



STATE OF ALABAMA SURFACE MINING COMMISSION

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Permit Number:P- 3964-63-17-U

License Number:L- 822

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:

BLUE CREEK ENERGY INC
PO BOX 361370
BIRMINGHAM AL 35244
(Blue Creek Energy Mine No. 1)

Such operations are restricted to 259 * acres as defined on the permit map and located in: (See Condition #3)

SW/NW, NW/SW, SW/SW and SE/SW of Section 1, SE/NE, NE/SE and SE/SE of Section 2, NE/NE and SE/NE of Section 11, NW/NW, NE/NW, SW/NW SE/NW, SW/NE, SE/NE, NW/SW and NE/SE of Section 12, Township 17 South, Range 9 West, NW/SW, SW/SW, SE/SW and SW/SE of Section 7, NE/NW, NW/NE, NE/NE, SE/NW, SW/NE, SE/NE, NW/SE, SW/SE and SE/SE of Section 18, NE/NE of Section 19, NW/NW, SW/NW, NW/SW and NE/SW of *

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.

* Section 20, Township 17 South, Range 8 West, Tuscaloosa County, Alabama

CONDITIONS TO BE PLACED ON PERMIT P-3964-63-17-U

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 251 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. Prior to bonding Increment #2, Blue Creek Energy, Inc., will have to get approval from ALDOT to disturb within the 100' setback of Highway #69 for waterline crossing in the NW ¼ - SE ¼ in Section 18, Township 17, Range 8 West.
9. 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.
10. 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.
11. This permit 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.
12. Any water supply impacted by subsidence or other causes associated with underground mining will be replaced or restored by the permittee.

EFFECTIVE DATE: JUNE 21, 2012
DATE ISSUED: JUNE 21, 2012
EXPIRATION DATE: JUNE 20, 2017

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Randall C. Johnson, Director

FINDINGS

PERMIT NO.: P-3964-63-17-U

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 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.
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 approximately 1863 acres from October 10-26, 2011. In a letter dated November 28, 2011 OAR states there are four properties eligible for the National Register of Historic Places (NRHP), sites 1Tu647/HAR 1, HAR 4, HAR 7, and HAR 8. The opinion of OAR is that the Blue Creek Mining project would have adverse effect on the NRHP properties. Based on the cultural resource assessment conducted by the OAR, the State Historical Preservation Office (SHPO) determined that the proposed project would have adverse effects on NRHP eligible structures: 1Tu647/HAR 1, HAR 4, and HAR 7, and requested a Phase II cultural resource survey be conducted for NRHP eligible structures. SHPO does not believe that HAR 8 is eligible for the NRHP.

OAR conducted a Phase II cultural resource survey January-February, 2012 and submitted the documentation to SHPO on February 20, 2012. In a letter dated March 19, 2012 SHPO states that the documentation of the area is acceptable and mitigates any adverse effect the activities may have had on the properties. Therefore, concurs with the proposed project activities. 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. The US Fish and Wildlife Service (FWS) agree with the habitat study provided by McGehee Engineering that no federally listed species/critical habitat occur in the project area, by comments dated November 17, 2011. In a letter dated September 27, 2011 the Alabama Department of Conservation and Natural Resources (ADCNR) determined that the closest sensitive species occurs approximately 0.4 mile from the project site. The US Army Corps of Engineers (USACE) authorized the proposed activities under Nationwide Permit 50 (Underground Coal Mining Activities), Permit #: SAM-2011-01645-CMS in a letter dated March 12, 2012. The proposed project will impact 8,762 linear feet (lf) (0.68 acre) of ephemeral streams and 671 lf (0.052 acre) of intermittent streams. A total of 2,341.6 stream credits are required to offset intermittent stream impacts. Seventy percent, or a total of 1819.42 stream credits (1,639.12*1.11 proximity factor) shall be bought from Big Sandy Mitigation Bank. Thirty percent or 779.75 stream credits (702.48*1.11 proximity factor) shall be preserved at an offsite compensatory location at the Poley Creek Conservation Area in Walker County, Alabama. To offset the ephemeral stream impacts, Seventy percent, or a total of 0.53 wetland credits (0.476*1.11 proximity factor) shall be bought from Big Sandy Mitigation Bank. Thirty percent or 0.23 acre (0.2*1.11 proximity factor) shall be preserved at an offsite compensatory location at the Poley Creek Conservation Area. 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.
20. 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 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.

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

DATE: June 21, 2012


Mark Woodley, Permit Manager

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cc: I & E, Permit File