



**DEPARTMENT OF THE ARMY**  
NASHVILLE DISTRICT, CORPS OF ENGINEERS  
3701 BELL ROAD  
NASHVILLE, TENNESSEE 37214-2660

December 21, 2011

REPLY TO  
ATTENTION OF:

**Regulatory Office**

SUBJECT: File No. LRN-2011-00481; Proposed Mine Operation in Little Dice Branch Watershed, Tennessee River Mile 225.0 L, Franklin County, Alabama: Birmingham Coal & Coke Co., Inc., ASMC # P-3831

Birmingham Coal & Coke Co., Inc.  
Attn: Mr. Robert A. Lewis  
2477 Valleydale Road, Suite B3  
Birmingham, Alabama 35601

Dear Mr. Lewis:

This letter is in reference to your request for Department of the Army (DA) authorization under Section 404 of the Clean Water Act to discharge fill material into tributaries to Little Dice Branch in Franklin County, Alabama.

Discharges into waters of the U.S. would be associated with surface mine through areas and associated sediment basins resulting in the loss of 3,080 linear feet of ephemeral and intermittent streams, 0.73 acre of wetlands and 3.03 acres of impoundments as detailed below:

<b>Reach Identification</b>	<b>Length/Area</b>	<b>Flow Regime</b>	<b>Type of Impact</b>
WFP 1	300'	Ephemeral	Mine Through
WFP 2	220'	Ephemeral	Mine Through
WFP 3	180'	Intermittent	Mine Through
WFP 4	80'	Ephemeral	Mine Through
WFP 5	100'	Intermittent	Mine Through
WFP 6	160'	Intermittent	Mine Through
WFP 7	140'	Ephemeral	Mine Through
WFP 9	180'	Intermittent	Mine Through
WFP 10	560'	Intermittent	Mine Through
WFP 10	100'	Intermittent	Temporary Basin
WFP 11	60'	Intermittent	Mine Through
WFP 11	300'	Intermittent	Temporary Basin
WFP 12	340'	Intermittent	Mine Through
WFP 13	360'	Ephemeral	Mine Through
WET 1	0.12	Emergent	Mine Through
WET 2	0.01	Emergent	Mine Through

WET 3	0.41	Emergent	Mine Through
WET 4	0.16	Emergent	Mine Through
WET 5	0.03	Emergent	Mine Through
Basin 2	0.22	Impounded	Mine Through
Basin 3	0.70	Impounded	Mine Through
Basin 4	2.11	Impounded	Mine Through

To compensate for unavoidable impacts to approximately 1,100 linear feet of ephemeral stream and 1,980 linear feet of intermittent stream, approximately 2,380 linear feet of intermittent stream will be restored on-site according to the proposed Compensatory Mitigation Plan (CMP). To compensate for unavoidable impacts to approximately 0.73 acre of wetland, approximately 0.84 acre of wetland will be restored on site according to the proposed CMP.

Based upon a review of the information provided, it has been determined your proposed work meets the criteria for Nationwide Permit (NWP) #49 for Coal Remining Activities, under the March 27, 2007 Federal Register, Reissuance of Nationwide Permit (72 FR 11092). This verification does not obviate your responsibility to obtain and abide by all other federal, state and local permits or approvals required. The Alabama Department of Environmental Management issued 401 water quality certification with conditions (attached) for this nationwide permit.

**In view of the above, your project is authorized subject to the terms and conditions of the enclosed material and the attached general and special conditions entitled “SPECIAL CONDITIONS FOR DEPT OF THE ARMY NWP VERIFICATION LRN-2011-00481, BIRMINGHAM COAL & COKE CO., INC., ASMCH# P 3831.”** It is your responsibility to ensure your work conforms to the conditions listed within the enclosed material.

This verification will be valid until March 18, 2012, unless the NWP authorization is modified, suspended, or revoked. If you commence or are under contract to commence this activity before that date, you will have twelve months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

If changes in the location or plans of the work are necessary, revised plans shall be submitted promptly to this office. Deviation shall not be made to the approved plans without first obtaining approval from this office. This NWP authorization may be modified, suspended or revoked and individual permit authorization may be required if you fail to comply with any of the NWP conditions. **Upon completion of work associated with this authorization, please sign and return the enclosed “Certification of Work” form.**

If you have any questions, you may contact me or Eric Sinclair at the Western Regulatory Field Office, 2042 Beltline Road SW, Building C, Suite 415, Decatur, Alabama 35601, telephone (256) 350-5620, or email [William.E.Sinclair@usace.army.mil](mailto:William.E.Sinclair@usace.army.mil).

Sincerely,



Tammy R. Fudge  
Chief, Eastern Regulatory Section  
Operations Division

Enclosures

Copies Furnished:

Mr. Cleo Stubbs  
Delta Natural Resource Services, Inc.  
P.O. Box 941  
Hartselle, Alabama 35640

Mr. Zach Wilbanks  
DSM Design Group, LLC  
PO Box 690  
1400 Viking Drive  
Jasper, Alabama 35502

Mark LaRue  
US EPA Region 4  
Water Protection Division  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

William Pearson  
U.S. Fish and Wildlife Service (USFWS)  
1208-B Main Street  
Daphne, Alabama 36526

Randall Johnson  
Alabama Surface Mining Commission (ASMC)  
PO Box 2390  
Jasper, Alabama 35502-2390

Aaron Peters  
Alabama Department of Environmental Management (ADEM)  
PO Box 301463  
Montgomery, Alabama 36130-1463

Matthew Marshall  
Alabama Department of Conservation & Natural Resources (ADCNR)  
64 North Union Street, Suite 567  
PO Box 301456  
Montgomery, AL 36130-1456

# ATTENTION

YOU ARE REQUIRED TO SUBMIT THIS SIGNED  
CERTIFICATION REGARDING THE COMPLETED ACTIVITY  
AND ANY REQUIRED MITIGATION.

I hereby certify that the work authorized by Permit No. LRN-2011-00481  
and any required mitigation was done in accordance with the Corps  
authorization, including any general or special conditions.

\_\_\_\_\_  
Permittee Signature

Date \_\_\_\_\_

Submit this signed certification to the office checked below:

- ~ U.S Army Corps of Engineers  
Regulatory Branch  
3701 Bell Road  
Nashville, TN 37214-2660
- ~ Western Regulatory Field Office  
501 Adesa Blvd.  
Suite 250  
Lenoir City, TN 37771
- ~  Western Regulatory Field Office (Attn: Eric Sinclair)  
2042 Beltline Road, Southwest  
Building C, Suite 415  
Decatur, Al 35601

Project Location: Proposed Mine Operation in Little Dice Branch watershed, Tennessee River  
Mile 225.0 L, Franklin County, Alabama: Birmingham Coal & Coke Co. Inc., ASMC# P-3831



**US Army Corps  
of Engineers.**

Nashville District

# Nationwide Permit

---

## **49. Coal Remining Activities**

Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal, provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI) Office of Surface Mining (OSM), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts. The permittee must clearly demonstrate to the district engineer that the reclamation plan will result in a net increase in aquatic resource functions. As part of the project, the permittee may conduct coal mining activities in an adjacent area, provided the newly mined area is less than 40 percent of the area being remined plus any unmined area necessary for the reclamation of the remined area.

*Notification:* The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.)

**(Sections 10 and 404)**

**SPECIAL CONDITIONS FOR DEPT OF THE ARMY NWP VERIFICATION  
LRN-2011-00481, Birmingham Coal & Coke Co., Inc., ASMC# P-3831 (a through hh)**

- a) The authorized work shall be performed in accordance with the Clean Water Act Section 404 Application and Final Compensatory Mitigation Plan (CMP) for NWP 49 dated August 22, 2011 and supplemental information received on October 17, 2011.
- b) The permittee shall ensure work occurs in accordance with the Alabama Surface Mining Commission Permit P-3831, pursuant to the Surface Mining Control and Reclamation Act of 1977.
- c) The permittee shall ensure work complies with the general conditions of the 401 water quality certification (attached).
- d) The permittee shall ensure work complies with the conditions of the NPDES Permit AL0074373, approved by letter dated May 17, 2011.
- e) Should new information regarding the scope and/or proposed impacts of the project become available that was not submitted to this office during our review of the proposal, you shall submit written information concerning proposed modification(s) to this office for review and approval.

**Stream Mitigation**

- f) Impacts to approximately 1,100 linear feet of ephemeral streams and 1,980 linear feet of intermittent streams shall be mitigated with the restoration of approximately 2,380 feet of intermittent stream in accordance with the CMP.
- g) The permittee shall implement the mitigation work plan and complete the initial construction and plantings in accordance with the timeframes specified in the above referenced CMP. Completion of all elements of this CMP is a requirement of this authorization.
- h) The restored stream channel segments have been designed and shall be constructed using natural stream design techniques to reestablish the appropriate hydrogeomorphic configuration. In-stream structures and habitat features such as random boulders placement, cross vanes, wedge dams, channel blocks, and channel deflectors shall be installed to enhance aquatic habitat and aid in stream bank protection.

**Wetland Mitigation**

- i) Impacts to approximately 0.73 acre of wetlands shall be mitigated with the creation of approximately 0.84 acre of wetlands according to the proposed CMP.
- j) The permittee shall implement the mitigation work plan and complete the initial construction and plantings in accordance with the timeframes specified in the above

referenced CMP. Completion of all elements of this CMP is a requirement of this authorization.

- k) The restored wetlands have been designed and shall be constructed to replace and increase the size and functions of the wetlands lost. The wetlands shall also be constructed in a manner that supplements the base flow of their adjacent streams.

**Performance Standards**

- l) Implementation of the CMP must ensure the restored stream segments totaling 2,380 linear feet provide sufficient stability and habitat for aquatic diversity. Physical habitat shall be assessed in the created and restored mitigation stream segments. Implementation of the CMP must also ensure the created wetlands totaling 0.84 acre exhibit a wetland hydrology and a dominance of wetland vegetation. If the mitigation efforts do not meet the performance standards outlined in the CMP and special conditions of this nationwide permit authorization, corrective measures and/or additional mitigation shall be required. Performance standards for the stream and wetland restorations are identified in the CMP.
- m) The projected Compensation Credits for the restored stream channels after five years shall be used to assess success of mitigation sites as submitted by Birmingham Coal & Coke Co., Inc. as part of the CMP. Contingency procedures described in the mitigation plan would be implemented in the event success criteria are not met.

**Compensation Credits for Stream Restoration On-Site**

Stream Name	Reach ID	Comp. Length (L <sub>i</sub> ) (feet)	Total Compensation Credit (Total CC) (From Form 3)
UTs Little Dice Branch	2,4 & 5	2,380	2,737

- n) Contingency procedures described in the mitigation plan shall be implemented in the event success criteria are not met.
- o) The permittee shall be responsible for maintaining all on-site mitigation and restoration areas until such time as the permittee provides documentation to, and receives verification from, the USACE, that areas within the mitigation area shall meet the following conditions:
  - i. constructed or restored waters have a continuous ordinary high water mark and are connected to a surface water tributary system of waters of the United States;
  - ii. the established or restored streams are functioning as the intended type and at the level of ecological performance prescribed in the CMP;
  - iii. buffer and riparian zones and other areas integral to the enhancement of the aquatic ecosystem are functioning as the intended type of ecosystem component and at the level of ecological performance prescribed in the CMP; and

- iv. water must flow above ground when present in the restored stream channels.

### **Vegetation**

- p) A minimum 50-foot vegetated buffer zone shall be planted along each side of the restored stream segments.
- q) The riparian zones and restored wetlands shall be vegetated in a random or scattered method planted at a density of at least 300 tree and 100 shrub stems per acre. Low growing shrubs shall be planted between the irregularly placed woody stems. The wetland shall be seeded with an herbaceous mixture at a rate sufficient to provide a minimum of 80% coverage. The riparian zone and wetland shall be vegetated to ensure success of at least 75% of the planted native species within the five year monitoring period.
- r) All tree, shrub and herbaceous species shall be selected based upon their hydrologic and edaphic tolerances, wildlife food and cover value and shall be native to Franklin County, Alabama. The native wetland plantings shall consist of a minimum three tree, two shrub and five herbaceous species with no single species comprising more than 25% of the total number of individuals planted. The native riparian zone plantings shall consist of a minimum four tree and two shrub species with no single species comprising more than 25% of the total number of individuals planted. A minimum of 5% of the planted trees shall be mast producing oak species.
- s) Invasive plant species are prohibited from use in the 50 foot riparian buffer zones along the entire length of restored stream channels and the wetland creation areas. Invasive species reproduce rapidly, forming stands that exclude nearly all other plant species. In the worst cases, they radically alter the ecosystem processes, alter natural areas, and displace native species. On 3 February 1999, Executive Order 13112 was issued to discourage the introduction of invasive species and provide for their control to minimize the economic, ecological, and human health impacts that invasive species cause. Preventative measures shall be taken to inhibit invasive species from establishing in the vegetated buffer zones along the mitigation areas. Upon discovery of invasive species, the permittee shall coordinate removal efforts with the USACE to determine appropriate eradication techniques.

### **Long-term Protection**

- t) The permittee shall present an "Addendum to Lease" for the landowner's signature. The Addendum to Lease commits the land owner to follow Alabama BMPs for forestry within all aquatic resources and their associated buffers. The Addendum to Lease shall be signed by the land owners and submitted to the USACE within 30 days of the Department of the Army (DA) NWP verification date.

### **Mitigation Monitoring**

- u) An annual status report shall be submitted to the USACE by December 31<sup>st</sup> of each year following authorization of the project (excluding 2011). This report shall provide a status of

all completed work in waters and the status of construction of all required mitigation. In the event work in waters has not commenced, a status report shall be submitted to indicate compliance with this condition.

v) Annual monitoring reports shall be submitted to the Nashville District :

Western Regulatory Field Office  
2042 Beltline Road SW  
Building C, Suite 415  
Decatur, Alabama 35601

No later than December 31 of the year following completion of the first mitigation reach. Failure to submit monitoring reports would constitute permit non-compliance. One original and three copies of the annual monitoring reports shall be submitted to expedite agency coordination.

w) The restored stream channels and wetlands shall be monitored annually for a minimum of five years following completion of the mitigation for each reach and site. The monitoring period may be extended past five years based upon the success of the mitigation. The monitoring requirements may also be revised when/if remediation actions are required. The monitoring and management plan evaluate the success of the mitigation work and will allow for any necessary adjustments to assure success of the site.

x) The monitoring report shall be developed in accordance with procedures described in 33 *CFR Parts 325 and 332 and 40 CFR 230 - Compensatory Mitigation of Losses of Aquatic Resources; Final Rule* and the *Regulatory Guidance Letter No. 08-03, dated October 10, 2008, entitled Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment and/or Enhancement of Aquatic Resources*" (attached). The monitoring report shall include the inspector's report, performance parameters as described in the plan, photographs with locations or stations depicted on plan views and any noted deficiencies and associated corrective measures. The annual monitoring report, at a minimum, must also include the following for each restored stream channel and wetland as appropriate:

- Narrative status of progress of mitigation site development and photographs depicting each mitigation site;
- Determination of compliance with each performance standard;
- As-built plan which depicts all monitoring stations and photograph locations;
- A set of completed stream bioassessment forms (reference EPA's Rapid Bioassessment Protocols, Chapter 7) for each stream reach;
- A status of the propagation and survival of riparian and wetland vegetation, including species composition, and % aerial cover;
- Monitoring and eradication methods for invasive species along each stream channel and wetland;
- Stream morphology development status of each stream channel;

### **Remedial Actions (Mitigation)**

- y) All compensatory mitigation is expected to ensure the stream segments and wetland areas develop into an equal or better habitat than existed prior to construction. If the mitigation efforts do not meet this performance standard, efforts indicated by the applicant's Contingency Plan or other corrective measures would be required. This may include off-site, in-kind mitigation performed on other lands available to the permittee.
- z) If performance standards are not met, a detailed explanation of the difficulties and potential remedial actions proposed by the permittee, including a timetable, must be provided. The District Engineer would ultimately determine if the mitigation site is successful for a given monitoring period.
- aa) Remedial actions taken during the monitoring period shall be described. These actions may include, but are not limited to, removing debris, replanting, controlling invasive species, regrading the site, applying additional topsoil or soil amendments, adjusting site hydrology, etc. Remedial measures may be necessary to achieve or maintain achievement of the success criteria and otherwise improve the extent to which the mitigation site(s) replace the functions and values lost due to project impacts.

### **Monitoring Inspections (Mitigation)**

- bb) The permittee shall arrange an on-site meeting with the USACE during the growing season after the first, third and fifth year reports are submitted. The purpose of the meeting is to determine if the stream and wetland mitigation sites have been constructed in accordance with the mitigation plan and are functioning as expected. A current jurisdictional delineation of all waters of the United States shall be provided for verification.
- cc) Problems, if any, of the mitigation areas shall be addressed and potential solutions must be incorporated into actions the permittee would take to allow the mitigation areas to reach their proposed functional status. The permittee is responsible for implementing reasonable corrective measures recommended by the USACE.
- dd) Following receipt of the fifth year monitoring report, an on-site meeting shall be arranged to determine if all success criteria have been met. A determination of the mitigation success would be made by the USACE. If success criteria have been met, the applicant would be released from future monitoring requirements. Otherwise, the applicant may be required to implement contingency measure(s), including additional mitigation, to ensure compensation adequately offsets the loss of waters in association with the proposal. Monitoring may be extended for a longer period if completed mitigation is not functionally as predicted in the CMP.
- ee) Your responsibility to complete the required compensatory mitigation as set forth in the previous CMP special conditions would not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the USACE.

### **Endangered Species Act**

- ff) Section 7 obligations under Endangered Species Act (ESA) must be reconsidered if new information reveals impacts of the proposed project that may affected federally listed species or critical habitat in a manner not previously considered, the proposed project is subsequently modified to include activities which were not considered during Section 7 consultation with the USFWS, or new species are listed or critical habitat designated that might be affected by your proposed project.
- gg) The permittee is reminded this DA Permit authorization does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS, both lethal and non-lethal "takes" of protected species are in violation of the ESA.

### **Cultural Resources**

- hh) In the event any previously unknown historic or archaeological sites or human remains are uncovered while accomplishing the activity authorized by this permit, the permittee must cease all work immediately and contact local, state and county law enforcement offices (*only contact law enforcement on findings of human remains*), our office at (256) 350-5620, and the Alabama Historical Commission/SHPO at (334) 242-3184. While accomplishing the activity authorized by this permit, the inadvertent discovery of any artifacts (human remains, funerary objects, sacred objects, and objects of cultural matrimony/patrimony, etc.) shall result in immediately ceasing work and contacting the Regulatory Branch of the USACE Nashville District. The USACE will initiate the Federal, state and tribal coordination required to comply with the National Historic Preservation Act and applicable state and local laws and regulations. Federally recognized tribes are afforded a government-to-government status as sovereign nations and consultation is required under Executive Order 13175 and 36 CFR Part 800.