# STATE OF ALABAMA
# SURFACE MINING COMMISSION



Permit Number:P- 3958 -64-18-S

License Number:L- 775

## PERMIT TO ENGAGE IN SURFACE COAL MINING OPERATIONS

Pursuant to **The Alabama Surface Mining Control and Reclamation Act of 1981**, as amended, **ALA. Code** Section 9-16-70 et. seq. (1975) a permit to engage in Surface Coal Mining Operations in the State of Alabama is hereby granted to:

CEDAR LAKE MINING INC
2361 CUMBERLAND LAKE DRIVE
PINSON AL 35126
(COAL VALLEY EAST MINE)

Such operations are restricted to 1,149 * acres as defined on the permit map and located in: (See Condition #3)

SEE ATTACHED LEGAL DESCRIPTION

This permit is subject to suspension or revocation upon violation of any of the following conditions:

1. The permittee shall conduct Surface Coal Mining and Reclamation Operations in accordance with the plans, provisions and schedules in the permit application.

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 [redacted] of any condition which threatens the environment or public health and safety.

# LEGAL DESCRIPTION

NW/SW, SW/SW OF SECTION 29, SE/SE, NE/SE, NW/SE, SW/SE, SE/SW, NE/SW, NW/SW, SW/SW OF SECTION 30, NW/NW, NE/NW, SE/NW, SW/NW, NW/SW, NE/SW, SE/SW, SW/SW, NW/SE, SE/SE, NE/SE, SW/SE, SW/NE, SE/NE, NE/NE, NW/NE OF SECTION 31, NW/NW, SW/NW, NW/SW, SW/SW OF SECTION 32, TOWNSHIP 14 SOUTH, RANGE 8 WEST, SE/NE, SE/SE, NE/SE, NW/SE, SW/SE OF SECTION 25, NE/NE OF SECTION 36, TOWNSHIP 14 SOUTH, RANGE 9 WEST, NW/NW, SW/NW, NW/SW OF SECTION 5, NW/NW, NE/NW, SE/NW, SW/NW, SW/NE, NW/NE, NE/NE, SE/NE, NE/SE OF SECTION 6, TOWNSHIP 15 SOUTH, RANGE 8 WEST, ALL IN WALKER COUNTY, ALABAMA

CONDITIONS TO BE PLACED ON PERMIT P-3958-64-18-S

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, bond was posted only for increment #6 consisting of 5 acres as defined on the permit map.

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.

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.

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.

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.

8. The permittee shall notify the ASMC and seek consultation with the US Fish and Wildlife Service if:

   a. The permit is modified in any way that causes an effect on species or Critical Habitat listed under the Endangered Species Act of 1973.
   b. New information reveals the operation may affect Federally protected species or designated Critical Habitat in a manner or extent not previously considered or
   c. A new species is listed or Critical Habitat is designated under the Endangered Species Act that may be affected by the operation.

9. The permittee shall contact the ASMC and consult with the Alabama Historic Preservation Officer if the permit is modified or if previously unknown archaeological or historic resources are discovered on the permit area. Upon discovery of previously unknown artifacts or archaeological features the permittee shall cease operations until the Alabama Historic Preservation Officer approves resumption of operations.

10. The permittee shall purchase mitigation credits for impacts to jurisdictional streams and wetlands for each of the 5 USACE increments. A bill of sale for the approved number of credits from a USACE-approved mitigation bank shall be submitted to ASMC prior to conducting mining activities in an increment.

EFFECTIVE DATE: JUNE 27, 2013
ISSUANCE DATE: JUNE 27, 2013
EXPIRATION DATE: JUNE 26, 2018
/ns
cc: I & E, Permit File

Randall C. Johnson, Director

## FINDINGS

**PERMIT NO.: P-3958-64-18-S**

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

1. The permit application is complete and accurate and the applicant has complied with all requirements of the Act and the regulatory program.

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 application.

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; or

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.

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.

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.

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

8. The applicant has satisfied the applicable requirements of Subchapter 880-X-8J.

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-l0C-.58(4) and 880-X-10D-.52(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.).

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.

12. For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of Section 880-X-l0C-.56 or 880-X-10D.-49, the site of the operation is a previously mined area as defined in Section 880-X-2A-.06.

13. Surface coal mining and reclamation operations will not adversely affect a cemetery.

14. After application approval but prior to issue of permit, 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).

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.

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.

17. 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. The University of Alabama-Office of Archaeological Research (OAR) conducted a phase I cultural resource survey for ±2800 acres between August 6-14 and September 24-26, 2008, OAR Project Number: 08-200. Two archeological sites were identified, documented and added to the Alabama State Site File (ASSF), site 1Wa267 and 1Was268 along with one isolated find. However the sites do not meet the minimum eligibility for the National Register of Historic Places (NRHP). In a letter dated October 7, 2008 based on the findings of the survey OAR recommends the entire area be cleared from a cultural resources perspective. Based on the cultural resource assessment conducted by the OAR, the State Historical Preservation Office determined that the proposed project would have no adverse effect on cultural resources eligible for or listed on the NRHP, and therefore, concurs with the proposed project activities in a letter dated November 10, 2010. SHPO concurrence is contingent upon avoidance of Pleasant Valley Cemetery. 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.

18. Yokley Environmental Consulting Service conducted an environmental assessment on August 10-12, 2008 for the project area. Critical Habitat does not exist on or immediately adjacent to the site. No evidence was found for the possible presence of listed species. As a result of the assessment Yokley states the proposed mine will have no effect on Threatened and Endangered species. The US Fish and Wildlife Service (FWS), in comments dated September 3, 2008 and March 1, 2011 stated that no federally listed species/habitats occur with in the project area, based on habitat study conducted by Yokley, and FWS concurs with the proposed project. In a letter September 14, 2010 the Alabama Department of Conservation and Natural Resources (ADCNR) determined that the closest sensitive species occurs approximately 2.8 miles from the subject site. In a letter dated, March 1, 2013 the US Army Corps of Engineers (USACE) authorize the activities by Permit Number: SAM-2012-00567-CMS. The proposed surface coal mine will impact 11,298 linear feet (LF) of ephemeral streams, 9,814 LF of intermittent stream (0.19 acre), 3.81 acres of wetlands and 8.28 acres of open water impoundments. The project will be mined in increments. ASMC mining increments and USACE mitigation increments **DO NOT** match, increments for

mitigation are USACE increments shown on the maps with the Corps approval. The applicant shall purchase stream and wetland credits from a Corps-approved Mitigation Bank to offset impacts to jurisdictional streams and wetlands. The credits shall be purchased prior to impacts to waters of the US associated with each increment (Increment 1: No mitigation credits required, Inc. 2: 14,019.25 stream credit, Inc. 3: 34,908.385 stream credits, 0.4 wetland credits [1.0 acre*0.4 WRAP], Inc. 4: 1,812.95 steam credits, 1.6 wetland credits [2.73ac*0.59 WRAP = 1.6 and 0.05ac*0.27 WRAP= 0.014], Inc. 5: 231.18 stream credits, 0.0057 wetland credits [0.03ac*0.19 = 0.0057]). The applicant shall obtain approval from the USACE Birmingham Field Office of the intended Mitigation Bank and number of credits to purchase for the increment. A proximity factor may apply depending on the watershed location of the mitigation. The ASMC finds that the proposed operation will not jeopardize the continued existence of endangered or threatened species or critical habitat thereof.

BASED ON THESE FINDINGS, I RECOMMEND THAT THIS PERMIT BE ISSUED.

DATE: JUNE 27, 2013

Robert Armes, Permit Manager

/ns

cc: I & E, Permit File