

SUBJECT: Permitting Policy for Isolated Wetlands under the WV Surface Coal Mining and Reclamation Act.

DATE: October 22, 2021

APPROVAL: Jonathan Rorrer- Acting Director 

INTRODUCTION

Certain waters of the State are outside the federal jurisdiction of the US Army Corps of Engineers. The WV Department of Environmental Protection (WVDEP) has responsibility to protect all waters of the State. W. Va. Code §22-11-8(b) requires a permit for activities with the potential to affect the integrity of waters of the State. However, WVDEP has discretion regarding the permitting mechanism for waters that are outside federal jurisdiction.

In the case of isolated wetlands to be encountered by coal mining activities, WVDEP has determined that the permit issued pursuant to the WV Surface Coal Mining and Reclamation Act; W. Va. Code §22-3; is the best mechanism for identification, permitting, and mitigation of these waters of the State. In particular, the bonding required for the mining permit provides assurance that isolated wetlands will either be protected from disturbance or mitigated as part of the planned coal mining activities.

PROCEDURE

SCMRA Permit Application Requirements

The following must be completed and addressed in the mining permit application for any isolated wetlands located within the permitted area:

- The permittee must perform a delineation of any isolated wetlands using the most current and acceptable method as determined by the US Army Corps of Engineers (currently the 1987 Army Corps Manual for Identifying and Delineating Wetlands, along with the 2012 Interim Regional Supplement to the USACE Wetland Determination Manual: Eastern Mountains and Piedmont Region).
- The delineated wetlands and proposed mitigation plan must be addressed in Section J-11 (Hydrologic Reclamation Plan) of the mining permit application.

Mitigation Requirements

The following mitigation requirements must be met by the permittee for isolated wetlands:

- The permittee must submit West Virginia Stream and Wetland Valuation Metric (WVSWVM) forms completed by a qualified biologist for the isolated wetlands.
- Mitigation for the isolated wetlands to be affected by the proposed mining activity must occur within the permitted and bonded area for the proposed mining activity on an equal (1:1) basis to the WVSWVM units for the affected isolated wetland(s); or (2) offset with payment to the state stream restoration fund or an authorized mitigation bank, in either case resulting in No Net Loss to State Resources. This should be specified in the Hydrologic Reclamation Plan.
- The WVDEP permit reviewer will coordinate review and approval of the isolated wetlands delineation and mitigation plans.
- The cost of wetlands mitigation must be addressed by a separate bonding mechanism in addition to the reclamation performance bond required under 38 CSR§02 for the coal mining activity. The amount of this separate bonding mechanism will be equal to the WVSWVM calculation.
- Periodic (annual) monitoring of performance for the mitigation activities is required until final (Phase III) bond release.

Bond Release Requirements

All required isolated wetlands mitigation activities must be completed prior to Phase III bond release. For replacement wetlands constructed within the permitted area, the following metrics will be utilized to demonstrate that mitigation is complete:

- The WVSWVM units for the replacement wetlands will be evaluated by a qualified biologist, who will prepare a report to be included in the certified application for Phase III bond release.

If the replacement wetland(s) fail to meet the required offset ratio, the permittee will either provide additional mitigation to generate the required WVSWVM units on the site or pay the WVSWVM determined amount to the Stream Restoration Fund.