

Miller, Corey T.

Subject: FW: ATP Transmittal: Tommy Tackett AML Small Purchase Project, Floyd County, KY
Attachments: Approval Documents_Tommy Tackett ATP.pdf

From: Miller, Corey T.
Sent: Thursday, March 10, 2011 1:08 PM
To: 'Steve Hohmann'
Cc: 'carl.campbell@ky.gov'; 'Meade, Mark (EEC)'; 'Overman, Bill (EEC)'; 'Rickwa, Vanna (EEC)'; Blackburn, Joseph L. "Joe"; Smith, Gail; Turner, Samuel R. "Sam"; Cassel, Steven R. "Steve"; Francis, Gary D.; Edwards, Chester L. "Chet"; Estes, Loren A.; 'Train, Shannon (EEC)'
Subject: ATP Transmittal: Tommy Tackett AML Small Purchase Project, Floyd County, KY

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the February 23, 2011, request for ATP with construction activity on the Tommy Tackett AML Small Purchase Project, prepared by the Division of Abandoned Mine Lands (DAML). The request does not designate a funding source for the construction work under the Project Costs (Non-Water Supply) any of Kentucky's Annual AML Construction Grants. Please notify this office of the final funding source for our records.

A pre-approval field inspection of the proposed project was conducted on March 4, 2011. The proposal was recommended for approval with no concerns.

It is OSM's recommendation that appropriate consideration be given to the general recommendations and comments provided in the response from the agencies consulted in the National Environmental Policy Act (NEPA) environmental review documented in Categorical Exclusion (CX) prepared by DAML. Please ensure compliance with the provisions in the ATP request documents.

The OSM Lexington Field Office Director has signed an ATP notice and the CX. A copy of each of these documents and the LFO review memorandum are scanned into an attachment to this email for your information and use. Mr. Carl Campbell, Commissioner, Department for Natural Resources has been notified of this authorization by receiving a copy of this email.

As noted in your request documents, currently the AMLIS is not operational for data input. As noted in your ATP request letter, please be sure to update information in AMLIS regarding Problem Area (PA) # KY-003283-SGA at a later date when the system is once again operational.

Any questions concerning this ATP or the procedures can be addressed to Corey Miller at 859-260-3916 or Gail Smith at (859) 260-3908.

Corey Miller
Program Specialist
Office of Surface Mining-LFO
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Lexington, Kentucky 40503

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MAR 10 2011

Authorization to Proceed (ATP)

Tommy Tackett
Abandoned Mine Land (AML) Small Purchase Project
based on Categorical Exclusion (CX)
Floyd County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the February 23, 2011, request for ATP with construction activity on the Tommy Tackett AML Small Purchase project, prepared by the Kentucky Department for Natural Resources, Division of Abandoned Mine Lands (DAML).

OSM found that the appropriate request documents were submitted and appear to support the need for the proposed construction activity. OSM confirmed that the required information for this project has been included in the AML Inventory System (AMLIS) for Problem Areas (PA) # KY-003283-SGA.

OSM reviewed the CX NEPA environmental review document prepared by the Division of Abandoned Mine Lands for the AML reclamation project. We have determined that the currently proposed activity requested is adequately considered in the approved CX NEPA environmental review document. In addition, the proposed activity conforms with 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 compliance. We have prepared and I have signed a CX for this project. We recommend that appropriate consideration be given to the recommendations and comments provided in the response letters from the consultation agencies.

Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual and my signature on this notification document, DAML is authorized to proceed with the 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

3/10/2011
Date

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

State: KY PA: KY 3283 SGA
Project Name: Tommy Tackett Small Purchase AML Reclamation Project
Project Description: Construct a gabion wall to protect an access road and residence from a slide

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 Yes

II. DEPARTMENT OF INTERIOR EXCEPTIONS

Will the project have any of the following:

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

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

- | | |
|---|--|
| <input type="checkbox"/> Parks (state, local or National) | <input type="checkbox"/> Wild or Scenic Rivers |
| <input type="checkbox"/> Recreation or Refuge Lands | <input type="checkbox"/> Wetlands |
| <input type="checkbox"/> Wilderness Areas | <input type="checkbox"/> Floodplains |
| <input type="checkbox"/> Ecologically Significant or Critical Areas | <input type="checkbox"/> Sole or Principal Drinking Water Aquifers |
| <input type="checkbox"/> Prime Farmlands | |

Highly controversial environmental effects? No Yes

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

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

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

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

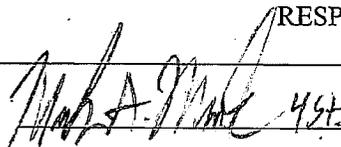
III. RESOURCE IMPACT EXCEPTIONS

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

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

V. RESPONSIBLE OFFICIAL CERTIFICATION

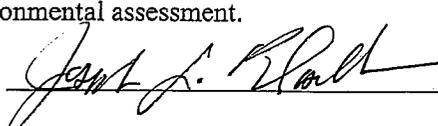
Signature:  45H Date: 2-23-11

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

VI. OSM DETERMINATION

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:  Date: 3/10/2011

Name and Title: Joseph L. Blackburn, Field Office Director

Memorandum

Date: March 10, 2011

To: Tommy Tackett Small Purchase Abandoned Mine Land (AML)
Reclamation Project File SubAccount# 99.093030000

From: Corey Miller, 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 Tommy Tackett Small Purchase AML Reclamation Project. The Branch prepared an ATP letter and Categorical Exclusion (CX), for the FOD review. The Branch recommends that the FOD sign the CX and ATP in the space provided on each document. The original signed ATP letter will be sent to the Division of Abandoned Mine Lands (DAML) Director, along with associated approval documents consisting of a copy of the LFO review memorandum and CX. A scanned copy of these authorization documents will be attached to an email to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated February 23, 2011, was received at LFO attached to an email on February 23, 2011. The ATP was processed within 11 working days; therefore, the customer service target of 14 working days to process an ATP was met. The ATP was processed in 15 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP was met.

DAML did not designate a funding source under the budget category entitled Project Costs (Non-Water Supply) of any of Kentucky's AML Annual Construction Grants (ACG). In previous discussions, DNR indicated they would assign projects to a grant before they go to construction. Until a final AG and Location Code are assigned the LFO Project/Site ID # 99.093030000 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 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 1, 2011, Contract Award was entered as May 1, 2011, and Contract/Construction Completion was entered as May 1, 2012.

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-003283-SGA.

A pre-approval field inspection of the proposed project was conducted on March 4, 2011. The proposal was recommended for approval with no concerns or recommendations. Refer to report findings and photos in the LFO State AML Project Database.

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 roads. All other areas were previously disturbed by mining, residential development road construction and a past AML project. 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 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 include the following comments and/or recommendations:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified one known federally threatened/endangered fish and wildlife in the USGS quadrangle in which the project area is located within a 10 mile radius of the project area. They also identified no records of state listed species of concern within 1 mile radius of the project area. They recommended that the erosion control measures, mentioned in the proposal, should be implemented and maintained periodically.

The DAML staff biologist reviewed the Kentucky State Nature Preserves Commission's (KSNPC) BIOTICS database in lieu of further consultation. The findings are noted in the ATP request letter and an attached memorandum. DAML found that KSNPC data indicated no federally listed threatened or endangered species within a 10-mile radius and one species of State concern within a 1-mile radius of the project. DAML listed the species in the biologist's memorandum, and their ATP request letter, finding that the noted species will not be impacted, since the project will not result in a significant negative impact to their critical habitat and/or suitable habitat does not exist within the project area to support the species. No reason was identified to dispute their determination.

The DAML Biologist also noted that the federally listed endangered Indiana bat, although not indicated to exist in the project vicinity; by his and the KDFWR reviews, would not be disturbed by the project. This is based on the fact that the project proposes to disturb no mine portals, cliffs, or caves, and proposes no disturbance of forested areas that could be utilized as roosting sites; and no trees that represent potential Indiana bat habitat need to be removed. The project is located in a residential yard and not forested.

In a meeting held in February 2010, between LFO, USFWS Kentucky Field Office (KFO) and DAML; Steve Hohmann, Director of DAML, offered to coordinate NEPA consultation with the KFO of the USFWS in Frankfort, Kentucky, 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 consulted 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. It was agreed to by all parties, acknowledging that LFO would retain the final review to determine if the NEPA documentation is complete.

After review of the ATP documents for this project, which included consultation with the KSNPC and the KDFWR, DAML determined that additional consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species (Federal Assistance Manual (FAM) Chapter 5-11-15, A. 3.)

The conditions in the MOA are met because:

- There will be no 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 14, and the proposed activity does not occur in "Known Indiana Bat Habitat".

- No caves or clifflines will be disturbed;
- The project proposes to reclaim one open mine portals/shafts with FWS accepted types of wildlife friendly gates that allow bat access.
- 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, and one systematic archaeological survey has been conducted in the northern vicinity of the project area, with no archaeological resources identified. They also stated that past disturbance to the project area make it unlikely that archaeological sites will be preserved.

On January 3, 2011, the Kentucky Heritage Council (KHC)/State Historic Preservation Officer (SHPO) and the DAML signed an agreement which identified the criteria to be used to determine which projects are exempt from review by the. The agreement defines exempt projects as: *"Routine and recurring projects whose impacts are foreseeable and cause little or no ground disturbance or that have a low probability of affecting known or unknown historic properties.."*

The definition also includes a list of areas that fit the above definition. They are listed below.

1. *Activities that occur on previously disturbed land, including highwalls, refuse piles, slurry cells, subsidence areas, mine benches, mine portals with no constructed entry support, and any coal mining remains less than 50 years of age, including tipples, other structures, intact rail tracks, and mining equipment.*
2. *Roads and roadside ditches.*
3. *Areas disturbed by timber operations.*
4. *Areas disturbed by gas and oil well development.*
5. *Areas disturbed by residential and commercial development.*

6. *Areas with water flows from mine discharges.*
7. *Trenches excavated for waterline installation in previously disturbed soils."*

According to the project description, all of the project area has been impacted by items 1, 2, and 5 in the above list; therefore, the project is exempt from further consultation with the KHC. This fulfills the responsibility to consult with the SHPO under the Section 106 review process. Neither agency recommended conducting archeological surveys/investigations or mitigation measures.

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. DNR assigned this responsibility to their Division of Mine Permits (DMP). The DMP further delegated this responsibility to DAML, with consultation as needed on a case by case basis. In addition, the DAML Director in a meeting held in February 2010, offered and agreed to coordinate consultation with the U.S. Army Corps of Engineers (COE) concerning CWA 404 (permits, as DAML had been doing without an agreement in the past. OSM LFO accepted DAML's offer to conduct this consultation.

Under a 2005 agreement with the Department 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.

As a result, DAML applies each responsible agency's criteria by agreement or physically consults with the DMP and DOW concerning CWA 401 WQC and floodplain permits to "Construct Across or Along a Stream", and with the COE concerning CWA 404 permits. This review has been centralized with DAML's Design Branch, whose staff has previous experience in this area and with the Kentucky DOW. DAML determined from the written description that the project does not impact a stream, wetland, or floodplain that requires a 401 WQC, a 404 CWA permit, or a DOW floodplain permit.

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 #'s KY-003283-SGA was directly input into the AMLIS by the DAML and the PA was initially established in the AMLIS on September 15, 2004, based on the AMLIS 2006 3rd Quarter database. This information reflects the changes in units and costs based upon the design and classification of the funded category. This was confirmed by LFO's review of the AMLIS data and a PAD

Tommy Tackett AML Small Purchase Project

March 10, 2011

summary printout from the OSM HDQ AMLIS database. PA # KY-003283-SGA submitted for this ATP does not represent a "new Problem Area" after December 20, 2006, requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007); therefore, no FOD approval form was prepared for FOD signature.