

APPENDIX D

Water Quality Certification

FILE NO. 970011920

BLACK EAGLE MINERALS

Request for a Proposed Expansion of an Existing Barge Loading Dock

Tennessee River Mile 247.5, Left Bank, Pickwick Lake, in Colbert County,
Alabama

ONIS "TREY" GLENN, III
DIRECTOR



BOB RILEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

July 30, 2008

JOE SHAWHAN
BLACK EAGLE MINERALS, LLC
P O BOX 536
TUSCUMBIA AL 35674

RE: Certification with Special Conditions
Clean Water Act (CWA) Section 401 Water Quality Certification Issued July 30, 2008
Water Quality Certification Expires July 29, 2013
Corps of Engineers (COE) JPN# AL08-34 Issued June 3, 2008
Colbert County (033)
Describe Proposed Activities: waterbottom fill in conjunction with an expansion of a barge loading dock

Dear Mr. Shawhan:

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 extend the facility 293' (L) x 264' (W) on the upstream most side of the existing fill. The fill material would be composed of shot limestone from the adjacent Vulcan Materials Rock site. Approximately 53,815 cubic yards of fill material would be required, of which about half would be below the summer pool contour, Elevation 414 (with 21,061 cubic yards in power loss and 32,734 cubic yards in flood storage loss). The proposed dock would not extend lakeward of the existing mooring cell line. Barge mooring capacity would not increase. The purpose of this fill is to provide more storage areas for the new commodities. Also Black Eagle Minerals is requesting to stabilize approximately 300 feet of shoreline and install fish attractors on the upstream side of the fill. The fish attractors will be made from the trees fronting the requested fill area.

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.

Please be advised that this certification shall expire eighteen (18) months after issuance if initial construction or implementation of the proposed project has not begun, unless an extension is approved by ADEM.

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. Please be advised that all terms, conditions, and requirements of the National Pollutant Discharge Elimination System (NPDES) registration AL0041092 approved on April 1, 2004, are in effect and must be followed and maintained. Failure to comply with the NPDES registration approval may constitute a violation of this certification. Please be advised that this NPDES registration currently expires March 31, 2009.

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)

2. During project implementation, the applicant/owner/operator shall ensure compliance with applicable requirements of ADEM Admin. Code Chapter 335-6-6 (National Pollutant Discharge Elimination System), Chapter 335-6-10 (Water Quality Criteria), and Chapter 335-6-11 (Water Use Classifications for Interstate and Intrastate Waters).
3. Please be advised that valid NPDES individual or general permit coverage for stormwater discharges resulting from the operation of a service dock, commercial/private marina, transportation/transloading facility, port/docks facility, landfills, or industrial/manufacturing facilities may be required. If you have any questions regarding the requirement for NPDES permit coverage, please contact ADEM's Water Division, at (334) 271-7700.
4. Please be advised that an air permit may be required for certain barge loading/unloading operations. If you have any questions regarding the requirement for air permit coverage, please contact ADEM's Air Division at (334) 271-7700.
5. Upon the loss or failure of any treatment facility, best management practice (BMP), or other control, the applicant shall, where necessary to maintain compliance with this certification, suspend, cease, reduce or otherwise control work/activity and all discharges until effective treatment is restored. It shall not be a defense for the applicant in a compliance action that it would have been necessary to halt or reduce work or other activities in order to maintain compliance with the conditions of this certification.
6. The applicant shall retain records adequate to document activities authorized by this certification including but not limited to, inspection reports, monitoring information, copies of any reports and all data used to complete the above reports or the application for this certification, for a period of at least three years after completion of work/activity authorized by the certification. Upon written request, the applicant shall provide ADEM with a copy of any record/information required to be retained by this paragraph. After completion of construction of the proposed project the applicant is required to submit to ADEM certification by a professional engineer (PE) registered in the State of Alabama and/or an ADEM recognized qualified credentialed professional (QCP) that all aspects of the project have in fact been implemented according to the requirements of this certification.
7. The applicant shall implement the project in accordance with all plans, designs, specifications, descriptions, drawings, schedules, maps, and other information submitted to ADEM relative to the proposed project, unless authorized otherwise by ADEM based on a detailed written request by the applicant to modify the project.
8. The applicant shall implement and maintain the Best Management Practices (BMP) Plan for prevention and control of nonpoint sources of pollutants, including measures that will be taken to ensure permanent revegetation or cover of all disturbed areas during and after project implementation, that was submitted as part of the application or required by this certification.
9. The applicant shall implement and maintain appropriate, effective Best Management Practices (BMPs) for prevention and control of nonpoint sources of pollutants during and after project implementation. The applicant, at a minimum, must implement and maintain applicable effective BMPs as provided in the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas, as amended, Alabama Soil and Water Conservation Committee (ASWCC). A copy of the Handbook can be downloaded or ordered at http://swcc.state.al.us/erosion_handbook.htm. Immediately after completion of the project, the applicant is required to implement and maintain effective measures to ensure permanent revegetation or cover of all disturbed areas.
10. The applicant shall implement a Spill Prevention Control and Countermeasures (SPCC) Plan for all temporary and permanent onsite fuel or chemical storage tanks or facilities consistent with the requirements of ADEM Admin. Code R. 335-6-6-.12(r), Section 311 of the Federal Water Pollution Control Act, and 40 CFR Part 112. The applicant shall maintain onsite or have readily available sufficient oil & grease

absorbing material and flotation booms to contain and clean-up fuel or chemical spills and leaks. The applicant shall immediately notify ADEM after becoming aware of a significant visible oil sheen in the vicinity of the proposed activity. In the event of a spill with the potential to impact groundwater or other waters of the State, the applicant should immediately call the National Response Center at 1-800-424-8802 and the Alabama Emergency Management Agency at 1-800-843-0699. The caller should be prepared to report the name, address and telephone number of person reporting spill, the exact location of the spill, the company name and location, the material spilled, the estimated quantity, the source of spill, the cause of the spill, the nearest downstream water with the potential to receive the spill, and the actions taken for containment and cleanup.

11. The applicant shall conduct, at a minimum, weekly comprehensive site inspections to ensure that effective Best Management Practices (BMPs) are properly designed, implemented, and regularly maintained (i.e. repair, replace, add to, improve, implement more effective practice, etc.) utilizing good engineering practices to prevent/minimize to the maximum extent practicable discharges of pollutants in order to provide for the protection of water quality. The inspections shall be conducted by a qualified credentialed professional (QCP), qualified personnel under the direct supervision of a QCP, or an ADEM recognized qualified credentialed inspector (QCI), until completion of the proposed activity.
12. Additional, effective BMPs shall be fully implemented and maintained on a daily basis as needed to prevent to the maximum extent possible potential discharges of pollutants from activities authorized by this certification, directly to or to a tributary or other stream segment, that have the potential to be impact a State water currently considered impaired [waterbody is identified on the Alabama 303(d) list, a total maximum daily load (TMDL) has been finalized for the waterbody, and/or the waterbody is otherwise considered a Tier 1 water pursuant to ADEM Admin. Code Ch. 335-6-10]. The applicant shall inspect all BMPs as often as is necessary (daily if needed) for effectiveness, need for maintenance, and the need to implement additional, effective BMPs. Additional effective BMPs shall immediately be implemented as needed and may include but are not limited to sediment retention basins, greater capacity in sediment retention structures, hydroseeding with application of non-toxic tackifiers, grass sodding, non-toxic chemical treatment, erosion control blankets, other effective innovative/alternative technologies, etc. to ensure full compliance with ADEM requirements and the protection of water quality in the impaired waterbody.
13. All construction and worker debris (e.g. trash, garbage, etc.) must be immediately removed and disposed in an approved manner. If acceptable offsite options are unavailable, effective onsite provisions for collection and control of onsite worker toilet wastes or gray waste waters (i.e. port-o-let, shower washdown, etc.) must be implemented and maintained. Soil contaminated by paint or chemical spills, oil spills, etc. must be immediately cleaned up or be removed and disposed in an approved manner. Also, the applicant shall manage and dispose of any trash, debris, and solid waste according to applicable state and federal requirements.
14. Appropriate measures must be taken to prevent the deposition of airborne pollutants such as spray paint, herbicides, excessive road dust, etc. from entering the waterbody.
15. Surface drainage patterns should be designed, constructed, and maintained to the extent practicable with swales or other methods to minimize direct runoff into the waterbody and to prevent/minimize the introduction of pollutants. Diversion structures (berms, ditches, etc.) created in order to re-route upgradient stormwater runoff from the proposed project location shall be constructed, stabilized, and vegetated as necessary, prior to commencement of disturbance activities.
16. All materials used as fill, or materials used for construction of structures in a waterbody, must be non-toxic, non-leaching, non-acid forming, and free of solid waste or other debris.
17. The applicant shall implement appropriate measures to minimize the potential for a decrease of instream dissolved oxygen concentrations as a result of project implementation. In addition, the applicant shall

ensure that the activities authorized by this certification do not significantly contribute to or cause a violation of applicable water quality standards for instream dissolved oxygen.

18. Dredged or fill material shall not be sidecast or otherwise placed in adjacent waters or wetlands outside the permitted project area.
19. The applicant shall conduct the proposed operation in a timely manner with all due diligence utilizing good engineering practices in order to reduce potential environmental impacts created by the project to the maximum extent practicable. The applicant shall conduct the proposed operation in an expedient time frame in order to reduce the amount of time to the maximum extent practicable in which turbid water is produced.
20. The applicant shall implement appropriate, effective BMPs, including installation of floating turbidity screens as necessary, to minimize downstream turbidity to the maximum extent practicable. The applicant shall visually monitor or measure background turbidity. The applicant must suspend operations should turbidity resulting from project implementation exceed background turbidity by more than 50 NTUs. Operations may resume when the turbidity decreases to within acceptable levels.
21. Please be advised that (A) ADEM Admin. Code R. 335-6-6-.03 (aaa) [NPDES Rules] defines "Waters of the state" as all waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce, (B) ADEM Admin. Code R. 335-6-9-.02(i) [Surface Mining Rules] defines "stream" as any body of water having a drainage area in excess of one square mile [640 acres], (C) Pursuant to ADEM Admin. Code R. 335-6-12-.21(10) [Construction Stormwater Rules], the installation or use of instream or within-bank sediment storage traps or deposition areas, or other sediment storage/detention BMPs, in waters of the State to control/treat stormwater runoff from construction/ activity, is not authorized, and (D) ADEM Admin. Code R. 335-6-12-.21(2)(b)3. [Construction Stormwater Rules], requires proper cleanup/removal or effective stabilization of sediment deposited offsite, in the event of such an occurrence, and effective remediation of sediment or other pollutant instream impacts to the maximum extent practicable.

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 and may subject the applicant to enforcement action.

ADEM certification decisions are predicated on current regulatory requirements, established engineering standards and technical considerations, best management practices information, and formal administrative procedures in conformance with ADEM regulations and applicable Alabama law. 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.

Black Eagle Minerals
July 30, 2008
Page 5 of 5

Should you have any questions on this or related matters, please do not hesitate to contact James McAfee, NPDES Compliance Section, by email at jmcafee@adem.state.al.us or by phone at (334) 394-4301.

Sincerely,



Steven O. Jenkins, Chief
Field Operations Division

SOJ/jrm

File: WQ401/0000001834

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