

Authorization to Proceed (ATP)
Marcum Highwall (HP)
Abandoned Mine Land (AML) Reclamation Project
based on Finding of No Significant Impact (FONSI)
Floyd County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the October 20, 2011, request for ATP with construction activity on the first phase of the Marcum Highwall (HP) 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 confirmed that the required information for this project has been included in the AML Inventory System under PA# KY-004170-CIA.

OSM thoroughly reviewed the environmental assessment (EA) prepared by DAML for 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 this project.

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:

- No tree removal is proposed for this first phase of the project, however DAML shall ensure that as noted in your ATP request documents that any clearing of trees that represent potential bat habitat associated with this phase of the project will only occur between October 15 and March 31.
- DAML shall ensure compliance with the provisions of the Kentucky Division of Water (DOW) floodplain Permit #5571 to "Construct Across or Along a Stream" for the waste area.
- Due to the need to act on this high priority project there was insufficient time to complete consultation with the Kentucky Department of Fish and Wildlife Resources (KDFWR) or the Office of State Archaeology (OSA). If these evaluations identify potential impacts to any federally threatened/endangered fish and wildlife or archaeological features, DAML must immediately notify OSM and address the impacts.

Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual and my signature on this ATP notification document, DAML is authorized to proceed with construction activity for this project as described in the ATP request documents submitted by DAML for this project and further conditioned in this notification, and expend Federal funds in accordance with AML grant terms and conditions.

 *Acting For*

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

10-20-11
Date

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Marcum Highwall (HP) (First Phase) Abandoned Mine Lands (AML) Project Floyd County, Kentucky

The Commonwealth of Kentucky submitted an Authorization to Proceed with Construction Activity (ATP) request for Federal AML grant funds to the Office of Surface Mining Reclamation and Enforcement (OSM) 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, and other supporting enclosures. The project area may be centrally located on the Lancer Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map at 37° 37' 59.1" North Latitude and 82° 41' 51.3" West Longitude near the community of Emma, Kentucky. The project location, AML problems to be addressed and proposed reclamation activity/cost are also available at <http://www.osmre.gov> in the AMLIS under PA# KY-004170-CIA. This first phase of the project involves reclamation of AML conditions consisting of removal of rocks and debris that collapsed from an unstable highwall behind the Jimmy and Karen Marcum home.

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. (Insert agency discussion from the ATP review letter in separate paragraphs below.) :

The Kentucky Department of Fish and Wildlife Resources (KDFWR) was sent a consultation notification; however, a response had not been received prior to needing to request ATP for the high priority project. The DAML request correspondence noted that they do not anticipate negative impacts on species of concern as the project site is in a residentially maintained yard, the waste area has been previously authorized for use in previous Federal AML projects, no trees will have to be removed at the project site or the waste area, no cave-like structures will be closed, no cliffs will be disturbed, no work will be performed in a stream, and routine sediment control will be used to control any runoff.

It appears there is adequate evaluation of impacts to fish and wildlife at this time to justify authorization of this high priority project. The ATP will be conditioned, that if the consultation response from the KDFWR identifies potential impacts to any federally threatened/endangered fish and wildlife, DAML must immediately notify OSM and modify the project construction activity to mitigate or eliminate the impacts. DAML must also consider and employ as appropriate any comments or suggestions provided by KDFWR.

The designated DAML biological review staff reviewed the Kentucky State Nature Preserves Commission's (KSNPC) endangered, threatened and special concern reference databases in lieu of direct consultation. The findings are noted in the ATP request correspondence and an attached biological review memorandum. DAML found that KSNPC data indicated one federally listed threatened or endangered species, the Indiana bat, within a 10-mile radius and one species of State concern, the Virginia Bladetooth snail, known to occur within a 1-mile radius of the project.

DAML listed and discussed each species in the biological review memorandum, the EA, and their ATP request correspondence, finding that the noted species will not be impacted, since the project will not result in a significant negative impact to their critical habitat and/or suitable habitat does not exist within the project area to support the species. No reason was identified to dispute their determination.

In a meeting held in February 2010 between the OSM Lexington Field Office (LFO) LFO, Kentucky Field Office (KFO) in Frankfort, Kentucky, of the U.S. Fish and Wildlife Service (USFWS) and DAML; Steve Hohmann, Director of DAML, offered to coordinate NEPA consultation with the KFO, utilizing the agreements in the September 18, 2009, Memorandum of Agreement (MOA) signed by the OSM, LFO and USFWS KFO. This document outlined the acceptable conditions that the projects potential impacts can have where the KFO will not need to be further contacted for comment. When the conditions within the agreement are present, processing of the ATP may proceed with the confidence that the biological environment is being protected and provisions of Section 7 of the Endangered Species Act have been fulfilled. It was agreed to by all parties, acknowledging that LFO would retain the final review to determine if the NEPA documentation is complete.

After review of the ATP documents for this project, DAML determined that additional consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species (Federal Assistance Manual (FAM) Chapter 5-11-15, A. 3.) The project activities meet the following conditions noted in the MOA to ensure protection of federally listed species; specifically the Indiana bat, Gray bat, and freshwater fishes and mussels:

- No tree removal is proposed or anticipated for this first phase of the project, however the DAML ATP request letter and biological review memorandum also note that if 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 becomes necessary, it will be accomplished between October 15 and March 31 or presence/absence survey will be required by qualified DAML staff.
- The project activity does 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), however the project proposes no tree removal and the only disturbance of potential cliffline type habitat, the highwall, is explained in the next paragraph, therefore the project will not significantly disturb Indiana bat habitat within the delineated area in light of the danger to the Marcum home;
- No mine portals, caves or cliffines will be disturbed, however the coal mine highwall which is the AML problem may be disturbed, in line with the MOA concept that habitat features like trees within an AML problem threatening the public are exempt from mitigation considerations, and the current construction work will be accomplished within the Indiana bat hibernacula of October 15 to March 31, construction activity disturbing

the highwall for this phase of the project is exempted from further consultation with the USFWS;

- No purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the Tradewater, lower Ohio, upper Cumberland, Green, and Licking River basins;
- In order to avoid/reduce indirect impacts, erosion and sediment control plans will be implemented and monitored until permanent vegetation has become established in the above listed watersheds and all other watersheds as may be appropriate.

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

The Office of State Archaeology (OSA) was sent a consultation notification; however, a response had not been received prior to needing to request ATP for the high priority project. The DAML request correspondence noted that they do not anticipate negative impacts on archaeological features, as the project site is in a residentially maintained yard, the waste area has been previously authorized for use in previous Federal AML projects.

The Kentucky Heritage Council (KHC) and State Historic Preservation Officer (SHPO) were not consulted further for the current construction activity, since this project activity falls under the "exempt projects" provisions in the Programmatic Agreement that DAML signed on January 3, 2011, with the KHC. Exempt projects are "Routine and recurring projects whose impacts [under Section 106 of the 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.

It appears there is adequate evaluation of impacts to archaeological features at this time to justify authorization of this high priority project. The ATP will be conditioned, that if the consultation response from the OSA identifies potential impacts to any archaeological features, DAML must immediately notify OSM and modify the project construction activity to mitigate or eliminate the impacts. DAML must also consider and employ as appropriate any comments or suggestions provide by OSA.

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 first phase of this project as proposed.

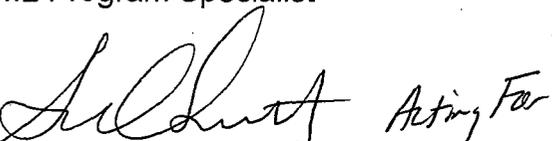
Under a 2005 agreement with the Kentucky Division of Water (DOW) Floodplain Management Section (FMS) of the Water Resources Branch, DOW authorized DAML to apply DOW floodplain standards in lieu of a DOW review. In this agreement, DAML will directly consult with DOW if it appears a permit may be required. 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 Marcum property part of this project is not within the base floodplain and no floodplain permits are required.

DAML determined that the previously used waste area does encroach upon the base floodplain of area streams and a stream construction permit from DOW to "Construct Across or Along a Stream" is required. DAML determined that the landowner of the waste area has a valid floodplain permit from DOW, Permit #5571. DAML provided OSM a copy of the permit and has committed to complying with the provisions of the DOW permit. This will be a condition of the ATP by OSM.



OSM Environmental Reviewer
AML Program Specialist

10-20-11
Date



Joseph L. Blackburn
Field Office Director

10-20-11
Date

Memorandum

Date: October 20, 2011

To: Marcum Highwall (HP) Abandoned Mine Land (AML) Reclamation Project
File ID# 99.143400000

From: Steve Cassel, Sr., AML Program Specialist *SCS* 10-20-11
Lexington Field Office (LFO), Program Support Branch (PSB)

Subject: Review of "Authorization to Proceed" (ATP) Request

The Branch recommends that the Field Office Director (FOD) authorize the State of Kentucky to proceed with the first phase of construction activity proposed on the Marcum Highwall (HP) AML Reclamation Project with a construction budget of \$21,525.00. The Branch prepared an ATP notice and Finding of No Significant Impact (FONSI) for the FOD review. The Branch recommends that the FOD sign the FONSI 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 FONSI. Additionally, the transmittal email will be copied to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated October 20, 2011, was received at LFO on October 20, 2011. The ATP was processed the same day; therefore, the customer service target of 14 working days to process an ATP has been met and the Federal employee performance appraisal standard of 30 calendar days to process an ATP has been met.

The project area may be centrally located on the Lancer Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map at 37° 37' 59.1" North Latitude and 82° 41' 51.3" West Longitude near the community of Emma, Kentucky. The project location, AML problems to be addressed and proposed reclamation activity/cost are also available at <http://www.osmre.gov> in the AMLIS under PA# KY-004170-CIA. The project involves reclamation of AML conditions consisting of removal of rocks and debris that collapsed from an unstable highwall behind the Jimmy and Karen Marcum home.

DAML did not designate a funding source for the construction work under the budget category entitled Project Costs (Non-Water Supply) of any of Kentucky's AML Annual Construction Grants (AG). In previous discussions, DNR indicated they would assign projects to a grant before they go to construction. The LFO Project/Site ID# 99.143400000 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 proposed bid advertisement, bid opening, or construction completion dates were

provided by DAML in the ATP request letter, therefore I inserted dates in the database based on the fact that this is a high priority project and these activities will occur as soon as possible. The following proposed dates were assigned and entered by LFO for database tracking purposes: Bid Advertisement Date was entered as October 21, 2011, Contract Award was entered as October 21, 2011, and Contract/Construction Completion was entered as November 1, 2011.

An office review of the request documents was conducted. The documents consisted of; a project description, location maps, a National Environmental Policy Act (NEPA) review documented in an Environmental Assessment (EA) with agency consultation documentation; and reference to the Abandoned Mine Land Inventory System (e-AMLIS) for access to Problem Area Description (PAD) summary and appropriate Priority Documentation Forms, with engineer cost estimates for PA# KY-004170-CIA.

A pre-approval field inspection of the proposed project was deemed unnecessary, since the project was previously evaluated by OSM under AML emergency complaint investigations Karen Marcum Highwall LFO# L2002-176A and Karen Marcum Highwall II LFO#2008-058-P; and DAML provided adequate documentation of the current conditions in reports and photos with the ATP request. The Karen Marcum Highwall LFO# L2002-176A investigation resulted in referral to the Federal Reclamation Program (FRP) for AML emergency program project, FRP# KY-2002-118, which involved installation of rock fall netting on the highwall and the construction of an "impact" wall between the house and the highwall. The Karen Marcum Highwall II LFO#2008-058-P complaint investigation resulted in FRP review of the site as project #KY-2008-048 which involved excavation to remove the current rock fall between the highwall and the impact wall to restore the wall to full functionality.

The EA 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. 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 EA submitted by the Kentucky DAML. The EA prepared by the State and the State's ATP request correspondence and attachments discussed the responses from agencies consulted for the NEPA review and discussed appropriate resolution of all their concerns and recommendations. The responses from agencies consulted for the NEPA review are summarized in the FONSI prepared by OSM for the EA.

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-004170-CIA was directly input into the AMLIS by the DAML on October 19, 2011. This information reflects the changes in units and costs based upon the design and classification of the funded

category. This was confirmed by LFO review of the OSM HDQ AMLIS database and attached to the ATP. PA # KY-004170-CIA represents a "new Problem Area" requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007). A FOD approval form was not prepared for the PA, since the new e-AMLIS is operational, with electronic OSM FOD approval, which eliminated the need for the FOD approval form. The e-AMLIS file indicated the PA had been approved on October 19, 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:

e-AMLIS printout of PAD# KY-004170-CIA

Cassel, Steven R. "Steve"

From: Howell, Ryan (EEC) [Ryan.Howell@ky.gov]
Sent: Thursday, October 20, 2011 9:19 AM
To: Cassel, Steven R. "Steve"; Miller, Corey T.; Estes, Loren A.; Smith, Gail
Cc: Overman, Bill (EEC); Rickwa, Vanna (EEC)
Subject: FW: Marcum Highwall HP AMLRP ATP request
Attachments: Marcum Highwall HP AMLRP description.docx; Marcum planview-optimized.pdf; Waste Area - optimized.pdf; Marcum Highwall HP - KSNPC response 10.19.11.pdf; RE: Marcum Highwall; RE: Marcum Highwall HP AMLRP water issues; Overview map.pdf

Importance: High

Steve and/or Corey,

AML recently became aware of a high priority situation at the Karen and Jimmy Marcum residence along KY 194, in Floyd County. An unstable highwall that was previously worked during two OSM emergency projects, KY-02-118 and KY-08-048, had a portion of the highwall collapse and damage a section of the impact wall between the highwall and the Marcum residence. Rocks and debris have crushed a portion of the wall and are now in the Marcum backyard. Further collapse would threaten the Marcum residence as the impact wall has been compromised and falling rocks may roll off the debris at the base of the highwall and yard towards the residence.

The site is approximately 0.75 mile east of the junction of KY 194 and KY 1428 in the community of Alvin, KY at latitude 37° 38' 15.8" N and longitude 82° 41' 0.4" W on the Lancer United States Geological Survey (USGS). A proposed waste area is approximately 1 mile west of the project site along Long Fork Road at latitude 37° 37' 59.1" N and longitude 82° 41' 51.3" W (See the attached planview maps and overview map). The planview map at the Marcum residence has proposed information for the future phase II project, which has not been finalized. The project limits are the same; however, the proposed work during this phase is for the removal of the rock and debris.

AML plans to work this site in two phases. This phase of the project will include the removal of rocks and debris from the base of the highwall and in the Marcum backyard. Material will be placed in a waste area that was previously used during the OSM emergency projects. This waste area is in the floodplain, but the landowner has a floodplain permit for fill from the Division of Water that is still valid (permit #5771). The Marcum site has been determined to not be in the floodplain and will not require a WQC or COE permits. The project sites do not involve work that will involve any streams (ephemeral, intermittent, or perennial). See the attached emails concerning the review of water issues for this proposed project, and a copy of the floodplain permit.

A KSNPC search was conducted by Keith Coleman on October 19, 2011, and is also attached. This memo indicates one species of state concern is known to exist within one mile of the project sites, and that one federally listed "threatened or endangered" species is known to occur within ten miles of the project sites. The species of state concern is the Virginia Bladetooth (*Paterna panselenus*), which is a snail. According to the attached memo, this project does not represent the preferred habitat of this species and should not negatively impact it. The other species noted in the search is the Indiana Bat (*Myotis sodalis*). This species day roosts and establishes maternity colonies in trees with exfoliating bark or cavities in their trunks and larger

limbs, and hibernates in caves and other similar underground structures. Although the project sites fall within an area buffered by the USFWS as “known habitat” for the Indiana Bat, since tree clearing is not anticipated within the project site or associated waste area, and since no portals or cave-like structures are associated with this project, project-related construction should not impact this species, regardless of the timing.

The project description and maps were sent to the Kentucky Department of Fish and Wildlife Services (KDFWS) and a copy of their letter will be sent when our office receives it. The Marcum site involves a residentially maintained yard and an unstable highwall, which would make it unlikely that any additional species of concern not mentioned in the KSNPC search would be negatively impacted. The waste area has been used multiple times in the past by OSM project related activity and is a maintained area void of trees. It is unlikely that any other species of concern would be negatively impacted by the use of this waste area.

Both the waste area and the Marcum site have been previously disturbed. The Marcum site was previously disturbed by coal mining, house seat construction, and OSM emergency project construction. The waste area has been previously disturbed by the filling of material from previous OSM construction and road construction. It is unlikely that any archaeological resources will be negatively impacted. A project description and maps were sent to the Office of Archaeology (OSA) and a copy of their response letter will be sent to OSM when it is received. The Kentucky Heritage Council (KHC) was not contacted, as this project is exempt under the Programmatic Agreement between KHC and AML.

Because the waste area is within the floodplain, an EA was prepared, and will be sent in a separate email. The site was previously reviewed for eligibility for the OSM emergency projects. A copy of the eligibility determination letters will be sent in a separate email, due to email size restrictions. PAD # KY 4170 CIA was prepared, entered, and approved in the e-AMLIS, and is available online for your review. The total estimated cost for this phase of the project is \$21,525.00.

Please accept this email as an ATP request for the Marcum Highwall HP AML Reclamation Project.

Thanks,
Ryan Howell

**Marcum Highwall High Priority
Abandoned Mine Lands (AML)
Reclamation Project
Floyd County**

Project Description

The proposed project (approximately 5.0 acres total) consists of the removal of rocks and debris that collapsed from an unstable highwall behind the Jimmy and Karen Marcum residence along KY 194, in Floyd County. The project site is approximately 0.75 mile east of the junction of KY 194 and KY 1428 in the community of Alvin, KY. The project is located at latitude 37° 38' 15.8" N and longitude 82° 41' 0.4" W on the Lancer United States Geological Survey (USGS) 7.5' quadrangle (see the attached map). A proposed waste area is approximately 1 mile west of the project site along Long Fork Road at latitude 37° 37' 59.1" N and longitude 82° 41' 51.3" W.

The project site was previously worked during two different OSM emergency projects (KY-02-118 and KY-08-048). A recent collapse of the highwall has damaged the barrier wall that was constructed during the first OSM project, and rocks and debris have fallen into the Marcum backyard. The compromised barrier wall may no longer be able to protect the residence from further collapse of the highwall.

The project site is proposed to be worked in two phases. This phase of the project will include the removal of rocks and debris from the base of the highwall and in the Marcum backyard. Material will be placed in a waste area that was previously used during the OSM emergency projects. This waste area is in the floodplain, but the landowner has a floodplain permit for fill from the Division of Water that has not expired. The project site has been determined to not be in the floodplain and will not require a WQC or COE permits.

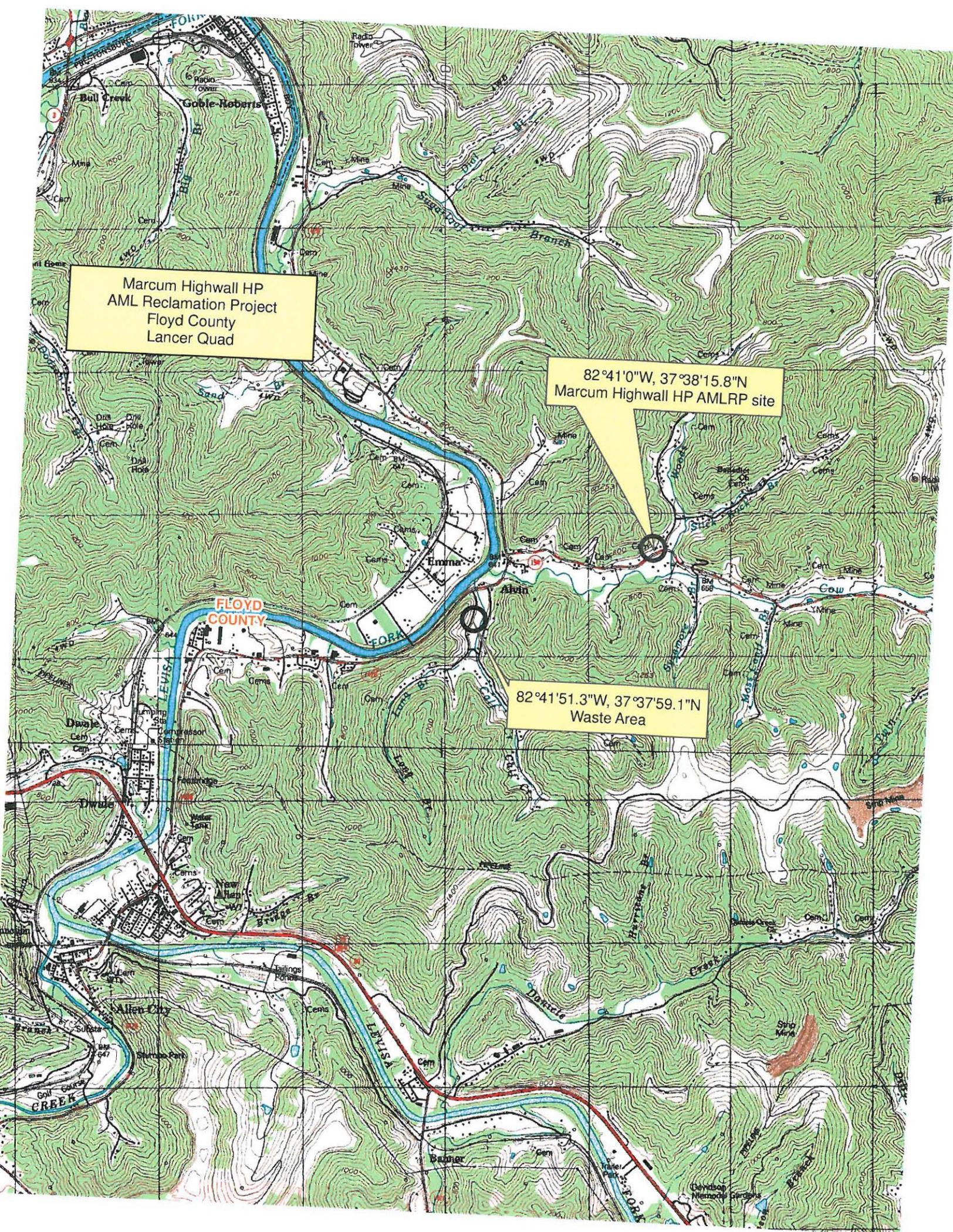
Access to the project site and waste area are along the county road, and through the residential driveway and yard. This project will include pre- and/or post- project maintenance and repair of existing previously constructed public county roads utilized during the construction of this project, which are administered by the county or local road authority. This construction activity will be conducted under the authority and supervision of the local public road authority and will consist of standard road construction practices appropriate to mitigate impacts to the local community from potential degraded road conditions in order to maintain public traffic safety.

No trees are proposed to be removed. No perennial or intermittent streams will be disturbed. To minimize sedimentation, a stringent erosion and sediment control plan including such measures as hay-bale silt fences and prompt revegetation will be implemented at all disturbed areas. The project work site and waste area have been previously disturbed by coal mining operations, residential development, and/or OSM emergency projects.

Marcum Highwall HP
AML Reclamation Project
Floyd County
Lancer Quad

82°41'0"W, 37°38'15.8"N
Marcum Highwall HP AMLRP site

82°41'51.3"W, 37°37'59.1"N
Waste Area



ENVIRONMENTAL ASSESSMENT

Marcum Highwall HP AML Reclamation Project Floyd County, Kentucky

A. Description of the Proposed Action:

The proposed project, approximately 5.0 acre, consists of the removal of rocks and debris from the base of an unstable highwall and from the Karen and Jimmy Marcum backyard. The Marcum residence is located along KY 194, near the community of Alvin, in Floyd County. The project is located at latitude 37° 38' 15.8" N and longitude 82° 41' 0.4" W on the Lancer United States Geological Survey (USGS) 7.5' quadrangle (see the attached map). A proposed waste area is approximately 1 mile west of the project site along Long Fork Road at latitude 37° 37' 59.1" N and longitude 82° 41' 51.3" W. All impacts associated with this reclamation project stem from AML eligible coal mining operations. This environmental assessment is required because the waste area is within the floodplain.

B. Need for the Proposed Action:

Mining, which occurred before May 18, 1982, created all problems associated with this project. These problems include:

- Hazards to public health, safety and welfare created from an unstable highwall that threatens the Karen and Jimmy Marcum residence.

The problems are further described in the description for National AML Inventory Problem Area KY 4170.

C. Alternatives Considered:

The following alternatives were considered for reclamation of the project site:

- Removal of rocks and debris from the base of an unstable highwall and residential backyard to prepare for a future phase of the project that will help alleviate the danger of further rock fall damaging the Marcum residence and threatening the safety of any occupants.

Or:

- Take no corrective action at this time.

C.1. Preferred Alternative:

In this project, the Kentucky Division of Abandoned Mine Lands proposes to take the following actions:

- Remove rocks and debris from the base of an unstable highwall and backyard that have created a ramp towards the Marcum residence.
- All excavated material will be placed in a waste area approximately 1 mile from the site.
- Installation and maintenance of hay bale silt checks will minimize erosion and sedimentation at the site.
- All areas disturbed by construction will be vegetated, as soon as practical, using agricultural limestone, fertilizer, seed, mulch, and netting.

C.2. No Action:

Should the Commonwealth of Kentucky take no corrective action, the previously described problems will likely result in further property damage, and risk of bodily injury or loss of life.

D. Affected Environment:

D.1. General Setting:

- The project site is approximately 0.75 mile east of the junction of KY 194 and KY 1428 in the community of Alvin, KY.
- KY 194, Long Fork Road, and residentially maintained properties will provide access to the site and waste area.
- Primary land uses in the vicinity include forest, coal mining, and residential.
- Mining disturbed the entire project area.

D.2. Affected Resources:

Resources that could, but will not, be negatively affected by the proposed project include:

- Historic/Cultural
- Fish and Wildlife/Plants
- Soils
- Agricultural
- Recreation
- Small Business Use
- Air Quality

- Noise
- Topography
- Other (Socioeconomic or Political)

The following agencies and databases were consulted to identify resources that may occur in the project vicinity:

- Kentucky Department of Fish and Wildlife Resources (KDFWR)
- Kentucky Division of Water (DOW) floodplain database
- Kentucky Office of State Archaeology (OSA)
- Kentucky State Nature Preserves Commission (KSNPC) database

The Kentucky Heritage Council (KHC) was not contacted, as the project is exempt under the Programmatic Agreement between KHC and AML due to the previous disturbances by mining activities, road construction, and houseseat development.

E. Environmental Impacts of the Proposed Alternatives:

E.1. Preferred Alternative:

The following resources will not be significantly impacted by reclamation activities using the preferred alternative:

- Historic/Cultural Resources
- Fish and Wildlife/Plants
- Soils
- Agricultural
- Recreation
- Small Business Use
- Air Quality
- Noise
- Topography
- Other (Socioeconomic or Political)

The proposed project will not adversely impact low income or minority persons. Due to the need for a floodplain permit to fill, hydrology will be discussed. Due to the possible occurrence of two monitored species within the project area, fish and wildlife/plants will be discussed. Because KHC was not contacted for this project, archaeology will be discussed.

E.1.a. Hydrology:

Division of Abandoned Mine Lands – Design Branch staff have reviewed the project and found that the waste area along Calf Creek of the Levisa Fork is within the floodplain. Work within the floodplain will involve placing material from the Marcum work site in

the waste area. The waste area was previously used during two OSM emergency projects that also involved work at the Marcum residence. The waste area is owned by Mr. Epp Banks. Mr. Banks has a floodplain permit, # 5771, that has not expired. The permit is for the placement of fill along the left bank of Calf Creek approximately 2000' from its confluence with Levisa Fork along Long Branch Road south of the community of Alvin, in Floyd County. All permit guidelines will be followed, which includes the restriction that "at no point shall the toe of the fill be located within 100' of the near top of bank of Calf Creek."

The Marcum project site was also reviewed by AML hydrology personnel and it was determined that no WQC, COE, or floodplain permits will be required. No long term impacts from sedimentation should occur since all areas disturbed by construction will be vegetated as soon as practical, using agricultural limestone, fertilizer, seed, mulch and netting.

E.1.b. Fish and Wildlife:

A search of the Kentucky State Nature Preserves Commission (KSNPC) database revealed that one species of state concern occurs within one mile of the project site and one federally listed threatened or endangered species is known to exist within ten miles of the project site. The species noted in the search are the:

- Virginia Bladetooth (*Patera pansulenus*- KSNPC Species of State Concern)
- Indiana bat (*Myotis sodalis* – USESA Listed Species)

According to the memo by Keith Coleman, dated October 19, 2011, neither of these species should be negatively impacted by the proposed reclamation work. Although, the project sites fall within an area buffered by the USFWS as "known habitat" for the Indiana Bat, since tree clearing is not anticipated within the project site or the associated waste area, and since no portals or cave-like structures area associated with this project, project-related construction should not impact this species, regardless of the timing.

E.1.c. Archaeology:

The Kentucky Heritage Council (KHC) was not contacted, as the site in this project was determined to be exempt under the Programmatic Agreement between KHC and AML due to the previous disturbances from mining activity, two OSM emergency projects, fill placement, and/or houseseat development.

E.1.d. Cumulative Environmental Impact:

No significant environmental impacts should occur as a result of construction of the preferred alternative in the watersheds where the proposed construction sites are located. No previous AML projects have been found to significantly negatively impact the environment- the projects are designed to reclaim human safety problems where the land has been disturbed by abandoned coal mining, with insignificant negative environmental

impacts during and after these reclamation projects. Therefore, as neither previous projects, nor the proposed alternative, will have any significant impact upon the environment within these watersheds, there will be no cumulative negative impact as a result of the construction of this proposed AML project.

E.2. No Action Alternative:

E.2.a. Hydrology:

Should the commonwealth take no action, existing hydrologic conditions would not change.

E.2.b Fish and Wildlife:

Should the commonwealth take no action, existing fish and wildlife conditions would not change.

E.2.c. Archaeology:

Potential archaeological resources would remain unchanged with the no-action alternative.

F. Summary:

The Commonwealth considered the following reclamation options:

- Removal of rocks and debris from the base of an unstable highwall and residential backyard to prepare for a future phase of the project that will help alleviate the danger of further rock fall damaging the Marcum residence and threatening the safety of any occupants.

Or:

- Take no corrective action at this time.

DAML selected the action alternative. It is the only option of those considered that may eliminate the continuing threats to health, safety, and the environment posed by the unstable highwall.

G. Consultations:

Agencies and databases consulted prior to the preparation of this document were:

- Kentucky Department of Fish and Wildlife Resources (KDFWR)
- Kentucky Division of Water (DOW)

- Kentucky Office of State Archaeology (OSA)
- Kentucky State Nature Preserves Commission (KSNPC) database

H. Preparers/Reviewers:

Kentucky Division of Abandoned Mine Lands Personnel

Keith Coleman, Environmental Technologist III
Ryan Howell, Environmental Control Supervisor
Bill Overman, Program Development Branch Manager

Steve Hohmann, Director

Date

Memorandum

To: Marcum Highwall-Phase I
AML High-Priority Reclamation Project

From: *Keith B. Coleman*
Environmental Technician, AML Program Development Branch
Keith B. Coleman October 19, 2011

Through: *Bill Overman*
Manager, AML Program Development Branch
Bill Overman 10/19/11

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

Date: October 19, 2011

On October 19, 2011, I conducted a search of the KSNPC database in order to determine if any species of state concern (monitored by KSNPC) are known to occur within the near vicinity (1 mile radius) of the sites to be disturbed by this project, and if any federally listed "threatened or endangered" species are known to occur within the general vicinity (10 mile radius) of the project sites. This search revealed that one species of state concern, monitored by KSNPC, is known to occur within one mile, and that one species currently listed as threatened or endangered under the United States Endangered Species Act (USESA) is known to occur within ten miles of the project site.

This project (5 acres total) consists of the removal of rock-fall materials from the back yard and high-wall area, behind the Marcum residence. Subsequent reclamation may involve rebuilding safety fences which were damaged by the rock-fall. All access routes are previously-existing. No trees, mine portals, or stream reaches will be disturbed. The nearby waste area was recently used during an emergency reclamation project, and the property owner has a valid floodplain permit for the site. No other WQC or COE permits are required. To minimize sediment and erosion problems, a stringent control plan, including the utilization of such measures as hay-bale silt checks, silt fences, erosion control blankets, and prompt vegetation of all disturbed areas, will be implemented and monitored during the construction process. The entire site has been previously disturbed by mining, previous reclamation projects, and residential and/or roadway development.

KSNPC Species of State Concern

Virginia Bladetooth (*Patera panselenus*)

USESA Listed Species

Indiana Bat (*Myotis sodalis*)

The **Virginia Bladetooth** is a snail which is most often found under rocks and logs within wooded floodplains, hillsides, and ravines. The single record of this species, within 1 mile of the project site, is a historical record. Both the waste area and the residential yard are not wooded areas and have been recently disturbed or are routinely maintained, and therefore are likely drier areas than the typical mesic-ravine habitat preferred by this species. Due to the scope and nature of this project, it is unlikely that project-related reclamation activities will negatively impact this species.

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

The search of the KSNPC BIOTICS database revealed one “undetermined” record of this species within 10 miles of the project site (3.4 miles NE from the project site). Two additional “summer mist-net” records document the Indiana Bat within 10-20 miles from the project site.

Since no records of hibernacula are within 10 miles of the project area and no maternity area records are within 5 miles from the project area, and since no maternity colonies or non-maternity records are within 2.5 miles from the project area, no special conditions would apply to the accepted tree removal period, a time at which bats are secured within their hibernacula (October 15 – March 31), as per the Kentucky Indiana Bat Mitigation Guidance (June 5, 2008).

However, since tree clearing is not anticipated within the project site or the associated waste area, and since no portals are associated with this project, project-related construction should not impact this species, regardless of the timing.

Should the clearing of trees (trees which are over 5” DBH and also display characteristics such as shaggy, exfoliating bark, or crevices and hollowed-out cavities within their trunks and larger limbs) outside of any unstable, directly AML-impacted areas become necessary, consultation with USFWS will be required, as the project falls within an area buffered by USFWS as “known habitat”. Adherence to these best management practices should prevent any negative impacts upon the Indiana Bat.

Cassel, Steven R. "Steve"

From: Hall, Samantha (EEC) [Samantha.Hall@ky.gov]
Sent: Monday, October 17, 2011 11:20 AM
To: Howell, Ryan (EEC)
Cc: Barger, Wally (EEC)
Subject: RE: Marcum Highwall
Attachments: Epp Banks 5771.pdf

Regarding the waste area along Calf Creek of the Levisa Fork; the project area is within the floodplain. The landowner has a floodplain permit for fill from the Division of Water that has not expired. No additional permits will be needed. I am attaching a copy of the floodplain permit.

From: Howell, Ryan (EEC)
Sent: Monday, October 17, 2011 8:42 AM
To: Hall, Samantha (EEC)
Subject: FW: Marcum Highwall

Here's an email discussing the potential waste area. It appears to be in the floodplain.

From: Overman, Bill (EEC)
Sent: Sunday, October 16, 2011 5:30 PM
To: Howell, Ryan (EEC)
Subject: Fw: Marcum Highwall

Ryan,

Please start NEPA as much as possible first thing Monday morning. Thanks. I should be in @ 8:30 AM.

Sent via DroidX2 on Verizon Wireless™

-----Original message-----

From: "Meade, Mark (EEC)" <Mark.Meade@ky.gov>
To: "Barger, Wally (EEC)" <Wally.Barger@ky.gov>, "Overman, Bill (EEC)" <Bill.Overman@ky.gov>
Cc: "Hohmann, Steve (EEC)" <Steve.Hohmann@ky.gov>, "Manley, Joseph (EEC)" <Joseph.Manley@ky.gov>
Sent: Sun, Oct 16, 2011 20:51:04 GMT+00:00
Subject: Re: Marcum Highwall

Thanks Wally

----- Original Message -----

From: Barger, Wally (EEC)
To: Meade, Mark (EEC)
Cc: Hohmann, Steve (EEC); Manley, Joseph (EEC)
Sent: Sun Oct 16 16:47:43 2011
Subject: Marcum Highwall

Former OSM project near Allen KY along Hwy 194; site investigation. Less than 1,000 yards of material has fallen from the highwall, damaging four of the 12 inch I beams. The safety fence is not a geo-brugg design; no expansion rings. Two sections of the chain link draped over the highwall face have been pulled loose. Access is via a brand new concrete driveway. Waste area previously used for

clean up work is within one mile: property belongs to Epp Banks, 247 Calf Creek Road, 606-874-2879, coordinates are 37 37 59.8 and 82 41 50.5.



COMMONWEALTH OF KENTUCKY
 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
 DEPARTMENT FOR ENVIRONMENTAL PROTECTION
 DIVISION OF WATER
 FRANKFORT, KENTUCKY 40601



Permit No. 5771
 Expires if work is not begun by July 21, 1995

STREAM CONSTRUCTION PERMIT
For Construction In Or Along A Stream

Issued to: Mr. Epp Banks
 Address: HC 71, Box 440
 (Street)
Prestonsburg Kentucky 41653
 (City) (State) (Zip Code)

In accordance with KRS 151.250 and KRS 151.260, the Natural Resources and Environmental Protection Cabinet approves the application dated May 26, 1994, for placement of fill along the left bank of Calf Creek approximately 2000 feet from its confluence with Levisa Fork (R.M.67197) along Long Branch Road south of the community of Alvin in Floyd County.

There shall be no deviation from the plans and specifications submitted and hereby approved unless the proposed change shall first have been submitted to and approved in writing by the Cabinet. This approval is subject to the following limitations.

- (1) Upon completion of construction of this project, the permittee must notify this Cabinet in writing that the project has been completed.
2. This permit is issued from the standpoint of stream obstruction only and does not constitute certification of any other aspect of the proposed construction. The applicant is liable for any damage resulting from the construction, operation, or maintenance of this project. This permit has been issued under the provisions of KRS Chapter 151.250 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal and local agencies.
3. A copy of this permit must be posted at the construction site.

"SEE ADDITIONAL"
 LIMITATIONS ON
 REVERSE SIDE

This permit is nontransferable and is not valid unless actual construction of this authorized work is begun prior to the expiration date noted above. Any violation of the Water Resources Act of 1966 as amended is subject to penalties as set forth in KRS 151.990.

Issued this 21st day of July, 19 94.

PC: Hugh Sammons, P.E.
Floyd County Courthouse
 Engineer: Hazard Regional Office

By [Signature]
 Division of Water

ADDITIONAL LIMITATIONS

4. The Engineer must, within 90 days of completion of construction, certify in writing that the project has been completed in accordance with the approved plans and specifications. A final construction report form is enclosed.
5. Since Floyd County participates in the National Flood Insurance Program, a local permit must be obtained prior to beginning of construction. Upon completion of construction Mr. Banks must contact the local permitting agency for final approval of the construction for compliance with the requirements of the county and/or city. Local agencies may have authority to require an elevation surcharge in your area, i.e., they may require that the finished first floor elevation be higher than that required by the state.
6. By commencing work pursuant to this permit, Mr. Banks acknowledges that any part of the work which does not fully conform to the submitted drawings and the limitations set forth, is subject to partial or total removal or enforcement actions pursuant to KRS 151.280 as directed by the Kentucky Department for Environmental Protection.
7. Permanent vegetation shall be established on fill as soon as possible upon completion of filling.
8. Fill slopes shall be no steeper than two feet horizontal to one foot vertical (2'H:1'V). Steeper slopes shall require a stability analysis.
9. Mr. Banks must use standard silt control practices in such quantity to prevent siltation of Levisa Fork. Silt fences, rock check dams and/or straw-bales are acceptable.
10. To avoid secondary adverse impacts, all materials used shall be stable and inert, free from pollutants and floatable objects, and shall meet all appropriate Engineering standards.
11. At no point shall the toe of the fill be located within 100' feet of the ~~xxxxxx~~ near top of bank of Calf Creek.
12. The permit pertains to fill placement only. Any structure will require separate permit.

Cassel, Steven R. "Steve"

From: Robinson, Jason (EEC) [jason.robinson@ky.gov]
Sent: Wednesday, October 19, 2011 10:27 AM
To: Howell, Ryan (EEC)
Subject: RE: Marcum Highwall HP AMLRP water issues

Based upon FEMA FRIM Panel 210069 0050C the project site is outside of the 100-year floodplain.

No floodplain permit is required for the project site.

The project site does not involve any streams (ephemeral, intermittent, or perennial) so no 401 or 404 permits are required for the project site.

*Jason Robinson
Project Management Branch
KY Division of Abandoned Mine Lands
2521 Lawrenceburg Rd
Frankfort, KY 40601
502-564-2141*

From: Howell, Ryan (EEC)
Sent: Wednesday, October 19, 2011 9:41 AM
To: Robinson, Jason (EEC)
Cc: Rickwa, Vanna (EEC); Overman, Bill (EEC)
Subject: Marcum Highwall HP AMLRP water issues

Jason,

Since Samantha is out today, will you please review the Marcum site for any water issues? Attached are an overview map and a planview map of the site.

Thanks,
Ryan

Cassel, Steven R. "Steve"

From: Howell, Ryan (EEC) [Ryan.Howell@ky.gov]
Sent: Thursday, October 20, 2011 9:28 AM
To: Cassel, Steven R. "Steve"; Miller, Corey T.; Smith, Gail; Estes, Loren A.
Cc: Rickwa, Vanna (EEC); Overman, Bill (EEC)
Subject: FW: Pic
Attachments: photo.JPG

Here's a picture from behind the Marcum residence.

Cassel, Steven R. "Steve"

From: Howell, Ryan (EEC) [Ryan.Howell@ky.gov]
Sent: Monday, October 24, 2011 1:08 PM
To: Cassel, Steven R. "Steve"; Miller, Corey T.; Smith, Gail; Estes, Loren A.
Cc: Overman, Bill (EEC); Rickwa, Vanna (EEC)
Subject: FW: Solicitation for KDFWR comments ref. Marcum Highwall HIGH PRIORITY AML Reclamation Project
Attachments: Comment Letter.pdf

Here's a copy of the KDFWR response letter for the Marcum Highwall HP AMLRP.

Thanks,
Ryan

From: Stoelb, Daniel (FW)
Sent: Monday, October 24, 2011 1:05 PM
To: Rickwa, Vanna (EEC); Howell, Ryan (EEC); Overman, Bill (EEC)
Subject: RE: Solicitation for KDFWR comments ref. Marcum Highwall HIGH PRIORITY AML Reclamation Project

Attached, please find the KDFWR comment letter regarding the subject project. Thanks,

Dan Stoelb

Wildlife Biologist
Fisheries Division - Environmental Section
KY Department of Fish and Wildlife Resources
#1 Sportsman's Lane
Frankfort, KY 40601
Phone: (502) 564-7109 ext. 4453
Fax: (502) 564-4519
www.fw.ky.gov

Did you know...Department of Fish and Wildlife receives NO state tax dollars and manages wildlife for all citizens?

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From: Rickwa, Vanna (EEC)
Sent: Wednesday, October 19, 2011 2:23 PM
To: Stoelb, Daniel (FW)
Cc: Dawson, Doug (FW); Howell, Ryan (EEC)
Subject: FW: Solicitation for KDFWR comments ref. Marcum Highwall HIGH PRIORITY AML Reclamation Project

Sorry. I attached the Word document letter in previous email.

Here is the pdf with project description and maps attached.

Vanna

From: Rickwa, Vanna (EEC)
Sent: Wednesday, October 19, 2011 1:50 PM
To: Stoelb, Daniel (FW)

Cc: Dawson, Doug (FW); Howell, Ryan (EEC)

Subject: Solicitation for KDFWR comments ref. Marcum Highwall HIGH PRIORITY AML Reclamation Project

Please see the attached letter with project description and maps.

Respond accordingly via email or letter.

Send email responses to:

Bill.Overman@ky.gov

Ryan.Howell@ky.gov

Vanna.Rickwa@ky.gov

Thanks,

*Vanna Rickwa
Administrative Specialist III
Energy and Environment Cabinet
Department for Natural Resources
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, Kentucky 40601
502/564-2141, Ext. 130*



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

Steven L. Beshear
Governor

#1 Sportsman's Lane
Frankfort, Kentucky 40601
Phone (502) 564-3400
1-800-858-1549
Fax (502) 564-0506
fw.ky.gov

Marcheta Sparrow
Secretary

Dr. Jonathan W. Gassett
Commissioner

24 October 2011

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

RE: Marcum Highwall HIGH PRIORITY AML Reclamation Project (Floyd County)

Dear Mr. Hohmann:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) has received your request for information pertaining to the subject project. The Kentucky Fish and Wildlife Information System indicates that the federally-endangered Indiana bat (*Myotis sodalis*) is known to occur within 10 miles of the proposed project site. No state-listed species are known to occur within one mile of the project site. The project site also falls within known maternity summer habitat for the Indiana bat. Since no trees are to be removed, the KDFWR does not anticipate impacts to the Indiana bat or its associated critical habitat. Please be aware that our database system is a dynamic one that only represents our current knowledge of various species distributions.

Erosion control measures, as mentioned in the proposal, will need to be installed prior to construction and maintained throughout the life of the project to minimize impacts to aquatic resources. I hope this information is helpful to you, and if you have questions or require additional information, please call me at (502) 564-7109 extension 4453.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan Stoelb".

Dan Stoelb
Wildlife Biologist

Cc: Environmental Section File

Cassel, Steven R. "Steve"

From: Overman, Bill (EEC) [Bill.Overman@ky.gov]
Sent: Wednesday, November 02, 2011 11:24 AM
To: Cassel, Steven R. "Steve"; Miller, Corey T.
Cc: Howell, Ryan (EEC)
Subject: Marcum Highwall - OSA responses
Attachments: RE: Solicitation for OSA comments ref. Marcum Highwall HIGH PRIORITY AML Reclamation Project; RE: Solicitation for OSA comments regarding Marcum Highwall HIGH PRIORITY AML Reclamation Project

For your records

Cassel, Steven R. "Steve"

From: Pappas, Christina A [Christina.Pappas@uky.edu]
Sent: Monday, October 31, 2011 1:41 PM
To: Rickwa, Vanna (EEC); Overman, Bill (EEC); Howell, Ryan (EEC)
Subject: RE: Solicitation for OSA comments ref. Marcum Highwall HIGH PRIORITY AML Reclamation Project
Attachments: Marcum Highwall AML OSA Letter.pdf

Please find attached OSA's comments regarding the referenced project. Please feel free to contact me if you further questions.

Sincerely,
Christina A. Pappas, M.A.
Assistant Director
Kentucky Office of State Archaeology
University of Kentucky
1020a Export Street
Lexington, KY 40506
(859)257-1944
christina.pappas@uky.edu

From: Rickwa, Vanna (EEC) [<mailto:Vanna.Rickwa@ky.gov>]
Sent: Wednesday, October 19, 2011 2:22 PM
To: Crothers, George M; Crothers, George M; Pappas, Christina A
Cc: Howell, Ryan (EEC)
Subject: FW: Solicitation for OSA comments ref. Marcum Highwall HIGH PRIORITY AML Reclamation Project

Sorry. I attached the Word document letter in previous email.

Here is the pdf with project description and maps attached.

Vanna

From: Rickwa, Vanna (EEC)
Sent: Wednesday, October 19, 2011 1:51 PM
To: 'gmcrot2@email.uky.edu'; 'george.crothers@uky.edu'; 'christina.pappas@uky.edu'
Cc: Howell, Ryan (EEC)
Subject: Solicitation for OSA comments ref. Marcum Highwall HIGH PRIORITY AML Reclamation Project

Please see the attached letter with project description and maps.

Respond accordingly via email or letter.

Send email responses to:

Vanna.Rickwa@ky.gov

Thanks,

*Vanna Rickwa
Administrative Specialist III
Energy and Environment Cabinet
Department for Natural Resources
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, Kentucky 40601
502/564-2141, Ext. 130*



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

October 31, 2011

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

RE: Marcum Highwall HIGH PRIORITY AML Reclamation Project (Floyd County)

Dear Mr. Hohmann:

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

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

Sincerely,

A handwritten signature in blue ink that reads 'George M. Crothers'. The signature is written in a cursive style with a large, sweeping 'G' and 'C'.

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

Cassel, Steven R. "Steve"

From: Pappas, Christina A [Christina.Pappas@uky.edu]
Sent: Monday, October 31, 2011 1:44 PM
To: Rickwa, Vanna (EEC); Overman, Bill (EEC); Howell, Ryan (EEC)
Subject: RE: Solicitation for OSA comments regarding Marcum Highwall HIGH PRIORITY AML Reclamation Project
Attachments: Marcum Highwall Phase II AML OSA Letter.pdf

Please find attached OSA's comments regarding the referenced project. Please feel free to contact me if you further questions.

Sincerely,
Christina A. Pappas, M.A.
Assistant Director
Kentucky Office of State Archaeology
University of Kentucky
1020a Export Street
Lexington, KY 40506
(859)257-1944
christina.pappas@uky.edu

From: Rickwa, Vanna (EEC) [<mailto:Vanna.Rickwa@ky.gov>]
Sent: Thursday, October 27, 2011 2:50 PM
To: Crothers, George M; Crothers, George M; Pappas, Christina A
Cc: Howell, Ryan (EEC)
Subject: Solicitation for OSA comments regarding Marcum Highwall HIGH PRIORITY AML Reclamation Project

Please see the attached letter with project description and maps.

Respond accordingly via email or letter.

Send email responses to:

Vanna.Rickwa@ky.gov

Thanks,

*Vanna Rickwa
Administrative Specialist III
Energy and Environment Cabinet
Department for Natural Resources
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, Kentucky 40601
502/564-2141, Ext. 130*



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(859) 257-8208
Fax (859) 323-1968
www.uky.edu

October 31, 2011

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

RE: Marcum Highwall Phase II HIGH PRIORITY AML Reclamation Project (Floyd County)

Dear Mr. Hohmann:

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

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

Sincerely,

A handwritten signature in blue ink that reads 'George M. Crothers'. The signature is written in a cursive style with a large, sweeping 'G' and 'C'.

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

Cassel, Steven R. "Steve"

From: Cassel, Steven R. "Steve"
Sent: Friday, October 28, 2011 4:05 PM
To: 'Bill.Overman@ky.gov'
Cc: 'Steve Hohmann (steve.hohmann@ky.gov)'; 'mark.meade@ky.gov'; 'Train, Shannon (EEC)'; Blackburn, Joseph L. "Joe"; Smith, Gail; Turner, Samuel R. "Sam"; Francis, Gary D.; Edwards, Chester L. "Chet"; Holliday, James "Jim"; Miller, Corey T.; 'Howell, Ryan (EEC)'
Subject: Revision Approval: Marcum Highwall (HP), ATP, Floyd County

Thank you for your October 27, 2011, email requesting revision of the Marcum Highwall High Priority (HP) AML Reclamation Project located in Floyd County, which is attached below; the email attachments have been included within our project file. You request authorization of the second phase, i.e. Phase II, of construction activity on this project. We accept your email as formal notification to revise this project. Conversely, please accept this email as our formal response to your notification.

Your email notifies the Office of Surface Mining (OSM) that Phase II consists of removal of additional areas of instability on the highwall and replacing damaged portions of the barrier wall and wire mesh drape that covers the wall, installed previously by the OSM emergency project. The original project, authorized DAML to proceed with construction activity on October 14, 2010 and revised to add an auxiliary waste area on October 24, 2011, was based upon an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) that did not specifically consider the specific new proposed construction activity.

Your email explains that the new work activity has similar characteristics, similar impacts and has the same environmental concerns considered in the original NEPA evaluation. Your email notes that the proposed revised construction activity does not require a Kentucky DOW floodplain construction permit, nor are a 404 COE permit or a 401 WQC are required. You note that consultation with the Kentucky Office of State Archaeology (OSA) was sent, but that no further consultation with the State Historic Preservation Officer (SHPO) is necessary as the site meets exemption criteria under the programmatic agreement with the SHPO and KHC. Your request notes, like the previously authorized construction activity, that no removal of trees will be involved, no cave like structure or cliffhines (outside the portion of the highwall that is the AML problem threatening the residence), or portals are to be disturbed, and no work within a stream channel is proposed, therefore no Indiana bats or habitat will be impacted. With this information, DAML concluded that the requirements of Section 7 of the Endangered Species Act have been fulfilled for the construction activity proposed for Phase II of this project. After reviewing your proposal and the original file, I agree with your assessment.

As a result, I agree that the requested project revision requires no further environmental review. It is adequately evaluated under the previously approved Environmental Assessment (EA) and Finding of No Significant Impact for this project, as updated and amended by the findings contained within this email and the EA submitted with this revision to update the previous EA, is excluded from further NEPA compliance as updated with the current information presented, and does not require the preparation of an Environmental Impact Statement.

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

- No tree removal is proposed for this Phase I or II of the project, however DAML shall ensure that as noted in your ATP request documents that any clearing of trees that represent potential bat habitat associated with this phase of the project will only occur between October 15 and March 31.
- DAML shall ensure compliance with the provisions of the Kentucky Division of Water (DOW) floodplain Permit #5571 to "Construct Across or Along a Stream" for the primary waste area along Calf Creek and Permit # 14557 issued to Michael Mckinney for the proposed auxiliary waste area.

- Please provide any subsequent consultation responses from the OSA or Kentucky Fish and Wildlife services, and consider and address any concerns or recommendations contained within their response.

Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual and under the authority of the previous authorization of this project by the Lexington Field Office Director, you are authorized to expend grant funds for construction activities on this revision for the Phase II construction activity for the Marcum Highwall High Priority (HP) AML Reclamation Project. This authorization supplements, and does not supersede the previous authorization and NEPA review for this project. If you have any questions respecting this authorization or the procedures, please contact me by email or at 859-260-3912, or my supervisor Gail Smith at (859) 260-3908.

Thank you

From: Howell, Ryan (EEC) [mailto:Ryan.Howell@ky.gov]
Sent: Thursday, October 27, 2011 2:04 PM
To: Cassel, Steven R. "Steve"; Miller, Corey T.; Smith, Gail; Estes, Loren A.
Cc: Overman, Bill (EEC); Rickwa, Vanna (EEC)
Subject: FW: Marcum Highwall Phase II HP AMLRP ATP request
Importance: High

Steve and/or Corey,

AML recently received an ATP for the Marcum Highwall HP AML Reclamation Project in Floyd County. The ATP covered work for the first phase of a two phase project. At this time, AML would like to request an ATP for the second phase of this project. This phase has been sent to OSA and KDFWR for review under the name "Marcum Highwall Phase II HP AMLRP". KHC was not contacted, as all sites have been previously disturbed and fall under the Programmatic Agreement between KHC and AML. The reviews by DAML personnel for floodplain and water issues and for the KSNPC search made during the first phase of this project covered all areas in this project, including the auxiliary waste area that was added at a later date. The boundaries for the project and two waste areas are the same as what is planned for the second phase of this project. A new project description is attached. Also, attached are the same maps used for the first phase of the project.

The waste areas are the same as what was previously approved for the Marcum Highwall HP AMLRP, and the boundaries of the waste areas and the scope of work will be the same.

The site is approximately 0.75 mile east of the junction of KY 194 and KY 1428 in the community of Alvin, KY at latitude 37° 38' 15.8" N and longitude 82° 41' 0.4" W on the Lancer United States Geological Survey (USGS). See the attached project description for more project details.

The Marcum site has been determined to not be in the floodplain and will not require a WQC or COE permits. The project sites do not involve work that will involve any streams (ephemeral, intermittent, or perennial). See the attached emails concerning the review of water issues for the proposed project, and a copy of the floodplain permit for both waste areas.

A KSNPC search was conducted by Keith Coleman on October 19, 2011 and October 21, 2011 (attached in a second email). These memos indicate two species of state concern are known to exist within one mile of the project sites, and that one federally listed "threatened or endangered" species is known to occur within ten miles of the project sites. The species of state concern are the Virginia Bladetooth (*Patera panselenus*) and the Trout-perch (*Percopsis omiscomaycus*). According to the attached memos, this project does not represent the preferred habitat of these species and should not negatively impact it. The other species noted in the search is the Indiana Bat (*Myotis sodalis*). This species day roosts and establishes maternity colonies in trees with exfoliating bark or cavities in their trunks and larger limbs, and hibernates in caves and other similar underground structures. Although the project sites fall within an area buffered by the USFWS as "known habitat" for the Indiana Bat, since tree clearing is not anticipated within the project site or associated waste areas, and since no portals or cave-like structures are associated with this project, and no cliff-lines outside of the unstable AML problem area are associated with the project sites, project-related construction should not impact this species, regardless of the timing.

The project description and maps for the second phase of this project were sent to the Kentucky Department of Fish and Wildlife Services (KDFWS) and a copy of their letter will be sent when our office receives it. KDFWR had no issues with the first phase of the project, and the additional work involves reclamation of the unstable AML problem area, which should be exempt. No trees will be removed and no streams will be impacted by this project.

Both of the waste areas and the Marcum site have been previously disturbed. The Marcum site was previously disturbed by coal mining, house seat construction, and OSM emergency project construction. It is unlikely that any archaeological resources will be negatively impacted. A project description and maps were sent to the Office of Archaeology (OSA) and a copy of their response letter will be sent to OSM when it is received. The Kentucky Heritage Council (KHC) was not contacted, as this project is exempt under the Programmatic Agreement between KHC and AML.

Because the waste areas are within the floodplain, an EA was prepared and updated for the second phase of the project, Marcum Highwall Phase II HP AMLRP. This will be sent in a separate email due to email size restrictions. The site was previously reviewed for eligibility for the OSM emergency projects. A copy of the eligibility determination letters will also be sent in a separate email, due to email size restrictions. An update for this phase of the project for PAD # KY 4170 CIA was prepared, entered, and approved in the e-AMLIS, and is available online for your review. The total estimated cost for this phase of the project is \$191,974.00.

Please accept this email as an ATP request for the Marcum Highwall Phase II HP AML Reclamation Project. A second email will be sent, due to email size restrictions.

Thanks,
Ryan Howell

Cassel, Steven R. "Steve"

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Sent: Thursday, October 27, 2011 2:04 PM
To: Cassel, Steven R. "Steve"; Miller, Corey T.; Smith, Gail; Estes, Loren A.
Cc: Overman, Bill (EEC); Rickwa, Vanna (EEC)
Subject: FW: Marcum Highwall Phase II HP AMLRP ATP request
Attachments: Marcum Highwall Phase II HP AMLRP description.doc; Marcum Highwall Phase II HP AMLRP overview map.pdf; Marcum planview-optimized.pdf; Waste Area - optimized.pdf; Marcum auxiliary waste area.pdf; RE: Marcum Highwall; RE: Waste Area Water Review

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Steve and/or Corey,

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Thanks,

Ryan Howell

MARCUM HIGHWALL PHASE II HIGH PRIORITY

AML RECLAMATION PROJECT

FLOYD COUNTY

The proposed Marcum Highwall Phase II High Priority AML Reclamation Project (approximately 5.0 acres total) is the site of two previous OSM emergency projects (KY-02-118 and KY-08-048) worked in 2002 and 2009. The site is at the Jerry and Karen Marcum residence just south of Prestonsburg, KY near the small community of Alvin, in Floyd County. The site is located on the Lancer United States Geological Survey (USGS) 7.5' quadrangle at N 37° 38' 16" and W 82° 41' 01" just off of KY 194. The site involves an approximately 80' tall unstable highwall that recently had a portion collapse and destroy a section of the barrier wall constructed during a previous OSM emergency project. Large rocks filled in behind the wall and overtopped the wall. The Marcum Highwall AML Reclamation Project (Phase I) removed the rocks from behind the wall and in the yard.

The proposed reclamation for this phase of the project will be to replace portions of the wall, remove any areas of instability on the highwall, and replace portions of the wire mesh drape that covers the wall. The reclamation of the highwall will involve the removal of damaged beams, cables and wire mesh. The damaged beams will be replaced with the same size beams, as well as, the same size cables. The wire mesh on the barrier wall will be replaced with a stronger wire mesh. The wire mesh used to drape the highwall will be replaced with the same size wire mesh. Portions of the driveway and landscape features will have to be replaced if damaged by the construction activities. Also, a safety fence will be constructed above the highwall since the area is in a populated area.

The material removed from the highwall will be disposed in one of two waste areas. The first waste area is at N 37° 38' 00" & W 82° 41' 51". The second (auxiliary) waste area is at N 37° 35' 48" & W 82° 43' 56" (see attached maps). Both of these waste areas are located within the floodplain; however, the landowners at both sites have valid floodplain permits to fill from the Division of Water at these locations. Both of these waste areas have also been previously approved for use during the initial Marcum Highwall HP AML Reclamation Project.

Access to the project site and waste areas are along county roads, and through a residential driveway and maintained yards. This project will include pre- and/or post- project maintenance and repair of existing previously constructed public county roads utilized during the construction of this project, which are administered by the county or local road authority. This construction activity will be conducted under the authority and supervision of the local public road authority and will consist of standard road construction practices appropriate to mitigate

impacts to the local community from potential degraded road conditions in order to maintain public traffic safety.

No trees are proposed to be removed. No perennial or intermittent streams will be disturbed. To minimize sedimentation, in accordance with our Technical Specifications, a stringent erosion and sediment control plan including such measures as hay-bale silt fences and prompt revegetation will be implemented at all disturbed areas.

STREAM CONSTRUCTION PERMIT

For Construction In Or Along A Stream

Issued to: **Mr. Michael McKinney**
Address: **Box 1138**
Martin, KY 41649

Expires if work is not begun by
November 4, 2005

Permit No. 14557

In accordance with KRS 151.250 and KRS 151.260, the Natural Resources and Environmental Protection Cabinet approves the application dated **October 28, 2004** for placement of fill in the right descending floodplain of Beaver Creek at about stream mile 2.3, with coordinates 37.596303, -82.732687, in Floyd County.

There shall be no deviation from the plans and specifications submitted and hereby approved unless the proposed change shall first have been submitted to and approved in writing by the Cabinet. This approval is subject to the attached limitations.

This permit is nontransferable and is not valid unless actual construction of this authorized work is begun prior to the expiration date noted above. Any violation of the Water Resources Act of 1966 as amended is subject to penalties as set forth in KRS 151.990.

If you have any questions regarding this permit, please call Ms. Kathy Allen at (502) 564-3410.

Issued November 4, 2004.

By:


Art Clay, P.E., Manager
Water Resources Branch

AC/KA/kla

pc: Hazard Regional Office
Lon May – Floyd County
File

Stream Construction Permit

Michael McKinney Residence

Facility Requirements

Permit Number: 14557

Activity ID No.: APE20040001

ACTV0000000001 (Fill) placement of fill:

Submittal/Action Requirements:

Condition No.	Condition
S-1	Michael McKinney must submit final construction report: Due within 90 days after completion of construction Michael McKinney must notify in writing that the project has been completed in accordance with the approved plans and specifications. A Final Construction Report Form is enclosed. [401 KAR 4:060 Section 3(2)]

Narrative Requirements:

Condition No.	Condition
T-1	This permit is issued from the standpoint of stream obstruction only and does not constitute certification of any other aspect of the proposed construction. The applicant is liable for any damage resulting from the construction, operation, or maintenance of this project. This permit has been issued under the provisions of KRS Chapter 151.250 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal and local agencies. [KRS 151.250]
T-2	A copy of this permit must be available at the construction site. [KRS 151.250]
T-3	Any work performed by or for Michael McKinney that does not fully conform to the submitted application or drawings and the limitations set forth in this permit, is subject to partial or total removal and enforcement actions pursuant to KRS 151.280 as directed by the Kentucky Department for Environmental Protection. [KRS 151.280]
T-4	Any design changes or amendments to the approved plans must be submitted to the Division of Water and approved in writing prior to implementation. [KRS 151.250]
T-5	Since Floyd County participates in the National Flood Insurance Program, a local floodplain permit must be obtained prior to beginning of construction. Upon completion of construction Michael McKinney must contact the local permitting agency for final approval of the construction for compliance with the requirements of the local floodplain ordinance. [401 KAR 4:060 Section 1(16)]
T-6	Permanent vegetation shall be established on fill as soon as possible upon completion of filling. [KRS 224.70-110]

Stream Construction Permit

Michael McKinney Residence
Facility Requirements
Permit Number: 14557
Activity ID No.: APE20040001

ACTV0000000001 (continued):

Narrative Requirements:

Condition No.	Condition
T-7	It is the intent of this permit that no fill be placed within the limits of the designated floodway. The floodway limits are determined by the Federal Insurance Administration of the Federal Emergency Management Agency (FEMA), and shown on the Flood Boundary and Floodway Map included in the Flood Insurance Study for Lon May dated 4/46/1990. Copies of the Flood Insurance Study are on file with Lon May, the Division of Water, and the Federal Insurance Administration in Atlanta, Georgia. [401 KAR 4:060 Section 4(1)]
T-8	Fill slopes shall be no steeper than 2:1 (horizontal: vertical). Steeper slopes shall require a stability analysis. [401 KAR 4:060 Section (7)]
T-9	To avoid secondary adverse impacts, all materials used shall be stable and inert, free from pollutants and floatable objects, and shall meet all appropriate engineering standards. (Inert here means materials that are not chemically reactive and that will not rot or decompose, such as soil, rock, broken concrete or similar materials.). [401 KAR 4:060 Section 7]
T-10	Construction other than as authorized by this permit shall require written approval from the Division of Water. [401 KAR 4:060]