



STATE OF ALABAMA SURFACE MINING COMMISSION

Page 1 of 2

Permit Number:P- 3979 -49-19-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 AND COKE COMPANY INC
912 EDENTON STREET
BIRMINGHAM AL 35242
(GOODEN CREEK MINE NO. 2)

Such operations are restricted to 401* 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 890-8-8-K-16~~ of any condition which threatens the environment or public health and safety.

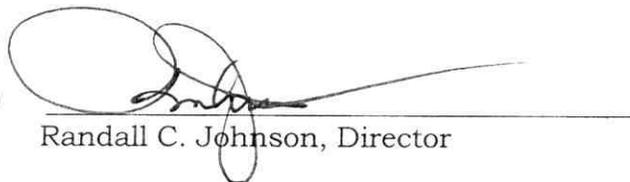
LEGAL DESCRIPTION

SE/SE, NE/SE & SE/NE OF SECTION 12, SW/SW, NW/SW, NW/SE, SW/NW, NW/NW, NE/NW, NW/NE, SE/NE, NE/NE, NE/SE, SW/NE, SW/SE, SE/SW & SE/SE OF SECTION 13, NW/NW, NE/NW, NW/NE, SE/NW, SE/NE, SW/NE, NE/SE, NE/NE, NW/SE, NE/SW, SW/SE, SE/NE & SE/SE OF SECTION 24; TOWNSHIP 12 SOUTH, RANGE 11 WEST, ALL IN MARION COUNTY, ALABAMA; NW/SW, SW/NW, SW/SW & SE/SW OF SECTION 19; NW/NW, SW/NW, NW/SW & SW/SW OF SECTION 29; NW/NW, NE/NW, NW/NE, NE/NE, SE/NE, SW/NE & SE/NW OF SECTION 30; NW/NW OF SECTION 32; TOWNSHIP 12 SOUTH, RANGE 10 WEST, ALL IN WALKER COUNTY, ALABAMA; NW/NW, NE/NW, SE/NW & SW/NW OF SECTION 7; TOWNSHIP 12 SOUTH, RANGE 10 WEST, ALL IN WINSTON COUNTY, ALABAMA

CONDITIONS TO BE PLACED ON PERMIT P-3979-49-19-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 144 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. Permittee shall flag and maintain a one hundred foot offset around cemetery 1Mr241 in a flagging color different than that used to flag the permit boundary.
11. The permittee shall provide ASMC with a proof of credit purchase/bill of sale for the USACE wetland and stream credits incrementally prior to conducting mining activities in the specified increment.

DATE ISSUED: NOVEMBER 14, 2014
EFFECTIVE DATE: NOVEMBER 14, 2014
EXPIRATION DATE: NOVEMBER 13, 2019


Randall C. Johnson, Director

/ns

cc: I & E, Permit File

FINDINGS

PERMIT NO.: P-3979-49-19-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.
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. In a letter dated May, 2001 The University of Alabama-Office of Archaeological Services (OAS) conducted a Phase I Cultural Resource Survey for approximately 10,050 acres in Marion, Walker, and Winston Counties, Alabama, over a six week time period, spanning October and November 2000. Approximately 7,700 acres of the project area

had been previously surveyed or strip mined. As a result of the Phase I survey, twenty-three cultural resources were recorded and investigated within the project area, and eleven previously recorded cultural resources located within the project boundary were reinvestigated and reevaluated. Only five of the cultural resources located within the bounds of the project area are considered potentially eligible for nomination to the National Register of Historic Places (NRHP), (1Mr236, 1Mr237, 1Wi474, 1Wi 476, and 1Wi477). In addition to the noted resources, two cemeteries (1Mr239 and 1Mr241) were recorded within the bounds of the survey area. By letters dated July 26 and December 28, 2001, January 18 and March 20, 2012 the State Historical Preservation Office (SHPO) concur with the project activities with the caveat that sites 1Mr236, 1Mr237, 1Wi474, 1Wi 476, and 1Wi477 and cemeteries 1Mr239 and 1Mr241 are avoided, based on the cultural resource assessment conducted by the OAS. All cultural resource sites and cemeteries are located outside the permitted mine area. 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. Dan Spaulding, Environmental Consultant, conducted a habitat assessment for federal or state protected species on approximately 375 acre site (broken up in 4 areas) for a proposed surface mining project in Marion and Walker Counties, Alabama on April 20-21, 2013. Based on literature review and a field survey of the project site, Spaulding recommends no additional studies are required to be in compliance with state and federal endangered species laws associated with the project impacts to Threatened and Endangered species. The US Fish and Wildlife Service (FWS), in comments dated May 13, 2013, stated that no federally listed species/habitats occur within the project area. In a letter March 12, 2012 the Alabama Department of Conservation and Natural Resources (ADCNR) determined that the closest sensitive species occurs approximately 4.4 miles from the subject site. In a letter dated, November 5, 2014 the US Army Corps of Engineers (USACE) authorize the activities by Permit Number: SAM-2012-00444-CMS. The proposed project, is a surface coal mine, which will involve the discharge of fill material into waters of the United States. These activities will involve impacts 7,681 linear feet (LF) of ephemeral streams, 6,064 LF of intermittent stream, 1.06 acres of open water impoundments. USACE increments 1 & 2 corresponds to ASMC increments 1 & 2, USACE increment 3 corresponds to ASMC increments 3 & 4, and USACE increment 4 matches to ASMC increment 5.

To compensate for impacts to 7,681 LF of ephemeral streams, the permittee shall purchase wetland credits from the Big Sandy Mitigation Bank as mining progresses incrementally.

Increment 1: 0.148 wetland credits *1.08 Proximity = 0.16
Increment 2: 0.093 wetland credits *1.08 Proximity = 0.10
Increment 3: 0.10 wetland credits *1.08 Proximity = 0.11
Increment 4: 0.005 wetland credits *1.08 Proximity = 0.005

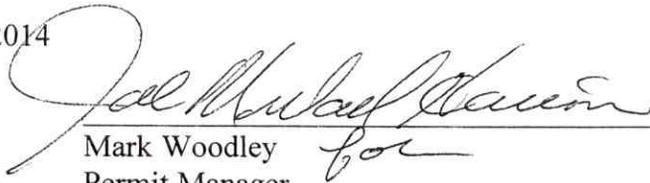
To compensate for impacts to 6,064 LF of intermittent streams, the permittee shall purchase stream credits from the Big Sandy Mitigation Bank as mining progresses incrementally.

Increment 1: 8,244 stream credits *1.08 Proximity = 6,233
Increment 2: 6,100 stream credits *1.08 Proximity = 6,588
Increment 3: 3,535 stream credits *1.08 Proximity = 3,817
Increment 4: 1,320 stream credits *1.08 Proximity = 1,426

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: November 14, 2014


Mark Woodley
Permit Manager

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