



**US Army Corps
of Engineers**
Louisville District ®

Public Notice

Public Notice No.
LRL-2013-448-mad

Open Date:
18 May 2015

Close Date:
2 Jun 2015

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Louisville District
ATTN: Mr. Matt Dennis, CELRL-OPF-W, Rm 752
P.O. Box 59
Louisville, Kentucky 40201-0059
lr.regulatorypubliccomment@usace.army.mil

Phone: 502-315-6689

This notice announces an application submitted for a Department of the Army (DA) Permit, subject to Section 404 of the Clean Water Act:

APPLICANT: Armstrong Coal Company, Inc.
407 Brown Road
Madisonville, Kentucky 42431

LOCATION: Unnamed tributaries of Williams Creek and Elk Creek located approximately 5 miles west of Centertown, Ohio County, Kentucky

Latitude: 37.414720 North
Longitude: 87.056979 West
7.5 Minute Quad: Equality

PURPOSE: To develop a mixed coal refuse disposal site to support existing coal mining operations.

DESCRIPTION OF WORK:

Public comments were previously solicited for the following project from September 5, 2013–October 7, 2013. After being withdrawn by the applicant, the project is once again proposed.

Development of a 309.8-acre mixed coal refuse disposal site in support of other existing coal mining operations. The operation is expected to last approximately 180 months. The site is located in the Williams Creek and Elk Creek watersheds.

Mixed coal refuse material generated from Armstrong Dock Coal Preparation Plant would be placed at the site. Prior to placing this material, top soil and subsoil would be removed and stockpiled for use as cover material. Upon completion of disposal operations, the refuse material would be final graded and covered with a minimum 4' of material consisting of non-toxic, non-combustible material (soil and rock) and a minimum of 0.5' of topsoil. The site would be re-vegetated in accordance with Surface Mining Control and Reclamation Act (SMCRA) reclamation guidelines.

Streams and wetlands would be impacted by excavation and fill during the sites development. Impacts to water resources include five intermittent streams totaling 9,543 feet, 36 ephemeral streams totaling 18,518 feet, two palustrine forested wetlands (PFO) totaling 4.028 acres, and one 0.008 acre palustrine emergent wetland (PEM).

AVOIDANCE, MINIMIZATION, AND MITIGATION MEASURES: The Warden Waste Area's site has been designed to avoid and minimize impacts to jurisdictional "Waters of the United States (U.S.)". The site was selected due to its proximity to existing operations that would generate the material to be disposed. The site would not require any residences or private lands to be disturbed. The sites proximity to the material source enables the use of private haul roads for transport, which would avoid the use of public roads for the transportation of material and precludes environmental effects associated with new road construction.

The site's design avoids the need to develop multiple alternative disposal sites required to provide the volume needed for disposal. The project footprint has been reduced to minimize impacts to adjacent, potential jurisdictional waters. Completely avoiding impacts to all streams and wetlands within the project boundary was determined not to be practical by the applicant due to the volume of material proposed to be disposed and the dendritic pattern of the resources throughout the site.

Mitigation would be performed off-site at four locations. Site 1 would be located immediately adjacent and downstream of the disposal area. Off-site mitigation will focus on enhancement of existing perennial streams and preservation of intermittent and ephemeral streams. Enhancement activities along 6,693 feet of perennial stream would increase the streams biological capability by adding habitat structures where appropriate such as log overhangs, log/rock vanes, and submerged logs. Additionally, bank stability measures such as back sloping, log and boulder bank toe protection, and tree and shrub planting would be installed where appropriate. Additionally, 3,429 feet of intermittent and 3,848 linear feet of ephemeral stream would be preserved. In conjunction with the stream enhancement activities, 10 acres of PFO would be created, 8 acres of PFO would be enhanced, and 4 acres of PFO would be preserved.

Site 2 would be located in the same HUC-12 as a portion of the on-site impacts at a site adjacent to the Armstrong Equality Mine. Mitigation would be performed through the enhancement of five ephemeral streams totaling 7,100 feet which have been impacted through agricultural practices. Enhancement would be achieved through the establishment of a forested riparian corridor along all streams to enhance and increase function and improve stream quality.

Site 3 is located in an adjacent HUC-12 at the Midway South Mine which is undergoing reclamation. The applicant proposes to construct 900 linear feet of ephemeral stream to confluence with an existing

mitigation stream on-site. The stream would be designed with in-stream habitat structures and have a riparian zone established.

Site 4 is located in an adjacent HUC 12 to the impact site, and is located adjacent to the Armstrong Midway Northeast mine. The applicant has recently created four intermittent streams totaling 3,690 linear feet and five ephemeral streams totaling 2,000 linear feet as part of a reclamation effort outside the Midway Northeast mine permit boundary. The streams are functioning now, with in-stream rock and log structures, riffle, and pools. The applicant proposed to establish a forested riparian corridor along the streams, and use them as mitigation streams, which would be monitored for success, and protected in perpetuity through a protective instrument.

It is noted that this proposed mitigation plan is open to comment and subject to change. The Corps will make a determination of appropriate mitigation, upon review of all submitted information.

REVIEW PROCEDURES: A DA Permit cannot be issued if any legally required Federal, State, or local authorization or certification is denied. A DA permit, if otherwise warranted, will not be issued until a State of Kentucky Water Quality Certification or waiver is on file at this office. In order to comply with Section 401 of the Clean Water Act, the applicant must apply for State certification from the Kentucky Energy and Environment Cabinet Division of Water (KDOW).

Copies of this notice are sent to the appropriate Federal and State Fish and Wildlife Agencies. Their views and comments are solicited in accordance with the Fish and Wildlife Coordination Act of 1956. Based on available information, the proposed activity will not destroy or endanger any Federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. A request for a public hearing must state the specific interest which might be damaged by issuance of the DA Permit.

The National Register of Historic Places has been examined, and it has been determined that there are no properties currently listed on the Register which would be directly affected by the proposed work. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archaeological, scientific, prehistorical, or historical sites or structures which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

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The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetic values, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and in general, the needs and welfare of the public. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines (40 CFR Part 230) promulgated by the Administrator, United States Environmental Protection Agency, under authority of Section 404(b) of the CWA.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. It is presumed that all interested parties and agencies will wish to respond; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed project. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Written statements received in this office on or before the closing date will become a part of the official record and will be considered in the determination on this permit request. Any objections which are received during this period will be forwarded to the applicant for possible resolution before the determination is made whether to issue or deny the requested DA Permit. A permit will be granted unless its issuance is found to be contrary to the public interest.

Information pertaining to this application is available for public examination during normal business hours upon prior request. Drawings are available on Louisville District's Internet site at <http://www.lrl.usace.army.mil/Missions/Regulatory.aspx>. All comments regarding this proposal should be addressed to Mr. Matt Dennis; CELRL-OPF-W at the address noted above and should refer to the Public Notice Number LRL-2013-448-mad.

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If you desire to submit your comments by email, you must comply with the following:

a) In the subject line of your email, type in **ONLY** the Public Notice ID No. LRL-2013-448-mad.

Example:

Subject: LRL-2013-448-mad

b) Provide your physical mailing address and telephone number.

c) Send your email to: lrl.regulatorypubliccomment@usace.army.mil.

d) If you are sending attachments greater than 1 Mb in size with your email, you must send a hard copy (CD or paper) to the Corps' physical address as well.