



STATE OF ALABAMA SURFACE MINING COMMISSION

Page 1 of 2

Permit Number:P- 3962-67-17-S

License Number:L- 378

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:

BIRMINGHAM COAL & COKE COMPANY INC
912 EDENTON STREET
BIRMINGHAM AL 35242
(OLD UNION #2 MINE)

Such operations are restricted to 1,393 * 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 in accordance with ASMC Rule 880-X-8K-.16 of any condition which threatens the environment or public health and safety.

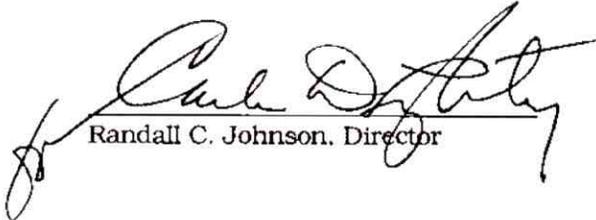
LEGAL DESCRIPTION

NE/SW, SE/SW, NW/SE, SW/SE OF SECTION 33, TOWNSHIP 11 SOUTH, RANGE 9 WEST; NW/SW, SW/SW, SE/SW OF SECTION 3; NE/NW, SW/NW, SE/NW, SW/NE, NW/SW, NE/SW, SE/SW, SW/SW, NW/SE, NE/SE, SE/SE, SW/SE OF SECTION 4; SE/NE, NE/SE, OF SECTION 5; NW/NE, NE/NE, SW/NE, SE/NE OF SECTION 9; NW/NW, NE/NW, SW/NW, SE/NW, SW/NE, NW/SW, NE/SW, SW/SW, SE/SW, NW/SE, SW/SE, SE/SE OF SECTION 10; NW/SE, NE/SE, SW/SE, SE/SE, SE/SW OF SECTION 11; SE/NW, NW/NE, NE/NE, SW/NE, SE/NE, NE/SW, SW/SW, SE/SW, NW/SE, NE/SE, SW/SE, SE/SE OF SECTION 12; NW/NW, NE/NW, SW/NW, SE/NW, NW/NE, NE/NE, SW/NE, NW/SW, NE/SW, SW/SW, SE/SW OF SECTION 13; NW/NW, NE/NW, SW/NW, SE/NW, NW/NE, SW/NE, SE/NE, NW/SW, NE/SW, SE/SW, NW/SE, NE/SE, SW/SE, SE/SE OF SECTION 14; NW/NE, NE/NE OF SECTION 15, TOWNSHIP 12 SOUTH, RANGE 9 WEST; NW/NW, SW/NW, SE/NW, SW/NE, NW/SW, NE/SW, SW/SW, SE/SW OF SECTION 7; NW/NW OF SECTION 18, TOWNSHIP 12 SOUTH, RANGE 8 WEST, ALL IN WINSTON COUNTY, ALABAMA. NE/NE OF SECTION 23; NW/NW, NE/NW, SW/NW, SE/NW OF SECTION 24, TOWNSHIP 12 SOUTH, RANGE 9 WEST; ALL IN WALKER COUNTY, ALABAMA

CONDITIONS TO BE PLACED ON PERMIT P-3962-67-17-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 #1 consisting of 159 acres and Increment #6 consisting of 22 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 or human remains 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. Cemetery/Archaeological Site 1Wi540 in the SW/SW of Section 13, shall be clearly flagged with a 100' buffer zone prior to conducting mining activities in increment #5.
11. Federal coal reserves in the SW/NW & NW/SW of Section 10, T12S, R9W, shall be clearly flagged at the property lines, in a color that is different than permit boundary. To ensure no coal removal from the SW/NW & NW/SW of Section 10, the flagging shall be in place prior to conducting mining activities in Increment #2 and maintained throughout the mining process of Increment #2.

EFFECTIVE DATE: August 8, 2012
DATE ISSUED: August 8, 2012
EXPIRATION DATE: August 7, 2017


Randall C. Johnson, Director

FINDINGS

PERMIT NO.: P-3962-67-17-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-10C-.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-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.
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. P.E. LaMoreaux & Associates (PELA) Conducted Phase I Cultural Surveys from January 30 - February 9, 2006 for approximately 1,970 acres and from March 31- April 4, 2006 for approximately 543 acres. In letters dated February 15 and April 10, 2006 PELA recommends that both project areas be cleared from further cultural resource investigation due to the lack of any resources that are potentially eligible or eligible for listing on the National Register of Historic Places (NRHP). By letters dated

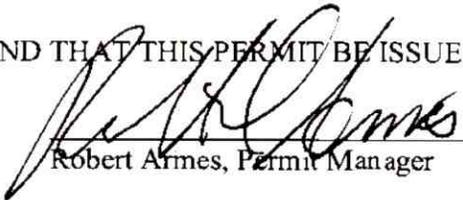
March, April and August 2006 the State Historic Preservation Officer (SHPO) concurs with the project based on the study performed by PELA. The University of Alabama-Office of Archaeological Research (OAR) conducted a phase I archaeological survey of 5 tracts with an approximate total of 1,505 acres, from June 19-July 10, 2009. In a letter dated July 27, 2009, OAR recommends a finding of no properties for tracts 2-5. Tract 1 contained a newly recorded site, 1Wi540 (a small cemetery), recommended for avoidance of relocation. SHPO determined further research of the cemetery was necessary to determine if there are additional burials, and a detailed avoidance of moving plan forwarded to SHPO for review and comment. Based on an avoidance plan submitted by DSM Design Group, LLC dated October 9, 2009 the SHPO concurred with the proposed activities in letters dated October 28, 2009 and April 17, 2012, but requests that the cemetery (site 1Wi540) continue to be avoided. 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. In letters dated January 3 and July 16, 2006 the Alabama Department of Conservation and Natural Resources (ADCNR) determined that the closest sensitive species occurs approximately 5.0 and 0.8 miles from the project site. The US Fish and Wildlife Service (FWS) expressed concern for a total of 8 listed species and their habitats that may occur within the project areas. FWS requested that habitat suitability surveys be conducted for each species. Based on biological and habitat surveys conducted by Samford University (February 11-13, 2006), PERC Engineering Co. Inc. (July 14, 2006), and Spaulding Environmental (May-July, 2006 and July - August 2009) FWS issued comments dated September 3, 2009 and April 13, 2012 that no federally listed species/critical habitat occur within the project area and therefore concur with the project. The US Army Corps of Engineers (USACE) authorized the proposed activities under Individual Permit SAM-2010-00860-CTM in a letter dated April 4, 2012. The proposed project will impact 31,083 linear feet (lf) of intermittent streams, 48,734 lf of ephemeral streams, 0.11 acres wetlands and 0.66 acre of impoundments. Based on the Mitigation Plan dated February 15, 2012 the permittee shall construct at least 31,083 lf of intermittent streams that shall generate no less than 131,455.2 stream SOP (2009) credits. If the permittee is unable to establish all of the required stream SOP credits, then the remaining amount shall be purchased from Big Sandy Mitigation Bank. The permittee shall purchase 1.87 wetland credits to compensate for 0.11 acre of wetlands impacts (0.11 acre X 0.472 WARP X 1.497 proximity factor) and 48,734 lf (1.2 acres X 1.497 proximity factor) of ephemeral stream impacts. The permittee shall preserve (in a restrictive covenant) 2,875 lf of perennial stream along Indian Creek to compensate for the lack of a site protection easement at the on-site mitigation areas. The ASMC finds that the proposed operation will not jeopardize the continued existence of endangered or threatened species or critical habitat thereof.

- 19. 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.

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

DATE: August 8, 2012
/ns
cc: I & E, Permit File


Robert Armes, Permit Manager