APR 04 2011

Authorization to Proceed (ATP)
Danny Spence Small Purchase
Abandoned Mine Land (AML) Reclamation Project
based on Categorical Exclusion (CX)
Lawrence County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the March 31, 2011, request for ATP with construction activity on the Danny Spence Small Purchase AML Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML) of the Kentucky Department for Natural Resources. OSM found that the appropriate request documents were submitted and appear to support the need for the proposed construction activity.

The information to enter new AMLIS Problem Area (PA) # KY-004110-CIA was submitted by DAML for OSM review and approval with the ATP request package. The AMLIS system is not operative at this time for input of new data by DAML or the OSM LFO. DAML noted that they will input this new PA data when the AMLIS is once again operative. I have signed an approval form for the PA in accordance with OSM Directive AML-1-2 (June 22, 2007).

OSM reviewed the categorical exclusion (CX) certification prepared by DAML for this project. OSM determined that the construction activity requested under this project conforms to the exclusion criteria in 516 DM 2 and 13, does not involve any of the general exceptions in 516 DM 13.5(A)(33) or extraordinary circumstances listed in 516 DM 2, Appendix 2, and is excluded from further NEPA environmental review.

Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual and my signature on this ATP notification document, DAML is authorized to proceed with construction activity for this project as described in the ATP request documents submitted by DAML for this project and further conditioned in this notification, and expend Federal funds in accordance with AML grant terms and conditions.

Joseph L. Blackburn, Field Office Director
OSM Lexington Field Office

4/04/11
Date

UNITED STATES DEPARTMENT OF THE INTERIOR
Office Of Surface Mining Reclamation And Enforcement
ABANDONED MINE LANDS
CATEGORICAL EXCLUSION CERTIFICATION AND DETERMINATION

State: Kentucky PA: KY 4110 SGA
Project Name: Danny Spence Small Purchase AML Reclamation Project
Project Description: Removal of boulders upslope of a residence and business.

## I. GENERAL EXCEPTIONS

Does the project type specifically require an EA in 516 DM 6, Appendix 8, as specified in Item I of the attached instructions? No [x] Yes [ ]

## II. DEPARTMENT OF INTERIOR EXCEPTIONS

Will the project have any of the following:

A significant adverse effect on public health or safety? No [x] Yes [ ]

An adverse effect on any of the following unique geographic characteristics? If 'yes,' check the ones that apply: No [x] Yes [ ]

[ ] Parks (state, local or National)
[ ] Recreation or Refuge Lands
[ ] Wilderness Areas
[ ] Ecologically Significant or Critical Areas
[ ] Prime Farmlands
[ ] Wild or Scenic Rivers
[ ] Wetlands
[ ] Floodplains
[ ] Sole or Principal Drinking Water Aquifers

Highly controversial environmental effects? No [x] Yes [ ]

Highly uncertain and potentially significant environmental effects or unique or unknown environmental risks? No [x] Yes [ ]

A precedent for future action or a decision in principle about future actions with potentially significant environmental effects? No [x] Yes [ ]

Directly related to other actions with individually insignificant but cumulatively significant environmental effects? No [x] Yes [ ]

Adverse effects on properties listed or eligible for listing on the National Register of Historic Places? No [x] Yes [ ]

Adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species? No [x] Yes [ ]

| | | |
|---|---|---|
| Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Wetlands Protection) or The Fish and Wildlife Coordination Act? | No [x] | Yes [ ] |
| Threaten to violate a Federal, State, Tribal or local law or requirement imposed for the protection of the environment? | No [x] | Yes [ ] |

## III. RESOURCE IMPACT EXCEPTIONS

Are there any unresolved issues or adverse effects requiring specialized mitigation for any of the following resources? If yes, check the ones that apply. No [x] Yes [ ]

[ ] Topography
[ ] Land Use (includes prime farmland)
[ ] Soils
[ ] Vegetation (includes wetlands)
[ ] Hydrology
[ ] Fish and Wildlife
[ ] Historic and Cultural
[ ] Recreation
[ ] Air Quality
[ ] Noise
[ ] Other (includes socio-economics)

## IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

## V. RESPONSIBLE OFFICIAL CERTIFICATION

Signature: Steve Hohmann Date: 3/31/11

Name and Title: Steve Hohmann, Director
Division of Abandoned Mine Lands

## VI. OSM DETERMINATION

4-4-11

[X] This project conforms with the exclusion criteria in 516 Dm 6, Appendix 8, and is excluded from further NEPA compliance.

[ ] This project does not conform with the exclusion criteria in 516 DM 6, Appendix 8, and requires an environmental assessment.

Signature: Joseph F. Pollock Date: 4/04/11

Name and Title: FIELD OFFICE DIRECTOR

Memorandum

Date: April 4, 2011 4-4-11

To: Danny Spence Small Purchase Abandoned Mine Land (AML) Reclamation Project File ID# 99.10203000

From: Steve Cassel, Sr., AML Program Specialist
Lexington Field Office (LFO), Program Support Branch (PSB)

Subject: Review of "Authorization to Proceed" (ATP) Request

The Branch recommends that the Field Office Director (FOD) authorize the State of Kentucky to proceed with the construction activity proposed on the Danny Spence Small Purchase AML Reclamation Project. The Branch prepared an ATP notice and Problem Area (PA) approval form, as required by OSM Directive AML-1-2 (signed June 22, 2007) for the FOD review. The Branch recommends that the FOD sign the Categorical Exclusion Determination (CX), PA approval form, and ATP notice in the space provided on each document. The original signed ATP notice will be filed in the LFO AML project construction files and a copy will be sent to the Division of Abandoned Mine Lands (DAML) Director attached to a transmittal email, with an attachment of associated approval documents, consisting of a copy of the LFO review memorandum, CX, and PA approval form. Additionally, the transmittal email will be copied to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated March 31, 2011, was received at LFO on March 31, 2011. The ATP was processed within 2 working days; therefore, the customer service target of 14 working days to process an ATP has been met. The ATP was processed in 4 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP has been met.

DAML did not designate a funding source for the construction work under the budget category entitled Project Costs (Non-Water Supply) of any of Kentucky's AML Annual Construction Grants (AG). In previous discussions, DNR indicated they would assign projects to a grant before they go to construction. The LFO Project/Site ID # 99.102030000 was assigned to the project file for LFO tracking purposes until actual AG and Location Code numbers are assigned by DAML and can be inserted in the appropriate positions at the beginning and end of the LFO Project #. No specific bid advertisement, bid opening, or construction completion dates were provided by DAML in the ATP request letter, therefore I inserted dates in the database based on the ATP request letter stating that these activities will occur as soon as possible. The following proposed dates were assigned and entered by LFO for database tracking purposes: Bid Advertisement Date was entered as April 15, 2011, Contract Award was entered as May 1, 2011, and Contract/Construction Completion was entered as December 31, 2011.

An office review of the request documents was conducted. The documents consisted of; a project description, a location map, a National Environmental Policy Act (NEPA) review documented in a CX with agency consultation response letters attached; and an Abandoned Mine Land Inventory System (AMLIS) Problem Area Description (PAD) summary and appropriate Priority Documentation Forms, with engineer cost estimates for PA# KY-004110-CIA. The only problem with the submittal documents was that for the PA the funding code SGA was selected instead of CIA, as noted in the attached emails. DAML resubmitted a corrected PAD on April 4, 2011.

A pre-approval field inspection of the proposed project was deemed unnecessary, since no unique characteristics warranting special field verification were noted and it wasn't selected for field verification under the EY 2011 Oversight Agreement.

Previously the general area was evaluated by OSM under AML emergency complaint investigation. The Danny Spence Silt Pond investigation resulted in OSM referral of the complaint to the State as a high priority AML problem. That investigation involved deteriorating sediment ponds also associated with the Tebco, Inc. Permit #064-0044. This supports the DAML eligibility determination that this site is eligible under interim program criteria. The ponds at that time were determined not to be eligible for Federal AML emergency assistance as they were not serious enough and the landowner signed permit documents requesting the ponds be left unreclaimed as permanent structures and taking full responsibility for maintenance of the ponds.

The CX submitted for the construction activity at the site was reviewed and found to adequately document the environmental review of the construction activity within the current NEPA review guidance. The use of a CX is acceptable for the construction activity proposed in this project because all items on the CX have a response of "No." The project type does not meet any of the ten general exceptions, in 516 DM 13.5(B)(33), that would require preparation of an Environmental Assessment.

The project involves: no more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, noncommercial borrow or disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes to address more than one structure; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation.

In addition, none of the twelve extraordinary circumstances listed in 516 DM 2, Appendix 2, exist on the project. All access is via existing mine roads. The waste area was previously disturbed as a mine bench. There are no unresolved issues or adverse effects requiring specialized mitigation.

No significant impacts have been reported to this office or identified by the Branch. The Branch recommends that the Office of Surface Mining Reclamation and Enforcement (OSM) accept the CX submitted by the Kentucky DAML. The State's ATP request letter and attachments summarized the responses from agencies consulted for the NEPA review and discussed appropriate resolution of all their concerns and recommendations. The responses from agencies consulted for the NEPA review are summarized as follows.

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified known federally threatened/endangered fish and wildlife within a 10 mile radius of the project area. They identified one record of state listed species of concern within 1 mile radius of the project area an American Black Bear. KDFWR does not anticipate any significant impacts on this species or its habitat.

The designated DAML biological review staff reviewed the Kentucky State Nature Preserves Commission's (KSNPC) endangered, threatened and special concern reference databases in lieu of direct consultation. The findings are noted in the ATP request letter and an attached biological review memorandum. DAML found that KSNPC data indicated no federally listed threatened or endangered species within a 10-mile radius and no species of State concern is known to occur within a 1-mile radius of the project. The DAML biological review memorandum also noted that the federally listed endangered Indiana bat, although not indicated to exist in the project vicinity by DAML and the KDFWR reviews and for which the U.S. Fish and Wildlife Service has declared the entire state of Kentucky as potential habitat, would not be disturbed by the project.

In a meeting held in February 2010 between the OSM Lexington Field Office (LFO) LFO, Kentucky Field Office (KFO) in Frankfort, Kentucky, of the U.S. Fish and Wildlife Service (USFWS) and DAML; Steve Hohmann, Director of DAML, offered to coordinate NEPA consultation with the KFO, utilizing the agreements in the September 18, 2009, Memorandum of Agreement (MOA) signed by the OSM, LFO and USFWS KFO. This document outlined the acceptable conditions that the projects potential impacts can have where the KFO will not need to be further contacted for comment. When the conditions within the agreement are present, processing of the ATP may proceed with the confidence that the biological environment is being protected and provisions of Section 7 of the Endangered Species Act have been fulfilled. It was agreed to by all parties, acknowledging that LFO would retain the final review to determine if the NEPA documentation is complete.

The project activities meet the following conditions noted in the MOA to ensure protection of federally listed species; specifically the Indiana bat, Gray bat, and freshwater fishes and mussels:

- With the exception of the on tree directly impacted by the AML problem (boulders), the project does not include the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inch or greater diameter at breast height and at least 10 feet in height, during the period of April 1 to October 15;

- The project activity does not occur in "Known Indiana Bat Habitat" identified on the map attached to the MOA and the GIS files provided by USFWS KFO on November 2, 2009, used to generate the map (a copy of a section of the MOA GIS layer map on which the project coordinates are located is attached to the DAML biological review memorandum as proof of this determination);

- No caves or clifflines will be disturbed;

- No mine portal/shaft closures are proposed;

- No purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the Tradewater, lower Ohio, upper Cumberland, Green, and Licking River basins;

- In order to avoid/reduce indirect impacts, erosion and sediment control plans will be implemented and monitored until permanent vegetation has become established in the above listed watersheds and all other watersheds as may be appropriate.

With the specifics of the proposal meeting the criteria set out in the MOA, OSM agrees with DAML's determination that the proposed project would not adversely impact the species if these conditions are present. With this information, they found the requirements of Section 7 of the Endangered Species Act have been fulfilled.

The Office of State Archaeology found that their records did not indicate any known archaeological sites directly in the project area, no systematic archaeological survey has been conducted in the immediate project area, and past disturbance to the project area make it unlikely that archaeological sites will be preserved. The Kentucky Heritage Council (KHC) and State Historic Preservation Officer (SHPO) were not consulted further for the current construction activity, since this project activity falls under the provision in Programmatic Agreement that DAML signed on January 3, 2011, with the KHC of "exempt projects." Exempt projects are "Routine and recurring projects whose impacts [under Section 106 of the Natural Historic Preservation Act] are "foreseeable and cause little or no ground disturbance or that have a low probability of affecting known or unknown historic properties..." Under the agreement KHC requires no consultation beyond DAML's determination that the project is an exempt project.

Environmental and Public Protection Cabinet (EPPC) (changed to the Environment and Energy Cabinet (EEC) in July 2008) Secretary order dated December 12, 2006, transferred authority for issuance of Clean Water Act (CWA) Section 401 Water Quality Certifications (WQC) associated with surface coal mine operations, to include any reclamation projects proposed by the DAML, to the Kentucky Department for Natural Resources (DNR). DNR assigned this responsibility to the DAML Design Branch. In a meeting held in February 2010 between the OSM Lexington Field Office (LFO), Kentucky Field Office (KFO) in Frankfort, Kentucky, of the U.S. Fish and Wildlife Service (USFWS) and DAML to primarily discuss fish and wildlife issues; Steve Hohmann, Director of DAML, offered to coordinate NEPA consultation with the U.S. Army Corps of Engineers (COE) to assess the need for and compliance with the permit requirements of Section 404 of the Clean Water Act (CWA) by application of criteria provided by the COE. This was beneficial to both offices since these issues are inter-related. The DAML Design Branch determined that neither a 401 WQC nor a 404 CWA permit are needed for the project as proposed.

Under a 2005 agreement with the Kentucky Division of Water (DOW) Floodplain Management Section (FMS) of the Water Resources Branch, DOW authorized DAML to apply DOW floodplain standards in lieu of a DOW review. In this agreement, DAML will directly consult with DOW if it appears a permit may be required. DAML has acquired a set of Federal Emergency Management Agency (FEMA) floodplain maps that include the project area. DAML's Design Branch personnel researched these maps and have determined that the project is not within the base floodplain and no floodplain permits are required.

The comments from the Kentucky State Clearinghouse, Kentucky's "Single Point of Contact" (SPOC) pertaining to AML Non-Water Supply projects included no comments that affect this proposal. The information to update PA # KY-004110-CIA was prepared by DAML for OSM review with the ATP request. Currently the AMLIS is not operational for data input. DAML states in their ATP request letter that they will input this information at a later date in the future when the AMLIS is once again operational. PA # KY-004110-CIA represents a "new Problem Area" requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007). A FOD approval form was prepared for the PA and submitted for FOD signature. The signed form will be kept on file at LFO and a copy will be transmitted to DAML as an enclosure with the ATP letter.

The Area Office AML staff will be notified of this project authorization by cc'd copy of the email notifying DAML of this ATP or email of an updated State AML Project List after the authorization of this project and availability of the project documents on the LFO State AML reclamation project tracking database.

Attachments: Email's concerning AMLIS PA# KY-0004110-CIA