PUBLIC NOTICE

U.S. Environmental Protection Agency, Region 5
In the matter of: Black Beauty Coal Company
Docket Nos. CWA-05-2008-0003

The U.S. Environmental Protection Agency (EPA), Region 5, hereby provides notice of the issuance of three Consent Agreement and Final Orders (CAFOs) to Black Beauty Coal Company (Respondent) for alleged violations of Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311.

EPA has alleged in the CAFOs that Respondent and its subsidiary, Arclar Company, LLC, mined-through or otherwise impacted (directly or indirectly)with earth moving equipment, a total of approximately 164,179 linear feet of streams and 16.69 acres of wetlands across three different mine sites. The Farmersburg Mine is located in Vigo and Sullivan Counties, Indiana, the Somerville Mine-North, Central and South Pits are located in Gibson County, Indiana and the Wildcat Hills Mine-Cottage Grove Pit is located in Gallatin and Saline Counties, Illinois. The aforementioned earth moving activities were not authorized by a Department of the Army permit, under Section 404 of the CWA, 33 U.S.C. § 1344. The aforesaid earth moving activities occurred in Illinois within unnamed tributaries to the North Fork of the Saline River at the Wildcat Hills Mine. The earth moving activities occurred in Indiana within West Fork Busseron Creek, its tributaries and tributaries to Turman Creek at the Farmersburg Mine and tributaries to Pigeon Creek, Big Creek, Smith Fork, East Fork Keg Creek, West Fork Keg Creek and Donahue Creek at the Somerville Mine. The North Fork of the Saline River is a traditionally navigable water (TNW). West Fork Busseron Creek is a tributary to Busseron Creek, which flows into the Wabash River, a TNW. Turman Creek is also a tributary to the Wabash River. East and West Fork Keg Creek are tributaries of Keg Creek, a tributary of the Patoka River, a TNW. Donahue Creek flows into Big Creek. Big Creek and Smith Fork flow into Pigeon Creek, a tributary of the Ohio River, a TNW. Therefore, the abovementioned streams and wetlands are subject to federal jurisdiction under the CWA.

EPA and Respondent have agreed to settle this matter without further litigation. Under the CAFOs, Respondent has agreed to pay $75,000 in civil penalties and perform a Supplemental Environmental Project (SEP) valued at $292,344. The SEP includes the creation of 36.3 acres of wetland and a 50 foot buffer around the perimeter of the created wetland (an additional 5.5 acres). The SEP wetlands will be protected in perpetuity by a Conservation Easement to be held by the Indiana Department of Natural Resources.

Before issuing an order assessing a civil penalty, EPA is providing an opportunity for the public to comment on the appropriateness of the civil penalty. Any person wishing to comment on the proposed civil penalty must submit comments in writing to the Regional Hearing Clerk at the address listed below within 30 days from the date of this notice.

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In accordance with 40 C.F.R. § 22.45, EPA will provide to each commenter a copy of the proposed CAFO. Within 30 days of receipt of the CAFO, a commenter may petition the Regional Administrator of Region 5 to set aside the proposed CAFOs on the basis that material evidence was not considered.

Interested parties may contact the Agency representative for this action at the following address or by phone to obtain further information on the proposed civil penalty:

Thomas Turner
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 886-6613