



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
NASHVILLE DISTRICT, CORPS OF ENGINEERS  
3701 BELL ROAD  
NASHVILLE, TENNESSEE 37214

October 26, 2012

Regulatory Branch

SUBJECT: File No. LRN-2012-00024; Proposed Impacts to Waters of the U.S. associated with the Knight Surface Coal Mine, ASMC # P-3970, Franklin and Winston Counties, Alabama

Birmingham Coal and Coke, Inc.  
Attn: Mr. Robert A. Lewis  
912 Edenton Street  
Birmingham, Alabama 35242

Dear Mr. Lewis:

Enclosed in duplicate is the Department of the Army (DA) Permit LRN-2012-00024. If you have no objections to the permit, please sign, date, and return *both* copies to this office for validation. The signed permit copies should be returned as soon as possible, but no later than 15 days from the date of this letter. Upon receipt of the signed copies, the permit will be validated and returned to you without delay. In addition, prior to permit issuance, it will be necessary for you to submit to this office a \$100.00 fee, payable to the Corps of Engineers, Nashville District. To ensure proper credit, please write "File No. LRN-2012-00024 DA Permit Fee" on the front of your check.

This letter contains a proffered permit for your proposed project. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 C.F.R. Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Great Lakes and Ohio River Division Office at the following address:

Appeal Review Officer  
U.S. Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street, Room 10032  
Cincinnati, Ohio 45202-3222  
PHONE (513) 684-6212; FAX (513) 684-2460

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA

form, it must be received at the above address by September 10, 2012. **It is not necessary to submit an RFA form to the Division office if you do not object to the decision in this letter.**

It should be understood that this is **not** an authorization to commence construction. No work should be performed in the waterway below ordinary high water until you have received a validated copy of the permit. If you have any questions regarding this matter, please contact Mr. Eric Sinclair at 2042 Beltline Rd SW Bldg. C, Suite 415, Decatur AL 35601-9990, or by telephone at (256) 350-5620.

Sincerely,



Tammy R. Turley  
Chief, Regulatory Branch  
Operations Division

Enclosures:

DA Application with attachments (Sheets 1-7)  
Compensatory Mitigation Plan (Sheets 1-2)  
Individual Section 401 Water Quality Certification (WQC)  
NPDES Permit - AL0074373  
NAP Fact Sheet  
RFA Form

Copy Furnished:

Design Group LLC  
P.O. Box 690  
Jasper, AL 35502

## DEPARTMENT OF THE ARMY PERMIT

**PERMITTEE:** Birmingham Coal and Coke Company

**PERMIT NUMBER:** 2012-00024

**ISSUING OFFICE:** Nashville District Corps of Engineers

**NOTE:** The term you and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**PROJECT DESCRIPTION:** Discharge of fill material into 1,692 linear feet of ephemeral streams (10) and 332 linear feet of intermittent stream (1), unnamed tributaries to Bear Creek and 1.33 acres of open water features (3). The waters would be filled from mine-through activities and the construction of sediment retention ponds associated with coal mining activities at the Knight Mine (P-3970).

**PROJECT LOCATION:** Unnamed tributaries and three associated open-water features, Bear Creek Mile 126.0 R, Tennessee River Mile 225.0 L. Project site is near Haleyville, Franklin and Winston Counties, Alabama. Coordinates: Latitude 34.30851°, Longitude -87.61957°.

### **PERMIT CONDITIONS**

#### **GENERAL CONDITIONS:**

1. The time limit for completing the work authorized ends on \_\_\_\_\_. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you must make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you may obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**SPECIAL CONDITIONS:** (SEE CONTINUATION SHEET 1, SPECIAL CONDITIONS FOR BIRMINGHAM COAL AND COKE: KNIGHT MINE (P-3970) LRN 2012-00024)

**FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - ( ) Section 10 of the Rivers and Harbors Act Of 1899 (33 U.S.C. 403).
  - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344)
  - ( ) Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413)
2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a

File No. 2012-00024

reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
(PERMITTEE) (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

James A. DeLapp, LTC, Corps of Engineers  
(DISTRICT ENGINEER) \_\_\_\_\_ (DATE)

By: \_\_\_\_\_  
Tammy R. Turley  
Chief, Regulatory Branch  
Operations Division

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE) (DATE)

**CONTINUATION SHEET 1**  
**SPECIAL CONDITIONS FOR BIRMINGHAM COAL AND COKE: KNIGHT MINE (P-3970)**  
**LRN 2012-00024**

1. The authorized work shall be performed in accordance with the Clean Water Act Section 404 Application (seven pages attached) dated 5 May 2012 and the Final Compensatory Mitigation Plan (CMP) (two pages attached) dated 25 April 2012.
2. The permittee shall ensure work complies with Alabama Surface Mining Commission ASMC requirements pursuant to the Surface Mining Control and Reclamation Act of 1977.
3. The permittee shall ensure work complies with the general conditions of the Section 401 Individual Water Quality Certification (attached), issued on 24 July 2012.
4. The permittee shall ensure work complies with the conditions of the NPDES Permit No. AL0074373 (cover letter attached), issued on 28 February 2012.
5. Should new information regarding the scope and/or proposed impacts of the project become available that was not submitted to this office during our review of the proposal, you shall submit written information concerning proposed modification(s) to this office for review and approval.

**Stream Mitigation**

6. To compensate for impacts to 2,024 linear feet of stream, the permittee shall purchase 713 credits from the Flint River Mitigation Bank before any work in waters of the U.S. (WOUS) begins. A receipt of sale shall be submitted to this office upon purchase of credits prior to impacts to WOUS.

**Endangered Species**

7. Section 7 obligations under Endangered Species Act must be reconsidered if new information reveals impacts of the proposed project that may affected federally listed species or critical habitat in a manner not previously considered, the proposed project is subsequently modified to include activities which were not considered during Section 7 consultation with the USFWS, or new species are listed or critical habitat designated that might be affected by your proposed project.
8. The permittee is reminded this Department of the Army Permit authorization does not authorize the "take" of a threatened or endangered species as defined under the Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS or their World Wide Web page at <http://www.fws.gov/r9endspp/endspp.html>.

**Cultural Resources**

9. In the event any previously unknown historic or archaeological sites, artifacts (funerary objects, sacred objects, and objects of cultural matrimony/patrimony, etc.) or human remains are uncovered while accomplishing the activity authorized by this permit, the permittee must cease all work immediately and contact local, state and county law enforcement offices (*only contact law enforcement on findings of human remains*), USACE Regulatory Branch at (615) 369-7500, and the Alabama Historical Commission at (334) 242-3184. The USACE would then initiate the Federal, State and tribal coordination required to comply with the National Historic Preservation Act and applicable State and local laws and regulations. Federally recognized tribes are afforded a government-to-government status as sovereign nations and consultation is required under Executive Order 13175 and 36 CFR Part 800.

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DESIGN GROUP, LLC  
ENGINEERING/SURVEYING

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MAY 05, 2012

USACE PERMIT APPLICATION:  
LRN-2012-00024

**KNIGHT MINE**  
FRANKLIN & WINSTON COUNTY, AL



*Photo of avoided intermittent stream within project.*

PREPARED FOR:  
BIRMINGHAM COAL AND COKE CO., INC.  
912 EDENTON STREET  
BIRMINGHAM, AL 35242



5. Project Description (continued)

6. Dredging Project Specifications (Show locations and dimensions of proposed dredge areas on attached plans. Include existing and proposed depths.)

New Work \_\_\_\_\_ Maintenance Work \_\_\_\_\_  
 Cubic yards of material to be removed \_\_\_\_\_ Type of material \_\_\_\_\_  
 Surface area (square feet) impacted \_\_\_\_\_ (sand, muck, hard bottom, ect.)  
 Method of excavation \_\_\_\_\_  
 Nature of area to be dredged (check all that apply) Upland \_\_\_\_\_ Wetland \_\_\_\_\_ Waterbottom \_\_\_\_\_  
 Other (explain) \_\_\_\_\_

7. Specifications for Discharge of Dredged or Fill Material (Show locations and dimensions of all disposal or fill areas on attached plans.)

Cubic yards of fill 3290 Type of fill compacted material for earthen embankments & spoil material from project  
 Surface area (square feet) impacted 88862  
 Source of fill material (check all that apply) Commercially obtained \_\_\_\_\_ Dredged material \_\_\_\_\_ Borrowed on-site   
 Other (explain) \_\_\_\_\_  
 How will discharged material be contained? (Include erosion control measures, levees, etc.) Constructed Sediment Basins & Diversion Ditches  
Appropriate Seeding and mulching and other BMPs such as riprap protection and silt fencing.  
 Nature of disposal/fill areas (check all that apply) Upland \_\_\_\_\_ Wetland \_\_\_\_\_ Waterbottom   
 Other (explain) \_\_\_\_\_

8. Additional information relating to the proposed activity.

Are oyster reefs located within or near the project area? Yes \_\_\_\_\_ No  If yes, explain: \_\_\_\_\_  
 Will this project result in the siting, construction, and/or operation of an energy-related facility? Yes \_\_\_\_\_ No   
 Is the project area greater than 25 acres in size? Yes  No \_\_\_\_\_  
 Is any portion of the activity for which authorization is sought now complete? Yes \_\_\_\_\_ No  If yes, explain: \_\_\_\_\_  
 \_\_\_\_\_ Month and year activity took place  
 If project is for maintenance work of existing structures or existing channels, describe legal authorization for the existing work. Provide permit number, dates or other form of authorization \_\_\_\_\_

9. Describe the purpose and public benefit, if any, of the project. Describe the relationship between the project and any secondary or future development the project is designed to support. The project is for the extraction of coal reserves for sell to the power company to generate electrical power throughout the region.

Intended use: Public \_\_\_\_\_ Private  Commercial \_\_\_\_\_ Other (explain) \_\_\_\_\_

10. Project Schedule:

Proposed start date September, 2012 Proposed completion date September, 2017

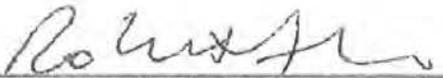
11. Names and address of adjoining property owners, lessees, etc. whose property also adjoins the waterway. Also identify the owners on the plan views in attachment. See attached Property Owners List with map.

12. List all authorizations or certifications received or a applied for from federal, state or local agencies for any Structures, construction, discharges, deposits or other activities described in or directly related to this application. Note that the signature in Item 13 certifies that application has been made to or that permits are not required from the following agencies. If permits are not required place NA in space for Type Approval.

Agency	Type Approval	Identification No.	Date of Application	Date of Approval	Date of Denial
AL Dept. of Environmental Management	NPDES	AL0074373	09/22/2009	02/01/2012	
U. S. Army Corps of Engineers	IP	LRN-2012-00024	03/14/2012		
AL State Lands Division					
Alabama State Docks					
City/County _____					
Other _____					

13. Application is hereby made for authorization to conduct the activities described herein. I agree to provide any additional information/data that may be necessary to provide reasonable assurance or evidence to show that the proposed project will comply with the applicable state water quality standards or other environmental protection standards both during construction and after the project is completed. For projects within the coastal area of Mobile and Baldwin Counties, I certify that the proposed project for which authorization is sought complies with the approved Alabama Coastal Area Management Program and will be conducted in a manner consistent with the program. I agree to provide entry to the project site for inspectors from the environmental protection agencies for the purpose of making preliminary analyses of the site and monitoring permitted works. I certify that I am familiar with responsible for the information contained in this application, and that to the best of my knowledge and belief such information is true, complete and accurate. I further certify that I possess the authority to undertake the proposed activities or I am acting as the duly authorized agent of the applicant.

**(SIGNATURE OF APPLICANT OR AGENT REQUIRED BELOW)**

  
Signature of Applicant or Agent

03/14/2012

Date

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willingly falsifies, conceals, or covers up by any trick, scheme or device a material fact or make any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

**14. In addition to the completed application, the following attachments are required:**

Provide a vicinity map showing the location of the proposed site along with a written description of how to reach the site from major highways or landmarks. Provide accurate drawings of the project site with existing structures and proposed activities shown in detail. For projects located adjacent to, or on water, the site plan must clearly indicate the location of the ordinary mean high tide line and the width of the water body at the site location. All drawings must be to scale or with dimensions noted on drawings and must show a plan view and across section or elevation. All plans and attachments must be of reproducible quality on 8 1/2 inch x 11 inch paper.

NOTE: FEES ARE REQUIRED IN CONJUNCTION WITH ADEM CERTIFICATION: ADEM WILL CONTACT APPLICANT WITH FEE REQUIREMENTS.

NOTE: FEES MAY BE REQUIRED BY THE ALABAMA STATE LANDS DIVISION FOR DREDGE ACTIVITIES AND PROJECTS IMPACTING STATE OWNED SUBMERGED LANDS. THE STATE LANDS DIVISION WILL CONTACT APPLICANT WITH FEE REQUIREMENTS.

**15. APPLICATION SUBMISSION INFORMATION**

Contact the Corps of Engineers prior to submittal with any questions or to request acceptable alternate content/format. An instruction package, example PAP and SPCC plans, and other information are available upon request. Complete this form, attach additional information as necessary, and submit signed original to:

(Statewide, Except Tennessee River Watershed)  
District Engineer, Attn: Regulatory Division  
U.S. Army Corps of Engineers - Mobile District  
Post Office Box 2288  
Mobile, Alabama 36628-0001  
Phone: (251) 690-2658 Fax: (251) 690-2660  
WebPage: [www.sam.usace.army.mil/](http://www.sam.usace.army.mil/) WebPage:

**OR** (Tennessee River Watershed Only)  
District Engineer, Attn: Regulatory Branch  
U.S. Army Corps of Engineers - Nashville District  
3701 Bell Road  
Nashville, Tennessee 37214  
Phone: (615) 369-7500 Fax: (615) 369-7501  
WebPage: [www.arn.usace.army.mil/](http://www.arn.usace.army.mil/)

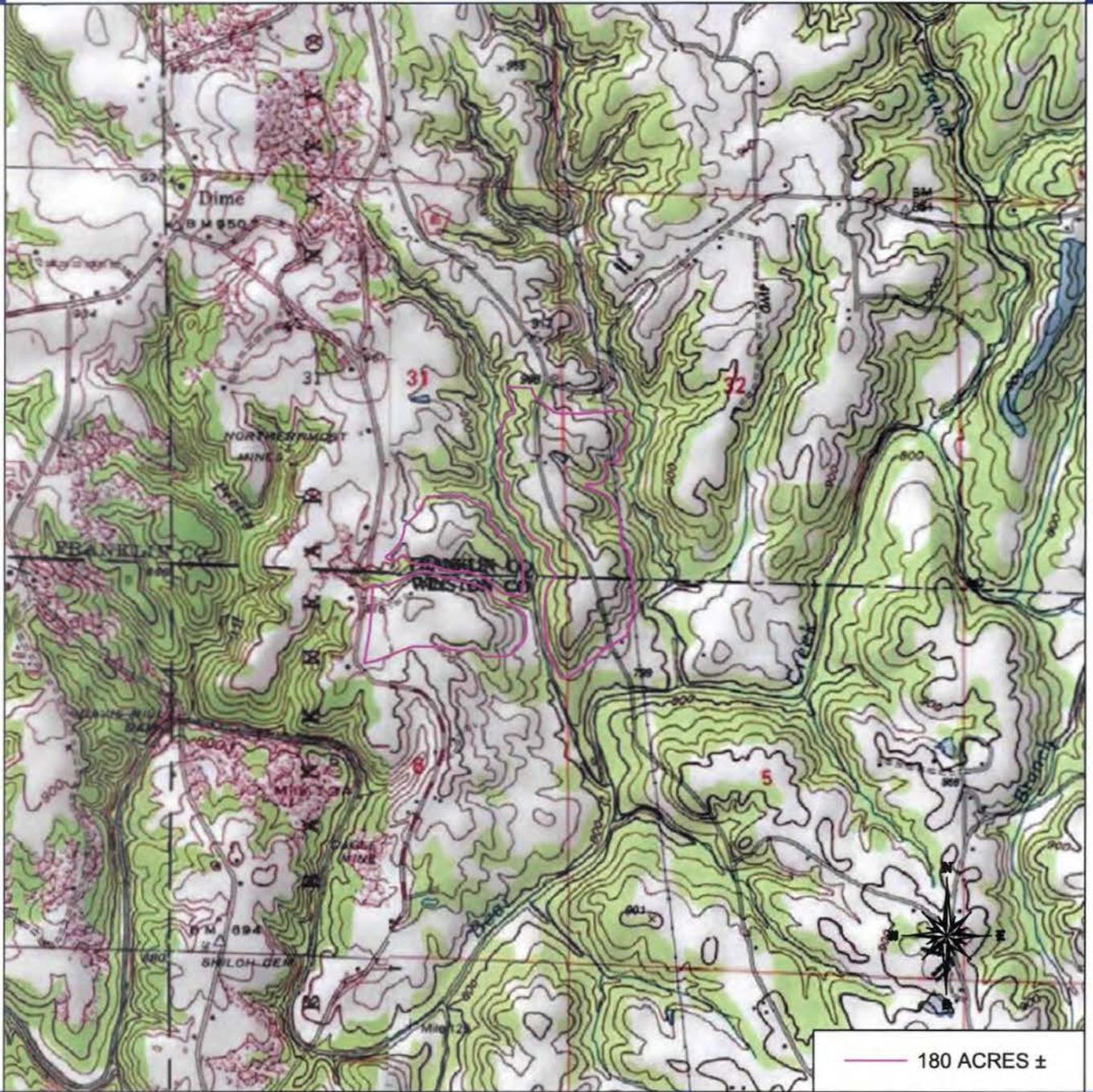
Submit signed copy of application and attachments to:

**For Activities Statewide:**

<b>Mining &amp; Nonpoint Source Section</b> Field Operations Division, ADEM PO Box 301463 Montgomery, AL 36110-2059 Phone: (334) 394-4311 Fax: (334) 394-4326 Email: <a href="mailto:mnpss@adem.state.al.us">mnpss@adem.state.al.us</a> WebPage: <a href="http://www.adem.state.al.us">www.adem.state.al.us</a> W	<b>Alabama State Port Authority</b> Environmental, Health, Safety P. O. Box 1588 Mobile, AL 36633 Phone: (251) 441-7085 Fax: (251) 441-7255 WebPage: <a href="http://www.aspd.com">www.aspd.com</a>
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**(In Mobile, Baldwin and Washington Counties Only)**

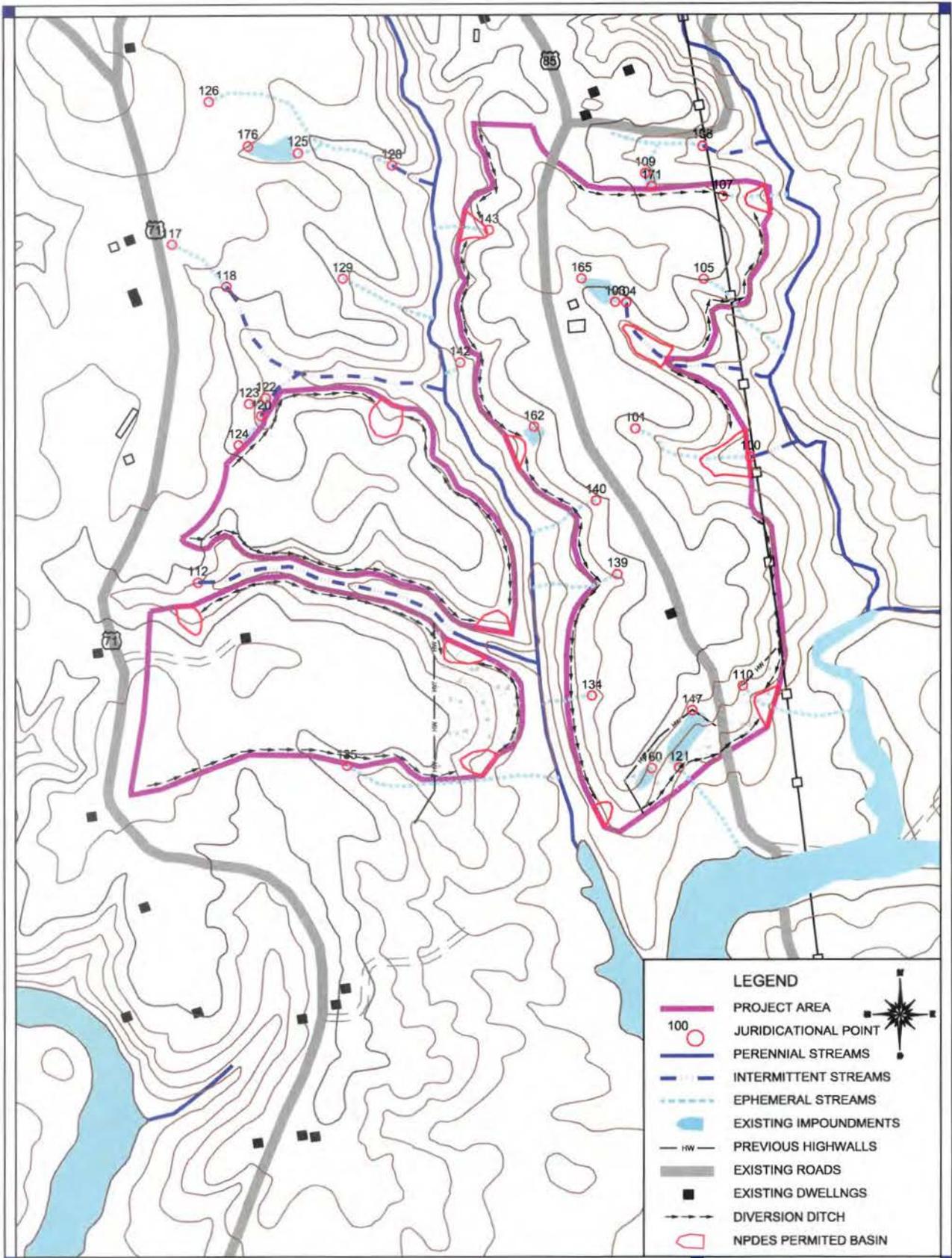
<b>Coastal Section-Mobile Branch</b> Field Operations Division, ADEM 4171 Commanders Dr. Mobile, AL 36615 Phone (251) 432-6533 Fax: (251) 432-6598 Email: <a href="mailto:coastal@adem.state.al.us">coastal@adem.state.al.us</a> WebPage: <a href="http://www.adem.state.al.us">www.adem.state.al.us</a>	<b>Alabama State Lands Division</b> Coastal Section 2310 US Hwy. 98 Suite B-1 Fairhope, AL 36532 Phone: (251) 929-0900 Fax: (251) 990-9293
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**BIRMINGHAM COAL & COKE CO., INC.  
KNIGHT MINE**

DRAWN BY: Z.B.W.	DATE: 05/07/12	KINLOCK SPRINGS & PHIL CAMPBELL USGS QUAD MAP
APPROVED BY: J.D.M.	DATE: 05/07/12	
SCALE: 1" = 2000'	SHEET: 1 OF 1	PROJECT AREA MAP

**DSM**  
DESIGN GROUP, LLC  
ENGINEERING / SURVEYING  
1400 VIKING DRIVE  
JASPER, ALABAMA 35501  
TELEPHONE: (205) 221-6262



**LEGEND**

- PROJECT AREA
- 100 ○ JURISDICTIONAL POINT
- PERENNIAL STREAMS
- - - INTERMITTENT STREAMS
- · - · - EPHEMERAL STREAMS
- EXISTING IMPOUNDMENTS
- hw — PREVIOUS HIGHWALLS
- EXISTING ROADS
- EXISTING DWELLINGS
- - - DIVERSION DITCH
- NPDES PERMITTED BASIN

DRAWN BY:  
Z.B.W.  
05/04/2012

APPROVED BY:  
J.D.M.  
05/04/2012

SCALE:  
1" = 500'

SHEET:  
1 OF 1

**BIRMINGHAM COAL & COKE CO., INC.**  
**KNIGHT MINE**

---

**PROJECT SITE**  
LRN-2012-00024

**DSM**  
DESIGN GROUP, LLC  
ENGINEERING / SURVEYING

1400 VIKING DRIVE  
JASPER, ALABAMA 35501  
TELEPHONE: (205) 221-6262





DESIGN GROUP, LLC  
ENGINEERING/SURVEYING

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April 25, 2012

## BIRMINGHAM COAL AND COKE CO., INC. KNIGHT MINE - LRN-2012-00024

### Mitigation Statement

After avoidance and minimization to the project area, there were still some unavoidable impacts to jurisdictional waters of the United States. The mitigation approach for achieving the necessary mitigation is proposed as *mitigation banking*. As quantified on the jurisdictional impacts table and illustrated on the attached Alternative No. 1 Map, the following waters require mitigation:

- **Intermittent Streams:** 332 (0.02 acres)
- **Ephemeral Streams:** 1,692 (0.08 acres)

### **Streams**

Each intermittent stream was assessed using the Unified Stream Methodology (USM) procedure to calculate necessary compensation for impacts. Scores were typically low throughout the site due to logging and clear cutting activity in addition to incised/erosive characteristics for most streams. A score was determined from a thorough site evaluation which included determining channel conditions while in the field while also taking documented photos of each stream. Photos of each stream are provided in the USM worksheets and are attached to this document. It is important to note that photos only represent one location of the stream (usually the headwater beginning) and do not necessarily reflect the channel conditions of the entire scored stream. These worksheets are attached to this report and yield the following results:

### *Credit Summary for Impacted Streams*

<b>Project</b>	<b>Linear feet</b>	<b>SOP Score</b>
Knight Mine	2,024	713

### Attachments

*Jurisdictional Impacts Table*  
*Alternatives No. 1 Map*  
*USM Summary Table*  
*USM Worksheets (11)*

# Stream Assessment Summary Form (Form 2)

## Unified Stream Methodology for use in Virginia

Project #	Applicant	Date
Knight Mine	Birmingham Coal and Coke Company, Inc.	5/4/2012
Evaluators		HUC
Zach Wilbanks		6030006
		Locality
		Phil Campbell, AL

Stream Name	Reach ID	Length of Impact (L <sub>I</sub> ) (feet)	Reach Condition Index (RCI)	Impact Factor (IF)	Compensation Requirement (CR) (L <sub>I</sub> × RCI × IF)
UT	110	195	0.25	1.00	49
UT	121	83	0.25	1.00	21
UT	134	96	0.25	1.00	24
UT	139	93	0.25	1.00	23
UT	140	110	0.25	1.00	28
UT	143	133	0.25	1.00	33
UT	101	534	0.30	1.00	160
UT	103	51	0.30	1.00	15
UT	104	332	0.68	1.00	226
UT	105	175	0.38	1.00	67
UT	107	222	0.30	1.00	67
<b>Total L<sub>I</sub></b>		<b>2,024</b>		<b>Total CR</b>	<b>713</b>

Note: Round all feet & CR's to the nearest whole number.

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

July 24, 2012

BIRMINGHAM COAL & COKE COMPANY  
ATTN ROBERT LEWIS  
912 EDENTON STREET  
BIRMINGHAM AL 35242

RE: Certification with Special Conditions  
Clean Water Act (CWA) Section 401 Water Quality Certification Issued July 24, 2012  
Water Quality Certification Expires July 23, 2017  
Corps of Engineers (COE) JPN# AL12-27 Issued June 8, 2012  
Franklin County (059)  
Proposed waterbottom impacts associated with surface coal mining

Dear Mr. Lewis:

This office has completed a review of the above-referenced joint public notice and all associated materials submitted related to the proposed project. Any comments made during the public notice period have also been forwarded to us for review.

From our review, it is understood that the applicant proposes to discharge fill material into 11 unnamed tributaries to Bear Creek and associated impoundments. Impacts to waters of the U.S. would total 2,024 linear feet of stream and 1.33 acres of open water features. Specifically, the proposed mining project would result in permanent impacts to 332 linear feet of one intermittent stream, 1,692 linear feet of ten ephemeral streams, and 1.33 acres of three open water features. The open water features include a 0.4 acre impoundment (pond 165) at the headwaters of stream 103 and two ponded areas of 0.75 acre (pond 147) and 0.18 acre (pond 160) located at the base of an unreclaimed high-wall that discharge into stream 121. The impacts include the construction of sediment ponds on 220 linear feet of intermittent stream and 1,245 linear feet of four ephemeral streams. The remaining 112 linear feet of intermittent stream, 1,118 linear feet of ephemeral streams and 1.33 acres of impoundments would be impacted by mine-through activities.

Because action pertinent to water quality certification (WQC) is required by Section 401(a)(1) of the Clean Water Act (CWA), 33 U.S.C. Section 1251, et seq., we hereby issue certification, for a period **not to exceed five (5) years** from the date of issuance, that there is reasonable assurance that the discharge resulting from the proposed activities as submitted will not violate applicable water quality standards established under Section 303 of the CWA and Title 22, Section 22-22-9(g), Code of Alabama, 1975, provided the applicant acts in accordance with the following conditions as specified. We further certify that there are no applicable effluent limitations under Section 301 and 302 nor applicable standards under Section 306 and 307 of the CWA in regard to the activities specified.

To minimize adverse impacts to State waters, by copy of this letter we are requesting the Nashville District Corps of Engineers to incorporate the following as special conditions of the Corps Permit:

1. During project implementation, the applicant shall ensure compliance with applicable requirements of ADEM, Admin. Code Chapter 335-6-6 [National Pollutant Discharge Elimination System (NPDES)], Chapter 335-6-10 (Water Quality Criteria), and Chapter 335-6-11 (Water Use Classifications for Interstate and Intrastate Waters).
2. The applicant shall obtain and maintain valid NPDES permit coverage prior to commencing and/or continuing the proposed project activities. On September 22, 2009, the applicant applied for NPDES permit AL00080608. As of the date of this letter, the NPDES permit application is pending. If you have any questions regarding regulated mining activity or NPDES permit requirements, please contact ADEM's Water Division at (334) 271-7823.

**Birmingham Branch**  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (FAX)

**Decatur Branch**  
2715 Sandlin Road, S. W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

**Mobile-Coastal**  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (FAX)

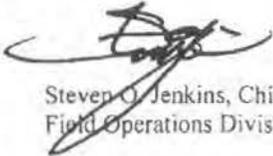
3. Please be advised that ADEM permit coverage may be required for certain activities/operations relating to or resulting from this project. If you have any questions regarding regulated activity or the need for air permit coverage, please contact ADEM's Air Division at (334) 271-7869. If you have any questions regarding regulated activity or the need for hazardous, toxic, and/or solid waste permit coverage, please contact ADEM's Land Division at (334) 271-7730.

In recognition that projects are site specific in nature and conditions can change during project implementation, ADEM reserves the right to require the submission of additional information or require additional management measures to be implemented, as necessary on a case by case basis, in order to ensure the protection of water quality. Liability and responsibility for compliance with this certification are not delegable by contract or otherwise. The applicant shall ensure that any agent, contractor, subcontractor, or other person employed by, under contract, or paid a salary by the applicant complies with this certification. Any violations resulting from the actions of such person shall be considered violations of this certification.

Issuance of a certification by ADEM neither precludes nor negates an operator/owner's responsibility or liability to apply for, obtain, or comply with other ADEM, federal, state, or local government permits, certifications, licenses, or other approvals. This certification does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, trespass, or any infringement of Federal, State, or local laws or regulations, and in no way purports to vest in the applicant title to lands now owned by the State of Alabama nor shall it be construed as acquiescence by the State of Alabama of lands owned by the State of Alabama that may be in the applicant's possession.

Should you have any questions on this or related matters, please do not hesitate to contact **Aaron Peters, Office of Field Services**, by email at [dapeters@adem.state.al.us](mailto:dapeters@adem.state.al.us) or by phone at (334) 394-4310.

Sincerely,



Steven O. Jenkins, Chief  
Field Operations Division

SOJ/DAP

File: WQ401/

c: Nashville COE  
Permits & Services Division, ADEM  
Water Division, ADEM  
Wetlands Section, EPA Region IV

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

February 28, 2012

CERTIFIED MAIL 91 7108 2133 3935 0353 1984  
RETURN RECEIPT REQUESTED

Robert Lewis  
President  
Birmingham Coal & Coke Company, Inc.  
912 Edenton Street  
Birmingham, Alabama 35242

Re: Final Permit  
Bear Creek Mine  
NPDES Permit No. AL0074373  
Franklin, Marion, and Winston Counties (059, 093, and 133)

Dear Mr. Lewis:

Enclosed is the issued National Pollutant Discharge Elimination System (NPDES) permit for the above referenced facility. The issuance, effective, and expiration dates of the permit are specified on the cover page.

Please see Parts I.A. and I.C. of the permit for monitoring and reporting requirements. Copies of the DMR forms are enclosed. The original DMR forms should be retained for your records. The original signature of a principal executive officer or authorized agent must appear on all DMRs submitted to the Department. The principal executive officer must submit, in writing, authorization allowing a designated agent to sign DMR forms submitted to the Department. The submittal must specify either an individual or a position having responsibility for the overall operations of the regulated facility or activity. **Use of the enclosed forms is required for future report submittals for this facility.**

Please be advised that pursuant to Part II.C.1. of the enclosed permit, you are allowed to continue with work related to the implementation of the Pollution Abatement/Prevention Plan for the proposed outfalls, including the construction of sedimentation basins. Any mining or processing activity conducted prior to Departmental receipt of certification from a professional engineer licensed to practice in the State of Alabama, that the Pollution Abatement/Prevention Plan for the proposed outfalls was implemented according to the design plan, or notification from the Alabama Surface Mining Commission that the sediment control structures have been certified, is prohibited. Please be advised that pursuant to ADEM Admin. Code R. 335-6-6-.05, this permit will automatically **expire eighteen (18) months** after the permit issuance date if construction, as defined by ADEM Admin. Code R. 335-6-6-.02(g), or mining has not commenced.

The Department provides a voluntary web-based electronic environmental (E2) reporting system for submittal of discharge monitoring reports (DMRs). The E2 DMR system provides an alternative method to submit DMR data and allows ADEM to electronically validate, acknowledge receipt, and upload data to the state's central wastewater database. This system is expected to reduce costs to both the regulated community and ADEM and to improve the accuracy of reported compliance data. If you wish to participate in this program, the Permittee Participation Package may be downloaded online at <https://e2.adem.alabama.gov/npdes> or you may obtain a hard copy by submitting a written request or by emailing [e2admin@adem.alabama.gov](mailto:e2admin@adem.alabama.gov).

The Department encourages you to voluntarily consider additional pollution prevention practices/alternatives at your facility which may assist you in complying with effluent limitations, and possibly reduce or eliminate pollutant discharges.

**Birmingham Branch**  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (FAX)

**Decatur Branch**  
2715 Sandlin Road, S. W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

**Mobile-Coastal**  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (FAX)

Should you have any questions concerning this matter, please contact Andrew Burroughs at (334) 274-4197 or by email at [aburroughs@adem.state.al.us](mailto:aburroughs@adem.state.al.us).

Sincerely,



Johnathan E. Hall, Chief  
Mining and Natural Resources Section  
Stormwater Management Branch  
Water Division

JEH/apb      File: FPER/17983

Enclosure

cc: Andrew Burroughs, ADEM  
Karrie-Jo Shell, EPA  
Christa Marks, ASMC  
William Pearson, U.S. Fish & Wildlife Service



# NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM INDIVIDUAL PERMIT

PERMITTEE: Birmingham Coal & Coke Company, Inc.  
912 Edenton Street  
Birmingham, Alabama 35242

FACILITY LOCATION: Bear Creek Mine  
Alabama Highway 243  
Haleyville, Alabama 35565  
Franklin, Marion, and Winston Counties  
T8S, R10W, Sections 19-21 and 27-32  
T8S, R11W, Section 36  
T9S, R10W, Sections 5 and 6

PERMIT NUMBER: AL0074373

<u>DSN</u>	<u>Receiving Water</u>	<u>DSN</u>	<u>Receiving Water</u>	<u>DSN</u>	<u>Receiving Water</u>
001-1	Little Dice Branch	002-1	Unnamed Tributary to Little Dice Branch	003-1	Unnamed Tributary to Little Dice Branch
004-1	Unnamed Tributary to Little Dice Branch	005-1	Unnamed Tributary to Little Dice Branch	006-1	Little Dice Branch
007-1	Unnamed Tributary to Little Dice Branch	008-1	Little Dice Branch	009-1	Little Dice Branch
010-1	Little Dice Branch	015-1	Little Dice Branch	016-1	Unnamed Tributary to Little Dice Branch
017-1	Unnamed Tributary to Little Dice Branch	018-1	Little Dice Branch	019-1	Little Dice Branch
020-1	Little Dice Branch	021-1	Little Dice Branch	022-1	Little Dice Branch
023-1	Unnamed Tributary to Little Dice Branch	024-1	Unnamed Tributary to Bear Creek	025-1	Unnamed Tributary to Bear Creek
026-1	Unnamed Tributary to Bear Creek	027-1	Unnamed Tributary to Bear Creek	028-1	Unnamed Tributary to Bear Creek
029-1	Unnamed Tributary to Bear Creek	030-1	Unnamed Tributary to Bear Creek	031-1	Unnamed Tributary to Bear Creek
032-1	Unnamed Tributary to Bear Creek	033-1	Unnamed Tributary to Bear Creek	034-1	Unnamed Tributary to Bear Creek
035-1	Unnamed Tributary to Bear Creek	036-1	Unnamed Tributary to Bear Creek	037-1	Unnamed Tributary to Bear Creek
038-1	Unnamed Tributary to Bear Creek	039-1	Unnamed Tributary to Bear Creek	041-1	Unnamed Tributary to Bear Creek
042-1	Unnamed Tributary to Bear Creek	043-1	Unnamed Tributary to Bear Creek	044-1	Unnamed Tributary to Bear Creek
045-1	Unnamed Tributary to Bear Creek	046-1	Unnamed Tributary to Bear Creek	047-1	Unnamed Tributary to Bear Creek
056-1	Pretty Branch	057-1	Pretty Branch	058-1	Pretty Branch
059-1	Pretty Branch	060-1	Pretty Branch	061-1	Pretty Branch
062-1	Pretty Branch	063-1	Pretty Branch	064-1	Pretty Branch
065-1	Pretty Branch	066-1	Cat Den Branch	067-1	Cat Den Branch
068-1	Cat Den Branch	069-1	Cat Den Branch	070-1	Cat Den Branch
071-1	Cat Den Branch				

*In accordance with and subject to the provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251-1378 (the "FWPCA"), the Alabama Water Pollution Control Act, as amended, Code of Alabama 1975, §§ 22-22-1 to 22-22-14 (the "AWPCA"), the Alabama Environmental Management Act, as amended, Code of Alabama 1975, §§22-22A-1 to 22-22A-16, and rules and regulations adopted thereunder, and subject further to the terms and conditions set forth in this Permit, the Permittee is hereby authorized to discharge into the above-named receiving waters.*

ISSUANCE DATE: February 28, 2012  
EFFECTIVE DATE: March 1, 2012  
EXPIRATION DATE: February 28, 2017

*Sienna L. Dean*  
Alabama Department of Environmental Management

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Birmingham Coal and Coke, Inc.		File Number: LRN 2012-00024	Date: 25-OCT-2012
Attached is:		See Section below	
<input checked="" 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 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/cecwo/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:  
U.S. Army Corps of Engineers  
Western Regulatory Field Office  
2042 Beltline Rd SW  
Bldg C Suite 415  
Decatur, AL 35601

If you only have questions regarding the appeal process you may also contact:  
U.S. Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street, Room 10032  
Cincinnati, OH 45202

**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: