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Yellow Spring, WV 26865-9507  
24 April 2002

Matthew B. Crum  
Director, Division of Mining and Reclamation  
West Virginia Department of Environmental Protection  
105 South Railroad Street  
Philippi, WV 26416

cc: Gov. Bob Wise  
West Virginia State Capitol  
Charleston, WV 25305

Honorable Darrell V. McGraw, Jr.  
State of West Virginia Attorney General  
1900 Kanawha Blvd., East, Room 26E  
Charleston, WV 25305-9924

Dear Mr. Crum,

I had hoped to hear from Mr. Callaghan pursuant to a letter I received from Governor Bob Wise dated March 14<sup>th</sup> 2002 regarding a shale quarry at Hooks Mill, but to date I have not.

I am writing you to request copies of the following public records from your department pursuant to the West Virginia Freedom of Information Act (WV Code 29B-1-3):

1. A copy of the permit for the quarry site at the junction of Hooks Mill Road (13/3) and Cacapon River Road (14) as specified in Article 4 "Quarry Reclamation Act", §22-4-5 of the West Virginia State Code, including the supporting items 1 through 11 enumerated in that section. The owner of this property is Clyde Brill of Leesburg, Virginia.

2. The Reclamation Plan for this site as specified in §22-4-17 of Article 4.

I am willing to pay a reasonable fee for the cost of reproducing these records. If the fee is more than ten dollars (\$10.00), however, I would instead like the opportunity to review the items in person before deciding if I want copies of them.

Please respond to this request within 5 business days by either mailing me the items with a bill for the charges or advising me of a time and place at which I may inspect and copy these records, and what the cost for copies will be.

If you have any questions or need any additional information regarding this request, I can be reached at 304-856-1305.

Mr. Charles Combs, an Environmental Inspector with your department, has indicated to me that DEP has recently sent a policy "interpretation" of Article 4 to the Attorney General's office for review. Nowhere in the Article does it state that the DEP has the right to interpret the law. It does, however state that the Director has the responsibility to enforce the law.

The Quarry Reclamation Act states in its definitions (§22-4-3) that "quarrying" is "any breaking of the ground surface in order to facilitate the extraction of minerals". It further defines "minerals" as "natural deposits of commercial value found on or in the earth" and specifically includes "shale" in the list of defined minerals. There is no ambiguity in the activity taking place at this site. The shale is being removed specifically because it is a commercially valuable mineral. This shale is being used for the final surfacing of public and private roads and driveways. It is not "soil or other materials" being removed for use as "fill."

This mountain site is subjected to much more than on-site farming, construction, and noncommercial activities, and the vast majority of material being removed is not being used either on-site or as fill. Private builders and excavators haul shale for the surfacing of third-party roads and drives as part of for-profit projects. The State Department of Highways is engaged in this quarrying operation as well. In the very recent past this quarry has been mined by various entities on the following dates: February 20 - 22, February 25 - March 1, March 25, March 29, April 3 - 4, April 10, and April 18.

None of the exemptions listed in Article 4 §22-4-29 apply to the activity at this site. By law there must be a quarrying permit.

Mr. Crum, I would appreciate a speedy reply with the materials that I have requested.

Sincerely,

Kirsten Weiblen

1 Enclosure