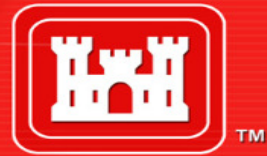




US Army Corps of Engineers

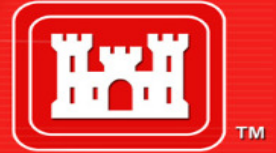


Corps of Engineers Regulatory Role in Coal Mining

Presented to:
Interstate Mining
Compact Commission –
2012 Annual Meeting
Asheville, NC
May 1, 2012

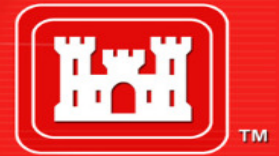
William L. James
National Coal Expert
Great Lakes & Ohio River Division





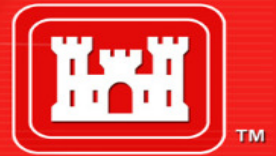
Outline

- **Corps Regulatory Authority**
- **Regulated Activities**
- **Permitting Options**
- **Nationwide Permits for Coal Mining**



Corps Regulatory Authority

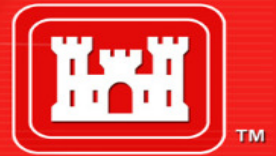
- Section 404 of the Clean Water Act (CWA) requires a permit from the Corps for the discharge of dredged or fill material into waters of the United States (WOUS)
- Corps is one of several agencies with regulatory authority for coal mining
 - State agency (OSM in some cases) - SMCRA permits
 - State agency - CWA Section 401 permits
 - State agency - CWA Section 402 permits (NPDES)
- On typical mine, Corps jurisdiction over WOUS (and adjacent riparian zone) is a very small percentage of the total mine acreage



Waters of the U.S.



Typical intermittent and ephemeral stream channels impacted by mining in Appalachia

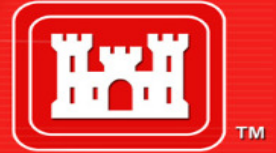


Regulated Activities

- Valley/Hollow Fills
- Sediment Structures
- Mine-Through Areas
- Stream Relocations
- Slurry Impoundments
- Culverts (road crossings)

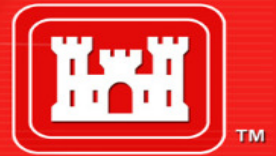


Fill and Sediment Structures



Corps Permitting Options

- Corps can authorize mining-related activities through individual or nationwide permits
 - Individual Permit
 - Used for larger projects with more substantial impacts
 - Issue public notice with opportunity for public hearing
 - Prepare environmental documentation pursuant to National Environmental Policy Act (NEPA)
 - Must determine compliance with 404(b)(1) Guidelines and that work is not contrary to public interest
 - General Permits (Nationwide and Regional)
 - Used to authorize activities that have minimal individual and cumulative effects on the aquatic environment
 - Must be reissued by HQ every five years
 - 50 Nationwide Permits for various activities
 - Three of the 50 NWP's (NWP 21, 49, and 50) for coal mining activities



Nationwide Permits for Coal Mining

- Nationwide Permits
 - NWP 21 - Surface Coal Mining Activities
 - NWP 49 - Coal Remining Activities
 - NWP 50 - Underground Coal Mining Activities
 - Applicants provide notification (PCN) to district for review
 - Districts must determine that project will have no more than minimal individual or cumulative adverse environmental effects (proposed mitigation can be considered)
 - Applicants can not begin work until they receive written verification from the Corps
 - When 2007 NWPs expired on March 18, 2012, if work was under construction or under contract, grandfather provision allows work to continue until March 18, 2013



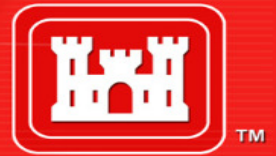
Nationwide Permits for Coal Mining

- NWP 21 – Surface Coal Mining Operations
 - Originally issued in 1982, reissued in 1987, 1992, 1997, 2002, and 2007
 - Versions through 2007 had no limits on amount of impacts
 - Easily the most controversial of the NWPs for coal mining
 - Subject of several lawsuits – NWP 21 has not been used in southern WV since 2009, current lawsuit in eastern Kentucky
 - Due to our concerns that continued use might result in more than minimal impacts, Corps suspended NWP 21 in the Appalachian region on June 18, 2010
 - Was a short term action item from the June 2009 Interagency MOU
 - NWP 21 reissued with limits effective March 19, 2012



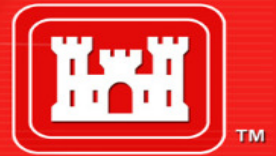
Nationwide Permits for Coal Mining

- 2012 NWP 21– Surface Coal Mining Activities (con’t)
 - NWP 21 (b)
 - Limits impacts to no more than ½ acre of non-tidal waters and 300’ linear feet of stream bed
 - 300’ limit for intermittent and ephemeral streams can be waived by the District Engineer on case-by-case basis if individual and cumulative adverse effects are determined to be minimal (can’t waive perennial)
 - Agency coordination required for proposed waivers of 300’ limit
 - Can not be used to authorize construction of valley fills
 - NWP 21 (a) (Reverification)
 - Can be used to reverify same work approved under 2007 NWP 21
 - Permittee must submit request with description by February 1, 2013
 - No increase in loss of waters from previous approval
 - DE must make minimal impacts determination and give written approval



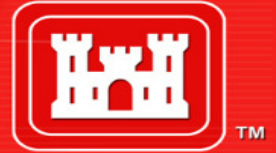
Nationwide Permits for Coal Mining

- 2012 NWP 49–Coal Remining Activities
 - First issued in 2007 in response to request by industry for incentive to remine
 - New mining techniques make it feasible to recover additional reserves
 - Remining can fix pre-law problems such as disconnected streams, highwalls, gob piles
 - No limits on impacts but must result in a net increase in aquatic resource functions
 - Permittee must document the net increase in notification package
 - Allows new mining in adjacent areas if newly mined area is less than 40% of remined area plus any additional area needed to facilitate the remining and reclamation



Nationwide Permits for Coal Mining

- 2012 NWP 50 – Underground Coal Mining Activities
 - First issued in 2007
 - Authorizes impacts to surface waters associated with deep mine activities
 - ½ acre and 300' limits on impacts as described in NWP 21
 - Can waive 300' stream limits as described in NWP 21



Summary

- Nationwide permits are an important part of the Corps regulatory program
- Nationwide permit information on Corps HQ website at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>
- Contact Information:
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