



# Public Notice

**US Army Corps  
of Engineers**  
Louisville District

Public Notice No.

LRL-2009-239

Date:

10 Apr 09

Closing Date:

9 May 09

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Louisville District

ATTN: Mr. David Baldrige, CELRL-OP-FS

Eastern Kentucky Regulatory Office

845 Sassafras Creek Road

Sassafras, Kentucky 41759

Phone: (606) 642-3404

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

APPLICANT: Frasure Creek Mining, LLC  
4978 Teays Valley Road  
Scott Depot, West Virginia 25560

AGENT: R.M. Johnson Engineering, Inc.  
P.O. Box 444  
Hindman, Kentucky 41822

LOCATION: This project is located along unnamed tributaries to Long Fork of Buckhorn Creek and Williams Fork near the community of Noble in Breathitt County, Kentucky.

Latitude: 37° 25' 12"  
Longitude: -83° 08' 26"  
7.5 Minute Quadrangles: Noble, KY

PURPOSE: To construct six permanent excess spoil disposal fills and six temporary sediment control structures as appurtenant structures to a surface coal mining operation.

DESCRIPTION OF WORK: The proposed mining activity would utilize area mining methods to extract the Hazard #8, Hazard #9, and Hazard #10 coal seams within a 350-acre mine area. The applicant proposes to construct six permanent excess spoil disposal fills (HF 1, HF 2, HF 3, HF 4 HF 5 and HF 7) and six temporary sediment control structures (SS 1, SS 2, SS 3, SS 4, SS 5 and SS 7) in jurisdictional waters. The proposed excess spoil disposal fills would permanently impact 6,911 feet of ephemeral and 3,689 feet of intermittent streams. The sediment control structures would temporarily impact 2,650 feet of intermittent streams. An additional 755 feet of intermittent streams would be temporarily impacted between the toe of the hollow fills and the sediment control structures. In total, there would be 14,005 feet of temporary and permanent impacts to ephemeral and intermittent streams. The applicant has applied for authorization for this operation from the Kentucky Division of Mine Permits (KDMP) as #813-0328.

AVOIDANCE, MINIMIZATION AND MITIGATION MEASURES: The sediment ponds have been proposed as temporary structures to minimize the duration of impacts. The proposed sediment ponds would be constructed as close to the toe of the proposed hollow fills as practicable to minimize stream

impacts. The proposed hollow fills have been backed up to the highest elevation possible while maintaining the required stability analysis. The applicant has proposed within the SMCRA permit that the project would be returned to approximate original contour upon the reclamation phase. This would result in minimizing the amount of spoil placed in the hollow fills.

To offset the 14,005 feet of stream impacts, the applicant proposes a combination of onsite stream construction and payment of in-lieu fee monies to the Kentucky Department of Fish and Wildlife Resources Stream and Wetland Mitigation Trust Fund. Monies paid to this fund are used to undertake stream and wetland restoration projects in the vicinity of the impacted area. Permanent ephemeral stream impacts are proposed to be offset on-site by the construction of an ephemeral stream channel along the top and on the slope of the proposed hollow fills and by payment to the Kentucky Department of Fish and Wildlife Resources Stream and Wetland Mitigation Trust Fund. Losses associated with temporary and secondary impacts would be offset, post mining, by restoring areas used as sediment drainage and control back to pre-mining habitat conditions using natural stream designs.

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 Division of Mine Permits (KDMP).

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 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 that might be damaged by issuance of the DA Permit.

The National Register of Historic Places has been examined, and it has been determined that there are no properties currently listed on the Register which would be directly affected by the proposed work. 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 that 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, U.S. 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 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> under "Obtain a Permit". All comments regarding this proposal should be addressed to Mr. David Baldrige; CELRL-OP-FS at the address noted above and should refer to the Public Notice Number LRL-2009-239.