

NPDES PERMIT NO. NM0029505

STATEMENT OF BASIS

FOR THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES.

Applicant: San Juan Coal Company – La Plata Mine
P.O. Box 210
La Plata, NM 87418

Issuing Office: U.S. Environmental Protection Agency
Region 6
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Permit Action: Proposed re-issuance of the current permit issued February 25, 2005, with an effective date of April 1, 2005, and an expiration date of December 31, 2008.

Date Prepared: September 30, 2008

40 CFR CITATION: Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of September 5, 2008.

CERTIFICATION - The permit is in the process of certification by the State agency following regulations promulgated at 40 CFR Part 124.53. A draft permit and draft public notice will be sent to the District Engineer, Corps of Engineers; to the Regional Director of the U.S. Fish and Wildlife Service; and to the National Marine Fisheries Service, prior to the publication of that notice.

FINAL DETERMINATION - The public notice describes the procedures for the formulation of final determinations.

I. PROPOSED EFFLUENT LIMITATIONS

There are changes from the current permit issued February 25, 2005, with an effective date of April 1, 2005, and an expiration date of December 31, 2008:

- A. Delete authorization for discharge from active mining areas;
- B. Delete outfalls 001, 002, 007 – 011, 013, 014, 017, 024, and 025;
- C. Delete technology-based effluent limitations for total settleable solids; and
- D. Change pH limitation range from 6.0 – 9.0 to 6.6 – 9.0.

II. APPLICANT ACTIVITY

Under the Standard Industrial Classification (SIC) Code(s) 1221, the applicant operates a coal mine at La Plata Mine. The La Plata Mine was a surface coal mine and is under reclamation process.

III. DISCHARGE LOCATION

As described in the application, the La Plata Mine is located at Highway 170, La Plata, in San Juan County, New Mexico. Storm runoffs are to varied tributaries of La Plata River in the Segment No. 20.6.4.402 of the San Juan River Basin.

IV. RECEIVING STREAM USES

The State has designated La Plata River for irrigation, marginal warmwater aquatic life, marginal coldwater aquatic life, livestock watering, wildlife habitat and secondary contact.

V. STREAM STANDARDS

The general and specific stream standards are provided in "State of New Mexico Standards for Interstate and Intrastate Surface Waters," (NM WQS) New Mexico Water Quality Control Commission, as amended through August 1, 2007.

VI. DISCHARGE DESCRIPTION

The geometric mean of water samples analyses from reclamations has demonstrated that discharges from reclamation areas have a reasonable potential to cause or contribute to a violation of total aluminum criteria for acute aquatic life and total selenium criteria for wildlife habitat use. Because dissolved aluminum was established for NM WQS and the permittee has reported total aluminum in the application, EPA proposes to include monitoring requirement for dissolved aluminum in addition to effluent limitations for total recoverable aluminum and total recoverable selenium the permit.

VII. TENTATIVE DETERMINATION

On the basis of preliminary staff review, the Environmental Protection Agency, after consultation with the State of New Mexico, has made a tentative determination to issue a permit for the discharge described in the application.

VIII. DRAFT PERMIT RATIONALE

The following section sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. Also set forth are any calculations or other necessary explanations of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions as required under 40 CFR Part 122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed:

A. REASON FOR PERMIT

The applicant operates the La Plata Mine which is a surface coal mine. No coal processing is conducted at the mine. The applicant anticipates potential activity in all mine lease areas and lists 22, down from 32, potential outfalls. It is proposed that the current permit be reissued with a five-year term, to coordinate with the EPA Basin Statewide Management Approach to Permitting in New Mexico, adopted March 2, 2000. This program, also known as the Statewide Basin Management Approach to permitting, is a comprehensive framework to better coordinate and integrate water resource management activities geographically by river basin.

B. TECHNOLOGY-BASED EFFLUENT LIMITATIONS AND/OR CONDITIONS

Surface water sample analytical results indicate that mine drainage has pH greater than 6.0, dissolved iron less than 10 mg/l, and net alkalinity greater than zero.

Because the permittee expects to complete the reclamation processes for the whole mine site by November, 2008, most of discharges will be from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas. The permittee requested to use the best management practices as an alternative to sampling and reporting discharge water quality for discharges from post-mining areas in accordance with Subpart H of 40 CFR 434. Therefore, best available technology (BAT) provisions for Western alkaline coal mining are incorporated into the proposed permit to replace effluent limitations and monitoring requirements for discharges from top soils covered post-mining areas. Technology-based effluent limitations and monitoring requirements for total settleable solids in the current permit are removed from this permit.

C. WATER QUALITY-BASED EFFLUENT LIMITATIONS AND/OR CONDITIONS

1. POST THIRD ROUND POLICY AND STRATEGY

Section 101 of the Clean Water Act (CWA) states that "...it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited..." To insure that the CWA's prohibitions on toxic discharges are met, EPA has issued a "Policy for the Development of Water Quality-Based Permit Limitations for Toxic Pollutants (49 FR 9016-9019, 3/9/84)." In support of the national policy, Region 6 adopted the "Policy for Post Third Round NPDES Permitting" and the "Post Third Round NPDES Permit Implementation Strategy" on October 1, 1992. The Regional policy and strategy are designed to insure that no source will be allowed to discharge any wastewater which (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical State water quality standard resulting in non-conformance with the provisions of 40 CFR Part 122.44(d); (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health.

2. AQUATIC TOXICITY TESTING

This draft permit does not propose the Whole Effluent Toxicity (WET) testing because discharges are either storm runoffs or impoundment overflows due to storm events.

3. DILUTION CALCULATIONS

The critical low flow (4Q3) for the receiving stream is zero and the critical dilution is 100%.

4. STATE STANDARDS

Applicable NM WQS apply to the discharge at the outfalls.

5. PERMITTING ACTION

Surface water data from reclamation areas indicate that the discharges would have reasonable potential to exceed total recoverable selenium standard for wildlife habitat use. Therefore, effluent limitation for total selenium is retained in the proposed permit. The monitoring frequency for water quality-based pollutants is once per month when discharge occurs. The discharge data has also demonstrated that discharges from reclamation areas have a reasonable potential to cause or contribute to a violation of NM Standards for aluminum. Because total aluminum, instead of dissolved aluminum, data were provided, monitoring of dissolved aluminum is included in addition to effluent limitation and monitoring requirement for total aluminum.

Water quality segment-specific pH range of 6.6 – 9.0 which is more stringent than the technology-based pH limit is proposed in the draft permit.

D. HUMAN HEALTH SCREENING

Surface water data from previous active mining area indicated that the discharge has no reasonable potential to violate human health standards for persistent pollutants.

IX. VARIANCE REQUESTS

No variance requests have been received.

X. ENDANGERED SPECIES

In accordance with requirements under section 7(a)(2) of the Endangered Species Act, EPA has reviewed this permit for its effect on listed threatened and endangered species and designated critical habitat. According to the most recent county listing of species posted on Fish and Wildlife Service's website for the State of New Mexico, the following species may be present in the county where the proposed NPDES discharge occurs: Black-footed ferret, Southwestern willow flycatcher, Colorado pikeminnow, Razorback sucker, Knowlton cactus, Mancos milk-vetch, Mexican spotted owl, and Mesa Verde cactus.

After review, EPA has determined that the reissuance of Permit No. NM0029505 will have "no effect" on listed threatened and endangered species nor will adversely modify designated critical habitat. EPA makes this determination based on the following:

1. Permit limitations are not less stringent than those in the previously issued permit, and this permit action does not authorize discharges from active mining areas.
2. No changes have been made to the US Fish and Wildlife list of threatened and endangered species and critical habitat designation in the area of the discharge since prior issuance of the permit.
3. EPA concluded "no effect" during the previous issuance of the permit in 2005, and has received no additional information since then which would lead to revision of that "no effect" determination.
4. EPA determines that Items 1, 2, and 3 result in no change to the environmental baseline established by the previous permit, therefore, EPA concludes that reissuance of this permit will have "no effect" on listed species and designated critical habitat.

XI. ADMINISTRATIVE RECORD

The following section is a list of the fact sheet citations to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR Part 124.9:

- A. PERMIT(S)- NPDES Permit No. NM0029505 issued on February 25, 2005 and expiring December 31, 2008.
- B. APPLICATION(S)- NPDES Re-application for Permit No. NM0029505 received

by EPA on July 1, 2008.

- C. WATER QUALITY STANDARDS CITATION(S)- New Mexico State Water Quality Standards for Interstate and Intrastate Surface Waters, Effective August 1, 2007.
- D. 40 CFR CITATION(S)- 40 CFR Part 434 for Coal Mining Point Source Category.