

## DEPARTMENT OF THE ARMY PERMIT

Permittee: Coal Mining Companies in North Dakota

Permit No.: Regional General Permit 11-01 (2011-2288-BIS)

Issuing Office: North Dakota Regulatory Office, Omaha District

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 or the appropriate official of that office acting under the authority of the commanding officer.

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

Project Description: This RGP authorizes discharges of dredged or fill material associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the North Dakota Public Service Commission.

Project Location: Waters of the United States in North Dakota (except peatlands)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on August 31, 2017. 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 may 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 must 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 archeological 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. For your convenience, a copy of the certification is attached if it contains such conditions.
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.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - ( X ) Section 10 of the River 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 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 those 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 reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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

JOEL R. CROSS  
Colonel, Corps of Engineers  
Commanding

BY:   
MARTHA S. CHIEPLY  
Chief, Regulatory Branch, Operations Division

DATE: 20 August 2012

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### SPECIAL PERMIT CONDITIONS

1. The activity must be authorized, or currently being processed as part of an integrated permit processing procedure, by the North Dakota State Public Service Commission.
2. The permittee must comply with the conditions established by the North Dakota Department of Health's or Environmental Protection Agency's Section 401 water quality certifications.
3. This RGP is not applicable to activities which involve impacts to peatlands. Peatlands are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat.
4. No activity may cause more than a minimal adverse effect on navigation.
5. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
6. Culverts and riprap proposed to be installed within waters of the U.S. listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota shall be installed one foot below the natural streambed.
7. Activities in spawning areas, during spawning seasons, must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
8. No regulated activity within waters of the U.S. listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June. No regulated activity within the Red River of the North shall occur between 15 April and 1 July.
9. Activities in waters of the U.S. that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
10. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Materials used for construction or discharged must be free from pollutants in toxic amounts..
11. No activity may occur in the proximity of a public water supply intake.
12. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water and/or restricting its flows must be minimized to the maximum extent practicable.
13. To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment.
14. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

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SPECIAL PERMIT CONDITIONS (con't)**

15. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the U.S. during periods of low-flow or no-flow.

16. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated as appropriate.

17. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

18. No activity or its operation may impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

19. No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species.

20. No activity is authorized that would adversely impact sites included in the most current listing of the National Register of Historic Places or sites known to be eligible for such listing, sites included in the National Register of Natural Landmarks, or any other known historic, cultural, or archaeological sites until the District Commander has complied with the provisions of 33 CFR Part 325, Appendix C pursuant to the National Historic Preservation Act of 1966.

21. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized, you must immediately notify the North Dakota Regulatory Office of what you have found, and to the maximum extent practicable, stop activities that would adversely affect those remains and artifacts until the required coordination has been completed. The North Dakota Regulatory Office will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river.

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### APPLICATION PROCEDURES

All interested parties proposing work under this Regional General Permit are required to contact:

U.S. Army Corps of Engineers  
North Dakota Regulatory Office  
1513 South 12th Street  
Bismarck, North Dakota 58505  
(701) 255-0015

The following information is required:

1. Name, address, and telephone number of the person responsible for the work.
2. A written description of the proposed work, including the purpose and need; type, composition and volume of fill and/or excavated material; length, width and depth of fill material and/or excavation area; disposal site for the excavated material; borrow site for fill material; types of equipment to be used; and impacts to wetlands, streams or other waters of the United States. Impacted includes filled, excavated, drained, dewatered or otherwise adversely modified by coal mine operations.
3. A written legal description of the project location including section, township, range, and county.
4. Names, addresses, and telephone numbers of adjacent property owners.
5. A set of drawings on 8 1/2 by 11 inch paper, with dimensions of the proposed work, showing:
  - a. The project location, including the disposal site locations.
  - b. A plan or top view of the mine area.
  - c. A typical cross-section or side view of the project area.
6. A wetland delineation for the entire life of mine permit boundary area. Delineations must be completed by qualified individuals in accordance with the U.S. Army Corps of Engineers Wetland Delineation Manual dated January 1987 and any updates and supplements to the manual. More detailed information on delineation requirements is available upon request. Delineation maps must show all areas that meet the definition of wetland, as defined in the manual, and all other water features such as ditches, streams, ponds, and lakes.
7. Copy of Public Service Commission coal mining permit.
8. A wetland and waters final reclamation/restoration plan.

Mitigation to offset impacts to wetlands and streams may be required. The North Dakota Regulatory Office will make a case-specific determination during the permit evaluation.

No project may not proceed until approval has been provided by the North Dakota Regulatory Office that the proposal meets the Regional General Permit criteria.