



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

# Public Notice

---

Public Notice No.	Open Date:	Close Date:
LRL-2011-348-dah	4 Oct 2012	5 Nov 2012

---

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Louisville District

ATTN: Ms. Devetta Hill, CELRL-OP-FW

P.O. Box 489

Newburgh, Indiana 47629-0489

Phone: (812) 842-0250

Or email comments to:

[lr.regulatorypubliccomment@usace.army.mil](mailto:lr.regulatorypubliccomment@usace.army.mil)

---

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

**APPLICANT:**

Sean Jones  
Oxford Mining Company-Kentucky LLC  
PO Box 427  
544 Chestnut Street  
Coshocton, OH 43812

**LOCATION:**

Unnamed tributaries and adjacent wetlands to Elk Pond Creek, located west of Greenville, in Muhlenberg County, Kentucky.

**PURPOSE:**

To relocate and/or fill streams, wetlands and open waters to facilitate the removal of subsurface coal.

Latitude: 37°11' 50.628"

Longitude: -87°13' 56.587"

7.5 Minute Quad: Greenville, KY

**DESCRIPTION OF WORK:** The proposed project area, approved by the Kentucky Division of Mine Permits (KDMP) Permit No. 889-0130, is a 400 acre surface coal mining operation using a combination of the open strip pit method and highwall mining. Only 1.72 acres of the project site have been previously mined. See Figure 1 for the location. The proposed excavated area will fill 6,174 linear feet of ephemeral streams and 13,225 linear feet of intermittent streams, for a total of 19,399 linear feet of stream impacts. Approximately 2.62 acres of Palustrine Emergent (PEM) wetlands and 0.68 acre of Palustrine Scrub-Shrub (PSS) wetlands will be filled for a total of 3.3 acres of wetlands. Approximately 1.04 acres of open water will also be filled. The stream and wetland locations are shown on Figure 2. All economically recoverable coal will be removed during the excavation of the area, processed and sold. The area will be returned to approximate original contours, covered with stockpiled soil material, revegetated, and returned to an approved post-mine land use through the Surface Mining Control and Reclamation Act (SMCRA) process.

Operations Division  
Regulatory Branch (West)  
Public Notice No. LRL-2011-348-dah

**AVOIDANCE, MINIMIZATION, AND MITIGATION MEASURES:** The applicant avoided a total of 41,230.4 linear feet of streams and 3.93 acres of wetlands by adjusting the permit boundary. Because of the coal geology in the area and the topography of the site, it was not possible to totally avoid stream and wetland impacts and still achieve a viable coal mining operation.

The applicant proposes to mitigate stream impacts by creating a total of 13,225 linear feet of intermittent streams and 6,174 linear feet of ephemeral streams. This approximates a 1:1 mitigation ratio for intermittent and 1:1 for ephemeral streams. Streams will be created with riparian corridors and natural patterns, profiles, and dimensional characteristics. A riparian zone, consisting of predominately hard-mast producing hardwood species, of 50 feet either side of the channel for both the intermittent streams and the ephemeral streams would be planted. Enhancement of stream functions would consist of, but not limited to, hard-mast riparian corridor, and the use of engineered structures.

The applicant proposes to mitigate wetland impacts by the construction on-site of 5.02 acres of Palustrine Forested (PFO) wetlands. By creating PFO wetlands, the applicant proposes there will be an ecological lift over the wetlands/open water resources that currently exist. As a result, the applicant proposes the following mitigation ratios: 2:1 for the PSS wetland impacts resulting in 1.36 acres of PFO wetlands and 1:1 for the PEM wetlands impacts resulting in 2.62 acres of PFO for a total PFO acreage of 3.98 acres. Open water will be mitigated in-kind at a 1:1 ratio resulting in 1.04 acres. The PFO wetlands would have hard-mast producing tree species that have a facultative or wetter indicator status.

Refer to Figure 3 for the location of the proposed wetland and stream mitigation. 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, by this notice, hereby applies for State certification from the Kentucky Natural Resources and Environmental Protection 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

Operations Division  
Regulatory Branch (West)  
Public Notice No. LRL-2011-348-dah

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.

A Phase I survey was conducted to locate historic and archaeological resources on the project area. The survey located ten (10) previously unrecorded sites and one (1) previously recorded site. Seven (7) sites were determined to be not eligible for listing in the National Register of Historic Places. A Phase II survey was conducted on the remaining four (4) sites and it was determined that one (1) site is eligible for listing on the National Register of Historic Places. A Phase III survey has been proposed for this site. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archaeological, scientific, pre-historical, 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).

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. 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

Operations Division  
Regulatory Branch (West)  
Public Notice No. LRL-2011-348-dah

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/orf/listnotices.asp>. All comments regarding this proposal should be addressed to Devetta Hill, CELRL-OP-FW at the address noted above and should refer to the Public Notice Number LRL-2011-348-dah.

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-2011-348-dah.

Example:

Subject: LRL-2011-348-dah

- b) Provide your physical mailing address and telephone number.
- c) Send your email to: [lrl.regulatorypubliccomment@usace.army.mil](mailto: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.