



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS - MOBILE DISTRICT
BIRMINGHAM FIELD OFFICE
218 SUMMIT PARKWAY, SUITE 222
HOMEWOOD, ALABAMA 35209

March 5, 2012

Inland North Section
Regulatory Division

SUBJECT: Nationwide Permit Authorization - Permit Number SAM-2012-00048-CMS, Birmingham Coal and Coke Company, Inc., Gooden Creek Mine Revision R-8

Birmingham Coal and Coke Company, Inc.
Attention: Mr. Robert Lewis
912 Edenton Street
Birmingham, Alabama 35242

Dear Mr. Lewis:

This letter is in response to your January 25, 2012 application, submitted on your behalf by DSM Design Group, for a Department of the Army permit to perform work in waters of the United States in association with the Gooden Creek Mine Revision R-8 project. The project is located in Sections 19 and 20, Township 12 South, Range 10 West in Walker County, Alabama (N 33.994695, W 87.612206).

Department of the Army authorization is necessary because your project will involve the placement of fill material into jurisdictional waters of the United States, regulated under Section 404 of the Clean Water Act. Project impacts include 883 linear feet of intermittent streams (0.08 acre) and 2,995 linear feet of ephemeral streams (0.11 acre), for a total impact of 3,878 linear feet of stream (0.19 acre). Project maps are attached.

Based on the pre-construction notification and mitigation plan submitted on January 27, 2012 and subsequent correspondence, your proposal is authorized by Nationwide Permit (NWP) 21 Surface Coal Mining Activities (Federal Register, March 12, 2007 Vol. 72, No. 47). In order for this NWP authorization to be valid, you must ensure that the work is performed in accordance with the General Conditions of *Nationwide Permit 21*, which can be viewed at our website at www.sam.usace.army.mil/RD/reg, and the following special conditions:

a. The applicant shall purchase 0.12 wetland credits (0.11 credits x 1.08 proximity factor) from Big Sandy Mitigation Bank for the ephemeral stream impacts and 4,238 stream credits (3,924 credits x 1.08 proximity factor) from Big Sandy Mitigation Bank. Proof of credit purchase must be received by this office prior to commencing work in waters of the United States.

b. You shall comply with all the terms and conditions of the Alabama Department of Environmental Management Section 401 Water Quality Certifications for the Nationwide Permits. This document can be viewed at our website: www.sam.usace.army.mil/rd/reg/nwp/htm for you review and compliance, or at your request a paper copy will be provided to you.

This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to

remain informed of changes to the NWP. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit.

This letter of authorization does not obviate the necessity to obtain any other Federal, State, or local permits, which may be required. Further, please note General Condition 26 requires that you submit a signed certification to us once any work has commenced and when the work and required mitigation are completed. Please complete and submit the attached Notification of Commencement of Work when work has begun and the attached Compliance Certification form to this office within 60 days of completion of the authorized work.

A copy of the preliminary jurisdictional determination form is enclosed. Please be advised that this jurisdictional determination reflects current policy and is valid for a period of 5 years after the date of this letter. If after a 5-year period this jurisdictional determination has not been specifically revalidated by the U.S. Army Corps of Engineers, it shall automatically expire. Should you disagree with certain terms and/or conditions of this determination, the enclosed Appeal Form outlines the steps to take to file your objection.

A copy of this authorization with attachments is being provided to the Alabama Department of Environmental Management, Attention: Mr. Richard Hulcher, Field Operations Division, 1400 Coliseum Boulevard, Montgomery, Alabama 36110 and DSM Design Group, Attention: Mr. Zach Wilbanks, Post Office Box 690, Jasper, Alabama 35502.

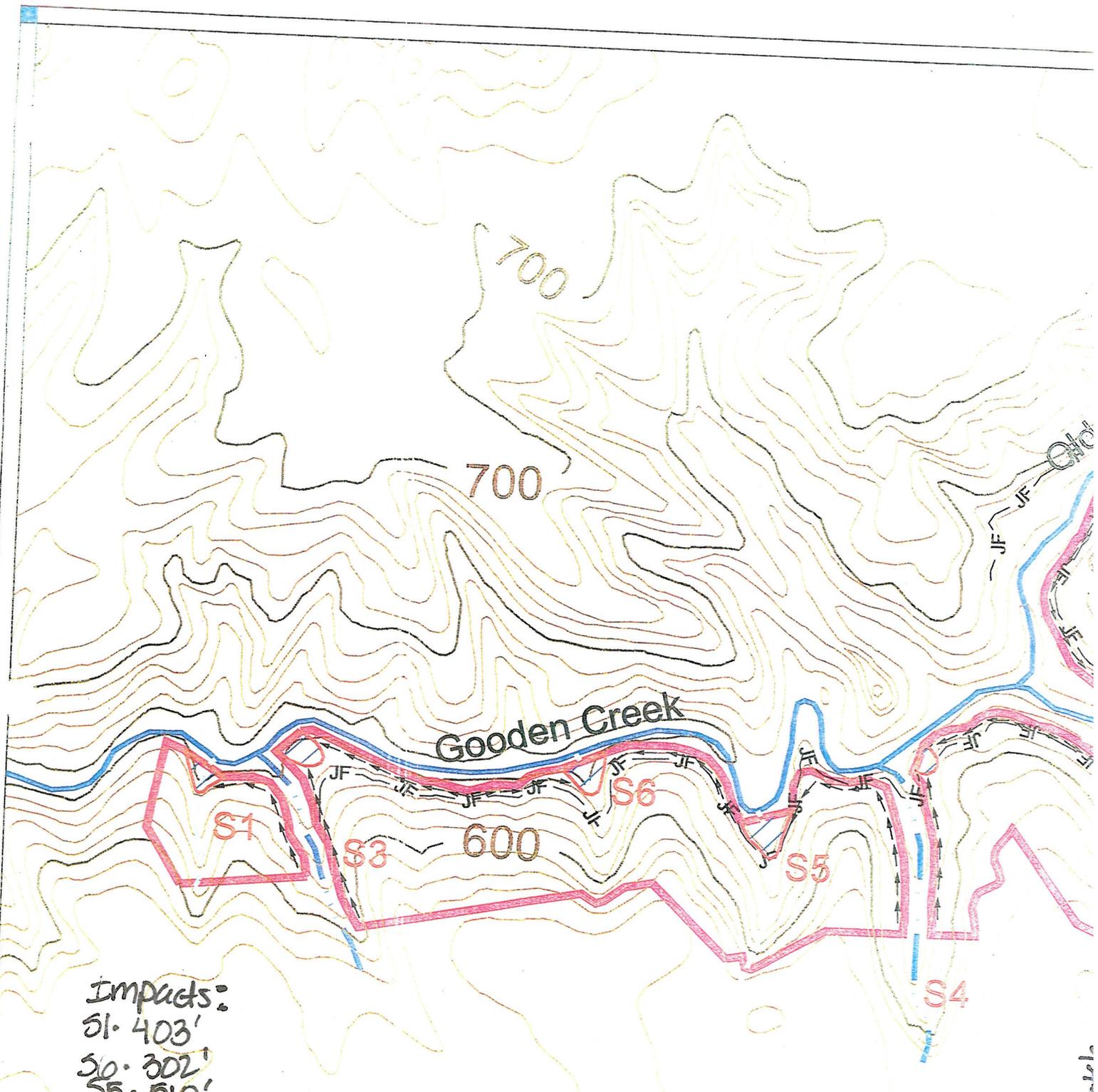
Please contact me at 205-290-9096 and refer to File Number SAM-2012-00048-CMS if you have any questions. For additional information about our Regulatory Program, visit our web site at www.sam.usace.army.mil/RD/reg, and please take a moment to complete our customer satisfaction survey while you are there. Your responses are appreciated and will allow us to improve our services.

Sincerely,



Courtney Shea
Project Manager
Regulatory Division
Birmingham Field Office

Enclosures



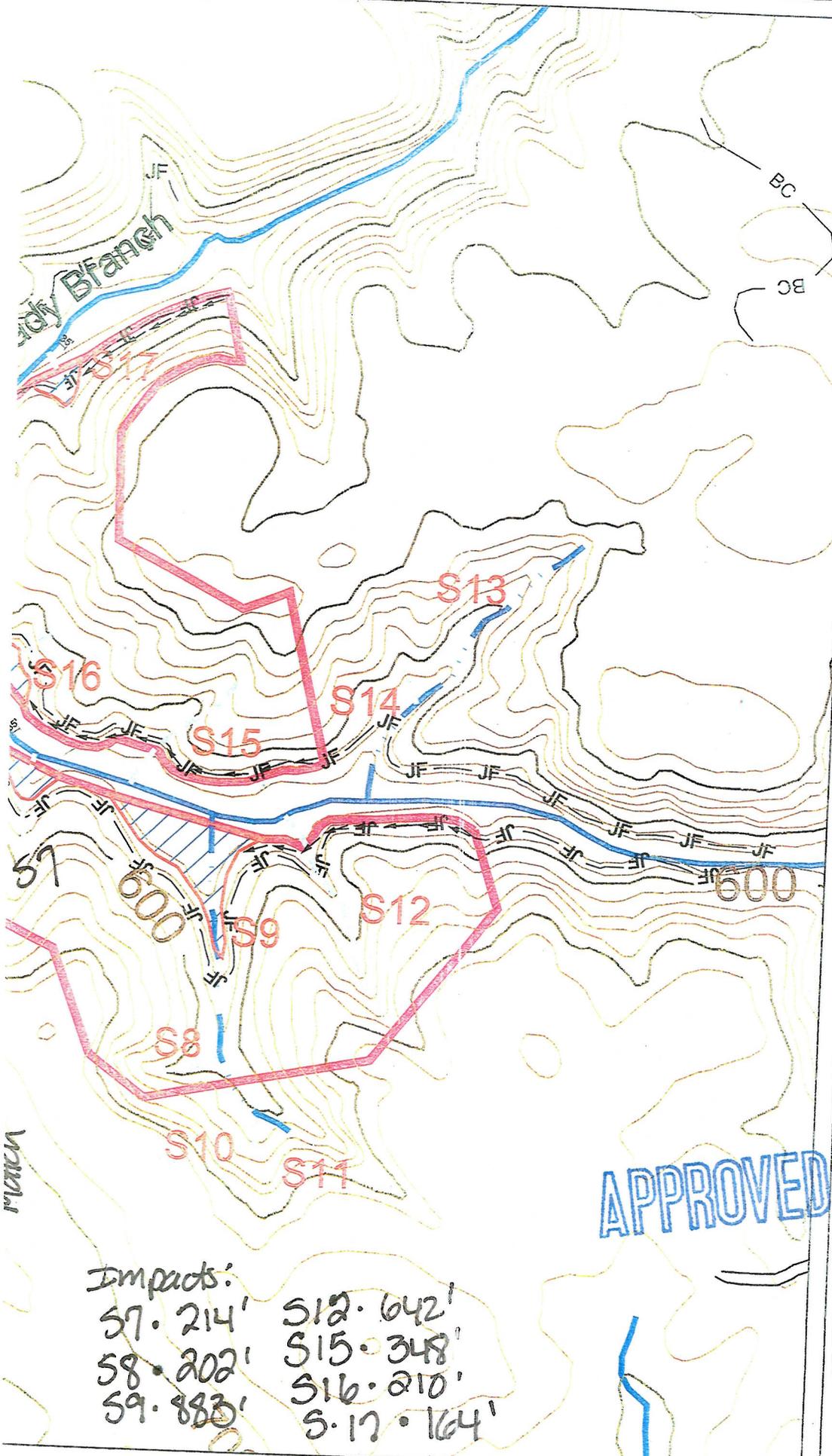
Impacts:
 51.403'
 50.302'
 55.510'

LEGEND	
	PROJECT AREA
	PERENNIAL STREAMS
	INTERMITTENT STREAMS
	EPHEMERAL STREAMS
	COAL SEAM
	PROPOSED PONDS
	PROPOSED DIVERSIONS

APPROVED

Jurisdictional Impacts
 SAM-2012-00048-CMS
 Gooden mine, Revision R-8
 (Western Side of Project)

Model



Impacts:

S7. 214'	S12. 642'
S8. 202'	S15. 348'
S9. 883'	S16. 210'
	S17. 164'

Birmingham Coal & Coke Co., Inc.
 Gooden Creek Mine, Revision R-8

SAM-2012-000482ms
 JURISDICTIONAL IMPACTS MAP
 WALKER CO., AL
Eastern Side of Project

DSM
 DESIGN GROUP, LLC
 ENGINEERING / SURVEYING
 1400 VIKING DRIVE
 JASPER, ALABAMA 35501
 TELEPHONE: (205) 221-0262

DRAWN BY:
 Z.B.W.
 01/04/2012

APPROVED BY:
 J.D.M.
 01/04/2012

SCALE:
 1" = 500'

SHEET:
 1 OF 1



US Army Corps of Engineers
Mobile District

SELF-CERTIFICATION - STATEMENT OF COMPLIANCE

Permit Number: SAM-2012-00048-CMS

Name of Permittee: Birmingham Coal and Coke Co., Inc.

Date of Permit Issuance: March 5, 2012

Location of the Work: Eldridge, Walker County, AL

Upon completion of the activity authorized by this permit and any mitigation required by the permit, you must complete and return this certification to the following address:

**U.S. Army Corps of Engineers, Mobile District
Regulatory Division (RD-I-N)
218 Summit Pkwy, Suite 222
Homewood, AL 35209**

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with all terms and conditions of this permit the permit is subject to permit suspension, modification, or revocation and you are subject to an enforcement action by this office.

PERMITTEE TO COMPLETE THE FOLLOWING:

Date Work Completed: _____

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the permit authorization, including all general and/or special conditions of the said permit, and the required mitigation (if applicable) was completed in accordance with the permit conditions.

Signature of Permittee

Date



US Army Corps of Engineers
Mobile District

NOTIFICATION OF COMMENCEMENT OF WORK

Permit Number: SAM-2012-00048-CMS

Name of Permittee: Birmingham Coal and Coke Co., Inc.

Date of Permit Issuance: March 5, 2012

Location of the Work: Eldridge, Walker County, AL

Upon commencement of the authorized work and any mitigation required by the permit, you must complete and return this notification to the following address:

**U.S. Army Corps of Engineers, Mobile District
Regulatory Division (RD-I-N)
218 Summit Pkwy, Suite 222
Homewood, AL 35209**

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with all terms and conditions of this permit the permit is subject to permit suspension, modification, or revocation and you are subject to an enforcement action by this office.

IT SHALL NOT BE LAWFUL TO DEVIATE FROM SUCH PLANS EITHER BEFORE OR AFTER COMPLETION OF THE WORK, unless modification of said plans has previously been submitted to and received the approval of the Department of the Army. If for any reason it becomes necessary to make a material change in location or plans for this work, revised plans should be submitted promptly to the District Engineer in order that the revised plans may receive the approval required by law before work is begun.

PERMITTEE TO COMPLETE THE FOLLOWING:

Date Work Commenced: _____

Signature of Permittee

Date

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Birmingham Coal and Coke	File Number: SAM-2012-00048-CMS	Date: 2/5/12
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
USACE Mobile District – Birmingham Field Office
218 Summit Parkway, Suite 222
Homewood, Alabama 35209

If you only have questions regarding the appeal process you may also contact:
Jason Steele
Administrative Appeals Review Officer
60 Forsyth Street, SW (Room 9M10)
Atlanta, GA 30303-8801
404-562-5137

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 2/13/12

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

Birmingham Coal and Coke, Inc.
Attention: Robert Lewis
912 Edenton Street
Birmingham, AL 35242

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESAM-RD-I-N, Gooden Creek Mine, SAM-2012-00048-CMS

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:
(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)**

State:AL County/parish/borough: Walker City: North of Eldridge
Center coordinates of site (lat/long in degree decimal format): Lat. 33.994695° **Pick List**,
Long. -87.612206° **Pick List**.

Universal Transverse Mercator:

Name of nearest waterbody: Gooden Creek

Identify (estimate) amount of waters in the review area:

Non-wetland waters: **6,846 linear feet:** width (ft) and/or **0.362 acres.**

Cowardin Class: Riverine

Stream Flow: **intermittent (3406 lf) and ephemeral (3440 lf)**

Wetlands: 0 acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

Field Determination. Date(s): 1/12/12 (Corps) 12/28-12/29/11 & 1/3/12 (agent)

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction

notification” (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant’s acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

This preliminary JD finds that there “*may be*” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Carbon Hill Quad.
- USDA Natural Resources Conservation Service Soil Survey. Citation: websoil survey.
- National wetlands inventory map(s). Cite name:USFWS NWI map.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):aerial 6/15/06.
or Other (Name & Date):USACE site photos 1/12/12.

- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

 2/13/12

Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining the
signature is impracticable)

SAM-2012-00048-CMS, Gooden Creek Mine, Birmingham Coal and Coke

Site number	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
S1	33.99514	-87.61982	Riverine ephemeral	403 l.f., 1' wide	Non-section 10, non-wetland
S3	33.99435	-87.61780	Riverine intermittent	540 l.f., 3' wide	Non-section 10, non-wetland
S4	33.99361	-87.61106	Riverine intermittent	945 l.f., 3' wide	Non-section 10, non-wetland
S5	33.99431	-87.61329	Riverine ephemeral	510 l.f., 2' wide	Non-section 10, non-wetland
S6	33.99564	-87.61499	Riverine ephemeral	302 l.f., 2' wide	Non-section 10, non-wetland
S7	33.99561	-87.60837	Riverine ephemeral	214 l.f., 2' wide	Non-section 10, non-wetland
S8	33.99343	-87.60667	Riverine ephemeral	202 l.f., 2' wide	Non-section 10, non-wetland
S9	33.99291	-87.60521	Riverine intermittent	941 l.f., 4' wide	Non-section 10, non-wetland
S10	33.99272	-87.60558	Riverine ephemeral	94 l.f., 2' wide	Non-section 10, non-wetland
S11	33.99280	-87.60491	Riverine ephemeral	151 l.f., 2' wide	Non-section 10, non-wetland
S12	33.99406	-87.60420	Riverine ephemeral	673 l.f., 2' wide	Non-section 10, non-wetland
S13	33.99867	-87.60216	Riverine intermittent	980 l.f., 2' wide	Non-section 10, non-wetland
S14	33.99735	-87.60410	Riverine ephemeral	100 l.f., 1' wide	Non-section 10, non-wetland
S15	33.99723	-87.60599	Riverine ephemeral	417 l.f., 1' wide	Non-section 10, non-wetland
S16	33.99762	-87.60816	Riverine ephemeral	210 l.f., 1' wide	Non-section 10, non-wetland
S17	33.99966	-87.60808	Riverine ephemeral	164 l.f., 1' wide	Non-section 10, non-wetland



Birmingham Coal & Coke Co., Inc.
 Gooden Creek Mine *Revision R-8*

DRAWN BY: J.R.W.	DATE: 2/13/2012
APPROVED BY: J.D.M.	DATE: 2/13/2012
SCALE: 1" = 1000'	SHEET: 1 OF 1

Jurisdictional
 Area Map
 WALKER CO., AL
SAM-2012-00048-CMS
 USACE Permit

APPROVED

DSM
 DESIGN GROUP, LLC
 ENGINEERING / SURVEYING
 1100 VIKING DRIVE
 JASPER, ALABAMA 35791
 TELEPHONE: (205) 221-6262