

## DEPARTMENT OF THE ARMY PERMIT

**Permittee** Kansas Department of Health and Environment

**Permit No.** GP-31K

**Issuing Office** U.S. Army Engineer District, Kansas City

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, and with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

Project Description: Proposed Work: Abandoned Mined Land Reclamation Projects. This permit authorizes the discharge of dredged and/or fill material incidental to Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section's abandoned mined land reclamation projects as described in Appendix I. Discharges authorized are limited to those which occur during the actual abandoned mined land reclamation work and those associated with preparation and restoration of the site.

Project Location: Waters of the United States within the counties of Bourbon, Linn, Crawford, Cherokee and Labette in southeast Kansas. These areas are generally defined as altered or degraded waters located on previously mined lands and wetlands which formed under conditions resulting from past mining activities.

### Permit Conditions:

#### General Conditions:

1. The time limit for completing the work authorized ends on 2 years from each permit determination. 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 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.

Special Conditions:

See continuation sheets, pages 4 and 5 of this document.

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).
- 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 authorization 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 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.

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

(General Permit - signature not required)

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

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

*Joseph S. Hughes* \_\_\_\_\_  
 (DISTRICT ENGINEER) (DATE) 4/13/05  
 MICHAEL A. ROSSI  
 BY: Joseph S. Hughes  
 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)

## **Special Conditions:**

- a. You must sign and return a "Compliance Certification" after you complete the authorized work and any required mitigation. Your signature will certify that you completed the work in accordance with this permit, including general and specific conditions, and that any required mitigation was completed in accordance with the permit conditions.
- b. No activity is authorized under this general permit 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 is likely to destroy or adversely modify the critical habitat of such species. Further, this general permit does not authorize the "take" of a Federally listed species. See Appendix II, paragraph No. 1 for permitting requirements if these species are likely to be present or their habitat would be adversely modified.
- c. If any part of the authorized work is performed by a contractor or other party, before starting work you must discuss the terms and conditions of this permit with the contractor or party; and, you must give a copy of this entire permit to the contractor or other party involved in the reclamation activities. The permittee remains responsible for ensuring compliance with all aspects of this permit.
- d. You must excavate, dredge and/or fill in the watercourse in a manner that will minimize increases in suspended solids and turbidity, which may degrade water quality and damage aquatic life outside the immediate area of operation.
- e. You must immediately remove and properly dispose of all debris during every phase of the project in order to prevent the accumulation of unsightly, deleterious and/or toxic materials in or near the water body.
- f. You must not dispose of any construction debris or waste materials below the ordinary high water mark of any water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.
- g. You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels. Fuel, oil, and other wastes and equipment containing such wastes shall not be stored nor released at any location between the high banks or in a manner such that they could enter the stream channel. You must dispose of such materials at authorized locations.
- h. You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work.
- i. In order to control erosion, upon completion of earthwork operations, you must immediately re-vegetate all areas disturbed during project construction utilizing a seed mix that includes native species.
- j. No activity which may affect Historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR 325, Appendix C. All prospective permittees must notify the District Engineer if the excavation activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places.

k. Any equipment that has been in any body of water with the past 30 days shall be thoroughly cleaned with hot water (>40° C or 104° F) and dried for a minimum of 5 days before being used at a new project site. In addition, before transporting equipment from the project site all visible mud, plants, and fish/animals should be removed and all water should be eliminated. Anything that came in contact with the water should be cleaned and dried following the above procedure before being moved to a new location.

l. Work under the provisions of this general permit is subject to the Applicant Notification Requirements. See Appendix III for the required information that must accompany the submission of the subject Applicant Notification.

## **APPENDIX I**

### **CRITERIA FOR AUTHORIZATION BY GENERAL PERMIT NWKGP-31K**

1. The District Engineer has the discretion to require an individual permit on a case-by-case basis for any activity authorized herein.
2. This general permit applies to the Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section's Abandoned Mined Lands Reclamation Projects when such activities are performed to provide hazard abatement or improve water quality.
3. Any conditions necessary to avoid and/or minimize effects to species or habitat pursuant to the Endangered Species Act (16 U.S.C.A. § 1536), become by reference, special conditions of this permit. The need for such conditions will be determined on a case-by-case basis, dependant upon project specific impacts. For activities involving formal consultation pursuant to Section 7 of the Endangered Species Act, the U.S. Department of Interior, Office of Surface Mining will serve as the lead Federal agency.
4. The cumulative impacts of this general permit may be reevaluated at the discretion of the Corps of Engineers at any time, but will be reevaluated at least every five (5) years.

## APPENDIX II

### **CORPS REVIEW PROCEDURES FOR AUTHORIZATION BY GENERAL PERMIT NWKGP-31K** **(for Corps use only)**

1. **ENDANGERED SPECIES CONSULTATION.** Each proposed activity, if within the range of a Federally listed threatened or endangered species, must be coordinated with the U.S. Fish and Wildlife Service and Kansas Department of Wildlife & Parks, to allow for timely, site specific evaluation and concurrence that the activity, as conditioned under the general permit, is not likely to adversely affect listed species or their habitat.
  - a. Additional project specific conditions must be imposed if, through timely informal consultation between the U.S. Fish and Wildlife Service and the Office of Surface Mining (the lead Federal agency for these activities), they are determined to be necessary to avoid the likelihood of adverse effects to listed species or their habitat.
  - b. In the event that the likelihood of adverse effects to listed species or designated critical habitat cannot be avoided, authorization will not be provided under the general permit until such time as: i) formal consultation between the U.S. Fish and Wildlife Service and the Office of Surface Mining is initiated; ii) a non-jeopardy Biological Opinion is issued; and iii) the terms and conditions of any associated Incidental Take Statement are incorporated by reference in the general permit.

**APPENDIX III**  
**APPLICANT NOTIFICATION REQUIREMENTS**

1. If you wish to perform work under the authority of this General Permit, you must provide notification to the Corps of Engineers before you initiate any reclamation activity. You must submit the following information in this notification:

- (1) A completed application form ENG 4345, or equivalent information.
- (2) A clearly marked site location map.
- (3) Drawings showing the details of the proposed work.
- (4) An operation plan which describes how you will conduct the work, details how impacts to Waters of the United States, including wetlands, will be avoided and/or minimized, and measures to restore the site following completion of the activity.
- (5) For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands.

2. The District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, the District Engineer will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where the Office of Surface Mining or the State has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404 of the Clean Water Act.

3. You must receive written confirmation of authorization under this general permit from the Corps of Engineers before you start any reclamation or related activity affecting Waters of the United States.