Authorization to Proceed (ATP)
Straight Fork Refuse Enhancement Rule
Abandoned Mine Land (AML) Reclamation Project
based on Categorical Exclusion (CX)
Pike County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the September, 2011, request for ATP with construction activity on the Straight Fork Refuse Enhancement Rule 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. OSM concurs with the AML Enhancement Rule determinations and agrees that the project qualifies for the exemption for coal extraction incident to government-financed construction activity provided in 30 CFR Part 707. OSM confirmed that the required information for this project has been included in the AML Inventory System.

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.

Please ensure compliance with the following provisions in the ATP request documents noted here for emphasis or the authorization of this project is further conditioned as follows:

- Please ensure that as noted in your ATP request letter and recommended by your biologist that any clearing of trees associated with this project will only occur between October 15 and March 31, or a habitat assessment or a presence/absence survey will be required by qualified DAML personnel.

- No cave or cliffline disturbance or mine portal/shaft closures are proposed or authorized under this project;

- Please ensure compliance with the dust control, working hour's delineations, and engine brake use in order to minimize impacts on the public.

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.

Acting For

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

9/23/11
Date

Memorandum

Date: September 23, 2011

To: Straight Fork Refuse Enhancement Rule Abandoned Mine Land (AML) Reclamation Project File ID# 99.133300000

From: Steve Cassel, Sr., AML Program Specialist 9-23-11
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 Straight Fork Refuse Enhancement Rule AML Reclamation Project. The Branch prepared an ATP notice for the FOD review. The Branch recommends that the FOD sign the Categorical Exclusion Determination (CX) 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 and CX. Additionally, the transmittal email will be copied to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated September 1, 2011, was received at LFO on September 1, 2011. The ATP was processed within 15 working days; therefore, the customer service target of 14 working days to process an ATP has been met. The ATP was processed in 22 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP has been met.

The project area may be centrally located on the Pikeville, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map at 37° 23' "33.6 North Latitude and 82° 35' 13.2" West Longitude. The project location, AML problems to be addressed and proposed reclamation activity/cost are also available at http://www.osmre.gov in the AMLIS under PA#s KY-002477-SGA and KY-002477-ENH. The project involves reclamation of AML conditions consisting of about 30 acres of coal refuse by removing the refuse and hauling it to a permitted off-site coal preparation plant, then revegetating the disturbed area and planting hardwood tree seedlings.

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 # 99.133300000 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 #. Since this is an AML Enhancement project, I entered the Proposed and Actual Bid Advertisement and

Actual Contract Award as October 16, 2011, because the AML Reclamation Agreement (contract) notes work will begin on this date or when the ATP is signed by OSM. I entered the Proposed Construction Completion date as October 16, 2012, also from the reclamation agreement.

An office review of the request documents was conducted. The documents consisted of; a project description, an AML Enhancement Rule determination, a signed Cooperative Reclamation Agreement between the Division of Natural Resources and the contractor, with a reclamation workplan, technical specifications, and construction plans, a location map, a National Environmental Policy Act (NEPA) review documented in a CX with agency consultation documentation; and an Abandoned Mine Land Inventory System (AMLIS) Problem Area Description (PAD) summary and appropriate Priority Documentation Forms, with engineer cost estimates and reference to a water supply study, for PA#s KY-002477-SGA and KY-002477-ENH.

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 2012 Oversight Agreement.

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. 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 correspondence and attachments discussed 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 no known federally threatened/endangered fish and wildlife within a 10 mile radius of the project area. They also identified records of one state listed species of concern, the American Black Bear, within 1 mile radius of the project area. KDFWR did not note any significant impacts on this wildlife and recommended the use and maintenance of erosion control measures as needed.

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 correspondence and an attached biological review memorandums. DAML found that KSNPC data indicated no federally listed threatened or endangered species within a 10-mile radius and one species of State concern, the Squarerose Goldenrod, is known to occur within a 1-mile radius of the project. DAML listed and discussed the two State concern species noted above in the biological review memorandum, nd their ATP request correspondence, 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 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.

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 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 trees directly impacted by the AML problem, the project only includes limited possible 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, otherwise most tree removal should be able to be accomplished during the accepted tree removal period (October 15 to March 31); the DAML ATP request letter and biological review memorandum further note that if any removal of trees not directly impacted by the AML problem is found to be necessary during the period April 1 to October 15, a habitat assessment or presence/absence survey will be required by qualified DAML staff;

- 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 are proposed 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 "exempt projects" provisions in the Programmatic Agreement that DAML signed on January 3, 2011, with the KHC. 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. LFO concurs with the AML Enhancement Rule determinations and agrees that the project qualifies for the exemption for coal extraction incident to government-financed construction activity provided in 30 CFR Part 707. The information to update PA #'s was directly input into the AMLIS by the DAML. This information reflects the changes in units and costs based upon the design and classification of the funded category. This was confirmed by LFO review of the AMLIS data and a PAD summary website screen printout from the OSM HDQ AMLIS database. PA#(s) KY-002477-SGA and KY-002477-ENH submitted for this ATP do 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 forms were prepared for FOD signature.

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.

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 2477 SGA & KY 2477 ENH
Project Name: Straight Fork Refuse AML Enhancement Rule Project
Project Description: Removal of an old refuse pile

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: 9/1/11

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

VI. OSM DETERMINATION

9-23-11

[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: [signature] Date: 9/23/11

Name and Title: Acting FOD

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR NATURAL RESOURCES
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, Kentucky 40601
www.ky.gov

Steven L. Beshear
Governor

Leonard K. Peters
Secretary

Carl E. Campbell
Commissioner

September 1, 2011

Mr. Joseph L. Blackburn, Director
U. S. Department of the Interior
Office of Surface Mining
Lexington Field Office
2675 Regency Road
Lexington, KY 40503

RE: Straight Fork Refuse AML Enhancement Rule Project (Pike County)

Dear Mr. Blackburn:

We are requesting "Authorization to Proceed" with site-specific construction activities on the referenced project, as described in the enclosed package. The following documents are enclosed:

- Project description with location map
- AML Enhancement Rule Determinations document
- Title IV Cooperative Reclamation Agreement
- Copies of newspaper postings soliciting public comment
- Categorical Exclusion (CX)
- Office of State Archaeology (OSA) agency consultation response document
- Kentucky Department of Fish and Wildlife Resources (KDFWR) agency consultation response document
- Kentucky State Nature Preserves Commission (KSNPC) BIOTICS database memo
- Water Quality Certification (WQC) and floodplain statement
- Problem area description (PAD) priority documentation forms, including a problem description and cost estimate, for the above-referenced project. The PADs for problem area KY 2477 SGA and KY 2477 ENH have been prepared and entered into the e-AMLIS by the division.

An eligibility determination that finds the proposed project eligible for AML funding has been reviewed and signed by the Office of Legal Services. Support documents for the eligibility determination and agency consultations will be made available to you upon request. An advertisement for the project was run in the Appalachian News-Express newspaper and did not receive any public comments during the three-week comment period, so a decision document is not required. The KHC was not contacted, as this project falls under the Programmatic Agreement with KHC, due to the previous disturbance by coal mining operations.

AML Program Development staff conducted a search of the Kentucky State Nature Preserves Commission (KSNPC) BIOTICS database. This search revealed that one species of state concern, monitored by the KSNPC, is known to occur within one mile of the project site; and that no species, listed as threatened or endangered under the United States Endangered Species Act (USESA), are known to exist within ten miles of the project site. The species noted in the search is the Squarrose Goldenrod – (*Solidago squarrosa*, KSNPC Historical – County-wide).

The entire state of Kentucky has also been declared potential Indiana Bat (*Myotis sodalis*, USESA Endangered) habitat by the United States Fish and Wildlife Service (USFWS). However, as described in the attached memo from Keith Coleman, dated July 20, 2011, neither of these species should be negatively impacted. Since no records of hibernacula are within 10 miles of the project area and no maternity area records are within 5 miles from the project area, and since no maternity colonies or non-maternity records are within 2.5 miles from the project area, no special conditions would apply to the accepted tree removal period (October 15 – March 31). If it is determined that any trees that represent potential bat habitat will have to be removed between April 1 and October 14, a habitat assessment or a presence absence survey will be required to be performed by a qualified biologist.

The KDFWR also indicated that the American Black Bear (*Ursus americanus)* is known to occur within one mile of the project site. However, the attached memo from Edwin Boone, dated August 24, 2011, indicates the proposed project should not negatively impact this species.

Personnel from the Division of Abandoned Mine Lands Design Branch have determined that no WQC/COE permits or floodplain permit are required for this project. The other consulted agencies had no objections or concerns regarding this project. An advertisement for the project was run in the Appalachian News-Express newspaper and did not receive any public comments during the three-week comment period, so a decision document is not required.

Overall, the project is a priority 2. The project is estimated to cost $225,000.00, with $15,000.00 attributed to the SGA Program and $210,000.00 attributed to the ENH Program, exclusive of "in-house" personnel costs associated with project administration. Completion of the project will not require the acquisition of any land and will not significantly affect the potential recovery of virgin coal seams at the site. The principal benefits to be derived from the successful completion of the project are the elimination of abandoned mine land problems as described in the attached project description. Construction will occur as soon as possible. Should you have any questions regarding this information, please contact us at 502/564-2141.

Sincerely,

Steve Hohmann

Steve Hohmann, Director
Division of Abandoned Mine Lands

SH:RH:vr
Enclosures

Straight Fork Refuse
AML Enhancement Rule
Reclamation Project
Pike County
Pikeville Quadrangle
Project Description

The proposed project (30 acres total) will remove and reclaim an existing coal refuse pile located within Straight Fork of Bear Fork of Robinson Creek in Pike County, near the community of Robinson Creek. The project is centrally located at latitude 37°23'33.622"N and longitude 82°35'13.231"W (see the attached map). The existing refuse pile is a potential fire hazard, an environmental threat, and possible source of stream pollution within Robinson Creek. Gullies are currently located within the refuse pile. Such features indicate that the easily erodible materials are being flushed into Robinson Creek during storm events.

All coal refuse from the project area will be excavated and trucked to a permitted coal processing facility. Waste materials will be placed at the refuse/waste disposal site at the off-site preparation plant. Access to the work area will be via 2 existing roads. A portion of the lower access road will be newly constructed, and will also serve as a barrier for the local stream channel by forcing any runoff through a sediment-retaining sump prior to entering the stream channel. A vegetated berm will be maintained along the outslope of the lower road for its entire length. Additionally, a silt fence will be placed along the edge of the road. Excessive dust on access road surfaces will be controlled by watering equipment. Watering will also occur near public roadway entrances, in order to prevent tracking of excessive debris onto the roadways. All refuse removal will occur between 6:00 a.m. and 6:00p.m., Monday through Saturday, unless an emergency warrants a change of scheduled work hours.

The applicant/approved contractor will transport the necessary equipment (i.e. bulldozer) to the top of the refuse pile via the upper access road and commence to push the refuse material to the lower elevation work area. The lower access road will be extended, as necessary, in order to receive the refuse material for loading and to prevent runoff from entering the local stream channel. As the refuse material is pushed down-slope from above, the work area will be graded to a stable configuration. If deemed necessary, sumps and/or sediment traps, or other sediment control devices such as silt fences and hay bales, may be used to control runoff. Upon completion of the refuse removal, prompt vegetation and the establishment of a drainage channel, including structures which reduce flow velocity, will be constructed to control surface drainage and establish natural flow patterns.

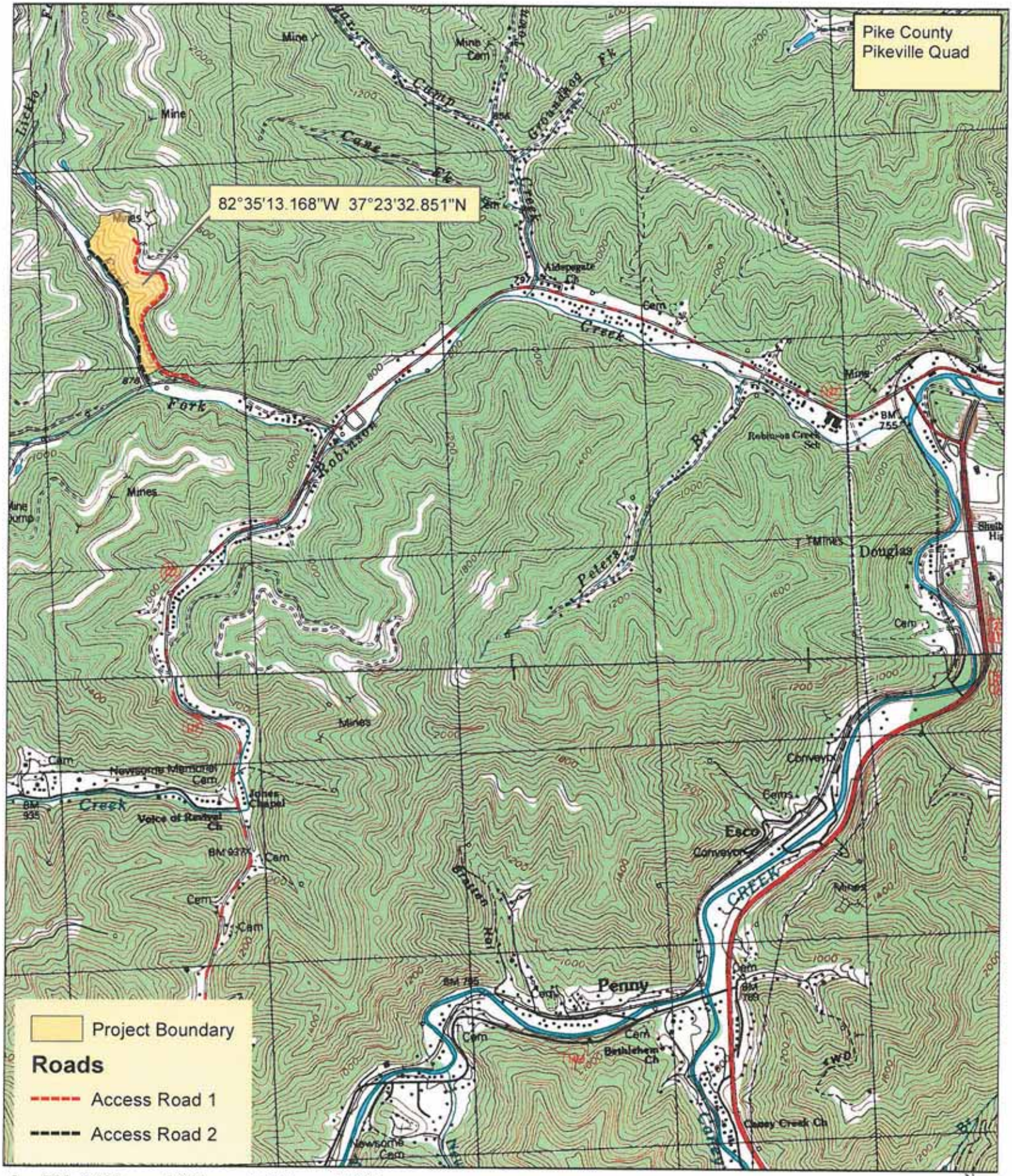
Although a previously disturbed area, trees currently exist within the proposed project boundary. In order to prevent any takings of the endangered (USESA) Indiana Bat, trees representing potential bat habitat will be removed between October 15 and

March 31, with written consent of the DAML Director. Any trees proposed for removal between April 1 and October 14 will require an approved habitat assessment or a presence/absence survey, to be performed by a qualified biologist, prior to tree removal.

Field inspections have revealed no seepage from the refuse pile. If conditions indicate a potential for water release during removal operations, water will be released in a controlled manner and allowed to bleed off slowly. Sediment structures will be constructed in accordance with DAML specifications, and will remain in place until all disturbed areas have established vegetative cover. The work progression will ensure that runoff passes through sediment structures before leaving the project area. No equipment will be operated within a local stream channel(s) without the Division of Water and / or U.S. Corps of Engineers approval.

The project site will be vegetated in accordance with a DAML vegetation plan as soon as possible after removal has commenced. Disturbed areas will be scarified, limed, top-soiled, seeded, and mulched. Top soil may be borrowed from on-site locations, within the project boundary, in order to establish vegetative cover. The entire work area will be graded to a stable configuration. Hardwood trees will be planted on the reclaimed site.

Straight Fork AML Enhancement Rule Project



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 2477 SGA & KY 2477 ENH
Project Name: Straight Fork Refuse AML Enhancement Rule Project
Project Description: Removal of an old refuse pile

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: 9/1/11

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: _____

Name and Title: _____

UNIVERSITY OF KENTUCKY

W. S. Webb Museum of Anthropology
Office of State Archaeology
College of Arts and Sciences
211 Lafferty Hall
Lexington, KY 40506-0024
(859) 257-8208
Fax (859) 323-1968
www.uky.edu

August 4, 2011

Mr. Steve Hohmann, Director
Energy and Environment Cabinet
Department for Natural Resources
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, KY 40601

RE: Straight Fork Refuse AML Enhancement Rule Project (Pike County)

Dear Mr. Hohmann:

Concerning the above referenced project, I have reviewed the Office of State Archaeology files to determine if any prehistoric or historic sites are located in proximity to the proposed AML project. The following information is provided to assist in your decision to proceed with an Environmental Assessment or a Categorical Exclusion Determination for the project.

Our records indicate that there are no archaeological sites or surveys recorded within the immediate vicinity of the project area. While our records indicate that the project area has not been previously surveyed for archaeological remains, past disturbances to the area make it unlikely that archaeological sites will be preserved.

Sincerely,

(Christina A. Pappas for)
George M. Crothers, Ph.D.
Director

An Equal Opportunity University

Howell, Ryan (EEC)

From: Hall, Samantha (EEC)
Sent: Tuesday, August 16, 2011 1:56 PM
To: Rickwa, Vanna (EEC); Hohmann, Steve (EEC)
Cc: Overman, Bill (EEC); Howell, Ryan (EEC); Mitchell, Jay (EEC)
Subject: RE: Request for floodplain and WQC review for Straight Fork Refuse Enhancement Rule Project

After reviewing additional information submitted by the project engineer, a stream construction (floodplain) permit will not be required.

From: Hall, Samantha (EEC)
Sent: Thursday, July 21, 2011 1:27 PM
To: Rickwa, Vanna (EEC)
Cc: Overman, Bill (EEC); Howell, Ryan (EEC); Mitchell, Jay (EEC)
Subject: RE: Request for floodplain and WQC review for Straight Fork Refuse Enhancement Rule Project

Floodplain/Stream Construction Permit
A floodplain permit may be required. The engineer for the project has been notified. More information and an analysis will need to be run to determine the floodplain.

US Army Corps of Engineers Permit (ACOE)
No permit is necessary.

Water Quality Certification
No permit is necessary.

From: Rickwa, Vanna (EEC)
Sent: Wednesday, July 20, 2011 2:38 PM
To: Hall, Samantha (EEC)
Cc: Overman, Bill (EEC); Howell, Ryan (EEC); Mitchell, Jay (EEC)
Subject: Request for floodplain and WQC review for Straight Fork Refuse Enhancement Rule Project

Attached please find the project description and map for Straight Fork Refuse Enhancement Rule Project.

Please do a floodplain and WQC review to determine if there would be any issues reference this project.

Please notify Bill Overman, Ryan Howell, Jay Mitchell, and myself of your response.

Thanks,

Vanna Rickwa
Administrative Specialist III
Energy and Environment Cabinet
Department for Natural Resources
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, Kentucky 40601

502/564-2141, Ext. 130

KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES
TOURISM, ARTS, AND HERITAGE CABINET

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Marcheta Sparrow
Secretary

Dr. Jonathan W. Gassett
Commissioner

26 July 2011

Steve Hohmann, Director
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, KY 40601

RE: Straight Fork Refuse AML Enhancement Rule Project (Pike County)

Dear Mr. Hohmann:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) has received your request for information pertaining to the subject project. The Kentucky Fish and Wildlife Information System indicates that no federally-threatened/endangered species are known to occur within 10 miles of the project site. The American Black Bear *(Ursus americanus)* is known to occur within one mile of the project site, and is a state-listed species of concern. Please be aware that our database system is a dynamic one that only represents our current knowledge of various species distributions.

Erosion control measures, as mentioned in the project description, will need to be installed prior to construction and should be inspected and repaired regularly as needed. I hope this information is helpful to you, and if you have questions or require additional information, please call me at (502) 564-7109 extension 4453.

Sincerely,

Dan Stoelb
Wildlife Biologist

Cc: Environmental Section File

Howell, Ryan (EEC)

From: Boone, Edwin (EEC)
Sent: Wednesday, August 24, 2011 10:29 AM
To: Howell, Ryan (EEC); Rickwa, Vanna (EEC)
Cc: Mitchell, Jay (EEC)
Subject: FW: Straight Fork Refuse AML ENH Project
Attachments: Straight Fork AML ERP Project Description (Reviewed Version).doc; StraightForkProjectMap.pdf; Comment Letter.pdf

The reclamation activities to be taken under this project, which consists of removal of waste coal material (gob) to an actively permitted coal processing facility, does not have any potential to cause a negative impact to the American black bear (*Ursus americanus*). The coal waste material is relatively loose and friable. It shifts relatively easily and is not an effective barrier against moisture. These qualities would appear to make the area to be affected by this project a poor choice for construction of a hibernation den. Removal of the coal waste is likely to, in the long term, improve foraging conditions for this species.

From: Howell, Ryan (EEC)
Sent: Wednesday, August 24, 2011 9:33 AM
To: Boone, Edwin (EEC)
Cc: Rickwa, Vanna (EEC)
Subject: Straight Fork Refuse AML ENH Project

Ed,

Please review the KDFWR letter, which indicates the American Black Bear is known to be in the area, and determine if this species will be negatively impacted, since it isn't dismissed in their letter.

Thanks,
Ryan

Memorandum

To: Straight Fork Refuse

AML Enhancement Rule Project

From: *Keith B. Coleman*

Environmental Technician, AML Program Development Branch

Keith B Coleman July 21, 2011

Through: *Bill Overman*

Manager, AML Program Development Branch

Bill Overman 7/21/11

RE: Results of Kentucky State Nature Preserves Commission (KSNPC) BIOTICS Database Search

Date: July 20, 2011

On July 20, 2011, I conducted a search of the KSNPC database in order to determine if any species of state concern (which are monitored by KSNPC) are known to occur within the near vicinity (1 mile radius) of the site to be disturbed by this project, and if any federally listed "threatened or endangered" species are known to occur within the general vicinity (10 mile radius) of the project site. This search revealed that one species of state concern, monitored by KSNPC, is known to occur within one mile, and that no species currently listed as threatened or endangered under the United States Endangered Species Act (USESA) is known to occur within ten miles of the project site.

This project (30 acres total) consists of the removal of a coal refuse pile located along Straight Fork of Bear Fork of Robinson Creek, in Pike County. Access routes are pre-existing, however the lower road (located along the toe of the slope) will be extended for load-out and erosion control purposes. The refuse-buried portion of the slope does contain sizeable trees which will be cleared as part of the reclamation operation. The described work sequence, combined with proper grading and the implementation and monitoring of the AML sediment and erosion control plan, should ensure that water quality standards are maintained during construction.

All access routes are previously existing routes, with the only exception being the extension of the lower access road along the toe of the refuse area. No perennial or intermittent streams will be disturbed. No mine portals will be disturbed. Lastly the

prompt establishment of vegetative cover and the planting of hardwood seedlings should ensure that slope conditions are more stable and that the localized water quality is improved post-construction.

The KSNPC species found within 1 mile from the project site is:

Squarrose Goldenrod
(*Solidago squarrosa*, Pre-1941 Historical, County-wide Record)

The **Squarrose Goldenrod** inhabits rich, dry or rocky open woods, thickets and clearings. The only clear, or open canopy, portions of the refuse pile are areas which are highly erodible. Soils within the refuse area are generally extremely dry, and are not organic-rich soils. The species has not been observed since prior to 1941, and although it is not considered extinct or extirpated within Kentucky, its presence is highly unlikely. The chances of AML reclamation activities negatively impacting this species is highly unlikely. Should the Squarrose Goldenrod be present within Pike County, the temporary open canopy conditions post-construction may provide increased habitat potential within the project area.

Indiana Bat

The US Fish and Wildlife Service (USFWS) has declared the whole of the state of Kentucky to be the potential habitat of the **Indiana Bat** (*Myotis sodalis* – USESA Endangered). This species day roosts and establishes maternity colonies in trees with exfoliating bark or splits/cavities in their trunks and larger limbs, and hibernates in caves and other similar underground cavities.

The search of the KSNPC BIOTICS database revealed one "summer mist-net" record of this species within 16.9 miles SE of the project site. Since no records of hibernacula are within 10 miles of the project area and no maternity area records are within 5 miles from the project area, and since no maternity colonies or non-maternity records are within 2.5 miles from the project area, no special conditions would apply to the accepted tree removal period, a time at which bats are secured within their hibernacula (October 15 – March 31).

Should the clearing of trees which are over 5" DBH (and also display characteristics such as shaggy, exfoliating bark, or crevices and hollowed-out cavities within their trunks and larger limbs) become necessary between April 1 and October 14, a habitat assessment or presence-absence survey may be required. Lastly, the project does not fall within "*known habitat*" of the Indiana Bat, as described by USFWS. Adherence to these best management practices should prevent any negative impacts upon the Indiana Bat.