

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 9 2010

REPLY TO THE ATTENTION OF:

WW-16J

U.S. Army Corps of Engineers, Huntington District
ATTN: CELRH-OR-FE
502 8th Street
Huntington, West Virginia 25701-2070

Subject: Oxford Mining Company, LLC / Peabody III –UT to Two Mile Run / PN #
LRH-2005-421-1

Dear Ms. Mullins:

On March 20, 2009, the U.S. Army Corps of Engineers (Corps) issued a Public Notice in which Oxford Mining Company, LLC (Oxford) proposed modifications to permit # 200500421, Peabody III-UT to White Eyes Creek, authorized on August 1, 2008. The original permit authorized discharges to 981 linear feet of perennial stream, 4,420 linear feet of intermittent stream, and 7,141 linear feet of ephemeral stream in association with mining activities on 424 acres of the 1400 acre Peabody III surface coal mine site located in Linton Township in Coshocton County, Monroe Township in Muskingum County and Knox Township in Guernsey County, Ohio.

The proposed permit modification included an additional 6,033 linear feet of stream impacts and 0.41 acres of wetland impacts. The permit modification area encompassed approximately 888 acres of the 1400 acre Peabody III surface coal mine site. On May 15, 2009, the United States Environmental Protection Agency objected to the issuance of a permit for the project as proposed because of direct and indirect impacts to Class III Primary Headwater Habitat (PHWH), which support aquatic communities specifically adapted to cold water systems, and indirect impacts to Category III wetlands, which typically display unique, high-quality ecological values and functions. Ultimately, the applicant did not demonstrate avoidance and minimization of adverse aquatic impacts to the maximum extent practicable in the proposal, which is required by the 404 (b)(1) Guidelines.

On November 20, 2009, Oxford withdrew the pending Individual Section 404 application for the Peabody III modification area because of the concerns raised by state and federal agencies on impacts to Class III PHWH streams and Category 3 wetlands.

Oxford submitted a revised Individual Section 404 application to the Corps for the 888 acre Peabody III modification area, which was subsequently public noticed on December 30, 2009. EPA has reviewed this public notice, the revised 404 permit

application dated November 2009, the Monitoring Plan dated January 29, 2010, and the revised Monitoring Plan dated February 4, 2010. The revised project as proposed would impact approximately 100 linear feet of perennial streams and 961 linear feet of intermittent streams for a total of 1,066 linear feet of stream impacts. Proposed stream impacts have been reduced by a total of 4,967 linear feet with the revised permit modification. Proposed impacts to Class III PHWH streams have been reduced from 2,790 linear feet to 100 linear feet. EPA appreciates the applicant's efforts to significantly reduce impacts to these valuable resources.

EPA offers the following comments based on our review of the revised documents:

To enhance avoidance and minimization efforts, EPA recommends the applicant avoid, where possible, mining through springs on site in order to maintain hydrology for both the reconstructed and avoided streams, as well as avoided wetlands. The avoidance of springs/hydrology sources, with certain exceptions, should be included as a special condition of the 404 permit. This is especially important for all Class III PHWH streams and Category III wetlands.

According to the monitoring plan, the applicant has agreed to perform biological monitoring and physical assessments prior to the initiation of mining activities to establish baseline conditions, during the mining activities to assist in determining potential impacts to aquatic habitat, and continuing at least five years after the completion of stream restoration and site reclamation activities at the mine site, where appropriate, to determine mitigation success. On February 4, 2010, EPA reviewed the January 29, 2010 Monitoring Plan and recommended that the applicant establish monitoring stations on stream IS-2 south of the confluence of IS-1 and IS-2 and Township Road 812, at the confluence of streams PS-53 and PS-55 and just upstream of the confluence of streams PS-33 and PS-41 on PS-33. On February 8, 2010, EPA received a copy of the revised monitoring plan which included the additional stations.

The applicant's revised mitigation proposal includes mitigation for 1,016 linear feet of stream impacts with the reconstruction and protection of all 1,061 linear feet of streams, and protection of an additional 532 linear feet of Class III PHWH streams in perpetuity with an environmental covenant. However, the proposal does not include many details on performance standards, success criteria or a conceptual mitigation schedule. It is critical that these be included in the final mitigation plan to ensure there is a means to measure and evaluate the success of the mitigation areas. Additionally, financial assurances and adaptive management should be addressed in the final mitigation plan. Ultimately, the mitigation plan must include more detailed information and meet the minimum requirements set forth in the 2008 Compensatory Mitigation Rule so that the Agencies may evaluate whether or not the mitigation will provide appropriate compensation for any unavoidable loss of functions and values before a 404 permit is issued.

In conclusion, permit conditions should incorporate our comments on avoiding springs, biological monitoring, and mitigation details. Thank you for the opportunity to provide comments on this project. Please keep EPA apprised of the status of the permit and any major revisions. If you have any questions, or if we can be of further assistance, please contact Melissa Gebien at 312-886-6833 or Andrea Schaller Hilton at 312-886-0746.

Sincerely,



fw Tinka G. Hyde, Director
Water Division

cc: Ric Queen, Manager
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