

Authorization to Proceed (ATP)  
Bucklick Refuse  
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 March 16, 2011, request for ATP with construction activity on the Bucklick Refuse 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. The information to update AMLIS Problem Area (PA) #(s) KY-002243-SGA and KY-002243-ENH 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 update data when the AMLIS is once again operative.

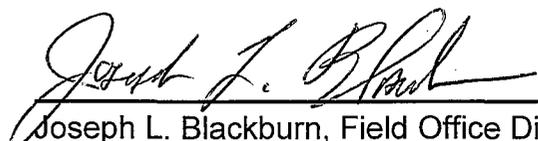
OSM reviewed the categorical exclusion certification prepared by DAML for this project. OSM determined that the construction activity requested under this project conforms to the exclusion criteria in 516 DM 2 and 13, does not involve any of the general exceptions in 516 DM 13.5(A)(33) or extraordinary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

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:

- The DAML ATP request letter and biological review memorandum note that if any tree removal is later found to be necessary between March 31 and October 15, a habitat assessment or mist-net survey will be required.
  
- AML Enhancement Rule Reclamation Agreement between DAML and Premier Elkhorn Coal Co. (Contractor) for Bucklick Refuse AML Project. At the end of the first paragraph on page 7 of The Project Description and Workplan it is stated that "Removal of the remaining coal refuse pile will not adversely affect the stability of the (Bucklick) cemetery..." and "...a 35 foot 'no mining' buffer will be maintained around the perimeter of the existing cemetery fence." This provision is further visually characterized on the Site Plan Map, which is part of the reclamation agreement. This provision must be adhered to and compliance is a stipulation of OSM's authorization of this project.

- In case the Bucklick Cemetery is later found to extend beneath the refuse pile or other human remains are later discovered during refuse removal activity, the contractor must comply with section III of the Programmatic Agreement that DAML signed on January 3, 2011, with the Kentucky Heritage Council (KHC). This provision must be adhered to and compliance is a stipulation of OSM's authorization of this project.
- AML Enhancement Rule Reclamation Agreement between DAML and Premier Elkhorn Coal Co. (Contractor) for Bucklick Refuse AML Project. The fourth paragraph of the workplan on page 10 notes that dust production will be controlled by utilization of watering trucks as deemed necessary by DAML. This dust control consideration must be extended to the Bucklick Cemetery and compliance is a stipulation of OSM's authorization of 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.

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

3/30/2011  
Date

## Cassel, Steven R. "Steve"

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**From:** Cassel, Steven R. "Steve"  
**Sent:** Wednesday, March 30, 2011 11:53 AM  
**To:** 'Steve Hohmann (steve.hohmann@ky.gov)'  
**Cc:** 'carl.campbell@ky.gov'; 'mark.meade@ky.gov'; 'Bill.Overman@ky.gov'; 'Howell, Ryan (EEC)'; 'Train, Shannon (EEC)'; Blackburn, Joseph L. "Joe"; Smith, Gail; Turner, Samuel R. "Sam"; Francis, Gary D.; Edwards, Chester L. "Chet"; Miller, Corey T.; Estes, Loren A.  
**Subject:** ATP Transmittal: Bucklick Refuse ATP, Pike County  
**Attachments:** AR-M550N\_20110330\_110932.pdf

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of your March 16, 2011, request for ATP with construction activity on the Bucklick Refuse AML Reclamation 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) of any of Kentucky's Annual AML Construction Grant. OSM requests to be notified of the final funding source and State account number for our records. A pre-approval field inspection of the proposed project was conducted on March 21, 2011, a copy was forwarded to your office previously.

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 the Categorical Exclusion Determination (CX) prepared by DAML. Please give special attention to the following recommendation(s)/conditions included for emphasis or further conditioning of the authorization of the project:

- The DAML ATP request letter and biological review memorandum note that if any tree removal is later found to be necessary between March 31 and October 15, a habitat assessment or mist-net survey will be required.
- AML Enhancement Rule Reclamation Agreement between DAML and Premier Elkhorn Coal Co. (Contractor) for Bucklick Refuse AML Project. At the end of the first paragraph on page 7 of The Project Description and Workplan it is stated that "Removal of the remaining coal refuse pile will not adversely affect the stability of the (Bucklick) cemetery... and ..." a 35 foot 'no mining' buffer will be maintained around the perimeter of the existing cemetery fence." This provision is further visually characterized on the Site Plan Map, which is part of the reclamation agreement. This provision must be adhered to and compliance is a stipulation of OSM's authorization of this project.
- In case the Bucklick Cemetery is later found to extend beneath the refuse pile or other human remains are later discovered during refuse removal activity, the contractor must comply with section III of the Programmatic Agreement that DAML signed on January 3, 2011, with the Kentucky Heritage Council (KHC). This provision must be adhered to and compliance is a stipulation of OSM's authorization of this project.
- AML Enhancement Rule Reclamation Agreement between DAML and Premier Elkhorn Coal Co. (Contractor) for Bucklick Refuse AML Project. The fourth paragraph of the workplan on page 10 notes that dust production will be controlled by utilization of watering trucks as deemed necessary by DAML. This dust control consideration must be extended to the Bucklick Cemetery and compliance is a stipulation of OSM's authorization of 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.
- OSM requests copies of any applications for permits/certifications and approval documents required for the construction of this project that were not submitted with the original ATP. This information is needed by OSM to perform oversight and monitor compliance with the NEPA.

The OSM Lexington Field Office Director has signed an ATP notice and the Categorical Exclusion Determination. A copy of each of these documents and the LFO review memorandum are scanned into the 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 the AMLIS with the information regarding Problem Area (PA) #'s KY-002243-SGA and KY-002243-ENH at a later date when the system is once again operational.

Any questions concerning this ATP or the procedures can be addressed to Steve Cassel at 859-260-3912 or Gail Smith at (859) 260-3908. Thank you.

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 2243 SGA & KY 2243 ENH  
Project Name: Bucklick Refuse AML Enhancement Rule Project  
Project Description: The removal of a coal refuse pile in Pike County

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
- 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: \_\_\_\_\_ Date: \_\_\_\_\_

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

VI. OSM DETERMINATION

<sup>3-30-11</sup> 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: 3/30/11

Name and Title: FIELD OFFICE DIRECTOR

Memorandum

Date: March 30, 2011 *3-30-11*

To: Bucklick Refuse Abandoned Mine Land (AML) Reclamation Project File  
LFO Project #98.09930000

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 Bucklick Refuse 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 March 16, 2011, was received at LFO on March 15, 2011. The ATP was processed within 11 working days; therefore, the customer service target of 14 working days to process an ATP has been met. The ATP was processed in 15 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP has been met. DAML Director Steve Hohmann had requested on about March 17, 2011, that LFO expedite authorization of this project to allow the contractor to be able to remove trees on the project before the end of the March 31, 2011, the generally accepted tree removal period to prevent impact on the Indiana bat. I began review, however, I identified the concerns discussed later in this memorandum with the Bucklick cemetery, tree removal discussion inconsistencies, and Blackside dace recommendation by the Kentucky Division of Fish and Wildlife, which needed further evaluation. The tree removal issue, however, became somewhat a moot issue, as during the pre-authorization inspection OSM Reclamation Specialist photo documented and verbally confirmed to me later that all the trees greater than 5 inches in diameter had been removed from the refuse pile prior to his inspection on March 21, 2011. Therefore, the urgency to expedite authorization of the project was eliminated and I conducted the review as soon as possible given the further NEPA evaluation and consultation I had to complete.

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 #

98.099300000 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 a recent phone conversation comment with the DAML Director that these activities will occur as soon as possible after authorization. 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 April 1, 2011, and Contract/Construction Completion was entered as April 1, 2012 (as noted in the AML Reclamation Agreement (contract)).

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 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 and for PA#s KY-002243-SGA and KY-002243-ENH.

A pre-approval field inspection of the proposed project was assigned by email on March 17, 2011, with a tentative completion date of March 31, 2011. This assignment was prior to the DAML Directors request for an expedited review. Inspector Gary Francis anticipated that the urgency to authorize the project and conducted the inspection on March 21, 2011, for field verification under the EY 2011 Oversight Agreement. The proposal was recommended for approval with no concerns or recommendations. Refer to report findings and photos in the LFO State AML Project Database. After I reviewed the inspection photos which seemed to document that the large pine trees on the refuse had been removed, upon my inquiry during a phone conversation, Inspector Francis verbally confirmed that all trees larger than 5 inches DBH had been cut prior to his inspection.

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 areas were previously disturbed by mining and road construction. 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 include the following comments and/or recommendations.

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified one known federally threatened/endangered (T&E) fish and wildlife, the Blackside Dace, to occur in Rocky Branch, which is assumed to be the hollow just to the north west of Bucklick Fork as shown on the location maps. KDFWR noted that no state-listed species are known to occur within one mile of the project site. They noted that since no stream reaches are going to be impacted by the project, they do not anticipate impacts to the Blackside Dace or its associated critical habitat. However, they recommended contacting the U.S. Fish and Wildlife Service on how to proceed since the Blackside Dace is known to occur within one mile of the project. The DAML ATP request letter noted the above, but did not address the recommendation for further consultation. In addition, the DAML biological review memorandum did not address this issue, and noted that there were no federal T&E species identified within ten miles of the project site. Further evaluation was needed to resolve this issue.

The project activities meet the aquatic condition noted in the Memorandum of Agreement (MOA) between the OSM Lexington Field Office (LFO) and the Kentucky Field Office (KFO) of the U.S. Fish and Wildlife Service (USFWS) in Frankfort, Kentucky, signed on September 18, 2009, to ensure protection of federally listed species. The project involves "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. However, KDFWR recommended consultation with the USFWS. I called the USFWS KFO office on March 29, 2011, and spoke to Mike Floyd, who was indicated to be one of their authorities on Blackside Dace. He indicated their primary interest concerning Blackside Dace is in the upper Cumberland River basin. When he found that the project was in Pike County, he did not indicate any special concern, and was unaware of an Bucklick

occurrence of Blackside Dace in Rocky Branch. It was indicated that this may not be a natural occurrence of the species. Either way, he did not indicate that the USFWS recommended any special construction recommendations or mitigation measures beyond what is already in the project ATP request package. Therefore, no further consideration of this issue was pursued.

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 three species of State concern known to occur within a 1-mile radius of the project. DAML listed and discussed each species in the biological review 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 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 trees directly impacted by the AML problem, 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;

[Note: Both the ATP request letter and DAML biology review memorandum indicate the project involves no tree clearing. However, the early DAML inspection report and photos provided by DAML indicate a number of trees on the refuse pile that would need to be cleared and the DAML Director requested expedited ATP review and authorization due to the need to remove trees before the end of the accepted tree cutting period of March 31. The inspection by OSM on March 21, 2011, documented that the trees had been removed prior to that date. The early DAML inspection report characterized the trees that were larger than 5 inches DBH as pine trees and this is born out in the photos. In past discussions with USFWS personnel, pine trees are not considered Indiana bat habitat. Therefore, especially in light of the fact that someone has already removed the trees, further discussion of this issue is moot.]

- 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.

The DAML ATP request letter and biological review memorandum also note that if any tree removal is later found to be necessary between October 15 and March 31, a habitat assessment or mist-net survey will be required.

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.

At a meeting on March 25, 2011, DAML by hand delivery provided OSM a letter dated March 17, 2011, from the Office of State Archaeology (OSA). OSA 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. They recommended no further coordination with the State Historic Preservation Officer (SHPO) before beginning construction activities.

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 National 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. This statement is contained in the ATP request letter and the project description.

Categorical Exclusion Certification and Determination, III. Resource Impact Exceptions, Other (includes socio-economics). This section will discuss the possible impacts to the Bucklick Cemetery and how the DAML project ATP proposal addresses the possible impacts. At OSM's request, DAML provided additional information concerning the Bucklick Cemetery by hand during a routine meeting at their office on March 25, 2011. The additional information consisted of a DAML Project Investigation Report (ISR) dated

January 26, 2011, and a consultation response from the Office of State Archaeology (OSA) dated March 17, 2011. These documents are attached to this memorandum and made part of the DAML Bucklick Refuse ATP request package.

The ISR noted the cemetery is located on the outslope below a coal mining operation access road. This would put it near the same level as or above the elevation of the base of the refuse pile proposed to be removed. It also notes the site could be re-mined to match the surrounding reclaimed topography, would have no impact on the cemetery, and access to the cemetery would be improved. The IRS notes that the cemetery is not being maintained, which is also evidenced in the aerial and site level photos attached to the report. The cemetery is difficult to identify in the photos due to the lack of maintenance. Also a photo of one of the gravestones shows no apparent evidence of maintenance or visitation by family or the public, such as weed removal, vegetation cutting, or artificial flowers or other periodic decorative adornments. The headstones are in poor eroded condition, with no apparent evidence of historic characteristics.

The Office of State Archaeology responded that they have no concerns about potential disturbance to archaeological resources and they did not recommend further coordination with the State Historic Preservation Officer (SHPO) before beginning construction activities. 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."

The IRS notes that the refuse is twenty feet or more (a visual estimate) from the "cemetery fence". This indicates that the extent of the cemetery is somewhat delineated, and it would not be expected to extend beneath the refuse pile (as opposed to no boundary delineation and the possibility that the past refuse placement operation buried a portion of the cemetery).

In case the cemetery is later found to extend beneath the refuse pile there is a provision under section III of the Programmatic Agreement between DAML and KHC for late discovery of cultural materials or evidence of human remains. Note that in this case the provision of the DAML/KHC agreement would be followed and this will be emphasized in the ATP.

DAML placed an advertisement in the newspaper of local circulation, the Appalachian News-Express, notifying the public of the project and soliciting comments. DAML received no comments from this advertisement.

The AML Enhancement Rule Reclamation Agreement between DAML and Premier Elkhorn Coal Co. (Contractor) and its attached "The Project Description and Workplan" are part of the DAML ATP project proposal. In the first paragraph of page 7 of the agreement, the project description states that "Removal of the remaining coal refuse

pile will not adversely affect the stability of the (Bucklick) cemetery, as removal operations will cease once natural ground is reached beneath the existing coal refuse pile. Additionally, a 35 foot 'no mining' buffer will be maintained around the perimeter of the existing cemetery fence." These provisions will be emphasized in the ATP.

The fourth paragraph of the workplan on page 10 notes that dust production will be controlled by utilization of watering trucks as deemed necessary by DAML. A stipulation in the ATP will require that dust control be extended to the Bucklick Cemetery.

With the determinations and provisions noted, and all the provisions in the DAML ATP project proposal, it is determined that the impacts to the Bucklick Cemetery are adequately considered and mitigated and there are no "unresolved issues or adverse effects requiring specialized mitigation ..." for "Historic and Cultural" or "Other (socio-economics)" resources requiring consideration beyond a CX evaluation.

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 KY-002243-SGA and KY-002243-ENH 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. This information reflects the changes in units and costs based upon the design and classification of the funded category. The PAD's 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.

Attachments:

Letter dated March 17, 2011 from Kentucky Office of State Archaeology

DAML Project Investigation Report dated January 26, 2011