

Authorization to Proceed (ATP)  
Bryan-Piper Highwalls (Piper Site) Maintenance  
Abandoned Mine Land (AML) Reclamation Project  
Based on Categorical Exclusion (CX)  
LFO Project# 30.141410000  
Muhlenberg County, Kentucky

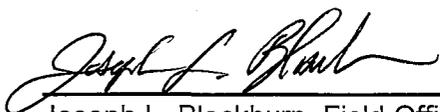
The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the October 18, 2011, request for ATP with construction activity on the Bryan-Piper Highwalls (Piper Site) Maintenance AML Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML). The request plans funding for the construction work under the Maintenance Subaccount of the Project Costs (Non-Water Supply) of Kentucky's FY 2011 30th Annual AML Construction Grant. The request states that this maintenance project addresses conditions on the Bryan-Piper Highwalls AML Reclamation Project (State Subaccount# 25.216031500) authorized previously on November 29, 2006, of which a State final inspection was conducted on December 4, 2008.

OSM found that the appropriate request documents were submitted and/or referenced in the ATP documents of the previously approved project; and appear to support the need for the proposed maintenance construction activity. A pre-approval field inspection of the proposed project was deemed unnecessary since no unique characteristics warranting special field verification were noted and it was not selected for field verification under the EY 2012 Performance Agreement. OSM confirmed that the required information for this project has previously been included in the AML Inventory System, and no current update is needed at this time.

OSM reviewed the Categorical Exclusion Determination (CX) prepared by the Division of Abandoned Mine Lands for the previous AML reclamation project, which OSM signed on November 28, 2006. OSM determined that the currently proposed maintenance activity requested is adequately considered in the previously approved 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 maintenance project request proposes no tree removal. As noted in the previous project, if tree removal is needed it will only take place between October 15 and March 31.
- The DAML project request does not propose and this authorization does not approve any purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the Middle Green River Watershed. If this activity is necessary DAML must notify OSM for further consultation with the USFWS.

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 maintenance 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

10-20-11  
Date

Memorandum

Date: October 20, 2011

To: Bryan-Piper Highwalls (Piper Site) Maintenance Abandoned Mine Land (AML) Reclamation Project File ID# 28.219030107

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 Bryan-Piper Highwalls (Piper Site) Maintenance AML Reclamation Project with a construction budget of \$8,100.00. The Branch prepared an ATP letter for the FOD review. The Branch recommends that the FOD sign the ATP in the space provided. The original signed ATP letter will be sent to the Division of Abandoned Mine Lands (DAML) Director, along with associated approval documents consisting of a copy of the LFO review memorandum. In addition, a scanned copy of these authorization documents will be attached to a transmittal email to the DAML Director, along with a "cc" to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated October 18, 2011, was received at LFO on October 18, 2011. The ATP was processed within 2 working days; therefore, the customer service target of 14 working days to process an ATP has been met. The ATP was processed in 2 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP has been met.

DAML designated funding under the Maintenance Subaccount of the budget category Project Costs (Non-Water Supply) of Kentucky's FY 2011 30th AML Annual Construction Grant (ACG). The project is located in Muhlenberg County. The maintenance project addresses conditions on the Byran-Piper Highwalls AML Reclamation Project (State Subaccount# 25.216031500) authorized previously on November 29, 2006, of which a State final inspection was conducted on December 4, 2008.

An office review of the current maintenance ATP proposal and previously submitted and accepted ATP request documents was conducted. The documents consisted of a project description and a location map, reference to a National Environmental Policy Act (NEPA) review documented in a Categorical Exclusion Determination (CX) for the previous project, with agency consultation response letters attached, and reference to a previously processed Abandoned Mine Land Inventory System (AMLIS) Problem Area Description (PAD) summary and appropriate Priority Documentation Forms for PA# KY-001126-SGA. Additionally, I have included a copy of the authorization letter, CX, and LFO review and recommendation memorandum dated November 28, 2006, that

includes the environmental review analysis as part of the NEPA documentation. A pre-approval field inspection of the proposed project was deemed unnecessary, since the original project was previously authorized and it wasn't selected for field verification under the EY 2012 Oversight Agreement.

The CX submitted for the construction activity at the site for the previously authorized project was reviewed and found to adequately evaluate the environmental concerns and impacts of the currently proposed maintenance 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 or 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. 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 OSM accept the CX previously submitted by the Kentucky DAML signed by OSM on November 28, 2006, as adequate NEPA consideration for the proposed maintenance activity. The responses from agencies consulted for the NEPA review are summarized in the file of the previously authorized project. The responses from agencies consulted for the NEPA review are summarized in the LFO review and recommendation memorandum dated November 28, 2006. The responses from agencies consulted for the NEPA review include the following comments and/or recommendations that would apply to the current maintenance construction activity.

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified no known federally threatened/endangered fish and wildlife in the USGS quadrangle in which the project area is located.

The DAML staff biologist 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 previous project's ATP request letter and an attached memorandum. DAML found that KSNPC data indicated two federally listed threatened or endangered species within a 10-mile radius and one species of State concern known to occur within a 1-mile radius of the project. DAML listed and

discussed each species in the previous project's biologist's memorandum and their ATP request letter, finding that the noted species will not be impacted, since the project will not result in a significant negative impact to their critical habitat and/or suitable habitat does not exist within the project area to support the species. Since the current proposed work is the same or similar to the previous project, this conclusion is valid for the current maintenance ATP. No reason was identified to dispute their determination.

The OSM LFO coordinated NEPA consultation with the Kentucky Field Office (KFO) of the U.S. Fish and Wildlife Service (USFWS) in Frankfort, Kentucky. This is initiated by review of the ATP documents, which includes informal consultation with the KSNPC and the KDFWR. This was followed by evaluation of the requested construction activity under the provisions of the consultation Memorandum of Agreement (MOA) between the OSM Lexington Field Office and the KFO signed on September 18, 2009. As a result LFO determined that further 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:

- The project does not include the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inch or greater diameter at breast height and at least 10 feet in height, during the period of April 1 to October 15,
- The project activity does not occur in "Known Indiana Bat Habitat" identified on the map attached to the MOA and the GIS files provided by USFWS KFO on November 2, 2009, used to generate the map (a copy of a section of the MOA GIS layer map on which the project coordinates are located is attached to this memorandum as proof of this determination);
- No caves or clifflines will be disturbed;
- No mine portal/shaft closures are proposed;
- The project activity is within the Middle Green River Watershed, however there is "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 this information, it is concluded that 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 and State Historic Preservation Officer (SHPO) determined that the proposed project will not impact any National Register Properties or sites, no properties currently listed in the National Register of Historic Places are within the project areas, and an archaeological survey will not be necessary, since all reclamation activities are restricted to previously disturbed areas, which fulfills the responsibility to consult with the SHPO under the Section 106 review process.

Under the previous project the Kentucky Division of Water's (DOW) Water Quality Certification (WQC) Section determined from the written description that the project does not impact a stream or wetland that requires a specific 401 WQC, unless a specific 404 Clean Water Act (CWA) permit is required by the U.S. Army Corps of Engineers (COE). In an email dated October 11, 2006, DAML documented their consultation with the COE Louisville Office. The COE determined that a 404 CWA permit is not needed since no waterways of the United States were to be disturbed.

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 FEMA floodplain maps that include the project area. In the previous project DAML Design Branch personnel researched these maps and determined that the project is not within the base floodplain and no floodplain permits are required.

The comments from the Kentucky State Clearinghouse, Kentucky's "Single Point of Contact" (SPOC) pertaining to AML Non-Water Supply projects included no comments that affect this proposal. The information to update PA # KY-001126-SGA was directly input into the AMLIS under the previous AML reclamation project and accepted by OSM. No new AML problems are to be addressed under this maintenance project. There was no reason to update the AMLIS since no new AML features are to be addressed under the amended construction activity.

Bryan-Piper Highwalls (Piper Site) Maintenance Project

October 20, 2011

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:

Copy of section of the MOA GIS layer map with project coordinates located  
Copy of the NEPA documents from the previous project



**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR NATURAL RESOURCES**

**Steven L. Beshear**  
Governor

Division of Abandoned Mine Lands

2521 Lawrenceburg Road  
Frankfort, Kentucky 40601

[www.kentucky.gov](http://www.kentucky.gov)

October 18, 2011

**Leonard K. Peters**  
Secretary

Joseph Blackburn, Director  
Lexington Field Office  
U.S. Office of Surface Mining  
2675 Regency Road  
Lexington, Kentucky 40503

Re: Bryan-Piper Highwalls  
AML Reclamation Project  
Muhlenberg County, Kentucky  
Sub-account # 25.216031500

Dear Mr. Blackburn:

Please find enclosed a request for "Authorization to Proceed" with maintenance on the following previously approved reclamation project:

Bryan-Piper Highwalls, AML Reclamation Project

This site is on the approved Inventory (AMLIS). There is no need for additional environmental studies due to the fact that the construction activity proposed for this site has had previous NEPA review. The LFO Field Office Director signed the previous Finding of No Significant Impact prepared by DAML, in December, 2009.

Completion of the project will not require the acquisition of any land and will not significantly affect potential recovery of residual coal reserves at the site. The principal benefit to be derived from the successful completion of the project is the continued success of the previously completed project.

Should you have any questions or require further information regarding this site, please feel free to contact me at (502) 564-2141.

Sincerely,

A handwritten signature in blue ink that reads "Steve Hohmann".

Steve Hohmann  
Director

**SH/ST**  
Attachments

**Bryan-Piper Highwalls AML Project Maintenance II  
Muhlenberg County, Kentucky**

**PROBLEM AREA NAME: Beech Creek**

**PROBLEM AREA NUMBER: KY 1126**

**PREVIOUS PROJECT NAME: Bryan Piper Highwalls**

**PREVIOUS PROJECT SUBACCOUNT #: 25.216031500**

**PREVIOUS PROJECT LOCATION: Muhlenberg County**

**PREVIOUS PROJECT DESCRIPTION:** The project at the Bryan Site consisted of the elimination of approximately 4,500 feet of highwall that is 20 feet tall with approximately a 45 degree slope and correcting inadequately vegetated spoil piles surrounding the highwall areas.

**PREVIOUS RECLAMATION PERFORMED:** This project consisted of backfilling dangerous highwalls on both Bryan and Piper sites. 4500 Feet were backfilled on the Bryan sites with 3:5-1 slope and 1500 Feet with 3:1 slope on the Piper site. These slopes terminated into FB. ECB ditches with positive drainage into rock lined ditches leading into local creeks. All disturbed areas were graded to uniformed transitions, limed, re-vegetated and mulched. The following maintenance was done in 2008. On the Bryan site both rock-lined ditches had washouts in the ditch lines. The N/W ditch crossing the Arlie Griffin property at the Bryan site was widen so it could handle the amount of drainage, which was washing out onto the Arlie Griffin Property. This ditch flowed into a 2ft. culvert which was washing out because it needed a larger culvert to handle the amount of drainage. Therefore, the 2 ft. culvert was changed to a 24' culvert. The N/E ditch and the ditch at the cross section F both were cleaned out of sediment.

**PROBLEM:** The culvert that was installed in the 2008 maintenance project has been diverting water of the tributary of Beech Creek onto Mrs. Patricia Jernigan's property. This is causing flooding to her property.

**PROPOSED MAINTENANCE LOCATION: Bryan Site**

**PROPOSED MAINTENANCE:** The flooding will be corrected by the removal of the existing culvert, grout, debris and excavating for the addition of two 24' culverts with a head wall.

**TENTATIVE BID ADVERTISEMENT DATE: October 2011**

**TENTATIVE CONTRACT AWARD DATE: November 2011**

**TENTATIVE CONSTRUCTION COMPLETION DATE: November 2011**

**ESTIMATED COST: \$8,100.00**



JOE DAVIS LOOP

BEECH CREEK BROWDER RD

MIHI ENBERG COUNTY

87°3'11.48"W, 37°10'36.418"N

N WEBB RD

S WEBB RD

246



# United States Department of the Interior

## OFFICE OF SURFACE MINING

Reclamation and Enforcement

2675 Regency Road

Lexington, KY 40503-2922

**NOV 29 2006**

Categorical Exclusion  
Authorization to Proceed (ATP)  
Bryan-Piper Highwall AML Reclamation Project  
Muhlenberg County, Kentucky

Ms. Susan C. Bush, Commissioner  
Department for Natural Resources  
#2 Hudson Hollow Complex  
Frankfort, Kentucky 40601

Dear Ms. Bush:

The Office of Surface Mining (OSM) has completed a review of your November 2, 2006, request for Authorization to Proceed (ATP) with construction activity on the Bryan-Piper Highwall Abandoned Mine Land (AML) Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML). Your request does not designate a funding source by assignment of a State Subaccount number under the Project Costs (Non-Water Supply) of any of Kentucky's Annual AML Construction Grants. Please notify this office of the final funding source and State Subaccount number for our records.

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. A pre-approval field inspection of the proposed project was conducted on November 22, 2006, for field verification under the EY 2007 Performance Agreement. The proposal was recommended for approval with no concerns and/or recommendations identified.

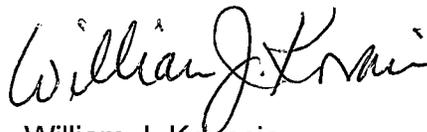
We conducted National Environmental Policy Act (NEPA) coordination with the Kentucky Field Office of the U.S. Fish and Wildlife Service (USFWS) in Frankfort, Kentucky. After review of the ATP documents, we determined that formal consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species. However, we requested their comments and/or recommendations for the project. To date, the USFWS has not responded. If a response is received at a later date, a copy of their comments and any actions the USFWS finds required under the requirements of Section 7 of the Endangered Species Act will be forwarded to DAML for consideration.

**TAKE PRIDE<sup>®</sup>  
IN AMERICA** 

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 exclusion criteria in 516 DM 6, Appendix 8, and is excluded from further NEPA compliance. We recommend that appropriate consideration be given to the general recommendations and comments provided in the response from the consultation agencies. As noted in your letter, construction activity involving tree removal must be restricted to the period of October 15th to March 31<sup>st</sup>, in order to prevent any possible impact on the Indiana bat. Please send OSM copies of any additional applications for permits/certifications and approval documents needed for the construction of this project that were not submitted in your original ATP. This information is needed by OSM to perform oversight and monitor compliance with NEPA.

I have signed the CX and enclosed a copy to Steve Hohmann, Director, DAML under copy of this letter. Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual, you are authorized to proceed with construction activity for this project and expend Federal funds in accordance with AML grant terms and conditions. If you have any questions concerning this ATP or the procedures, please contact Sherry Wilson at (859) 260-8405.

Sincerely,

A handwritten signature in black ink that reads "William J. Kovacic". The signature is written in a cursive style with a large, prominent "W" and "K".

William J. Kovacic  
Field Office Director

cc: Steve Hohmann, DAML

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 1126-SGA, KY 2388-SGA

Project Name: Bryan-Piper Highwalls AML Reclamation Project

Project Description: Eliminating the threat to the public at two sites, between Beechmont and Beech Creek in Muhlenberg County, posed by highwalls, spoil ridges and hazardous water bodies, especially for all terrain vehicle riders (DH and HWB).

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: Steve Hohmann Date: 11/2/06

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

VI. OSM DETERMINATION

D1128-06

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: William J. Kovacic Date: 11/28/04

Name and Title: William J. Kovacic, Field Office Director

Memorandum

Date: November 28, 2006

To: Bryan-Piper Highwall AML Reclamation Project File

From: Steve Cassel, Sr., Program Specialist (AML) *11-28-06*  
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 Kentucky to proceed with the construction activity proposed on the Bryan-Piper Highwall AMLR Project. The Branch prepared an (ATP) letter for FOD review. The Branch recommended that the FOD sign the Categorical Exclusion Determination (CX and ATP) in the space provided on each document. The original of the ATP letter will be sent to the Department for Natural Resources Commissioner and a copy will be sent to the Division of Abandoned Mine Lands (DAML) Director with a copy of the CX.

The Kentucky Division of Abandoned Mine Lands (DAML) ATP request dated November 2, 2006, was received at LFO on November 6, 2006. DAML did not designate a funding source under the budget category entitled Project Costs (Non-Water Supply) of any of Kentucky's AML Annual Construction Grants (ACG). In a previous email they indicated they would assign the project to a grant before it goes to construction.

An office review of the request documents was conducted. The documents consisted of: a project description; a location map; a National Environmental Policy Act (NEPA) review documented in a Categorical Exclusion Determination (CX) with agency consultation response letters attached; and an Abandoned Mine Land Inventory System (AMLIS) Problem Area Description (PAD) summary and appropriate Priority Documentation Form's, with engineer cost estimates for PA#s KY001126SGA and KY002388SGA.

A pre-approval field inspection of the proposed project was conducted on November 22, 2006, for field verification under the EY 2007 Oversight Agreement. The proposal was recommended for approval with no concerns or recommendations identified.

The Categorical Exclusion (CX) submitted for the construction activity at the site was reviewed and found to adequately document the environmental review of the construction area 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 nine general exceptions, in 516 DM 6, Appendix 8, requiring preparation of an Environmental Assessment. The project is not over 100 acres in size and does not include placement of material into underground mine voids, mine/refuse fires, hazardous or explosive

gases, dangerous impoundments, abatement of dangerous slides that can result in damage to an inhabited property, hazardous wastes, use of explosives or undisturbed/non-commercial borrow or disposal/waste areas. All access is via existing roads. All waste areas were within the project area previously disturbed by mining operations. The project does not meet any of the Department of Interior exceptions presented in 516 DM 2. 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 OSM accept the CX submitted by the Kentucky DAML. The States ATP request letter summarized the formal responses from agencies consulted for the NEPA review and discussed appropriate resolution of all their concerns and recommendations. The formal 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 in the USGS quadrangle within which the project area is located. KDFWR does not anticipate any significant impacts on wildlife.

The DAML staff biologist reviewed the Kentucky State Nature Preserves Commission's (KSNPC) BIOTICS database in lieu of formal consultation. The findings are noted in the ATP request letter and an attached memorandum. DAML found that KSNPC data shows two federally listed threatened or endangered species within a 10-mile radius, one species of State concern is known to occur within a 1-mile radius of the project, and the project will take place within the portion of the state that has been designated as the habitat of the copperbelly water snake (KSNPC Special Concern). DAML listed and discussed each species noted above in the biologist's memorandum and their ATP request letter, finding that the noted species will not be impacted since the project will not result in a significant negative impact to their critical habitat and/or suitable habitat does not exist within the project area to support the species. No reason was identified to dispute their determination.

The DAML Biologist and DAML's ATP letter 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 for two reasons. The project does not involve any caves and does not include closure of any open portals. The project does include disturbance of forested areas that could be utilized as roosting sites if Indiana bats were present. The U.S. Fish and Wildlife Service (USFWS) generally concurs with OSM that a proposed project would not likely adversely impact this species if construction activity involving tree removal be restricted to this species's hibernation period of October 15 to March 31. DAML included this requirement for the project in their ATP letter to prevent any possible impact on the Indiana bat.

The OSM Lexington Field Office coordinated NEPA consultation with the Kentucky Field Office of the U.S. Fish and Wildlife Service (USFWS) in Frankfort, Kentucky. After review of the ATP documents, which include formal consultation with the KSNPC and the KDFWR, LFO determined that formal 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.). LFO sent the USFWS an email on November 8, 2006, notifying them of this determination and requesting their comments or recommendations for the project prior to our ATP authorization target date of November 28, 2006.

To date, the USFWS has not responded. If a response is received at a later date, a copy of their comments will be forwarded to DAML for consideration and any actions the USFWS finds required under the requirements of Section 7 of the Endangered Species Act.

In previous NEPA consultation requests the USFWS comments consistently center on one species. The USFWS generally find that the only federally listed threatened or endangered species known to occur within the proposed project area is the endangered Indiana bat. This is primarily based only on the fact that it is located within the borders of Kentucky and generally not based upon previous actual documented evidence of their existence in the local area, be it the USGS Topo Quad or ten mile radius. The USFWS generally concurs with OSM that the proposed project would not likely adversely impact this species if portals are collapsed precluding the use as bat habitat and/or the project proposes: (1) to reclaim the open portals with wildlife friendly gates to allow bat access, (2) no disturbance of forested areas that could be utilized as roosting sites, or (3) that construction activity involving tree removal be restricted to this species' hibernation period of October 15 to March 31.

This project does not include any caves or portals. As noted above DAML included in their ATP letter the provision above that "construction activity involving tree removal be restricted to this species' hibernation period of October 15 to March 31." This should prevent any possible impact on the Indiana bat. With this information, it is concluded that the requirements of Section 7 of the Endangered Species Act have been fulfilled.

The Office of State Archaeology found that their records do not show 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 and State Historic Preservation Officer (SHPO) determined that the proposed project will not impact any National Register Properties or sites, no properties currently listed in the National Register of Historic Places are within the project areas, all reclamation activities are restricted to previously disturbed areas, and this fulfills the

responsibility to consult with the SHPO under the Section 106 review process. Neither agency recommended conducting archeological surveys/investigations or mitigation measures.

The Kentucky Division of Waters (DOW) Water Quality Certification Section determined from the written description that the project does not impact a stream or wetland that requires a specific 401 Water Quality Certification, unless a specific 404 Clean Water Act (CWA) permit is required by the U.S. Corps of Engineers (COE). In an email dated October 11, 2006 DAML documents their consultation with the COE Louisville Office. The COE determined that a 404 Clean Water Act (CWA) permit is not needed since no waterways of the US were to be disturbed.

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 FEMA floodplain maps that include the project area. DAML Design Branch personnel researched these maps and have determined that the project is not within the base floodplain and no floodplain permits are required.

The comments from the Kentucky State Clearinghouse, Kentucky's "Single Point of Contact" (SPOC) pertaining to AML Non-Water Supply projects included no comments that affect this proposal. The information to update the AMLIS for PA#s KY001126SGA and KY002388SGA was directly input into the AMLIS by the Commonwealth's 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's review of the AMLIS data and a PAD website screen printout from the OSM HDQ AMLIS database.

The Madisonville Area Office will be notified by email of the authorization of this project and availability of the project documents.

Administrative Note: **(1)** Please enter the date of the ATP letter into the "Approval Date" field of the ATP tab screen. **(2)** Please scan the signed CX and copy of the FOD signed ATP letter into the project database Attachments tiff file, at the top or front of the file. The main State ATP request package should already be scanned into the Attachments-General Info tiff file, if not please scan the entire package into the database. **(3)** Then, please attach the original signed CX and copy of the FOD signed ATP letter to the States ATP request letter and enclosures, and file alphabetically by project name in the LFO ATP suspense folder or with the appropriate grant folder if a State Project Number is assigned. **Thanks**



NOV - 6 2006

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**DEPARTMENT FOR NATURAL RESOURCES**

**Ernie Fletcher**  
Governor

Division of Abandoned Mine Lands  
2521 Lawrenceburg Road  
Frankfort, Kentucky 40601  
[www.kentucky.gov](http://www.kentucky.gov)

**Teresa J. Hill**  
Secretary

November 2, 2006

Mr. William J. Kovacic, Director  
U. S. Department of the Interior  
Office of Surface Mining  
Lexington Field Office  
2675 Regency Road  
Lexington, KY 40503

RE: Bryan-Piper Highwalls AML Reclamation Project (Muhlenberg County)

Dear Mr. Kovacic:

We are requesting "Authorization to Proceed" with site-specific construction activities on the referenced project, as described in the enclosed package. Enclosed are a project description, location map, and problem area description (PAD) priority documentation forms, including problem descriptions and engineer cost estimates, for the above-referenced project. The PADs for problem area #s KY 1126-SGA and KY 2388-SGA have been prepared and entered into the 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 PADs, the eligibility determination and agency consultations will be made available to you upon request.

Also, enclosed is a Categorical Exclusion Certification and Determination form with four agency consultation response documents attached. DAML employees searched the Kentucky State Nature Preserves Commission (KSNPC) database and a memo regarding these findings is enclosed. This search revealed one species of state concern, monitored by the KSNPC, is known to have historically occurred within one mile of the project site, and two federally-listed threatened and endangered species are known to exist within ten miles of the project site. The species noted in the search are:

- Elusive clubtail (*Stylurus notatus*- KSNPC Endangered)
- Fanshell (*Cyprogenia stegaria*- USESA Endangered)
- Catspaw (*Epioblasma obliquata obliquata*- USESA Endangered)

Mr. William J. Kovacic  
Page Two  
November 2, 2006

No disturbance of perennial or intermittent streams is anticipated as a result of this project, so that the aquatic invertebrate dragonfly and mussel species will not be negatively impacted by construction of this project. Since trees will be cut during grading to eliminate the highwalls, spoil ridges and water impoundments, clearing and grubbing of vegetation in preparation for this project will be conducted between October 15 and March 31, when all Indiana bats (*Myotis sodalists*- USESA Endangered) should be at their hibernacula. Since the project area has acidic soil and water that the copperbelly water snake (*Nerodia erythrogaster neglecta*- KSNPC Special Concern) avoids, this snake should not suffer a negative impact as a result of project construction. One letter was sent to the Kentucky Division of Water (DOW) soliciting their comments regarding water quality certification issues (WQC). The DOW determined that a 401 WQC is not required. KY DAML has acquired a set of floodplain maps. Our Design Branch personnel have researched these maps and have determined that the project is not within a base floodplain. As a result, no floodplain permits are required. The other consulted state agencies had no objections to this project.

Overall, the project is a priority 2. The project is estimated to cost \$596,020.00, exclusive of "in-house" personnel costs associated with project administration. A breakdown of this estimate is as follows: \$595,020.00 for construction and \$1,000.00 for support, including bid activities. Completion of the project will not require the acquisition of any land and will not significantly affect the potential recovery of residual coal reserves at the site. The principal benefits to be derived from the successful completion of the project are eliminating the danger posed to the public by dangerous highwalls and hazardous water bodies. We have tentatively scheduled to advertise construction contract bids on December 15, 2006, award the contract on February 15, 2007 and complete construction by August 15, 2007. Should you have any questions regarding this information, please contact us at 502/564-2141.

Sincerely,



Steve Hohmann  
Director

SH:BO:JR:tym

Enclosures

# **Bryan-Piper Highwalls AML Reclamation Project Muhlenberg County**

## **Project Description**

The proposed project (50 acres total) consists of reclaiming dangerous highwalls, spoil ridges, and water impoundments at two sites in Muhlenberg County. The project area is centrally located at 37° 10' 32" latitude and 87° 03' 03" longitude on the Drakesboro quadrangle, between Beechmont and Beech Creek (see attached map). These abandoned coal mine features are a danger to ATV riders and swimmers who frequent the area. A local resident stated that there have been two broken arms and broken ribs from three ATV accidents.

Construction at the Bryan site (40 acres) includes grading and backfilling highwalls with material from on-site spoil ridges and installing a locked gate at the access road. Construction at the Piper site includes filling several water impoundments and backfilling a 350' section of highwall with material from on-site spoil ridges. Existing coal fines at the sites will be buried during the highwall backfilling process. Domestic debris at the sites will be taken to an approved landfill. Impounded water at the Piper site will be directed across alkaline limestone sand and into a silt trap. The flow then goes into a sequential aeration rock ditch (a series of plateaus) and then to another silt trap. The aeration and alkalinity addition will promote metal precipitation from the drainage.

Construction disturbances will be kept to a minimum and will be vegetated as soon as practical. Hay bale silt checks, maintained throughout the life of the project, will provide additional sediment control. Culverts, ditches and silt traps will control drainage. All project access exists. Portions of the spoil ridges at both sites currently support scrubby vegetation and scattered pockets of mature trees. There are no borrow or waste areas outside of the project boundaries shown on the map. All project areas are previously disturbed by mining, residential use and road construction. Construction will not disturb any intermittent or blue-line streams and all disturbances are outside of any floodplains. Impounded water will be treated and drained, as necessary.

JR/BO 9/18/06

P J Piper Site

Bryan-Piper Highwalls  
AML Reclamation Project  
Drakesboro Quad.  
Muhlenberg County

Latitude: 37° 10' 32"  
Longitude: 87° 03' 03"

Steve Bryan Site

