

## Miller, Corey T.

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**Subject:** FW: ATP Transmittal: Terry Howell Portals Group AML Reclamation project, Floyd County  
**Attachments:** ATP Notification\_Terry Howell Portals Group.pdf; LFO Review Memo\_Terry Howell Portals Group.pdf; NEPA Doc\_CX\_Terry Howell Portals Group.pdf

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**From:** Miller, Corey T.  
**Sent:** Tuesday, June 26, 2012 11:25 AM  
**To:** Scott, Bob F  
**Cc:** 'mark.meade@ky.gov'; 'Steve Hohmann ([steve.hohmann@ky.gov](mailto:steve.hohmann@ky.gov))'; 'Bill.Overman@ky.gov'; 'Howell, Ryan (EEC)'; 'Train, Shannon (EEC)'; 'Rickwa, Vanna (EEC)'; Blackburn, Joseph L. "Joe"; Edwards, Chester L. "Chet"; Holliday, James "Jim"; Estes, Loren A.; Wilson, Sara Beth (EEC); Coleman, Keith (EEC); Evans, Robert S. "Bob"  
**Subject:** ATP Transmittal: Terry Howell Portals Group AML Reclamation project, Floyd County

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of your June 11, 2012, request for ATP with construction activity on Terry Howell Portals Group AML Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML). The request does not designate a funding source for the construction work under the Project Costs (Non-Water Supply) of any of Kentucky's Annual AML Construction Grant. OSM requests to be notified of the final funding source and State account number for our records.

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 2012 Oversight Agreement.

It is OSM's recommendation that appropriate consideration be given to the general recommendations and comments provided in the response from the agencies consulted in the National Environmental Policy Act (NEPA) environmental review documented in the Categorical Exclusion (CE) prepared by DAML. Please give special attention to the following NEPA consultation recommendation(s)/conditions and ensure compliance with the following provisions in the ATP request documents noted here for emphasis, and/or the authorization of this project is further conditioned as follows:

- If tree cutting is required outside of the non-AML features, a habitat assessment or presence /absence survey will be required, and must be performed by a certified biologist.
- Please follow all appropriate provisions included in the DAML Erosion and Sediment Control Best Management Practices (BMP) Plan guidance document throughout the construction activity at this site.

The OSM Lexington Field Office Director has signed an ATP notice and the Categorical Exclusion Determination for the project. A copy of each of these documents and the LFO review memorandum are scanned into the attachment to this email for your information and use. Mr. Steve Hohmann, Commissioner, Department for Natural Resources has been notified of this authorization by receiving a copy of this email.

Please ensure that the e-AMLIS information regarding Problem Area's (PA) # KY-001319-SGA, KY-003824-SGA, and KY-003971-SGA are updated to reflect the authorization of this project by moving the appropriate Units and Cost from Unfunded to Funded category. This will update the e-AMLIS for use in generating the Annual Report to Congress and other inquiries of the database.

Any questions concerning this ATP or the procedures can be addressed to Corey Miller at 859-260-3916 or Bob Evans at (859) 260-3904. Thank you.

Corey Miller  
AML Program Specialist  
Office of Surface Mining  
Lexington Field Office  
2675 Regency Road  
Lexington, Kentucky 40503

Phone: (859) 260 - 3916  
Fax (859) 260 - 8410

Memorandum

Date: June 20, 2012

To: Terry Howell Portals Group Abandoned Mine Land (AML) Reclamation Project File SubAccount# 99.192030000

From: Corey Miller, 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 Terry Howell Portals Group AML Reclamation Project with a construction budget of \$143,795.00. The Branch prepared an ATP letter, Categorical Exclusion (CX), for the FOD review. The Branch recommends that the FOD sign the (CX) 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 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 June 11, 2012, was received at LFO attached to an email on June 11, 2012. The ATP was processed within 8 working days; therefore, the customer service target of 14 working days to process an ATP was met. The ATP was processed in 10 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP was met.

The project area may be centrally located on the McDowell, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map(s) and composed of three sites at 37° 25' 59" North Latitude and 82° 43' 05" West Longitude. The project location, AML problems to be addressed and proposed reclamation activity/cost are also available at <http://amlis.osmre.gov/Default.aspx> in the AMLIS under PA#s KY-001319-SGA, KY-003824-SGA, and KY-003971-SGA. The project involves reclamation of AML conditions consisting of portals at three sites.

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). 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 # 99.192030000 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 July 15, 2012, Contract Award was entered as August 1, 2012, and Contract/Construction Completion was entered as January 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 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 for PA#s KY-001319-SGA, KY-003824-SGA, and KY-003971-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 2012 Oversight Agreement.

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. All other areas were previously disturbed by residentially maintained yards and road construction. 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) identified no known federally threatened/endangered fish and wildlife within a 10 mile radius of the project area. They also identified no records of state listed species of concern within 1 mile radius of the project area. The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified no known federally threatened/endangered fish and wildlife within a 10 mile radius of the project area. They also identified no records of state listed species of concern within 1 mile radius of the project area. The KDFWR also stated that due to the nature and location of the project, they do not anticipate impacts to listed species or any associated critical habitat. No state listed species are known to occur within one mile of the Mike Dudleson site. Lastly, they recommended that the erosion control measures, as mentioned in the proposal, should be implemented and maintained periodically.

The DAML staff biologist reviewed the Kentucky State Nature Preserves Commission's (KSNPC) BIOTICS database in lieu of further consultation. The findings are noted in the ATP request letter and an attached memorandum. DAML found that KSNPC data indicated one federally listed threatened or endangered species (the Indiana bat) within a 10-mile radius and no species of State concern a 1-mile radius of the project. DAML listed and discussed the species in the biologist's memorandum, 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. This is based on the fact that the project proposes to reclaim the sixteen open portals with wildlife friendly gates to allow bat access, 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;
- The project proposes to reclaim sixteen open mine portals/shafts with FWS accepted types of wildlife friendly gates that allow bat access.
- 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 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 (KHC) and State Historic Preservation Officer (SHPO) were not consulted further for the current construction activity, since this project activity falls under the provision in Programmatic Agreement that DAML signed on January 3, 2011, with the KHC of "exempt projects." Exempt projects are "Routine and recurring projects whose impacts [under Section 106 of the Natural 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. This fulfills the responsibility to consult with the SHPO under the Section 106 review process.

Environmental and Public Protection Cabinet (EPPC) (changed to the Environment and Energy Cabinet (EEC) in July 2008) Secretary order dated December 12, 2006, transferred authority for issuance of Clean Water Act (CWA) Section 401 Water Quality Certifications (WQC) associated with surface coal mine operations, to include any reclamation projects proposed by the DAML, to the Kentucky Department for Natural Resources (DNR) DNR. DNR assigned this responsibility to their Division of Mine Permits (DMP). The DMP further delegated this responsibility to DAML, with consultation as needed on a case by case basis. In addition, the DAML Director in a meeting held in February 2010, offered and agreed to coordinate consultation with the U.S. Army Corps of Engineers (COE) concerning CWA 404 (CWA) permits, as DAML had been doing without an agreement in the past. OSM LFO accepted DAML's offer to conduct this consultation.

Under a 2005 agreement with the DOW Floodplain Management Section (FMS) of the Water Resources Branch, DOW authorized DAML to apply DOW floodplain standards in lieu of a DOW review. In this agreement, DAML will directly consult with DOW if it appears a permit may be required. DAML has acquired a set of Federal Emergency Management Agency (FEMA) floodplain maps that include the project area. As a result, DAML applies each responsible agency's criteria by agreement or physically consults with the DMP and DOW concerning CWA 401 WQC and floodplain permits to "Construct Across or Along a Stream", and with the COE concerning CWA 404 permits. This review has been centralized with DAML's Design Branch, whose staff has previous experience in this area and with the Kentucky DOW. DAML determined from the written description that the project does not impact a stream, wetland, or floodplain that requires a 401 WQC, a 404 CWA permit, or a DOW floodplain permit.

The Kentucky State Clearinghouse, Kentucky's "Single Point of Contact" (SPOC) pertaining to AML Non-Water Supply projects provided no comments that affect this proposal. The information to update PA #s KY-001319-SGA, KY-003824-SGA and KY-003971-SGA was directly input into the AMLIS by the DAML. This information reflects the changes in units and costs based upon the design and classification of the funded category. This was confirmed by LFO's review of the OSM HDQ AMLIS database and attached to the ATP. A FOD approval form was not prepared for the PA, since the e-AMLIS is operational, with electronic OSM FOD approval, which eliminated the need for the FOD approval form. Under the authority of the Lexington Field Office Director, the e-AMLIS file indicated the first two PAs had been modified and approved on June 8, 2012 and the last one on June 21, 2012.

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

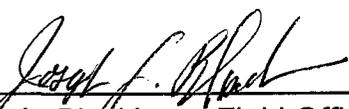
Terry Howell Portals Group  
Abandoned Mine Land (AML) Reclamation Project  
based on Categorical Exclusion (CX)  
Floyd County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the June 11, 2012, request for ATP with construction activity on the Terry Howell Portals Group AML Reclamation Project prepared by the Kentucky Department for Natural Resources, Division of Abandoned Mine Lands (DAML). OSM found that the appropriate request documents were submitted and appear to support the need for the proposed construction activity. OSM 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#s KY-001319-SGA, KY-003824-SGA and KY-003971-SGA.

OSM reviewed the Categorical Exclusion Determination (CX) NEPA environmental review document prepared by the Division of Abandoned Mine Lands for the AML reclamation project. We have determined that the currently proposed activity requested is adequately considered in the approved CX NEPA environmental review document. In addition, the proposed activity conforms with 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 have prepared and I have signed a CX for this project. We recommend that appropriate consideration be given to the recommendations and comments provided in the response letters from the consultation agencies. Please give special attention to the following recommendations for all three sites.

- 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, and provided the activity does not occur in "Known Indiana Bat Habitat".
- If tree cutting is required outside of the non-AML features, a habitat assessment or presence /absence survey will be required, and must be performed by a certified biologist.
- Please follow all appropriate provisions included in the DAML Erosion and Sediment Control Best Management Practices (BMP) Plan guidance document throughout the construction activity at this site.

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

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

  
\_\_\_\_\_  
Date



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 [ ]

- |   |   |
|---|---|
| <input type="checkbox"/> Topography                         | <input type="checkbox"/> Historic and Cultural            |
| <input type="checkbox"/> Land Use (includes prime farmland) | <input type="checkbox"/> Recreation                       |
| <input type="checkbox"/> Soils                              | <input type="checkbox"/> Air Quality                      |
| <input type="checkbox"/> Vegetation (includes wetlands)     | <input type="checkbox"/> Noise                            |
| <input type="checkbox"/> Hydrology                          | <input type="checkbox"/> Other (includes socio-economics) |
| <input type="checkbox"/> Fish and Wildlife                  |   |

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

V. RESPONSIBLE OFFICIAL CERTIFICATION

Signature: Robert F. Scott Date: 6/11/2012

Name and Title: Robert F. Scott, 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: 6/25/12

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