



REPLY TO
ATTENTION OF

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

Regulatory Division
Birmingham Field Office

October 29, 2010

SUBJECT: SAM-2010-01370-CHE; Sparks Branch Mine #2

Quality Coal Company, Inc.
Post Office Box 2705
Jasper, Alabama 35502-2705

Ladies and Gentlemen:

We have reviewed your application to conduct surface coal mining activities that will result in impacts to 5,040 linear feet of ephemeral streams and 0.28 acres of wetlands near Sparks Branch, Walker County, Alabama; Sections 14, 15, 22 & 23, T14S, R8W. Department of the Army (DA) permit authorization is necessary because your project would involve the placement of dredged and/or fill material into waters of the U.S., including wetlands under our regulatory jurisdiction.

Based on the information you provided to us, Nationwide Permit 21, Surface Coal Mining Operations (Federal Register, March 12, 2007 Vol. 72, No. 47), authorizes your proposal as depicted on the enclosed drawings dated October 29, 2010. 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 condition:

a. The permittee shall debit 0.356 wetland credits from the Big Sandy Mitigation Bank in compliance with the provisions of the approved mitigation banking instrument. This debit shall compensate off-site for unavoidable adverse project impacts to 0.43 acres of aquatic that would not be compensated for by on-site mitigation. The permittee shall complete the mitigation bank transaction and provide documentation to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, that the transaction has been completed prior to beginning the regulated activity.

Further, please note General Condition 26 requires that you submit a signed certification to us once any work and required mitigation are completed. Enclosure 1 is the form you must complete and return to us to satisfy this requirement.

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's. We will issue a public notice when the NWP's 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

Nothing in this letter shall be construed as excusing you from compliance with other Federal, State, or local statutes, ordinances, or regulations which may affect this work.

Please contact me at (205) 290-9096 or Casey.H.Ehorn@usace.army.mil 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're there. Your responses are appreciated and will allow us to improve our services.

Sincerely,

A handwritten signature in black ink, appearing to read "Casey Ehorn". The signature is fluid and cursive, with the first name "Casey" written in a larger, more prominent script than the last name "Ehorn".

Casey Ehorn
Regulatory Division

Enclosures

Enclosure 1



**US Army Corps of Engineers
Mobile District**

Permit Number: SAM-2010-01370-CHE

Name of Permittee: Sparks Branch Mine # 2

Date of Issuance: October 29, 2010

Upon completion of the activity authorized by this permit and any mitigation required by the permit, please sign this certification and return it to the following address:

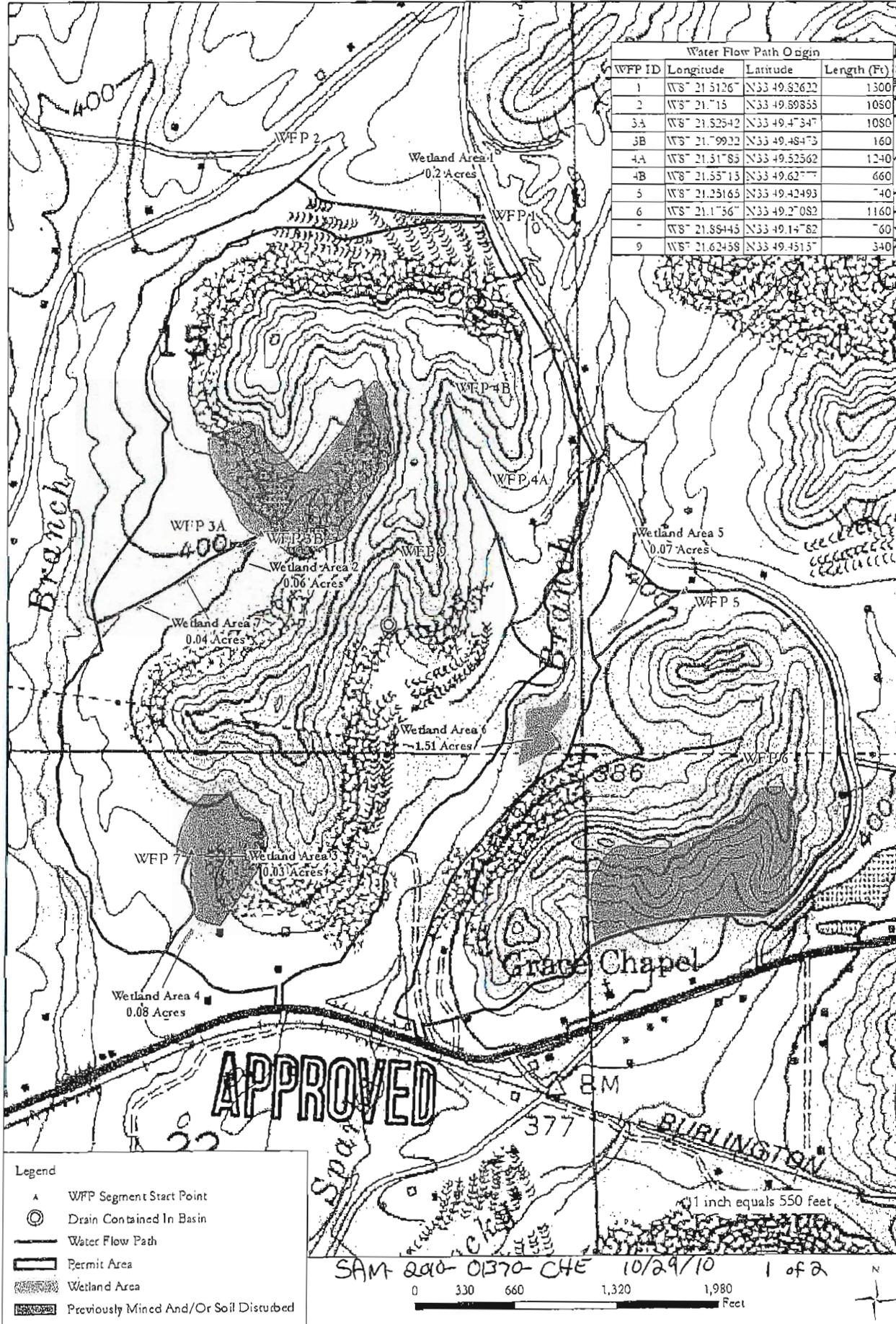
U.S. Army Corps of Engineers
Mobile District
Regulatory Division
Inland Branch
Post Office Box 2288
Mobile, Alabama 36628-0001

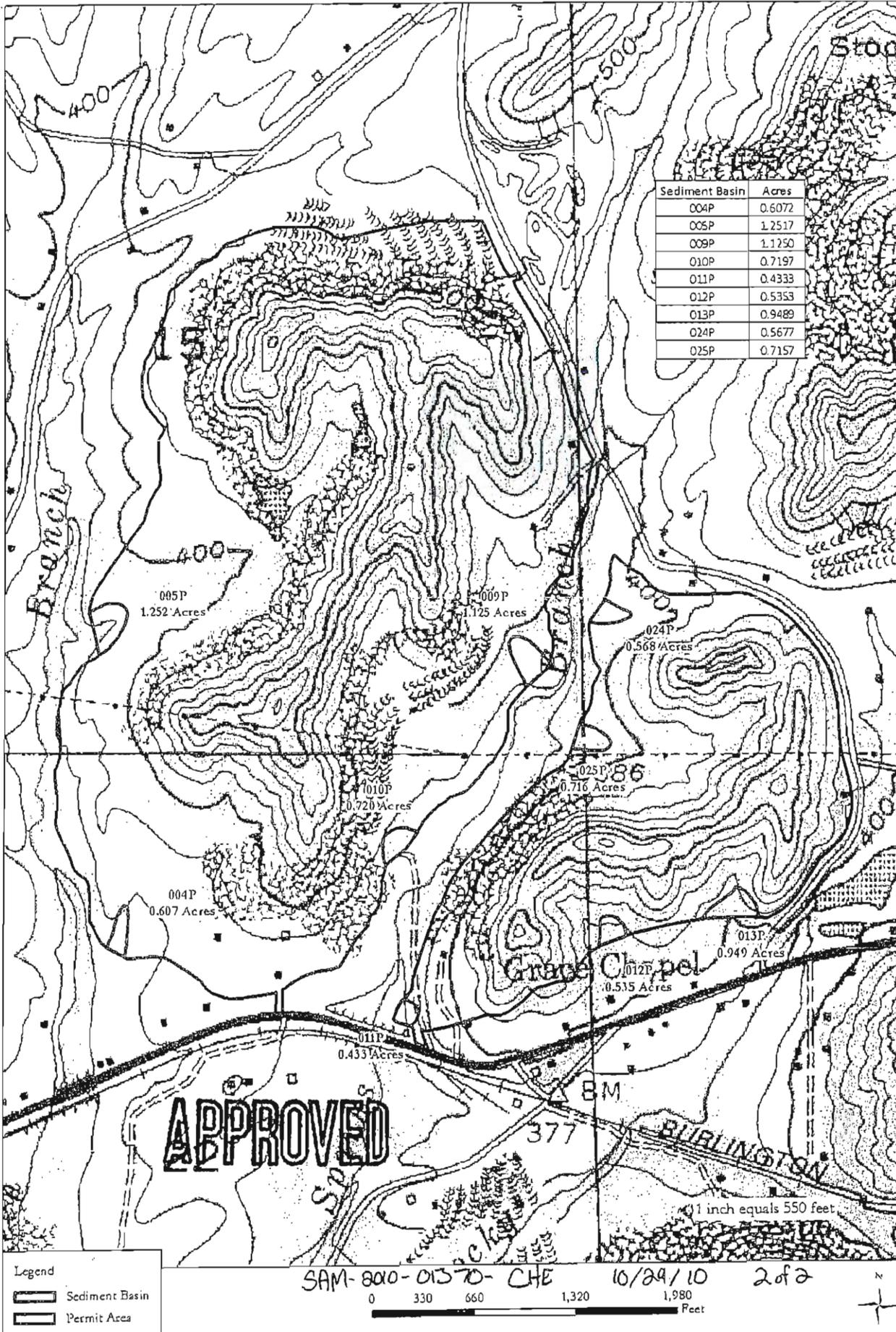
Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with all terms and conditions of this permit the permit is subject to permit suspension, modification, or revocation and you are subject to an enforcement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

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of the said permit, and the required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date





NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Quality Coal Company	SAM-2010-01370-CHE	Date: 10/29/2010
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input checked="" type="checkbox"/>	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://usace.army.mil/inet/functions/cw/ccwo/reg> 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:

Mr. Casey Ehorn
CESAM-RD-P
U.S. ARMY CORPS OF ENGINEERS
POST OFFICE BOX 2288
MOBILE, ALABAMA 36628-0001
(205) 290-9096

If you only have questions regarding the appeal process you may also contact:

MR. MICHAEL F. BELL
REGULATORY APPEAL REVIEW OFFICER
60 FORSYTH STREET SOUTHWES
ATLANTA, GEORGIA 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:

ATTACHMENT

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 2/15/2010

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:
Quality Coal Company Inc., Walker County, Alabama

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: *Birmingham, Alabama*
Field Office SAM-2010-01370-CITE

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

State: *Alabama* County/parish/borough: *Walker County* City: *Jasper, AL.*

Center coordinates of site (lat/long in degree decimal format):
Lat. *N33° 49' 45.157"*, Long. *W87° 21' 62.458"*.

Universal Transverse Mercator:

Name of nearest water body: *Locust Fork*

Identify (estimate) amount of waters in the review area: *See Attached sheet for waters in the project area*

Non-wetland waters: linear feet: width (ft) and/or acres.

Cowardin Class:

Stream Flow:

Wetlands: acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters: *Section 10 waters are not located in the project area.*

Tidal: *Na*

Non-Tidal: *Na*

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

Office (Desk) Determination. Date:

Field Determination. Date(s): *2/15/2010.*

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: *Delta Natural Resource Services Inc.*

Data sheets prepared/submitted by or on behalf of the applicant/consultant. *Delta Natural Resource Services Inc.*

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: 1:660

Jasper Quad

USDA Natural Resources Conservation Service Soil Survey. Citation: Walker County Soil Survey USDA/NRCS

National wetlands inventory map(s). Cite name:

State/Local wetland inventory map(s):

FEMA/FIRM maps:

100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

Photographs: Aerial (Name & Date): March 2010.

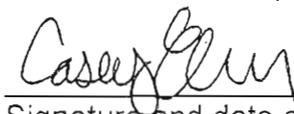
or Other (Name & Date):

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.

10-29-10



Signature and date of
Regulatory Project Manager

Signature and date of
person requesting preliminary JD

(REQUIRED)

(REQUIRED, unless obtaining the signature is impracticable)

Site number	Longitude	Latitude	Stream Category	Estimated amount of aquatic resource in review area	Bed Characteristics
3A	W87 21. 82542	N33 49. 47347	Ephemeral	1080	Bank is loamy soil material, bed is mixed rock loamy soil.
3B	W87 21. 79922	N33 49. 48473	Ephemeral	160	Bank is loamy soil material, bed is mixed rock loamy soil.
4A	W87 21.51785	N33 49.52562	Ephemeral	1240	Bank is loamy soil material, bed is mixed rock loamy soil.
4B	W87 21.55715	N33 49.496277	Ephemeral	660	Bank is loamy soil material, bed is mixed rock loamy soil.
5	W87 21.25165	N33 49.42493	Ephemeral	740	Bank is loamy soil material, bed is mixed rock loamy soil.
6	W87 21.17567	N33 49.27082	Ephemeral	1160	Bank is loamy soil material, bed is mixed rock loamy soil.
7	W87 21.88445	N33 49.14782	Ephemeral		Bank is loamy soil material, bed is mixed rock loamy soil.

Wetland areas delineated within the project boundaries =0.28 acres

BILL OF SALE

CONTRACT #52

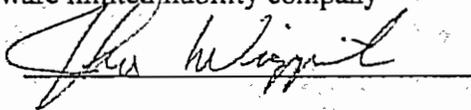
PERMIT NO. SAM-2010-01370-CHE

For valuable consideration, the receipt of which is hereby acknowledged, WESTERVELT ECOLOGICAL SERVICES, LLC, a Delaware limited liability company ("Owner"), does hereby bargain, sell and transfer to Quality Coal Company ("Buyer"): 0.356 **Wetland Mitigation Credits** (5,040 linear feet of ephemeral streams and 0.28 acres of wetland impacts) from Big Sandy Mitigation Bank, Tuscaloosa County, AL.

DATED: March 13, 2012

WESTERVELT ECOLOGICAL SERVICES, LLC,
a Delaware limited liability company

By:



Name: John Wigginton

Title: Southeast Region Manager



March 13, 2011

Casey Ehorn
U. S. Army Corps of Engineers
218 Summit Parkway, Ste 222
Homewood, AL 39209

Subject: Bill of Sale for 0.356 Wetland Mitigation Credits from Big Sandy Mitigation Bank
Quality Coal Company, Inc. - SAM-2010-01370-CHE

Dear Casey,

Please find enclosed a copy of the Bill of Sale that transfers 0.356 Wetland Mitigation Credits (5,040 linear feet of ephemeral streams and 0.28 acres of wetland impacts) at Big Sandy Mitigation Bank from Westervelt Ecological Services, LLC to Quality Coal Company, Inc.

If you have any questions please do not hesitate to contact me at (334) 821-1999.

Respectfully,

A handwritten signature in cursive script, appearing to read "John Wigginton".

John Wigginton
Southeast Region Manager

Enclosure