

MAR 11 2011

Authorization to Proceed (ATP)

Wallins Creek Phase 8
Abandoned Mine Land (AML) Reclamation Project
based on Environmental Assessment (EA)
Harlan County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the February 28, 2011, request for ATP with construction activity on the Wallins Creek Phase 8 AML Reclamation Project by the Kentucky Department for Natural Resources, Division of Abandoned Mine Lands (DAML).

OSM found that the appropriate request documents were submitted and appear to support the need for the proposed construction activity. OSM confirmed that the required information for this project has been included in the AML Inventory System (AMLIS) for Problem Areas (PA) # KY-000294-SGA.

OSM reviewed the EA prepared by DAML documenting the National Environmental Policy Act (NEPA) environmental review of this project. OSM determined that the EA adequately discusses the environmental issues and impacts associated with the construction of the project. Based on the analysis in the EA, I have determined that reclamation of this abandoned mine site would not have significant effects on the quality of the human environment. Therefore, I conclude that no environmental impact statement is necessary. As a result, I have signed the Finding of No Significant Impact (FONSI) for the Wallins Creek Phase 8 AML Reclamation Project. Please give special attention to the following recommendation (s).

- With the exception of trees directly impacted by the AML problem, there is no purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inch or greater diameter at breast height and at least 10 feet in height, during the period of April 1 to October 15, and provided the activity does not occur in "Known Indiana Bat Habitat".
- DAML determined from the written description that the project may impact a stream, wetland, or floodplain that requires a 401 Water Quality Certification (WQC), a 404 Clean Water Act (CWA) permit, or a DOW floodplain permit. All permits have been applied for and LFO has received the Floodplain permit for the Phase 8 project. Please submit the other permits to use for our records as they are received.

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



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

3/14/2011

Date

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

MAR 11 2011

Wallins Creek Phase 8 Abandoned Mine Lands (AML) Project Harlan 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 Wallins Creek, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) at 36° 48' 49" North Latitude and 83° 24' 41" West Longitude, 36° 49' 20" North Latitude and 83° 24' 48" West Longitude, 36° 47' 43" North Latitude and 83° 24' 06" West Longitude, 36° 47' 16" North Latitude and 83° 24' 40" West Longitude near the community of Kentenia, 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-000294-SGA. The project involves reclamation of AML conditions consisting of clogged streams at four sites.

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 AML 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 NEPA review include the following comments and/or recommendations.

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified two known federally threatened/endangered fish and wildlife in the USGS quadrangle in which the project area is located within a 10 mile radius of the project area. They also identified records of one state listed species of concern within 1 mile radius of the project area. They recommended coordination with the U.S. Fish and Wildlife Service's Kentucky Field Office on how to proceed under the Endangered Species Act. KDFWR also recommended that the erosion control measures, mentioned in the proposal, should be implemented and maintained periodically.

The DAML staff biologist reviewed the Kentucky State Nature Preserves Commission's (KSNPC) BIOTICS database in lieu of further consultation. The findings are noted in the ATP request letter and three attached memoranda. In review all three reports, DAML found that KSNPC data indicated two federally listed threatened or endangered species within a 10-mile radius and four species of State concern within a 1-mile radius of the project. DAML listed and discussed each species above in the biologist's memorandum, the EA, and their ATP request letter, finding that the noted species will not be impacted, since the project will not result in a significant negative impact to their critical habitat and/or suitable habitat does not exist within the project area to support the species. No reason was identified to dispute their determination.

The DAML Biologist also noted that the federally listed endangered Indiana bat, although not indicated to exist in the project vicinity; by his and the KDFWR reviews, would not be disturbed by the project. This is based on the fact that the project proposes to disturb no mine portals, cliffs, or caves, and proposes no disturbance of forested areas that could be utilized as roosting sites other than that area impacted by the AML problem that is creating a threat to the public; and in the event that any trees that represent potential Indiana bat habitat need to be removed, removal will only occur between October 15 and March 31, to avoid potential impacts to the Indiana bat.

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

After review of the ATP documents for this project, which included consultation with the KSNPC and the KDFWR, DAML determined that additional consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species (Federal Assistance Manual (FAM) Chapter 5-11-15, A. 3.)

The conditions in the MOA are met because:

- There will be no purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inch or greater diameter at breast height and at least 10 feet in height, during the period of April 1 to October 14, and the proposed activity does not occur in "Known Indiana Bat Habitat".
- No caves or clifflines will be disturbed;
- 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 was not contacted for this phase of this project. The area has been reviewed in previous phases of the work on this site, including the waste area. Since the work to be done is to replace or fortify wall construction done in the past, the Office of State Archaeology referenced the previous consultation(s). I agree with this decision, since the construction activity to be done at the site is similar to the work previously completed work at the site. The referenced consultation 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 project area does not appear to have any potential for adversely affecting archaeological sites.

On January 3, 2011, the Kentucky Heritage Council (KHC)/State Historic Preservation Officer (SHPO) and the DAML signed an agreement which identified the criteria to be used to determine which projects are exempt from review by the. The agreement defines exempt projects as: *"Routine and recurring projects whose impacts are foreseeable and cause little or no ground disturbance or that have a low probability of affecting known or unknown historic properties.."*

The definition also includes a list of areas that fit the above definition. They are listed below.

1. *Activities that occur on previously disturbed land, including highwalls, refuse piles, slurry cells, subsidence areas, mine benches, mine portals with no constructed entry support, and any coal mining remains less than 50 years of age, including tipples, other structures, intact rail tracks, and mining equipment.*
2. *Roads and roadside ditches.*
3. *Areas disturbed by timber operations.*
4. *Areas disturbed by gas and oil well development.*
5. *Areas disturbed by residential and commercial development.*
6. *Areas with water flows from mine discharges.*
7. *Trenches excavated for waterline installation in previously disturbed soils.”*

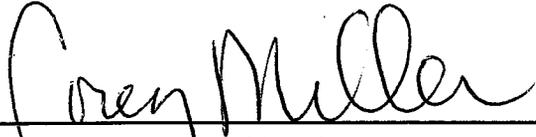
According to the project description, all of the project area has been impacted by items 1 - 6 in the above list; therefore, the project is exempt from further consultation with the KHC. This fulfills the responsibility to consult with the SHPO under the Section 106 review process. Neither agency recommended conducting archeological surveys/investigations or mitigation measures.

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 their Division of Mine Permits (DMP). The DMP further delegated this responsibility to DAML, with consultation as needed on a case by case basis. In addition, the DAML Director in a meeting held in February 2010, offered and agreed to coordinate consultation with the U.S. Army Corps of Engineers (COE) concerning CWA 404 permits, as DAML had been doing without an agreement in the past. OSM LFO accepted DAML's offer to conduct this consultation.

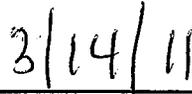
Under a 2005 agreement with the DOW Floodplain Management Section (FMS) of the Water Resources Branch, DOW authorized DAML to apply DOW floodplain standards in lieu of a DOW review. In this agreement, DAML will directly consult with DOW if it appears a permit may be required. DAML has acquired a set of Federal Emergency Management Agency (FEMA) floodplain maps that include the project area.

As a result, DAML applies each responsible agency's criteria by agreement or physically consults with the DMP and DOW concerning CWA 401 WQC and floodplain permits to "Construct Across or Along a Stream", and with the COE concerning CWA 404 permits. This review has been centralized with DAML's Design Branch, whose staff has previous experience in this area and with the Kentucky DOW. DAML determined from the written description that

the project may impact a stream, wetland, or floodplain that requires a 401 WQC, a 404 CWA permit, or a DOW floodplain permit. All permits have been applied for; and LFO has received the Floodplain permit for the Phase 8 project. Please submit any other permits to LFO for our records as they are received. DAML further notes in their ATP letter that they will request a copy of all necessary permits prior to expending AML funds.



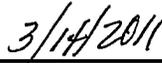
OSM Environmental Reviewer
AML Program Specialist



Date



Joseph L. Blackburn
Field Office Director



Date

Memorandum

Date: March 11, 2011

To: Wallins Creek Phase 8 Abandoned Mine Land (AML) Reclamation Project
File SubAccount# 99.094030000

From: Corey Miller, 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 Wallins Creek Phase 8 AML Reclamation Project. The Branch prepared an ATP letter and Finding of No Significant Impact (FONSI) for the FOD review. The Branch recommends that the FOD sign the FONSI and ATP in the space provided on each document. 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 and FONSI. A scanned copy of these authorization documents will be attached to an email to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated February 28, 2011, was received at LFO attached to an email on February 28, 2011. The ATP was processed within 10 working days; therefore, the customer service target of 14 working days to process an ATP was met. The ATP was processed in 12 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP was met.

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 previous discussions, DNR indicated they would assign projects to a grant before they go to construction. Until a final AG and Location Code are assigned the LFO Project/Site ID # 99.094030000 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 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 ATP request letter stating that 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 April 1, 2011, Contract Award was entered as May 1, 2011, and Contract/Construction Completion was entered as May 1, 2012.

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 an Environmental Assessment (EA) with agency consultation

response letters attached; and an Abandoned Mine Land Inventory System (AMLIS) Problem Area Description (PAD) summary and appropriate Priority Documentation Forms, with engineer cost estimates for PA# KY-000294-SGA.

A pre-approval field inspection of the proposed project was deemed unnecessary, since no unique characteristics warranting special field verification were noted and it wasn't selected for field verification under the EY 2009 Oversight Agreement.

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 letter summarized the responses from agencies consulted for the NEPA review and discussed appropriate resolution of all their concerns and recommendations. The responses from agencies consulted for the NEPA review 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-000294-SGA was submitted by DAML for OSM review prior to directly input into the AMLIS by the DAML and the PA was initially established in the AMLIS on September 8, 2006, based on the AMLIS 2006 3rd Quarter database. 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 summary printout from the OSM HDQ AMLIS database under the previous AML reclamation project and accepted by OSM. PA # KY-000294-SGA submitted for this ATP does not represent a "new Problem Area" after December 20, 2006, requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007); therefore, no FOD approval form was prepared for FOD signature. The signed form will be kept on file at LFO and a copy will be transmitted to DAML as an enclosure with their copy of the ATP letter.

Wallins Creek Phase 8
Abandoned Mine Lands (AML) Reclamation Project
ENVIRONMENTAL ASSESSMENT

A. Description of the Proposed Action:

The proposed project (1.0 acre total), along Wallins Creek, in Harlan County, consists of the removal and replacement of failed gabion baskets near the Timothy Hensley residence with concrete retaining walls, and grouting of existing gabion retaining walls at the Don Hensley and Homer Rowlett sites where pre-cast concrete block retaining walls were constructed. This environmental assessment is required because the project requires a floodplain permit and Corp of Engineers permit. One state agency and two state agency databases were consulted; their response letters/emails and a memorandum regarding the KSNPC database search results are enclosed. The KHC and OSA were previously consulted during the initial Wallins Creek AML Reclamation Project. Neither agency expressed concern for a potential negative impact to any archaeological resources, at that time. As this project area has already been significantly disturbed by past AML work, it does not appear that any potential archaeological resources will be negatively impacted during this phase of the project.

B. Need for the Proposed Action:

AML constructed gabion retaining walls, constructed in the mid-80's as stream bank stabilization have failed. The bottom baskets were eroded by the water and sediment in Wallins Creek and the upper baskets toppled over into the stream. The gabions and rock are restricting 10 feet of the stream channel. The gabions will need to be cut loose from standing baskets and metal properly disposed of. The proposed project will mitigate problems rated as Priority 2. The problems are further described in the description for national AML inventory problem area # KY 0294 SGA.

C. Alternatives Considered:

- Remove and replace the failed gabion walls that are restricting water flow within Wallins Creek.
- Take no action, allowing the human health hazards to continue.

C.1. Preferred Alternative:

The proposed project (1.0 acre total), along Wallins Creek, consists of the removal and replacement of failed gabion baskets near the Timothy Hensley residence with concrete retaining walls, and grouting of existing gabion retaining walls at the Don

Hensley and Homer Rowlett sites where pre-cast concrete block retaining walls were constructed.

The waste area was previously used in the Wallins Creek Phase V project and is located at 36° 47' 16" latitude and 83° 24' 40" longitude. Construction disturbances will be kept to a minimum, topsoiled (or alternate topsoiled), seeded and mulched as soon as practical.

C.2. No Action:

Should the Commonwealth take no action, people could be injured and property could be damaged from abandoned mine land problems.

D. Affected Environment:

D.1. General Setting:

The Wallins Creek Phase 8 Project site is located along Wallins Creek, in Harlan County. The predominant land uses in the vicinity are residential, commercial (small businesses), agricultural, and forestland. Second growth, unmanaged upland hardwood forest, coal mines and natural gas wells are on the steep slopes.

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 Mine Permits (DMP) floodplain database
- Kentucky Heritage Council (KHC) – previously consulted
- Kentucky Office of State Archaeology (OSA) – previously consulted
- Kentucky State Nature Preserves Commission (KSNPC) database

- Kentucky Division of Abandoned Mine Lands- Design Branch (DAML)

E. Environmental Impacts of the Proposed 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.

E.1.a. Hydrology:

A formulated erosion, sediment, and drainage control plan will be implemented during construction, to minimize sedimentation of receiving streams. This plan includes hay-bale silt checks, silt fences, road culverts, surface ditches and prompt revegetation of disturbed areas. The completed project will provide non-eroding drainage controls. The project will also provide a vigorous, complete cover of perennial vegetation, which will result in less stream sedimentation after project construction. All drainage controls will be implemented throughout the life of the project. Therefore, the hydrology of the project areas and downstream areas will suffer no long-term negative impacts due to construction of this project.

The Kentucky Division of Abandoned Mine Lands (DAML), Design Branch, reviewed information concerning the proposed project sites, and determined that a floodplain permit obtained in 2000 is still valid since maintenance has been ongoing; however a floodplain permit will be required for the waste area. In 2003 the Water Quality Section at the Division of Water waived the maintenance of gabion type streambank stabilization for AML. A COE permit will be required, and has been received. This division is applying for all necessary permits and construction will not start until they have been received.

E.1.b. Fish and Wildlife/Plants

The KSNPC database researched by AML staff revealed three species of state concern, monitored by the KSNPC, is known to occur within one mile, and that two species listed as threatened or endangered under the United States Endangered Species Act (USES A) are known to occur within ten miles of the project site. The species noted in the search are the:

- Roan Mountain Goldenrod (*Solidago roanensis* – KSNPC Threatened)
- Gray Comma (*Polygonia progne* – KSNPC Historical)
- Coal Skink (*Eumeces anthracinus* – KSNPC Threatened)
- Blackside Dace (*Chrosomus cumberlandensis* – USESA Threatened)
- Indiana Bat (*Myotis sodalist* – USESA Endangered)

According to the memo by Keith Coleman, dated January 28, 2011 none of these species should be negatively impacted by the proposed reclamation work.

Although, the entire state of Kentucky has been declared to be potential Indiana Bat habitat, since no records of hibernacula are within 10 miles of any project area, no special conditions would apply to the accepted tree removal period, a time at which bats are secured within their hibernacula. If trees greater than 5” DBH, which also may be characterized as featuring shaggy or exfoliating bark, cracks, splits or hollowed out cavities within limbs or trunks, need to be cleared, a biological assessment, or a mist-net survey may be required if the clearing would not occur between October 15 – March 31.

E.1.c. Cumulative Environmental Impact:

No significant environmental impacts should occur as a result of construction of the preferred alternative in the watershed where the proposed construction site is located. While numerous AML reclamation projects have been constructed throughout the state, each has been found through the NEPA process to have no significant impact upon the environment. Therefore, as neither previous projects nor the proposed alternative will have any significant impact upon the environment within the watershed, there will be no cumulative impact as a result of the construction of this proposed AML project.

E.2. No Action Alternative:

E.2.a. Hydrology:

Existing hydrologic conditions would remain unchanged with the no-action alternative.

E.2.b. Fish and Wildlife/Plants:

Existing plant and animal species would remain unchanged with the no-action alternative.

