTERS \_\_\_\_\_

DATE OF DECISION \_\_\_\_\_

## FACTS AND FINDINGS

<b>REGION:</b>	<b>ENCLOSED</b>	<b>N/A</b>
A. Checklist for appropriate application	<input type="checkbox"/>	<input type="checkbox"/>
B. Signature Page of Application	<input type="checkbox"/>	<input type="checkbox"/>
C. Tracking Form	<input type="checkbox"/>	<input type="checkbox"/>
D. Certification of Publication	<input type="checkbox"/>	<input type="checkbox"/>
E. Pre-Inspection Narrative	<input type="checkbox"/>	<input type="checkbox"/>
F. MR-2A	<input type="checkbox"/>	<input type="checkbox"/>
G. Waivers	<input type="checkbox"/>	<input type="checkbox"/>
H. Permit Supervisor Recommendation	<input type="checkbox"/>	<input type="checkbox"/>
I. Geologist Recommendation	<input type="checkbox"/>	<input type="checkbox"/>
J. Engineer Recommendation	<input type="checkbox"/>	<input type="checkbox"/>
K. Environmental Resource Specialist Recommendation	<input type="checkbox"/>	<input type="checkbox"/>
L. Inspector Recommendation	<input type="checkbox"/>	<input type="checkbox"/>
M. Blasting Recommendation	<input type="checkbox"/>	<input type="checkbox"/>
N. NPDES Summary	<input type="checkbox"/>	<input type="checkbox"/>
O. CHIA (MR-4 only)	<input type="checkbox"/>	<input type="checkbox"/>
P. Buffer Zone Analysis (BZA) (404(b)(1))	<input type="checkbox"/>	<input type="checkbox"/>
Q. Division of Labor Compliance (not required for MR-25)	<input type="checkbox"/>	<input type="checkbox"/>
R. Workers Compensation Compliance (not required for MR-25)	<input type="checkbox"/>	<input type="checkbox"/>
S. Unemployment Compensation Compliance	<input type="checkbox"/>	<input type="checkbox"/>
T. O/C Regional Reviewer signoff	<input type="checkbox"/>	<input type="checkbox"/>
U. Secretary of State verification	<input type="checkbox"/>	<input type="checkbox"/>
V. AVS/OSM Recommendation (Checked at Headquarters)	<input type="checkbox"/>	<input type="checkbox"/>
W. Site Specific Bond Calculations and Letter	<input type="checkbox"/>	<input type="checkbox"/>
X. Informal Conference (Summary, Tape, Log, Narrative)	<input type="checkbox"/>	<input type="checkbox"/>
Y. Community Impact Statement	<input type="checkbox"/>	<input type="checkbox"/>
Z. GIS Maps (ditigal or copies)	<input type="checkbox"/>	<input type="checkbox"/>

APPLICANT : \_\_\_\_\_ APPLICATION # \_\_\_\_\_

NPDES # \_\_\_\_\_ MSHA # \_\_\_\_\_

**CHECKLIST**

(SMA's, Amendments and MR-19A's)

**Application**

	REGION				HEADQUARTERS			
	YES	NO	N/A	DATE	YES	NO	N/A	DATE
Is insurance current?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Is Secretary of State verification enclosed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Is DOL compliance enclosed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Is Workers Comp compliance enclosed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Is Bond submitted and approved?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Is CHIA enclosed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Is NPDES permit issued or transferred?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Date of Issue \_\_\_\_\_ Transfer \_\_\_\_\_

Are approved person certifications included?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
*Has principal officer signed application (President/Vice President signature)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
If No, are proper legal documents included?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Are protest responses enclosed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Is Certification of Publication enclosed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

\*Notarization date of principal officer must be after date of last permit update.

Is O/C Unit Finding enclosed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Is AVS OSMRE recommendation enclosed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Are there any special comments from region?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**TO BE COMPLETED BY REGIONAL OFFICE ONLY:**

Permit Reviewer Recommendation \_\_\_\_\_ Issue  Deny  Conditions   
Date \_\_\_\_\_

Permit Supervisor Recommendation \_\_\_\_\_ Issue  Deny  Conditions   
Date \_\_\_\_\_

I & E Recommendation Date \_\_\_\_\_ Issue  Deny  Conditions

Date submitted to Headquarters \_\_\_\_\_ Checklist completed by \_\_\_\_\_

**TO BE COMPLETED BY HEADQUARTERS:**

Date received in Headquarters \_\_\_\_\_  
Date of Secretary's Decision \_\_\_\_\_ Issue  Deny  Conditions

MR-2A

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF MINING AND RECLAMATION  
PERMITTING SECTION**

**APPLICANT:** \_\_\_\_\_

**SMA/PERMIT NO.** \_\_\_\_\_

**NPDES NO.** \_\_\_\_\_

**FACTS AND FINDINGS**

**ADDENDUM TO NEW or SIGNIFICANT REVISION OF A PERMIT**

The Secretary of the West Virginia Department of Environmental Protection (DEP) has found that the following applies to this application:

1. The application is accurate and complete and all of the requirements of Article 3 of Chapter 22 of the Code and the Rules and Regulations promulgated thereunder have been complied with.
2. The applicant has demonstrated that reclamation as required by Article 3, Chapter 22 of the Code can be accomplished under the reclamation plan contained in the application.
3. An assessment of probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the Secretary and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
4. The area proposed to be mined is not included within an area designated or under consideration of unsuitable for surface mining subject to the prohibitions or limitations of subsection (d) Section 22 of the Act and is not within an area under administrative study by the Department of Environmental Protection for such designation.
5. The proposed surface mining will not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
6. The area proposed to be mined is not on any lands subject to the prohibitions or limitations in Sections 22-3-22(d)(1), (d)(2), (d)(3), (d)(4) and (d)(5) except as provided in 22-3-22(d)(4) of the Code.
7. The applicant has submitted proof or made the demonstration that all current violations are in the process of being corrected in accordance with Section 3.32.c.1. and 2. of the Rules and Regulations.
8. The applicant or the operator if other than the applicant does not control or has not controlled mining operations with a demonstrated pattern of willful violations of the State Code of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Code.
9. Surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area. The application has taken into account the effect of the proposed

- permitting action on properties listed or eligible for listing on the National Register of Historic Places.
10. The operator shall submit bond as required by Section 22-3-11 of the Code prior to the issuance of a permit.
  11. The applicant has, with respect to prime farmland, made a negative determination or satisfied the requirements of Section 22-3-18(d)(1) of the Code.
  12. The proposed post-mining land use of the permit area is approved in accordance with 22-3-13-(b)(2) of the Code.
  13. The permittee shall conduct its operations:
    - A. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and
    - B. utilizing any methods specified in the permit by the Secretary in approving alternate methods of compliance with the performance standards of the Code and the federally approved regulatory program.
  14. The applicant has satisfied the applicable requirements for experimental practices, mountain top removal mining, variances from approximate contour, prime farmland, steep slope mining, variance for delay in contemporaneous reclamation in situ processing, auger mining, and coal preparation plants not located within the permit area of a mine, when such are proposed in the application.
  15. The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the Secretary otherwise stipulates in the permit.
  16. The permittee shall allow rights of entry as provided by 22-3-15(a) and (g) of the Code. Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives:
    - A. of the DEP authority to have the right to entry; and
    - B. of the DEP authority to be accompanied by private persons for the purpose of conducting an inspection, when an inspection is in response to an alleged violation reported to the regulatory authority by the private person.
  17. For permits where the Secretary has approved a long-term, intensive agricultural post-mining land use, the permittee may be exempted from the revegetation requirements of Section 9 of the Rules and Regulations.

In addition, the following marked as “YES” have been found to apply to this application.

- | <b>YES</b>               | <b>NO</b>                |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted evidence of his right to extract the coal by surface mining methods.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. The chemical analysis requirements of 22-3-9(a)(14) of the Code have been found to be unnecessary and a statement of the test borings or core samples have been waived.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Approval is granted for the use of off-site geologic data in accordance with Section 3.23(f)(6) of the Rules and Regulations.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. The requirements for submission of soil surveys have been waived.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. The proposed operation is within one-hundred feet of the outside right-of-way of a public road and it has been determined that the interest of the public and the landowners affected thereby will be protected.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Approval is granted for the long-term agricultural post-mining land use as part of the mining and reclamation plan.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Approval is granted for the placement of spoil material outside the permit area and it has been determined that environmental harm will not result from such placement.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. The applicant has paid all federal reclamation fees.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. The proposed operation will adversely affect a public park or a publicly owned place listed on the National Register of Historic Places and the federal, state, or local agency with jurisdiction over such entity has approved the mining operations.                  |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. The remainder of the Subsidence Control Plan for underground mines has been waived because it has been determined from the Subsidence Control Plan survey that no material damage or diminution of value or foreseeable use of the land could be caused by subsidence. |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. Approval is granted for disturbance by surface mining operations within one-hundred feet of an intermittent or perennial stream.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. Approval is granted to locate a sediment control structure in a perennial stream and the Secretary finds that there is not other suitable location for such structure.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 13. The criteria of 22-3-13(b)(15) of the Code have been met and the provisions of Section 38-2-6.5(g) through (k) and Section 38-2-6.6 of the Rules and Regulations have been waived for specific utility structure(s).   |

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PERMIT SUPERVISOR

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DATE

### WAIVER OR VARIANCE APPROVAL

*This sheet must be completed for each waiver or variance requested in Section L of the application*

**PERMIT NO.** \_\_\_\_\_

Waiver/Variance Requested: \_\_\_\_\_

**\*\* If AOC Waiver/Variance is related to “Postmining Land use change to justify Mountaintop Removal AOC variances” complete “Postmining Land use change to justify Mountaintop Removal AOC variances Approval - Attachment A” as per W.Va. Code §22-3-13 (c) (3).**

**Application Item Number:** \_\_\_\_\_

**Explain Applicant’s justification for request:**

\_\_\_\_\_

**Information sources used by WVDEP in addition to that present in the application:**

\_\_\_\_\_

**Explain WVDEP’s justification for findings and approval:**

\_\_\_\_\_

Request meets the regulatory requirement?      Yes     No

Variance/Waiver Approved?      Yes     No

DEP Reviewer \_\_\_\_\_

Date \_\_\_\_\_

**POSTMINING LAND USE CHANGE TO JUSTIFY MOUNTAINTOP  
REMOVAL AOC VARIANCES  
APPROVAL**

**ATTACHMENT A**

*This "Attachment A" must be completed for all Postmining Land use change to justify Mountaintop Removal AOC variances requested in Section L of the application as per W.Va. Code §22-3-13 (c) (3).*

**PERMIT NO.** \_\_\_\_\_

**Application Item Number:** \_\_\_\_\_

This postmining land use change has been reviewed and it is determined to be:

Yes or No

- Equal to or better than premining landuse;
- Compatible with adjacent land uses and existing state and local land plans;
- Practicable with respect to achieving the proposed use;
- Obtainable according to data regarding expected need and market;
- Supported by commitments from public agencies where appropriate;
- Practicable with respect to private financial capability for completion of the proposed use;
- Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation reclamation with the postmining land use;
- Designed by a person approved by the director in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site.

Opportunity to comment was provided to county commission and other agencies?      Yes       No

Request meets the regulatory requirement?      Yes       No

Postmining Land-use Change Approved?      Yes       No

DEP Reviewer: \_\_\_\_\_

Date: \_\_\_\_\_

**PRE-ISSUANCE REVIEW CHECKLIST**

YES	NO	
_____	_____	Correct number of copies have been provided?
_____	_____	Are all copies of application consistent and stamped approved and dated by DEP?
_____	_____	Are all maps consistent?
_____	_____	Was draft NPDES permit issued and on file prior to date of NPDES advertisement?
_____	_____	Has bond been submitted and approved?
_____	_____	Is insurance current?
_____	_____	Has Department of Labor provided information that company is "in compliance?"
_____	_____	If blasting will be conducted within 500 feet of an underground mine, is approval from the Officer of Miner’s Health, Safety and Training enclosed?
_____	_____	If road relocations or abandonments are proposed, is approval from the Division of Highways enclosed?
_____	_____	Is Certificate of Publication included?
_____	_____	Are any public comments and/or protests included?

\_\_\_\_\_ PERMITTING REPRESENTATIVE

\_\_\_\_\_ DATE

### REVIEW TEAM FINDINGS

- 1. Comments on any adverse environmental impacts and/or special conditions:

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- 2. If a recut, list linear feet of highwall to be eliminated and acreage affected:

N/A \_\_\_\_\_ Linear Ft. of Highwall \_\_\_\_\_ Acres Affected \_\_\_\_\_

- 3. Review Team Recommendations: \_\_\_\_\_

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REVIEW TEAM MEMBER

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DATE

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### INSPECTOR'S FINDINGS AND RECOMMENDATIONS

Inspector \_\_\_\_\_

See Inspector's Narrative

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### NPDES PERMIT SUMMARY

Provide summary of status of NPDES draft permit and application review

Provide summary of status of Mitigation/Compensation Agreement, if applicable.