Coal Mining Activities and Section 404 Permits

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Topics

- COE Regulatory Authority
- Types of Permits – IPs; NWPs – 21, 49, 50
- 2009 MOU – Coordinated Agency Reviews
- BMPs
- Special Conditions
- Questions
Section 404 of the Clean Water Act

► Regulation of the discharge of dredged or fill material into waters of the U.S., including wetlands... the placement of material into waters.
404 Permits for Coal Mining

Placing fill material in waters

- Hollow Fills
- Coarse Refuse Fills
- Dams for Sediment Ponds
- Haul Roads
- Mine-Through Areas
- Operational Areas
- Deep Mine Face-Ups
Types of 404 Permits

Two permitting options for impacts associated with coal mining

- Individual Permits
  - Finding of No Significant Impact (FONSI)
  - Can be authorized for duration of impacts - ex. 10 years

- Nationwide Permits (NWP) - NWP 21, 49, 50
  - Must reach minimal impact both individually and cumulatively
  - Timeline restrictions - 5 years
Nationwide Permits (NWP)

Grandfather Provision for 2007 NWPs - If project had commenced or was under contract to commence by March 18, 2012 - one year to complete authorized activity - March 18, 2013.

2012 NWPs became effective on March 18, 2012

- 50 NWPs - 3 related to coal mining - 21, 49, and 50
NWP 21

Surface Coal Mining Activities

a. Previously Authorized Surface Coal Mining Activities - 2007 NWPs

► Submit re-verification letter by Feb 1, 2013 - describing any changes
► Loss of waters cannot be more than previously verified
► DE provides written verification
► If written verification is not received by 3/18/13 - must stop until received
NWP 21

Surface Coal Mining Activities – con’t

b. Other Surface Coal Mining Activities

► Authorized by SMCRA
► Does not cause loss of waters greater than 1/2 acre
► Does not cause the loss of greater than 300 linear feet of stream bed
► Waiver potential for intermittent and ephemeral stream impacts over 300 linear feet
► No Valley Fills
NWP 49 and 50

Coal Remining Activities - NWP 49
- No substantial changes from 2007 NWPs
- Clarification on how to determine the 40 percent of “new mining”
- Applicant must submit a document describing net increase in aquatic functions

Underground Coal Mining Activities - NWP 50
- Does not cause greater than 1/2 acre loss of “waters of the United States”
- Does not cause the loss of greater than 300 linear feet of stream bed
  - Potential waiver for intermittent and ephemeral streams
June 11, 2009 Memorandum of Understanding (MOU)

Between the Army, DOI, and EPA - Focused on coordinating the regulation of Appalachian Surface Coal Mining to reduce the harmful environmental consequences

- Interagency Action Plan - Several Initiatives
  - Coordinated Agency Reviews
    - Interagency Workgroup
Interagency Workgroup

KDNR, COE, USEPA, USFWS, KDOW, OSM

Agencies working to improve communication related to coal mining activities and better coordinate review of applications
Interagency Workgroup

KY Pre-Application Coordination Process Document - Completed

► Reduce cumulative time for application reviews
► Eliminate unnecessary redesign
► Consolidate pre-mining sampling efforts
► Identify critical resources
► Assure consistency of information to all agencies
Interagency Workgroup

KY Pre-Application Coordination Process

- Pre-Application Meetings
  - Applicant introduces concept plans
  - Agencies advice
    - Discuss procedural aspects
    - Site analysis
  - Next Meetings - September
In-Lieu Fees

KY Department of Fish and Wildlife Resources - new agreement

- COE advises permittee of how many credits they need to purchase
- KDFWR sets fee per credit
BMPs

- Keep water off/out of fills
- Isolate TDS and/or sulfate producing materials
- Compact fill as it is placed to reduce void space
- Crown the fill surface
- Use only low-reactive durable rock to construct underdrain and adjacent to highwalls
- Use 1-foot diameter rock for underdrain construction - wrapped with filter fabric
- Diversions constructed around fills so that surface runoff from upland areas will be intercepted and not infiltrate the fill
- Fill constructed in a “bottom-up” manner with 50 foot vertical lifts
Special Conditions

- Notification of BMPs utilized in construction of fills
- Submit monthly flow-weighted conductivities at pond outfalls and up/downstream of next receiving water
- Develop an Adaptive Management Plan for conductivities that exceed background or 500 µS/cm whichever is greater for more than 6 months
- Submit baseline and annual benthic macro-invertebrate surveys including RBP scores downstream of pond location and up/downstream of next receiving water
Questions??

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