Public Notice

US Army Corps of Engineers
Huntington District

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REGULATORY GUIDANCE ON SURFACE COAL MINING ACTIVITIES

The purpose of this notice is to advise and clarify information concerning the threshold of minimal impacts derived from the Settlement Agreement of December 23, 1998 (Bragg, et al. v. Robertson, et al, Civ No. 2:98-0636) for activities involving surface coal mining. In the state of West Virginia, discharges of fill material authorized under NWP 21 comprising a valley fill or a coal waste ("slurry") impoundment may not, as a general matter, occur below the point on a stream (as measured from the toe of the fill or slurry embankment) that drains a watershed of 250 acres or more. In specific circumstances, however, the Corps may determine, after a project-specific evaluation, that valley fills or slurry impoundments larger than 250 acres may be authorized under NWP 21 where individual and cumulative impacts are only minimal.

In determining whether an activity may be authorized under NWP 21, the nature and extent of aquatic resources affected by the activity will be evaluated as part of the assessment of potential cumulative impacts on the aquatic environment.

Information regarding compensatory mitigation may be referenced from the Regulatory Guidance Letter 02-2, dated December 24, 2002, and available on the internet at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/RGL2-02.pdf.

In accordance with Public Notice No. 200200248-21-1, dated January 10, 2003, applicants shall continue to reference and provide all information described in "Pre-Construction Notification Requirements for Nationwide Permit 21, Surface Coal Mining Activities". This public notice and other mining-related public notices may be referenced on the internet at http://www.lrh.usace.army.mil/or/permits/Public%20Notices/200200248.htm.

Additional information concerning Nationwide Permits for the State of West Virginia, specifically NWP 21 can be found in the January 15, 2002, Federal Register notice (67 FR 2020). This announcement was published by Public Notice No. 200200248-WV on March 18, 2002 and may be referenced on the internet at http://www.lrh.usace.army.mil/or/permits/hqreg/Nationwide/248-WV.pdf. If you have questions, please feel free to contact me at (304) 529-5487.

Ginger Mullins

Ginger Mullins, Chief
Regulatory Branch
Huntington District

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