

**MARYLAND****Carroll County**

Roop's Mill, 1001, 1019 Taneytown Pike,  
Westminster, 08000796, Listed, 10/31/08

**Cecil County**

Perry Point Village, A, B, C, D Aves., 2nd,  
3rd, 4th, 5th Sts., Perry Point VA Center,  
Perry Point, 65009962, \* Determined  
eligible, 10/31/08

**Montgomery County**

Krieger, Seymour, House, 9739 Brigadoon  
Dr., Bethesda, 08001022, Listed, 10/29/08

**MISSISSIPPI****Harrison County**

Gulfport-Harrison Public Library, 21st Ave.,  
Gulfport, 65009961, \* Determined eligible,  
10/31/08

**MISSOURI****Greene County**

Ambassador Apartments, 1235 E. Elm St.,  
Springfield, 08001023, Listed, 10/29/08,  
(Springfield MPS)

**St. Louis Independent City**

Farm and Home Savings and Loan  
Association, 1001 Locust St., St. Louis  
(Independent City), 08001025, Listed,  
10/29/08

\* Denotes FEDERAL Determination of  
Eligibility.

[FR Doc. E8-29660 Filed 12-15-08; 8:45 am]

**BILLING CODE 4310-70-P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****Request for Determination of Valid Existing Rights Within the Daniel Boone National Forest, Kentucky**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are providing opportunity for the public to comment on a request for a determination of valid existing rights (VER) to use an existing Forest Service road as a coal mine access and haul road across Federal lands within the boundaries of the Daniel Boone National Forest in Leslie County, Kentucky. The remainder of the mine would be located on privately owned land.

**DATES:** We will accept electronic or written comments until 4 p.m. Eastern time on January 15, 2009. Requests for an extension of the comment period must be received by the same time.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Mail/Hand-Delivery/Courier:* Joseph L. Blackburn, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503.

- *E-mail:* [jblackburn@osmre.gov](mailto:jblackburn@osmre.gov).

For detailed instructions on submitting comments, see "V. How Do I Submit Comments on the Request?" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Joseph L. Blackburn, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503.

*Telephone:* (859) 260-8402. *Fax:* (859) 260-8410. *E-mail:* [jblackburn@osmre.gov](mailto:jblackburn@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. What Is the Nature of the VER Determination Request?
- II. What Legal Requirements Apply to This Request?
- III. What Information Is Available Relevant to the Basis for the Request?
- IV. How Will We Process the Request?
- V. How Do I Submit Comments on the Request?

**I. What Is the Nature of the VER Determination Request?**

On October 21, 2008, Mr. John Begley II submitted a request for a determination of VER on behalf of Mr. William T. Gilbert of Jag Energy LLC. Jag Energy LLC has applied for a permit (Application #866-0264) to conduct surface coal mining operations on privately owned land in Bear Branch, Leslie County, Kentucky. The property to be mined is adjacent to the Daniel Boone National Forest.

William T. Gilbert is seeking a determination that Jag Energy LLC has VER under paragraph (c)(1) of the definition of VER in 30 CFR 761.5 to use an existing road across Federal lands within the Daniel Boone National Forest as an access and haul road for the proposed mine. No other surface coal mining operations would be conducted on Federal lands within the Daniel Boone National Forest as part of this mine.

**II. What Legal Requirements Apply to This Request?**

Section 522(e)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1272(e)(2), prohibits surface coal mining operations on Federal lands within the boundaries of any national forest, with two exceptions. The first exception pertains to surface operations and impacts incidental to an underground coal mine. The second relates to surface operations on lands within national forests west of the 100th meridian. Neither of those exceptions applies to the request now under consideration.

The introductory paragraph of section 522(e) also provides two general exceptions to the prohibitions on surface coal mining operations in that section. Those exceptions apply to operations in existence on the date of enactment of the Act (August 3, 1977) and to land for which a person has VER. SMCRA does not define VER. We subsequently adopted regulations defining VER and clarifying that, for lands that come under the protection of 30 CFR 761.11 and section 522(e) after the date of enactment of SMCRA, the applicable date is the date that the lands came under protection, not August 3, 1977.

On December 17, 1999 (64 FR 70766-70838), we adopted a revised definition of VER, established a process for submission and review of requests for VER determinations, and otherwise modified the regulations implementing section 522(e). At 30 CFR 761.16(a), we published a table clarifying which agency (OSM or the State regulatory authority) is responsible for making VER determinations and which definition (State or Federal) will apply. That table specifies that OSM is responsible for VER determinations for Federal lands within national forests and that the Federal VER definition in 30 CFR 761.5 applies to those determinations.

Paragraph (c) of the Federal definition of VER contains the standards applicable to VER for roads that lie within the definition of surface coal mining operations. Jag Energy LLC is seeking a VER determination under paragraph (c)(1), which provides that a person who claims VER to use or construct a road across the surface of lands protected by 30 CFR 761.11 or section 522(e) of SMCRA must demonstrate that the "road existed when the land upon which it is located came under the protection of § 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations."

In addition, based upon the information provided in the VER request, we also are considering whether VER might exist under the standard in paragraph (c)(3), which requires a demonstration that a "valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e)."

**III. What Information Is Available Relevant to the Basis for the Request?**

The following information has been submitted by Jag Energy LLC or obtained from the United States Forest Service (USFS) or the Kentucky

Department for Natural Resources (DNR):

1. A 1.76 mile long × 12 foot wide road designated USFS road FSR 1669 exists on the land to which the VER determination request pertains.

2. The land upon which the road is located was in Federal ownership as part of the Daniel Boone National Forest on August 3, 1977, the date of enactment of SMCRA.

3. A letter from USFS District Ranger, John Kinney, indicating that William Gilbert has applied for a special use permit for the use of Forest Service Road 1669 to access his property in Bear Branch, Ky.

4. An affidavit from John Hollen, a resident of Bear Branch in Leslie County, Ky indicating that the proposed haul road contained in Jag Energy LLC application #866-0264 crossing the USFS property was used prior to 1977 as a coal haul road.

5. A coal lease between William T. Gilbert *et al.* Lessors, and Kenneth C. Smith, Lessee, for the Number four coal seam on lands described in Deed Book 34, page 464 and an Affidavit of Descent of John and Sally B. Gilbert in the records of the Leslie County, Ky. Court Clerk's office.

6. A copy of the deed and Affidavit of Descent referenced in the coal lease.

#### IV. How Will We Process the Request?

We received the request on October 21, 2008, and determined that it was administratively complete on October 30, 2008. That review did not include an assessment of the technical or legal adequacy of the materials submitted with the request.

The process by which we will further review the request is set out in 30 CFR 761.16(d) and (e). As required by 30 CFR 761.16(d)(1), we are publishing this notice to seek public comment on the merits of the request. A similar notice will also be published in a newspaper of general circulation in Leslie County, Kentucky.

After the close of the comment period, we will review the materials submitted with the request, all comments received in response to this and other notices, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, we will notify the requester, in writing, explaining the inadequacy of the record and requesting submittal, within a specified time, of any material needed to remedy the deficiency.

Once the record is complete and adequate, we will determine whether the requester has demonstrated VER for

the proposed access and haul road. Our decision document will contain findings of fact and conclusions, along with an explanation of the reasons for our conclusions. We will publish a notice of the decision in the **Federal Register** and a newspaper of general circulation in Leslie County, Kentucky.

However, as provided in 30 CFR 761.16(d)(1)(iv), we will not make a decision on the merits of the request, if, by the close of the comment period under this notice or the notice required by 30 CFR 761.16(d)(3), a person with a legal interest in the land to which the request pertains initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the request. This provision applies only if our decision is based upon the standard in paragraph (c)(1) of the definition of VER in 30 CFR 761.5. It will not apply if we base our decision on the standard in paragraph (c)(3) of the definition.

#### V. How Do I Submit Comments on the Request?

We will make the VER determination request and associated materials available to you for review as prescribed in 30 CFR 842.16, except to the extent that the confidentiality provisions of 30 CFR 773.6(d) apply. Subject to those restrictions, you may review a copy of the request for the VER determination and all comments received in response to this request at the Lexington Field Office (see **ADDRESSES**). Documents contained in the administrative record are available for public review at the Field Office during normal business hours, Monday through Friday, excluding holidays.

##### *Electronic or Written Comments*

If you wish to comment on the merits of the request for a VER determination, please send electronic or written comments to us at the addresses above (see **ADDRESSES**) by the close of the comment period (see **DATES**). Under 30 CFR 761.16(d)(1)(vii), you may request a 30-day extension of the comment period. Requests for extension of the public comment period must be submitted to the same addresses by the date indicated.

If you submit comments by e-mail, please include your name and return address in your message. You may contact the Lexington Field Office at (859) 260-8402 if you wish to confirm receipt of your message.

##### *Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 18, 2008.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Region.*

[FR Doc. E8-29758 Filed 12-15-08; 8:45 am]

**BILLING CODE 4310-05-P**

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### **United States et al. v. Republic Services, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States v. Republic Services, Inc. & Allied Waste Industries, Inc.*, Civil Action No. 1:08-cv-02076. On December 3, 2008, the United States filed a Complaint alleging that the proposed acquisition by Republic Services, Inc. of Allied Waste Industries, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the provision of non-franchised small container commercial waste collection services in the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Lexington, Kentucky; Lubbock, Texas; and Northwest Indiana; and in the provision of municipal solid waste disposal services in the areas of Atlanta, Georgia; Cape Girardeau, Missouri; Charlotte, North Carolina; Cleveland, Ohio; Denver, Colorado; Flint, Michigan; Fort Worth, Texas; Greenville-Spartanburg, South Carolina; Houston, Texas; Los Angeles, California; Northwest Indiana; Philadelphia, Pennsylvania; and San Francisco, California. The proposed Final Judgment, filed the same day as the Complaint, requires Republic to divest certain non-franchised small container