



**STATE OF ALABAMA
SURFACE MINING COMMISSION**

P.O. BOX 2390 - JASPER, ALABAMA 35502-2390
(205) 221-4130 • FAX: (205) 221-5077

Permit Revision Number: R-4

**REVISION TO PERMIT FOR
SURFACE COAL MINING OPERATIONS**

Pursuant to the Alabama Surface Mining Control and Reclamation Act, Act No. 81-435, and duly promulgated rules of the Commission, revision is hereby approved for permit:

P-3942-64-17-S
McWane, Inc.
120 Vanderbilt Road
Birmingham, AL 35234
(Burton Bend Mine No. 2)

License No.: L- 603
Pursuant to the
permit map: 1 of 1
Certified by: Robert W. Usher, P.E.# 15917
Date: October 14, 2015

The permit is revised as follows:

1. Add five (5) acres for Sediment Basins 022 and 038 and drainage pathways to Increment No. 2.
2. Modify the Operation Plan.
3. Modify the General Plan.
4. Modify the Topsoil Variance.
5. Update the Hydrologic Monitoring Plan.

ACREAGE SUMMARY:

Increment No. 1 remains at..... 163 Acres
*Increment No. 2 increases to..... 80 Acres
TOTAL ACREAGE INCREASES TO: 243 Acres

*** Bonded to date**

All other terms and conditions remain in effect as well as all Findings in the original permit and any Findings appropriate for this revision.

EFFECTIVE DATE: June 17, 2016



Johnathan E. Hall, Director

/ml

cc: I & E, Permit File

- CONDITION R-4-1: The permittee shall conduct Surface Coal Mining and Reclamation Operations in accordance with the plans, provisions and schedules in the permit revision application.
- CONDITION R-4-2: The permittee shall conduct operations in a manner to prevent damage or harm to the environment and public health and safety and shall notify ASMC and the public of any condition which threatens the environment or public health and safety.
- CONDITION R-4-3: Surface coal mining operations are restricted to those areas for which sufficient bond has been posted with ASMC. On the date of issuance of this permit revision, bond was posted only for increment(s) 2 consisting of 5 acres as defined on the permit map.
- CONDITION R-4-4: No mining disturbance is to occur on any part of the permit on which legal "right of entry" has not been obtained. When such rights are "pending" the applicant shall submit acceptable evidence, to the Director, that such rights have been obtained according to ASMC Regulation 880-X-8D-.07.
- CONDITION R-4-5: No disturbance is to occur on any properties on which land use comments from legal owners of record are "pending" prior to the applicant providing acceptable comments.
- CONDITION R-4-6: No disturbance is to occur in the 300' setback area to any occupied dwelling prior to the applicant providing acceptable evidence to ASMC of its having secured a waiver of each subject area signed by the owner of the dwelling.
- CONDITION R-4-7: No mining disturbance shall occur within the 100' setback of any public road or the relocation of any public road prior to the applicant providing acceptable evidence, to the Director, of its having secured approval for a waiver from the appropriate jurisdictional authority and specific written waiver from ASMC.
- CONDITION R-4-8: No disturbance is to occur on any area that conforms to the U.S. Army Corps of Engineers (Corps) definition of wetlands until acceptable evidence is submitted, to the Director, of Corps approval.
- CONDITION R-4-9: This permit revision in no way authorizes the operator to cause material damage to or otherwise impair any lands, facilities, or improvements located on the surface above or adjacent to the mineral being mined in violation of the property rights of any owner of surface lands or facilities.
- CONDITION R-4-10: Any water supply impacted by subsidence or other causes associated with underground mining will be replaced or restored by the permittee.

- CONDITION R-4-11: All potential waters of the U.S. must be flagged with a 50 foot offset, in a flagging color different than the permit boundary, prior to conducting mining activities. Potential waters of the U.S. identified by Department of the Army letter dated June 26, 2014, Jurisdictional Number SAM-2014-00201-CMS.
- CONDITION R-4-12: An approved Army Corps of Engineers permit must be submitted to ASMC prior to conducting mining activities within the flagged 50 foot offset of potential waters of the U.S. areas.
- CONDITION R-4-13: Parameters of the Corps permit must be met and submitted to ASMC prior to mining activities in waters of the U.S.

The ASMC, acting by and through its Director, hereby finds, on the basis of information set forth in the revision application or from information otherwise available, that --

FINDING R-4-1: The permit revision application is complete and accurate and the applicant has complied with all requirements of the Act and the regulatory program.

FINDING R-4-2: The applicant has demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit revision application.

FINDING R-4-3: The proposed permit area is:

(a) Not within an area under study or administrative proceedings under a petition, filed pursuant to Chapter 880-X-7 to have an area designated as unsuitable for surface coal mining operations;

(b) Not within an area designated as unsuitable for mining pursuant to Chapter 880-X-7 or subject to the prohibitions or limitations of Section 880-X-7B-.06 and Section 880-X-7B-.07 of this chapter.

FINDING R-4-4: For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Regulatory Authority the documentation required under Section 880-X-8D.07 and Section 880-X-8G-.07 of this chapter.

FINDING R-4-5: The Regulatory Authority has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

FINDING R-4-6: The applicant has demonstrated that any existing structure will comply with Section 880-X-2B-.01, and the applicable performance standards of Chapter 3 or 10.

FINDING R-4-7: The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R., Subchapter R.

FINDING R-4-8: The applicant has satisfied the applicable requirements of Subchapter 880-X-8J.

FINDING R-4-9: The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural, postmining land use, in accordance with the requirements of 880-X-10C-.58(4) and 880-X-10D-.52(4).

- FINDING R-4-10: The operation will not affect the continued existence of endangered or threatened species, or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- FINDING R-4-11: The Regulatory Authority has taken into account the effect of the proposed permitting action on properties listed or eligible for listing on the National Register of Historic Places. This finding is supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Regulatory Authority has determined that no additional protection measures are necessary.
- FINDING R-4-12: For a proposed re-mining operation where the applicant intends to reclaim in accordance with the requirements of Section 880-X-10C-.56 or 880-X-10D-.49, the site of the operation is a previously mined area as defined in Section 880-X-2A-.06.
- FINDING R-4-13: Surface coal mining and reclamation operations will not adversely affect a cemetery.
- FINDING R-4-14: After application approval but prior to issue of permit revision, ASMC reconsidered its approval, based on the compliance review required by Section 880-X-8K-.10(2)(a) in light of any new information submitted under 880-X-8D-.05(8).
- FINDING R-4-15: The applicant has submitted the performance bond or other equivalent guarantee required under Chapter 880-X-9 of the ASMC Rules prior to the issuance of the permit revision.
- FINDING R-4-16: For mining operations where a waiver is granted from the 100' setback from a public road according to 880-X-7B-.07, the interests of the public and affected landowners have been protected.
- FINDING R-4-17: This permit does not constitute a determination that the operator has the legal right to cause material damage to or impair any surface lands or facilities above or adjacent to the mineral being mined, according to the Energy Policy Act of 1992, SMCRA Section 720(a)(1), 30 U.S. Code Section 1309a. In addition, by accepting this permit revision the applicant agrees that any water supplies impacted by subsidence be replaced according to the Energy Policy Act of 1992, SMCRA Section 720(a)(2) 30 U.S. Code Section 1309a.
- FINDING R-4-18: The Regulatory Authority has taken into account the effect of the proposed permitting action on properties listed or eligible for listing on the National Register of Historic Places. In a letter dated September 16, 2009, The University of Alabama, Office of Archaeological Research (OAR) documented a Phase I Cultural

Resource Survey for approximately 764 acres in Walker County, Alabama, conducted August 28-September 3, 2009. This survey covered the eastern portion of the project area. As a result of the Phase I survey six new archaeological sites were added to the Alabama State Site File (ASSF), three isolated finds were recorded, and nine previously recorded sites were revisited during the survey. Eight of the nine previously recorded sites could not be located, 1Wa80 was relocated and the current investigation confirms the original recommendation that the site is ineligible for the National Register of Historic Places (NRHP). The three isolated finds are not eligible for the NRHP. The six new sites 1WA270-1Wa275 are not eligible for the NRHP due to lack of integrity at the site locations and paucity of cultural materials.

In a letter dated April 10, 2013, The University of Alabama OAR documented a Phase I Cultural Resource Survey for approximately 154 acres in Walker County, Alabama, conducted February 20-21, 2013. This survey covered the Western portion of the project area. As a result of the survey one new site, Site 1Wa283, was added to the ASSF and one isolated find was discovered although no ASSF number was assigned. Site 1Wa283 does not meet the minimum criteria for nomination and is recommended ineligible for listing in the NRHP. Based on these findings the OAR recommends the project will not have an adverse effect on any significant historic properties within the area of projected effect and a finding of no properties is recommended. By a letter dated May 19, 2014, The State Historical Preservation Office (SHPO), based on the cultural resource assessments conducted by the OAR, determined that the project activities will have no effect on any cultural resources listed on or eligible for the NRHP and therefore concur with the project. This finding is supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the

Regulatory Authority has determined that no additional protection measures are necessary. Concerns for unknown resources, which might be discovered during mining, have been made conditions of the permit.

FINDING R-4-19:

McGehee Engineering Corp (MEC) conducted a biological habitat assessment for Threatened and Endangered species/critical habitat (T&E) for approximately 400 acres in Walker County, Alabama from October 2013 thru June 2014. Possible summer roosting habitat for the Indiana bat and northern long-eared bat was present within the project area. Preferred trees are limited to the steeper slope in and around the project area. Mist Net surveys were conducted on the project site in June 2014. The presence of the Indiana Bat and the Northern Long-eared Bat was not detected. No habitat was found

for the remaining listed, threatened and endangered species within the project boundary. By a comment letter dated July 7, 2014, The US Fish and Wildlife Service (FWS) concurred with the conclusion that no federally listed species/critical habitat occur in the project area. In a letter dated August 7, 2014, the Alabama Department of Conservation and Natural Resources (ADCNR) suggested a biological survey be conducted by trained professionals for the project area. The closest sensitive species is recorded in the ADCNR database as occurring approximately 1.6 miles from the subject site. US Army Corps of Engineers (USACE) authorization is forthcoming. In a letter dated June 14, 2016, Centennial Natural Resources, LLC has reached an agreement with McWane, Inc. in which Centennial Natural Resources, LLC agrees to allow McWane, Inc. joint use of USACE Individual Permit, SAM-2014-00201-CMS. The agreement shall remain in effect for the life of mining for both ASMC permits. Centennial Natural Resources, LLC will be responsible for all USACE compliance and mitigation responsibilities. The ASMC finds that the proposed operation will not jeopardize the continued existence of endangered or threatened species or critical habitat thereof.