

Coal Mining Activities and Section 404 Permits

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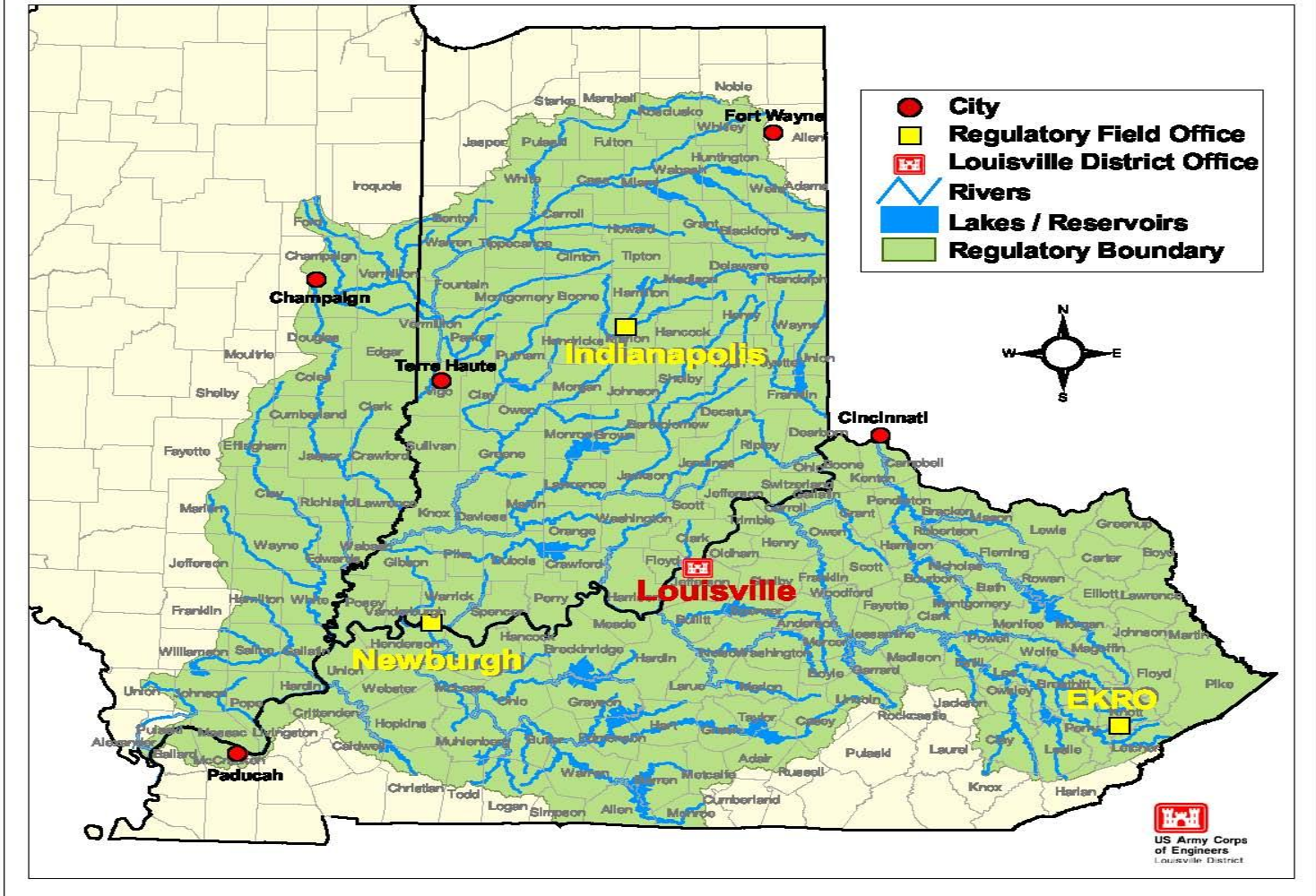


Topics

- COE Regulatory Authority
- Types of Permits - IPs; NWP's - 21, 49, 50
- 2009 MOU - Coordinated Agency Reviews
- BMPs
- Special Conditions
- Questions



Louisville District Regulatory Boundary



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 Fee

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 $500 \mu\text{S}/\text{cm}$ whichever ever 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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