

November 10, 2003

MEMORANDUM FOR RECORD

SUBJECT: Nally & Hamilton Enterprises, Inc.; KDSMRE #867-0377 Amendment No. 1; ID No. 200300818-odm; Nationwide permit consideration for surface coal mining activities.

1. On 11 October 2002, Mr. Darvin Messer and Mr. Todd Hagman, CELRL-OP-FS, conducted a preapplication site visit of the subject project area with Ron Johnson, R.M. Johnson Engineering, Inc., to assess potential spoil disposal sites and discuss mitigation options.
2. On 1 July 2003 this office accepted an application submitted by EcoSource, Inc. on behalf of Nally & Hamilton Enterprises, Inc., for the subject surface coal mining operation near Gordon in Letcher County, Kentucky. The proposed mine is referenced as Kentucky Department for Surface Mining and Reclamation Enforcement (KDSMRE) No. 867-0377 Amendment No. 1. The applicant requested Nationwide 21 authorization for this activity.
3. The proposed amendment to the mining operation consists of constructing 2 hollow fills permanently impacting 1,620 linear feet of intermittent stream reaches and 850 feet of ephemeral stream reaches. The largest of the two fills drains a watershed of 111 acres. Three temporary sediment ponds are proposed that would impact an additional 1,550 feet of intermittent reaches. Impacts to stream reaches utilized as "drainage corridors" were minimized to 25 feet of intermittent reaches. These impacts are proposed to occur within Laurelpatch Branch an unnamed tributary to Trace Branch of Line Fork.
4. The applicant received authorization from the KDSMRE for permit No. 867-0377 Amendment No. 1 on 06 August 2002, 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 1 July 2003 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 2 July 2003. A copy of the application was forwarded to each agency on the same day. The above-mentioned agencies were given 10 calendar days from 7 July 2003, to advise us if they would provide substantive comments and, if needed, an additional 15 days to forward them to this office.
6. Comments from the KDFWR were received on 21 July 2003 recommending a 2:1 mitigation ratio for all stream impacts proposed, biomonitoring be conducted during and after mining through Phase 3 bond release, best management practices (BMP's) for sediment control and a minimum 100-foot wide riparian zone consisting of native species be reestablished along

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restored stream reaches. Mitigation for the proposed aquatic resource impacts is discussed in item #9 below. Monitoring of the restoration and mitigation sites is proposed for 5 years following reclamation. BMP's for sediment control are included in the KDSMRE authorization. The applicant proposes to reestablish a 50-foot wide riparian vegetation buffer consisting of native species along restored stream reaches, which would achieve a sub optimal rating using USEPA's Rapid Bioassessment Protocol. Due to degradation of the proposed site, this 50-foot buffer would adequately replace the existing riparian forest.

7. Comments from the USEFWS were received on 8 August 2003 recommending upland disposal of overburden material and a 2:1 mitigation ratio for all stream impacts proposed. The applicant has managed overburden on upland sites to KDSMRE review standards, thus minimizing aquatic resource impacts. Mitigation for the proposed aquatic resource impacts is discussed in item #9 below.

8. 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 watersheds of the streams 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.

9. The stream ecosystem integrity of these systems was evaluated using information obtained during the 11 October 2002 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 an Ecological Integrity Index (EII) per running foot to the proposed impact/mitigation reach length(s). The resulting "currency" of Ecological Integrity Units (EIU's) provides a quantified and qualitative measure to evaluate project debits and/or credits. Using this model, permanent stream impacts resulting from proposed hollow fills #6 and #7 would result in a loss of 808 EIU's. Compensatory off-site mitigation proposed in the application offers 994 EIU's of mitigation credit to offset those losses along with potential losses associated with temporal lags of functional development and risks of failure. A Best Management Practices (BMP) plan has been proposed which would minimize overall

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stream loss and minimize stream degradation through environmentally sensitive mine plan design and operation. The fill material deposited to construct the dams of the temporary sediment ponds would be removed during the reclamation phase of the mining operation and the stream channels restored. The applicant has submitted premining descriptions of the stream morphology (i.e., longitudinal profiles and cross-sections) to serve as the target for postmining stream restoration.

10. Based on my review of the information provided by EcoSource, the State approved mining permit, the site visit performed on 11 October 2002, 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-OR), it is concluded that the project, with the following conditions, would have no more than minimal individual and cumulative adverse effects on 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 July 1, 2003 application for Department of the Army Permit.

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