



United States Department of the Interior



OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
710 Locust Street, 2nd Floor
Knoxville, Tennessee 37902

CATEGORICAL EXCLUSION AUTHORIZATION TO PROCEED

Austin Gap Highwall Elimination Project
Site No. 14201

Priority 3: 300 ft. (H) Highwall
Estimated Cost: No cost, \$0.00
Dickenson County, Virginia

The Virginia Department of Mines, Minerals and Energy (DMME), Division of Mined Land Reclamation (DMLR), Abandoned Mine Land Section submitted an Authorization to Proceed (ATP) request to the Office of Surface Mining Reclamation and Enforcement (OSMRE), Knoxville Field Office (KFO) for the Austin Highwall Elimination Project. The ATP request consists of a Categorical Exclusion Certification and Determination (CE), with eligibility documentation, consultation correspondence, project description, and location maps.

The Austin Gap Highwall Elimination site is located off State Route (SR) 627, approximately 1.6 miles north of West Dante in Dickenson County, VA. Coordinates for the approximate project location center are latitude 37° 0' 02"N, and longitude 82° 19' 27"W. Project area mapping is comprised of the Nora and St. Paul USGS 7.5 Min. Quadrangles. The project site is within the Dismal Ridge Problem Area, VA000385. The project site is approximately four acres which encompasses 300 feet of highwall created by pre-SMCRA surface mining in the Upper Banner coal seam. Reclamation will consist of backfilling an abandoned mine land highwall to restore approximate original contour. Backfill material will be non-toxic excess spoil material from an adjacent surface mine.

Through this reclamation, DMLR will apply the OSMRE approved VA program clarification to its regulatory interpretation of § 4 VAC 25-130-816/817.76 concerning excess spoil disposal (65 FR 5781-5784, February 7, 2000), to use excess spoil from a Title V permitted coal mining operation to reclaim an abandoned mine land (AML) project site. The excess spoil will be placed on the AML site in accordance with the AML reclamation guidelines (66 FR 31250-31258, June 11, 2001) and the provisions of a no-cost contract executed between DMME and the contractor (The Banner Company). DMLR will require the contractor to post an AML bond on the site of \$250/acre. The excess spoil is sediment that has accumulated in sediment control structures for the VA permit 1101671.

Under the no-cost contract, no coal can be removed from the disposal or AML project area. Implementing the approved AML no-cost provisions at this site will result in DMLR expending Federal AML funding only for non-emergency AML administration costs associated with the AML hazard abatement construction. The contractor will receive no money from DMLR in exchange for performing the contract terms. If the contractor fails to perform the work specified in the no-cost contract, DMLR will invoke appropriate contract sanctions to cause completion of the contract terms. Further, since the contractor and mine operator in this case are one and the same, the contract will include an additional default provision specifying that the mine operator will revise its permit to include the area upon which the excess spoil was placed pursuant to the no-cost contract, and the permit performance bond requirements will become applicable. The VA Abandoned Mine Lands Categorical Exclusion Certification and Determination document outlining NEPA requirements is fully incorporated into the agreement between the DMME and contractor, and is fully enforceable as a contract item.

Based on the analysis in the CE, OSMRE finds reclamation to abate the Priority 3 AML project of 300 feet of highwall, with less than 4.0 acres of land disturbance, conforms to the exclusion criteria in 516 DM 6, Appendix 8, and is excluded from further NEPA review; reasons for this determination are as follows:

DMLR's review of aerial photograph GS-VEBN taken March 7, 1976 shows the highwall in existence and DMME records show that Norton Coal Company mined this area under permit 1867. DMME released the permit on August 14, 1979. The AML feature designated within this project is a result of mining conducted prior to December 15, 1981, Virginia's primacy date. There is no continuing responsibility for any individual, firm, or organization to reclaim this site; therefore DMLR finds the site eligible for AML funding.

Reclamation activities will protect the public health and safety by eliminating the hazards associated with this highwall. Without abatement, this feature poses a continued danger to public safety.

DMLR's CE documents the required NEPA consultation to assess potential impacts to resource values under the proposed alternatives. Consultation was initiated in June of 2014. The following is a summary of the items identified by each agency from consultation:

1. The Virginia Department of Conservation and Recreation's Division of Natural Heritage (DCR) indicated that its Biotics Data System historically has documented the presence of natural heritage resources in the project area, however due to the scope of the activity and the distance to resources, they do not anticipate the project will adversely impact these natural heritage resources. DCR recommends the implementation and strict adherence to applicable state and local erosion and sediment control/storm water management laws and regulations to minimize adverse impacts. DCR also indicated that there are no State Natural Area Preserves under DCR's jurisdiction in the project vicinity, nor will the activity affect any documented state-listed plants or insects.
2. The Virginia Department of Environmental Quality (DEQ) indicated the proposed project site is in the McClure River drainage of the Russell Fork Subbasin of the Big

Sandy River Basin, Hydrologic Unit Code (HUC) 05070202-Q11R, classified as Section 4, Class IV, Mountainous Zone Waters in the Virginia Water Quality Standards (WQS). No Current water quality data is available in this area. The DEQ specified no objections provided the project complies with the following:

- Minimizes short-term impacts to water quality from surface runoff through Best Management Practices.
 - Abides by all applicable state, Federal and local laws and regulations.
 - Obtains all permits and approvals are obtained prior to construction.
 - Incorporates features which prevent significant adverse impacts on ambient air quality, water quality, wetlands, historic structures, fish wildlife, and species of plants, animals or insects listed by state agencies as rare, threatened or endangered.
3. The Department of Historic Resources (DHR) indicated their archives do not show recorded historic resources within the project area. DHR opinion is that no further identification efforts are warranted and based upon the documentation provided; they recommend a finding of No Historic Properties Affected for the proposed project.
 4. The Natural Resource Conservation Service (NRCS) responded that the proposed project appears to address their basic environmental and erosion and sediment control concerns. NRCS also noted that the project seems to conform closely to presently practiced reclamation goals and standards and their position is that the project is worthwhile and should be implemented.
 5. The U.S. Fish and Wildlife Service (USFWS) consultation response does not anticipate adverse effects to federally listed species or federally designated critical habitat for the proposed Austin Highwall Elimination, if the project is conducted as described. Should project plans change or if additional information becomes available, the determination may be reconsidered.
 6. The Virginia Marine Resources Commission (VMRC) responded that work does not appear to occur within the jurisdiction of the MRC, and concluded there will be no direct impacts to State-owned submerged lands and accordingly there will be no permit required for the proposed activity.

DMLR's CE document states that the amount of excess spoil to be placed on the AML site will only be that needed to reclaim the AML site. No blasting will occur on the AML site. Backfilling and grading will be in accordance with the lines and grades shown on the cross-section in DMLR's submitted documentation. The boundary of the AML project area is limited to the area of the backfill of the Upper Banner bench to the top of the Upper Banner bench highwall. Material that has a net acid-generating potential will not be placed in the AML backfill. The excess spoil will be trucked and/or pushed from the active permit and placed only on the solid bench associated with the highwall area, compacted, and regraded. All available excess spoil will be backfilled to eliminate as much highwall as technically practical using the excess spoil. The AML reclamation will ensure excess spoil placement and the backfilled slope toe does not

extended beyond the solid portion of the pre-SMCRA mine bench. No hollow/valley fills will be constructed on the AML site.

If needed, borrow or disposal sites will be from/on adjacent mined land that has previously been disturbed. DMLR will contact the OSMRE for approval prior to implementation of borrow or disposal area(s). Additionally, state regulations regarding fugitive dust control and open burning will be followed.

Strict erosion and sedimentation control measures will be implemented during and after reclamation to protect water quality. Erosion and sediment control measures will include, but not be limited to, installing filter fabric fences, constructing sediment channels, and routing runoff through sediment control structures permitted by the Title V mining operation. In hollows or in areas of concentrated flows, rock-lined channels will be constructed as permanent structures to safely convey runoff and to protect against erosion.

Topsoil material will be salvaged from the Title V permit and spread over the backfilled areas on the AML project. Following topsoiling and final grading, the company will seed and mulch all disturbed areas as expeditiously as possible using the species listed and agreed upon by DMLR and the FWS, as documented by letter dated June 21, 2000. All species seeded or planted will be certified weed-free non-invasive species included on the revegetation species list. Tree species included on the approved list will also be planted unless the contractor plans an alternate land use. DMME will accomplish the tree planting on the no-cost project area.

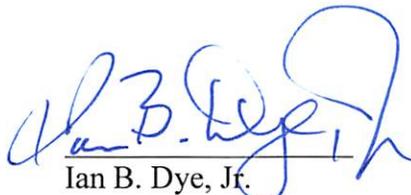
Accordingly, pursuant to section 4-160-50D.3 of the FAM, and section 403(b) of SMCRA, you are authorized to proceed with this project and expend Federal funds in accordance with AML grant terms and conditions.

In accordance with OSM Directive AML-1, please update the electronic Abandoned Mine Land Inventory System (e-AMLIS) for the Problem Area Description (PAD), Dismal Ridge, VA000385, for the Austin Highwall Elimination Project from "unfunded" to "funded" based on your budget estimate for the project.



Tonya Mullins
Physical Scientist
Field Oversight Branch
Knoxville Field Office

11/12/14
Date



Ian B. Dye, Jr.
Manager
Field Oversight Branch
Knoxville Field Office

11/12/2014
Date

ABANDONED MINE LANDS
CATEGORICAL EXCLUSION CERTIFICATION AND DETERMINATION

State: VA

Problem Area Number: VA-0385

Project Name: Austin Gap Highwall Elimination Project

Project Description: AUSTIN GAP HIGHWALL ELIMINATION

The FY2014 Austin Gap Highwall Elimination Project is located off Route 627, approximately 1.6 miles north of West Dante in Dickenson County, Virginia. Latitude and longitude for the area are 37 0 2.67 and 82 19 27.74 respectively. The project will backfill abandoned mine lands to eliminate highwalls and restore an approximate original contour. Backfill material will be non-toxic material that is excess spoil from an adjacent surface mine. This site is in Problem Area VA0385. Through this reclamation construction, DMLR proposes to apply the OSM approved VA program clarification to its regulatory interpretation of § 4 VAC 25-130-816/817.76 concerning excess spoil disposal (65 FR 5781-5784, February 7, 2000), to use excess spoil from a Title V permitted coal mining operation to reclaim an abandoned mine land (AML) project site. The excess spoil will be placed on the AML site in accordance with the AML reclamation guidelines (66 FR 31250-31258, June 11, 2001) and the provisions of a no-cost contract executed between DMME and the contractor (The Banner Company). DMLR will require the contractor to post an AML bond on the site of \$250/acre. The excess spoil is sediment that has accumulated in sediment control structures for the permit 1101671. Due to distances involved in transporting the material to actively mined areas on the permit, the material is not considered reasonably available spoil to eliminate highwalls. The sediment is to be used to eliminate Priority 3 AML hazards consisting of 300 feet of highwall (H) created by pre-SMCRA surface mining of the Upper Banner coal seam. The AML project will encompass approximately 4.0 acres. The amount of excess spoil to be placed on the AML site will only be that needed to reclaim the AML site. No blasting will occur on the AML site. To note that the sediment is excess spoil, the company documented that the permit is completed with all highwalls eliminated, and that there is an existing excess spoil fill:

Richard, the permit is completed ready for a phase III with all wall reclaimed and an existing spoil fill on the permit (1101671)

From: Davis, Richard (DMME) [<mailto:Richard.Davis@dmme.virginia.gov>]

Sent: Thursday, November 06, 2014 12:54 PM

To: Nunley Tad

Cc: Mullins, Tonya

Subject: FW: Austin Gap Highwall Elimination Project

Tad Is there a spoil balance statement in your permit that would verify that the pond sediment is excess spoil? If there is a statement to the effect there is sufficient spoil to eliminate all highwalls, that would be okay.

The NEPA document contains an eligibility statement. The amended 300 feet of Priority 3 highwall AML features to be reclaimed is included in the Abandoned Mine Land Inventory System (AMLIS) in program area RMA. The AML site will not be included in the permit acreage. Under the no-cost contract, no coal can be removed from the disposal or AML project area. Implementing the approved AML no-cost provisions at this site will result in DMLR expending Federal AML funding only for non-emergency AML administration costs associated with the AML hazard abatement construction. The contractor will receive no money from DMLR in exchange for performing the contract terms. Rather, the contractor receives the benefit of a free disposal area for its excess spoil in consideration for performing the needed reclamation. The AML features reclaimed will be moved to the completed column of AMLIS and noted as program area REMINING (RMA).

If the contractor fails to perform the work specified in the no-cost contract, DMLR will invoke appropriate contract sanctions to cause completion of the contract terms. Further, since the contractor and mine operator in this case are one and the same, the contract will include an additional default provision specifying that the mine operator will revise its permit to include the area upon which the excess spoil was placed pursuant to the no-cost contract, and the permit performance bond requirements will become applicable. The NEPA document is fully incorporated into the agreement between the DMME and contractor, and is fully enforceable as a contract item.

An enlarged 1" = 400' topographic map is included within the environmental document package denoting the AML project boundaries. A typical cross-section is also submitted. Backfilling will be in accord with the lines and grades shown on the cross-section.

The boundary of the AML project area is limited to the area of the backfill of the Upper Banner bench to the top of the Upper Banner bench highwall. Material that has a net acid-generating potential will not be placed in the AML backfill. The excess spoil will be trucked and/or pushed from the active permit and placed only on the solid bench associated with the highwall area, compacted, and regraded. All available excess spoil will be backfilled to eliminate as much highwall as technically practical using the excess spoil. The AML reclamation will ensure excess spoil placement and the backfilled slope toe does not extend beyond the solid portion of the pre-SMCRA mine bench. No hollow/valley fills will be constructed on the AML site.

Strict erosion and sedimentation control measures will be implemented during and after reclamation to protect water quality. Erosion and sediment control measures will include, but not be limited to, installing filter fabric fences, constructing sediment channels, and routing runoff through sediment control structures permitted by the Title V mining operation. In hollows or in areas of concentrated flows, rock-lined channels will be constructed as permanent structures to safely convey runoff and to protect against erosion.

Topsoil material will be salvaged from the Title V permit and spread over the backfilled areas on the AML project. Following topsoiling and final grading, the company will seed and mulch all disturbed areas as expeditiously as possible using the species listed and agreed upon by DMLR and the FWS, as documented by letter dated June 21, 2000. All species seeded or planted will be certified weed-free non-invasive species included on the revegetation species list. Tree species included on the approved list will also be planted unless the contractor plans an alternate land

use. DMME will accomplish the tree planting on the no-cost project area.

During construction, the contractor will comply with State regulations for fugitive dust control and open burning. All land clearing debris will be disposed of in an approved manner.

No portals will be sealed by the project. No in-stream construction will be associated with the project. No historic properties will be affected by the proposed highwall elimination project.

DMLR sent solicitation letters to state and federal agencies in accordance with NEPA procedures. Copies of the solicitation letter and responses are attached. All agencies responded with the exception of the Corps of Engineers. The AML no-cost project area is an upland bench and will not impact streams, wetlands, and floodplains. The agency comments did not require any alteration to the existing procedures noted above. The contractor is required to obtain all other permits and licenses to conduct the reclamation work and provide to DMME proof of same. An Assistant Attorney General gave an opinion that federally funded AML projects are exempt from requirements to obtain erosion and sediment control permits.

Possible impacts of the reclamation upon minority/low income populations were considered during planning of the project. The project should have no impact, direct or indirect, on such populations. This is due to the location and limited duration of the project.

YES RESPONSES REQUIRE SUBMISSION OF AN ENVIRONMENTAL ASSESSMENT

I. GENERAL EXCEPTIONS

Does the project specifically require an EA in 516 DM 6, Appendix 8, as specified in Item I of the instructions?

No (X) Yes ()

II. DEPARTMENT OF INTERIOR EXCEPTIONS

Will the project have any of the following:

A significant adverse effect on public health or safety?

No (X) Yes ()

An adverse effect on any of the following unique geographic characteristics?

No (X) Yes ()

() Parks (State, Local, or National)

() Wild or Scenic

Rivers

Recreation or Refuge Lands

Wetlands

Wilderness Areas

Floodplains

Ecologically Significant or
Critical Areas
Aquifers

Sole or Principal
Drinking Water

Prime Farmlands

Highly controversial environmental effects?

No (X) Yes ()

Highly uncertain and potentially significant
environmental effects or unique or unknown
environmental risks?

No (X) Yes ()

A precedent for future action or a decision in
principle about future actions with potentially
significant environmental effects.

No (X) Yes ()

Directly related to other actions with individually
insignificant but cumulatively significant
environmental effects?

No (X) Yes ()

Adverse effects on properties listed or eligible for
listing on the National Register of Historic Places?

No (X) 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 (X) 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 ()

- | | |
|---|--|
| <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 socioeconomics) |
| <input type="checkbox"/> Fish and Wildlife | |

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

V. RESPONSIBLE OFFICIAL CERTIFICATION

Signature: Richard Davis Date: 10-22-14

Name and Title: Richard Davis, AML Projects Coordinator

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: Tonya Mullins Date: 11/13/14
Name and Title: Tonya Mullins, Physical Scientist