

Section 404 Permits Update

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Topics

- Section 404 CWA
- Permits
- Jurisdictional Determinations
- Pre-Application Meetings
- Updates
- Corps Focus
- 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.*



Work Requiring 404 Permits

- Hollow Fills
- Refuse Fills
- Slurry Impoundments
- Sediment Ponds
- Haul Roads
- Mine-Through Areas
- Operational Areas
- Deep Mine Face-Ups



Permits for Coal Mining Activities

- NWP 21 (a & b)
- NWP 49
- NWP 50
- NWP 14
- NWP 43
- Individual Permits



404 Permits

- **Nationwide Permits**
 - ▶ 5 Year Expiration
 - ▶ Activity Specific
 - ▶ Minimal Impacts to waters
- **Individual Permits**
 - ▶ Public Notice
 - ▶ Larger Impacts to waters



Coal 404 Permits Issued

2003 - 2008

- 2003 – 13
- 2004 – 22
- 2005 – 11
- 2006 – 25
- 2007 – 26
- 2008 – 16

- Total - 113

2009 - 2014

- 2009 – 16
- 2010 – 4
- 2011 – 4
- 2012 – 8
- 2013 – 11
- 2014 – 5

- Total - 48



Jurisdictional Determinations

- Preliminary JDs
 - ▶ Assumes all waters within permit boundary are jurisdictional
 - ▶ Short turn around time
- Approved JDs
 - ▶ Used when non-jurisdictional waters are onsite
 - ▶ Take much longer to process



JD Requests

- Associated with potential stream impacts
 - ▶ Provide accurate stream assessments and delineations
 - ▶ Flag stream transition points and EOJ
- Associated with a NPR request
 - ▶ Flag the EOJ only



Pre-Application Meetings

KY Pre-Application Coordination Process

- ▶ KDNR, USACE, USEPA, USFWS, KDOW and OSMRE
- ▶ Agencies working to improve communication related to coal mining activities and better coordinate review of applications



Pre-Application Meetings

- ▶ Applicant introduces concept plans
- ▶ Agencies advise - discuss procedural aspects
- ▶ Reduce cumulative time for application reviews
- ▶ Eliminate unnecessary redesign
- ▶ Consolidate pre-mining sampling efforts
- ▶ Identify critical resources
- ▶ Assure consistency of information to all agencies



Updates

- New District Engineer (Col. Christopher Beck)
- New Branch Chief (Lee Anne Devine)
- Acting South Section Chief (Kimberly Simpson)



Updates

- Permits/Applications/JDs
- August 2013 – August 2014
 - ▶ 7 Permits Issued
 - ▶ 3 Permit Modifications
 - ▶ 37 JD Requests
 - ▶ 2 Permit Applications (NWP 49 & 50)
 - ▶ 3 Pre-Application Meetings



Updates

- Litigation, Appeals, Agreements
 - ▶ U.S Court of Appeals Upheld ECP
 - ▶ Completed Appeals Process of Declined Permit
 - ▶ Non-Judicial Settlement Agreement Reached



Updates

- Waters of the U.S. Proposed Rule
 - ▶ USACE HQ and EPA HQ have jointly drafted a proposed rule for defining waters of the U.S. under the Clean Water Act.
 - ▶ The rule is intended to provide additional clarity regarding the geographic scope of Clean Water Act (CWA) jurisdiction and improve national consistency and predictability of jurisdictional decisions applicable to all CWA programs (e.g., Sections 303, 309, 311, 402, and 404).



Updates

- Both agencies believe that the draft rule is consistent with the U.S. Supreme Court's SWANCC and Rapanos decisions.
 - ▶ Comment period ends October 20, 2014
 - ▶ Comment online at www.regulations.gov



Corps Focus

- Old Applications
 - ▶ Close out (permit decision or withdrawal) of old pending applications
 - ▶ Withdrawal letters
 - ▶ Permit decision
- New and Pending Applications
 - ▶ Mitigation Success/Compliance History
 - ▶ Mitigation Compliant with 2008 Rule



Corps Focus

- New Applications
 - ▶ Accuracy of stream assessments and delineations
- Non-Compliance
 - ▶ Letters advising and requiring action on delinquent mitigation or non-compliance
 - Permit Holder
 - Parent Company
 - Land Owner
- Permit Transfers



Questions??

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