

## **Authorization to Proceed (ATP)**

**McHenry High Priority Dam Refuse  
Abandoned Mine Land (AML) Reclamation Project  
based on Environmental Assessment (EA)  
Ohio County, Kentucky**

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the December 21, 2012, request for ATP with construction activity on the McHenry High Priority Dam Refuse AML Reclamation 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) #s KY-004228-SGA. OSM reviewed the EA prepared by DAML documenting the National Environmental Policy Act (NEPA) environmental review of this project. OSM determined that the EA adequately discusses the environmental issues and impacts associated with the construction of the project. Based on the analysis in the EA, I have determined that reclamation of this abandoned mine site would not have significant effects on the quality of the human environment. Therefore, I conclude that no environmental impact statement is necessary. As a result, I have signed the Finding of No Significant Impact (FONSI) for the McHenry High Priority Dam Refuse AML Reclamation. Please give special attention to the following recommendation (s).

- The KDFWR recommended that any tree cutting occur from November 15 – March 31 to reduce any potential impacts to tree roosting bat species.
- The EA and the DAML Biologist's memo states that should tree clearing be required outside of accepted tree clearing time period mentioned above, a habitat assessment or presence/absence survey will be required.
- Please follow all appropriate provisions included in the DAML Erosion and Sediment Control Best Management Practices (BMP) Plan guidance document throughout the construction activity at this site.

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.

Robert J. Evans for

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

1/3/13

Date

## FINDING OF NO SIGNIFICANT IMPACT (FONSI)

### McHenry Dam Refuse Fire High Priority Abandoned Mine Lands (AML) Project Ohio County, Kentucky

The Commonwealth of Kentucky has submitted an Authorization to Proceed (ATP) with construction activity for the McHenry Dam Refuse Fire High Priority. The proposal requests the Office of Surface Mining Reclamation and Enforcement (OSM) for authorization to utilize Federal AML grant funds to for this project. The ATP request consists of a request letter, Environmental Assessment (EA) with consultation correspondence, project description, location map, AML Inventory System (AMLIS) Problem Area (PA) Description forms (compiled from the e-AMLIS database), and other supporting enclosures. The project area may be centrally located on the Paradise, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) at 37° 21' 32.4" North Latitude and 86° 56' 18.7" West Longitude near the community of McHenry, Kentucky. The project location, AML problems to be addressed, and proposed reclamation activity/cost are also available at <http://amlis.osmre.gov/Default.aspx> in the AMLIS under PA# KY-004228-SGA. The project involves reclamation of AML conditions consisting of surface burning at one site.

OSM has thoroughly reviewed the EA prepared for this project by the Kentucky Division of Abandoned Mine Lands (DAML) and determined that it adequately discusses the environmental issues and impacts as required by the National Environmental Policy Act (NEPA) for OSM abandoned mine lands reclamation grant construction activities for authorization purposes.

Based on the analysis in the EA, I find that the construction activity performed under this project will not have significant impacts on the quality of the human environment. Therefore, I conclude that a detailed Environmental Impact Statement is unnecessary. My specific reasons are as follows:

The alternative to not fund the project would result in no favorable impacts and the adverse impacts would continue unabated. The long-term beneficial impact of the proposed action will result in the protection of the health, safety, general welfare, and property of the local citizens and other persons who may come in contact with these AML conditions. No long-term adverse impacts are anticipated. Short-term environmental impacts are limited to sedimentation, noise, and inconvenience to the local residents while the project is constructed. Sedimentation will be controlled by using silt control and prompt revegetation of the disturbed area. Noise, dust, and other inconveniences to local residents are unavoidable impacts related to construction activities.

All appropriate government agencies were consulted or their review criteria applied by agreement. As a result, it was determined that the project area does not contain or significantly affect threatened or endangered species or their habitat, jurisdictional wetlands, cultural or historic values, prime and unique farmland values, recreational resources, or Class I air quality regions. To reduce impacts from the project, the recommendations made by the agencies consulted were considered and, as appropriate, incorporated into the EA prepared by DAML and/or as an element of their request for ATP with construction submitted for OSM authorization. The responses from agencies consulted for the National Environmental Policy Act (NEPA) review include the following comments and/or recommendations.

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified seven known federally threatened/endangered fish and wildlife species within a 10 mile radius of the project area. They also identified two records of state listed species of concern within 1 mile radius of the project area. They recommended that any tree cutting occur from November 15 – March 31 to reduce any potential impacts to tree roosting bat species. They also stated that based on the location and nature of the project, the KDFWR does not anticipate impacts to listed species provided that the season tree cutting restrictions are followed. They recommended that the erosion control measures, as 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 three federally listed threatened or endangered species within a 10-mile radius and three species of State concern a 1-mile radius of the project. DAML listed and discussed each species in the biologist's memorandum, the EA, 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. The season tree cutting limitations also decrease the likelihood of impacts to these 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 other than that area impacted by the AML problem that is creating a threat to the public; and in the event that any trees that represent potential Indiana bat habitat need to be removed, removal will only occur between November 15 and March 31 to avoid potential impacts to the Indiana bat. The EA and the DAML Biologist's memo states that should tree clearing be required outside

of accepted tree clearing time period mentioned above, a habitat assessment or presence/absence survey will be required.

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 no mine portals/shafts;
- 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.

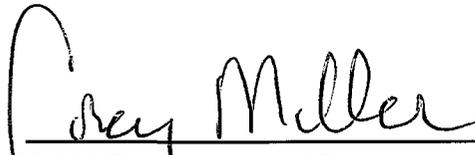
With the specifics of the proposal meeting the criteria set out in the MOA, OSM agrees with DAML's determination that the proposed project would not adversely impact the species if these conditions are present. With this information, they found the requirements of Section 7 of the Endangered Species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

There was insufficient time for normal consultation response from the Office of State Archaeology (OSA) and archaeological consultation was accomplished as described below. 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. In addition the archaeological consultation with the OSA and SHPO identified no impacts or concerns by these agencies. The current proposal has been disturbed by coal mining, houseseat development and road construction and qualifies for the exempt status identified in the agreement.

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 (CWA) 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 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.

  
\_\_\_\_\_  
OSM Environmental Reviewer  
AML Program Specialist

1/2/13  
Date

  
\_\_\_\_\_  
Joseph L. Blackburn  
Field Office Director

1/3/13  
Date