

May 20, 2004

MEMORANDUM FOR RECORD

SUBJECT: Diamond May Coal Company; KDSMRE #860-0406; ID No. 200400320-odm; Nationwide permit consideration for surface coal mining activities.

1. On 26 March 2004 Mr. Darwin Messer, CELRL-OP-FS, Mr. Harley Farrell, Mr. Ron Hall and Mr. Gaither Frazier, Diamond May Coal Company (DMCC) and Mr. Jeff Robinson, Summit Engineering, Inc. (Summit), conducted a preapplication site visit of the subject project area to delineate jurisdiction and flow regimes of stream proposed to be filled by the mining operation. Timber clearing activities were near completion for the project site, as DMCC is attempting to avoid potential future delays to commencing the project by complying with the established tree-clearing timeframe (October 15-March 31) for areas with suitable Indiana bat habitat.

2. On 19 April 2004 this office received an application submitted by Summit, on behalf of DMCC requesting Nationwide Permit 21 (NWP 21) authorization for the subject surface coal mining operation near Amburgey in Knott County, Kentucky. The proposed mine is referenced as Kentucky Department for Surface Mining Reclamation & Enforcement (KDSMRE) No. 860-0406.

3. The application proposes constructing one (1) hollow fill permanently impacting 995 feet of intermittent stream reach that drains a watershed of 102 acres. Temporary impacts to the stream reach utilized as a 'drainage corridor' were avoided by locating the sediment pond at the fill toe. Also, the one (1) sediment pond proposed would temporarily impact 375 feet of additional intermittent reach. These impacts are proposed to occur in an unnamed tributary to Madden Fork of Irishman Creek.

4. The applicant received authorization from the KDSMRE for permit No. 860-0406 on 21 April 2004, and is eligible for the general 401 Water Quality Certification for NWP No. 21 from the Kentucky Division of Water.

5. The application that was received by this office on 19 April 2004 constitutes pre-construction notification (PCN) of the proposal. The U.S. Environmental Protection Agency (USEPA), Kentucky Division of Water (KDOW), U.S. Fish and Wildlife Service (USFWS), Kentucky Department of Fish and Wildlife Resources (KDFWR), and the Office of Surface Mining (OSM) were notified of the proposal by a faxed letter dated 23 April 2004. A copy of the application was forwarded to each agency on the same day. The above-mentioned agencies were given 10 calendar days from 26 April 2004, to advise us if they would provide substantive comments and, if needed, an additional 15 days to forward them to this office.

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6. No comments were received from coordinating agencies on this project.

7. In evaluating this proposal, the boundaries of the area subject to the Corps' consideration of individual and cumulative adverse effects were limited to the "waters of the United States" within the watershed of the stream in item #3. It is also noted that any impacts to historic resources have been addressed with the State Historic Preservation Officer (SHPO) in the KDSMRE permit process. Also, it is determined that the proposal will have no effect on federally listed threatened or endangered species or critical habitat.

8. The stream ecosystem integrity of these systems was evaluated using information obtained during the 26 March 2004 site visit and provided by the applicant and their consultant. Current project assessment of aquatic resource debits/credits are derived from a functional assessment model, USACE Eastern Kentucky Stream Assessment Protocol, by applying a Stream Ratio Calculator that incorporates an Ecological Integrity Index (EII) per running foot of the proposed impact/mitigation reach length(s) with impact/mitigation construction timing (to assess for temporal losses) and risk of mitigation failure. Permanent impacts to intermittent stream reaches are proposed to be offset by the enhancement of an intermittent reach of the unnamed tributary downstream of the project site. A Best Management Practices (BMP) plan has been proposed which would minimize overall stream loss and minimize stream degradation through environmentally sensitive mine plan design and operation. The material deposited to construct the dam of the temporary sediment pond would be removed during the reclamation phase of the mining operation and the stream channel restored. The applicant has submitted pre-mining descriptions of stream morphology (i.e., pattern, profile, dimension and substrate) to serve as the target for post-mining stream restoration.

9. Based on my review of the information provided by Summit, the State approved mining permit, the site visit performed on 26 March 2004, the comments received during the Pre-Discharge Notification comment period, the language pertinent to the Nationwide Permit (NWP) authorization under 33 CFR 330, No. 21 (Surface Coal Mining), as published in the Federal Register dated January 15, 2002, and guidance for implementation of NWP 21 from our Regulatory Headquarters (CECW-CO/Regulatory, 19 March 2004), it is concluded that the project, with the following conditions, would have no more than minimal individual and cumulative adverse effects on

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the aquatic environment. Thus, it is determined that the proposal meets the requirements for NWP 21.

- 1) Upon completion of the mitigation construction, as-built plans documenting the final post-mining conditions of the stream(s) shall be submitted to this office for review and approval.
- 2) The permittee shall adhere to the plans and conditions included in the 19 April 2004 application for Department of the Army Permit.

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