



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

2675 Regency Road

Lexington, KY 40503-2922

FEB 05 2010

Categorical Exclusion (CX) Authorization to Proceed (ATP)

Anita Smith Slide

**Abandoned Mine Land (AML) Reclamation Project
Perry County, Kentucky**

Mr. Steve Hohmann, Director
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, Kentucky 40601

Dear Mr. Hohmann:

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of your January 11, 2010, request for ATP with construction activity on the Anita Smith Slide AML Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML). Your request does not designate a funding source for the construction work under the Project Costs (Non-Water Supply) of any of Kentucky's AML Construction Grants. Please notify this office of the final funding source and State Subaccount number for our records.

OSM found that the appropriate request documents were submitted and appear to support the need for the proposed construction activity. OSM confirmed that the required information for this project has been included in the AML Inventory System. I have signed an approval form for the new Problem Area (PA) # KY-003907-SGA. A pre-approval field inspection of the proposed project was conducted on January 22, 2010. The proposal was recommended for approval with no concerns and or recommendations identified.

We conducted National Environmental Policy Act (NEPA) coordination with the Kentucky Field Office of the U.S. Fish and Wildlife Service (USFWS) in Frankfort, Kentucky. After review of the ATP documents, we determined that further consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species.

OSM reviewed the categorical exclusion (CX) certification prepared by DAML for this project. OSM determined that the construction activity requested under this project conforms to the exclusion criteria in 516 DM 2 and 13, does not involve any of the



general exceptions in 516 DM 13.5(A)(33) or extraordinary circumstances listed in 516 DM 2, Appendix 2, and is excluded from further NEPA compliance.

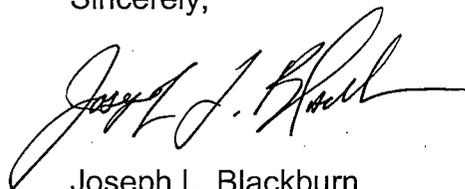
We recommend that appropriate consideration be given to the general recommendations and comments provided in the response from the consultation agencies. Please give special attention to the following recommendation(s).

- Please ensure compliance with the provision in your Biologist's Memo stating that if any tree removal is necessary, it will be accomplished only between October 15 and March 31, in order to avoid potential impacts to the Indiana bat. The Biologist's Memo does state however, that most of the vegetation to be removed does not consist of appropriate summer roosting habitat for the Indiana bat.

Please send OSM copies of any applications for permits/certifications and approval documents required for the construction of this project that were not submitted in your original ATP. This information is needed by OSM to perform oversight and monitor compliance with the NEPA.

I have signed the CX and attached a copy, scanned with this letter, and a PA approval form, to an email notifying Mr. Carl E. Campbell, Commissioner, Department for Natural Resources, of this authorization. Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual, you are authorized to proceed with construction activity for this project and expend Federal funds in accordance with AML grant terms and conditions. If you have any questions concerning this ATP or the procedures, please contact Steve Cassel at (859) 260-3912 or Gail Smith at (859) 260-3908.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph L. Blackburn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph L. Blackburn
Field Office Director



U.S. Office of Surface Mining Reclamation and Enforcement

Approve/Disapprove Adding New Problem Area (PA) to the AML Inventory

State/Tribe Kentucky Planning Unit Number 413

PA # KY-003907-SGA PA Name North Fork Kentucky River

Funding Source(s) (Check the appropriate source(s))

<input checked="" type="checkbox"/>	(SGA) Pre-SMCRA Coal (P1, P2, P3) State/Tribe Program	<input type="checkbox"/>	(AMA) Acid Mine Drainage Plan
<input type="checkbox"/>	(SGB) Pre-SMCRA Coal (P3 Only)	<input type="checkbox"/>	(NCA) Non-Coal (P1, P2, P3)
<input type="checkbox"/>	(FRA) FRP Non-emergency	<input type="checkbox"/>	(NCF) Non-Coal Sec. 411(f)
<input type="checkbox"/>	(RMA) Remining	<input type="checkbox"/>	(CLA) Clean Streams Initiative
<input type="checkbox"/>	(CIA) Coal Interim Site Funding	<input type="checkbox"/>	(ENH) Enhanced AML Rule Projects
<input type="checkbox"/>	(CSA) Coal Insolvent Surety Site Funding		

Approve

Disapprove

Joseph L. Blackburn, Director
Name (Print)

Name (Print)


2/10/2010
Signature/Date

Signature/Date

Comments: As required by OSM Directive AML-1-2 (June 22, 2007), this new Problem Area was reviewed on January 29, 2010, by Corey Miller, Regulatory Program Specialist and Steve Cassel, Sr., AML Program Specialist, who determined the PA Description (PAD) and Priority Documentation (PD) forms comply with the currently active version of OSM Directive AML-1 (August 28, 2000). At this time this directive has not been updated to reflect the other AMLIS related provisions enacted in the 2006 AML Reauthorization legislation of the Surface Mining Control and Reclamation Act (SMCRA) and no other official guidance has been provided, other than Change Notice #2 noted above to OSM Directive AML-1.

It should be noted that the "General Welfare Criteria" was eliminated from SMCRA in the 2006 changes to SMCRA and was not used in the prioritization of this PA.

The reviewer recommends that the Lexington Field Office Director (LFOD) approve this new PA as submitted based upon the guidance and criteria currently provided and authorized by OSM. This approval by the LFOD does not supersede new criteria and/or guidance approved by OSM at a later date requiring retroactive compliance. If this occurs, the State would need to change the PA in the AMLIS accordingly.

UNITED STATES DEPARTMENT OF THE INTERIOR
Office Of Surface Mining Reclamation And Enforcement
ABANDONED MINE LANDS
CATEGORICAL EXCLUSION CERTIFICATION AND DETERMINATION

State: Kentucky PA: 3907
Project Name: Anita Smith (AML) Reclamation Project
Project Description: The project consists of establishing controls for deep mine drainage. (DS)

I. GENERAL EXCEPTIONS

Does the project type specifically require an EA in 516 DM 6, Appendix 8, as specified in Item I of the attached instructions? No Yes

II. DEPARTMENT OF INTERIOR EXCEPTIONS

Will the project have any of the following:

A significant adverse effect on public health or safety? No Yes

An adverse effect on any of the following unique geographic characteristics? If 'yes,' check the ones that apply: No Yes

- | | |
|---|--|
| <input type="checkbox"/> Parks (state, local or National) | <input type="checkbox"/> Wild or Scenic Rivers |
| <input type="checkbox"/> Recreation or Refuge Lands | <input type="checkbox"/> Wetlands |
| <input type="checkbox"/> Wilderness Areas | <input type="checkbox"/> Floodplains |
| <input type="checkbox"/> Ecologically Significant or Critical Areas | <input type="checkbox"/> Sole or Principal Drinking Water Aquifers |
| <input type="checkbox"/> Prime Farmlands | |

Highly controversial environmental effects? No Yes

Highly uncertain and potentially significant environmental effects or unique or unknown environmental risks? No Yes

A precedent for future action or a decision in principle about future actions with potentially significant environmental effects? No Yes

Directly related to other actions with individually insignificant but cumulatively significant environmental effects? No Yes

Adverse effects on properties listed or eligible for listing on the National Register of Historic Places? No Yes

Adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species? No Yes

Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Wetlands Protection) or The Fish and Wildlife Coordination Act?

No [x] Yes []

Threaten to violate a Federal, State, Tribal or local law or requirement imposed for the protection of the environment?

No [x] Yes []

III. RESOURCE IMPACT EXCEPTIONS

Are there any unresolved issues or adverse effects requiring specialized mitigation for any of the following resources? If yes, check the ones that apply.

No [x] Yes []

- Topography
- Land Use (includes prime farmland)
- Soils
- Vegetation (includes wetlands)
- Hydrology
- Fish and Wildlife
- Historic and Cultural
- Recreation
- Air Quality
- Noise
- Other (includes socio-economics)

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

V. RESPONSIBLE OFFICIAL CERTIFICATION

Signature: Steve Hohmann Date: 1/11/12

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

VI. OSM DETERMINATION

This project conforms with the exclusion criteria in 516.Dm 6, Appendix 8, and is excluded from further NEPA compliance.

This project does not conform with the exclusion criteria in 516 DM 6, Appendix 8, and requires an environmental assessment.

Signature: Joseph L. Blackburn Date: 02/05/2010

Name and Title: Joseph L. Blackburn, Field Office Director

Memorandum

Date: January 29, 2010

To: Anita Smith Slide Abandoned Mine Land (AML) Reclamation Project
File Sub-Account# 99.100111002

From: Corey Miller, Regulatory Program Specialist
Lexington Field Office (LFO), Program Support Branch (PSB)

Through: Steve Cassel, Sr., AML Program Specialist
Lexington Field Office (LFO), Program Support Branch (PSB)

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

The Branch recommends that the Field Office Director (FOD) authorize the State of Kentucky to proceed with the construction activity proposed on the Anita Smith Slide AML Reclamation Project. The Branch prepared an ATP letter, Problem Area (PA) approval form, as required by OSM Directive AML-1-2 (signed June 22, 2007), and Finding of No Significant Impact (FONSI) (CX) Categorical Exclusion, for the FOD review. The Branch recommends that the FOD sign the Categorical Exclusion Determination (CX), the PA approval form, 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, PA approval form, and CX. 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 January 11, 2010 was received at LFO attached to an email on January 11, 2010. The ATP was processed within 14 working days; therefore, the customer service target of 14 working days to process an ATP was met. The ATP was processed in 18 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 Grant's (ACG). The temporary Subaccount# 99.100111002 was assigned to the project file for LFO tracking purposes until an actual subaccount number is assigned by DAML. 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 March 1, 2010, Contract Award was entered as March 15, 2010, and Contract/Construction Completion was entered as September 10, 2010.

An office review of the request documents was conducted. The documents consisted of; a project description, a location map, a National Environmental Policy Act (NEPA) review documented in a CX with agency consultation response letters attached; and an Abandoned Mine Land Inventory System (AMLIS) Problem Area Description (PAD) summary and appropriate Priority Documentation Form's, with engineer cost estimates PA# KY-00 -SGACIA.

A pre-approval field inspection of the proposed project was conducted on January 22, 2010. The proposal was recommended for approval with no concerns or recommendations the following concern and recommendation identified. Refer to report findings and photos in the LFO State AML Project Database.

The CX submitted for the construction activity at the site was reviewed and found to adequately document the environmental review of the construction activity within the current NEPA review guidance. The use of a CX is acceptable for the construction activity proposed in this project because all items on the CX have a response of "No." The project type does not meet any of the ten general exceptions, in 516 DM 13.5(B)(33), that would require preparation of an Environmental Assessment.

The project involves: no more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, noncommercial borrow or disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes to address more than one structure; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation.

In addition, none of the twelve extraordinary circumstances listed in 516 DM 2, Appendix 2, exist on the project. All access is via existing roads There are no unresolved issues or adverse effects requiring specialized mitigation.

No significant impacts have been reported to this office or identified by the Branch. The Branch recommends that the Office of Surface Mining Reclamation and Enforcement (OSM) accept the CX submitted by the Kentucky DAML.

The State's ATP request letter summarized the responses from agencies consulted for the NEPA review and discussed appropriate resolution of all their concerns and recommendations. The responses from agencies consulted for the NEPA review include the following comments and/or recommendations.

The Kentucky Department of Fish and Wildlife Resources (KDFWR) evaluated the project area and determined that state and federal threatened and endangered species are known to occur within close proximity of the proposed project area. However, the KDFWR does not expect impacts to listed species due to the location and nature of the project.

The DAML staff biologist reviewed the Kentucky State Nature Preserves Commission's (KSNPC) BIOTICS database in lieu of further consultation. The findings are noted in the ATP request letter and an attached memorandum. DAML found that KSNPC data indicated no federally listed threatened or endangered species within a 10-mile radius and no species of State concern within a 1-mile radius of the project. No reason was identified to dispute their determination.

The OSM Lexington Field Office (LFO) LFO coordinated NEPA consultation with the Kentucky Field Office (KFO) of the U.S. Fish and Wildlife Service (USFWS) in Frankfort, Kentucky. After review of the ATP documents, which include formal consultation with the KSNPC and the KDFWR, LFO determined that formal consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species (Federal Assistance Manual (FAM) Chapter 5-11-15, A. 3.). As of September 18, 2009, a Memorandum of Agreement (MOA) was signed by the Office of Surface Mining, 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.

The conditions in the MOA are met because:

- 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 November 15;
- The construction activity does not occur in "Known Indiana Bat Habitat";
- No caves or clifflines will be disturbed;
- No mine portal/shaft closures are proposed.
- The project proposes to reclaim open mine portals/shafts with FWS accepted types of wildlife friendly gates that allow bat access, to include DAML's current standard culvert closure design (see attached plans).
- There is no purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the Tradewater, lower Ohio, upper Cumberland, Green, and Licking River basins;
- In order to avoid/reduce indirect impacts, erosion and sediment control plans will be implemented and monitored until permanent vegetation has become established in the above listed watersheds and all other watersheds as may be appropriate.

With this information, the requirements of Section 7 of the Endangered Species Act have been fulfilled.

The Office of State Archaeology found that their records did not indicate any known archaeological sites directly in the project area, no systematic archaeological survey has been conducted in the immediate project area, and past disturbance to the project area make it unlikely that archaeological sites will be preserved. The Kentucky Heritage Council and State Historic Preservation Officer (SHPO) determined that the proposed project will not impact sites, within the project areas, and an archaeological survey will not be necessary, since all reclamation activities are restricted to previously disturbed areas. 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 of Natural Resources (DNR). DNR assigned this responsibility to their Division of Mine Permits (DMP). The DMP determined from the written description that the project does not impact a stream or wetland that requires a 401 Water Quality Certification. DMP also noted that the project information indicates that there will be no stream impact that requires a 404 Clean Water Act (CWA) permit. This is based upon DMP and DAML application of criteria provided by the U.S. Army Corps of Engineers (COE).

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. DAML's Design Branch personnel researched these maps and have determined that the project is not within the base floodplain and no floodplain permits are required; this is noted in the ATP letter which is prepared by the Design Branch.

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-3907-SGA was directly input into the AMLIS by the DAML. PA # KY-3907-SGA represents a "new Problem Area" requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007). A FOD approval form was prepared for the PA and submitted 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.

