

NPDES PERMIT NO. NM0030996

STATEMENT OF BASIS

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

APPLICANT

Lee Ranch Coal Company
El Segundo Mine
P.O. Box 757
Grants, NM 87020

ISSUING OFFICE

U.S. Environmental Protection Agency
Region 6
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PREPARED BY

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DATE PREPARED

September 17, 2015

PERMIT ACTION

The Environmental Protection Agency (EPA) has made a tentative determination, after consultation with the NMED, to modify the current National Pollutant Discharge Elimination System (NPDES) permit issued on September 30, 2014, with an effective date of November 1, 2014, and an expiration date of October 1, 2019.

Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed in Title 40, Code of Federal Regulations, revised as of July 1, 2015.

DOCUMENT ABBREVIATIONS

In the document that follows, various abbreviations are used. They are as follows:

4Q3	Lowest four-day average flow rate expected to occur once every three-years
BAT	Best available technology economically achievable
BCT	Best conventional pollutant control technology
BPT	Best practicable control technology currently available
BMP	Best management plan
BOD	Biochemical oxygen demand (five-day unless noted otherwise)
BPJ	Best professional judgment
CBOD	Carbonaceous biochemical oxygen demand (five-day unless noted otherwise)
CD	Critical dilution
CFR	Code of Federal Regulations
cfs	Cubic feet per second
cfu	Colony forming units
COD	Chemical oxygen demand
COE	United States Corp of Engineers
CWA	Clean Water Act
DMR	Discharge monitoring report
DO	Dissolved oxygen
ELG	Effluent limitation guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FWS	United States Fish and Wildlife Service
mg/l	Milligrams per liter
ug/l	Micrograms per liter
lbs	Pounds
MG	Million gallons
MGD	Million gallons per day
NMAC	New Mexico Administrative Code
NMED	New Mexico Environment Department
NMIP	New Mexico NPDES Permit Implementation Procedures
NMWQS	New Mexico State Standards for Interstate and Intrastate Surface Waters
NPDES	National Pollutant Discharge Elimination System
MQL	Minimum quantification level
O&G	Oil and grease
POTW	Publically owned treatment works
RP	Reasonable potential
SS	Settleable solids
SIC	Standard industrial classification
s.u.	Standard units (for parameter pH)
SWQB	Surface Water Quality Bureau
TDS	Total dissolved solids
TMDL	Total maximum daily load
TRC	Total residual chlorine
TSS	Total suspended solids
UAA	Use attainability analysis
USGS	United States Geological Service
WLA	Waste Load allocation
WET	Whole effluent toxicity
WQCC	New Mexico Water Quality Control Commission
WQMP	Water Quality Management Plan
WWTP	Wastewater treatment plant

I. MODIFICATION TO EXISTING PERMIT

Modifications to the current permit issued on September 30, 2014, with an effective date of November 1, 2014, and an expiration date of October 1, 2019, are as follow:

- TDS limit has been changed at Outfall 1 to 41 in permit Part I.A.5.
- Language for the Sediment Control Plan has been revised in permit Part I.A.6.

II. APPLICANT LOCATION and ACTIVITY

As described in the application, the facility is located at 35 miles north of Milan, off State Road 509, Grants, in McKinley County, NM.

Under the SIC code 1221, the applicant operates a surface coal mine that produces approximately 8 million tons of sub-bituminous coal annually; the production began in 2008. Many discharges from multiple outfalls are to receiving water named Kim-me-ni-oli Valley Tributary, thence into Chaco River, a tributary of San Juan River (about 100 miles north-west of El Segundo Mine). Other discharges from multiple outfalls are to Inditos Draw, a tributary of Vought Draw, which flows into Arroyo Chico, then to Rio Puerco (about 60 miles southeast the mine area), a tributary of the Rio Grande River. The outfalls are sediment ponds (designed for at least a 25-year, 6-hour precipitation event) and one sewage evaporation pond. There are 52 outfalls, which many will be likely constructed in this permit term. The sewage evaporation pond (lagoon) is not intended to discharge to surface water; however, in case discharge occurs (probably by storm event), the receiving water is Kim-me-ni-oli Valley. Three outfalls have been removed from the existing permit and 26 outfalls have been added to this proposed permit. A map of the facility is attached.

The water in the facility that originates from private wells is transferred via pipeline for use at the preparation plant and shops, dust suppression along mine roads, and storage for drinking and sanitary uses. All of the water collected in the storage tank is used for drinking and sanitary uses. Sewage is transferred to the lagoon. Water originating from other sources, such as storm water runoff, is collected in sediment ponds where it either evaporates or infiltrates. Some of the water collected in sediment ponds may also be used for dust suppression purposes or discharge to receiving streams.

III. BASIS FOR PERMIT MODIFICATION

EPA Region 6 issued a renewed NPDES permit to the Lee Ranch Coal Company (LRCC) for its El Segundo surface coal mine in New Mexico on September 30, 2014. LRCC filed a petition for review with the Environmental Appeals Board on November 3, 2014. The challenge was based on LRCC's argument that two permit conditions should not have been included in the permit: Total Dissolved Solids effluent limitations of less than 1 ton/day (pursuant to the Colorado River Salinity Control Program) and a Sediment Control Plan from the Western Alkaline Coal Mining effluent limitation guidelines. On August 21, 2015, EPA and LRCC signed a settlement agreement providing that EPA Region 6 will modify the permit to include the two conditions of Total Dissolved Solids of less than 366 tons/year (also pursuant to the Colorado River Salinity Control Program) and a revisable Sediment Control Plan that incorporates Western Alkaline Coal Mining effluent limitations where they are applicable to the mining and reclamation activities. This permit modification is proposed pursuant to this settlement.

IV. DRAFT PERMIT RATIONALE AND PROPOSED PERMIT CONDITIONS

The permit modification is proposed in accordance with 40 CFR 124.5 and 124.19. The TDS limit is proposed to be changed from less than one ton/day to less than 366 ton/year in Part I.A.5 and language for the SCP in Part I.A.6 of the permit proposed to be revised. Only Part I.A.5 and Part I.A.6 of the permit are open for comments; comments to other permit conditions will not be considered.

VI. ANTIBACKSLIDING

The proposed modified permit is consistent with the requirements and exemption to meet Antibacksliding provisions of the Clean Water Act (CWA), Section 402(o) and 40 CFR Part 122.44(i)(B), which states in part that interim or final effluent limitations must be as stringent as those in the previous permit, unless information is available which was not available at the time of permit issuance, or substantial alterations to the permitted facility have been made. The proposed modification is consistent with the regulation.

VI. ANTIDEGRADATION

The NMAC, Section 20.6.4.8 "Antidegradation Policy and Implementation Plan" sets forth the requirements to protect designated uses through implementation of the State water quality standards. The limitations and monitoring requirements set forth in the proposed permit are developed from the State water quality standards and are protective of those designated uses. Furthermore, the policy sets forth the intent to protect the existing quality of those waters, whose quality exceeds their designated use. The proposed modification for TDS is consistent with the State WQS.

VII. ENVIRONMENTAL REVIEW

The facility is a new source pursuant to 40 CFR 434.11(j)(1). The permittee must comply with the environmental review requirements of 40 CFR 6.600 through 6.607. The permittee submitted an environmental assessment (EA) dated April 2014. After reviewing the EA, EPA believes there are not significant changes or adverse effects to the area compared to the EA dated April 2008 in terms of local ambient air quality, noise levels, floodplains, surface or groundwater quality or quantity, fish, wildlife and their natural habitats, habitat of threatened and endangered species, wetlands, farmland and cultural resources and historical preservations. A Finding of No Significant Impact (FNSI) was issued on June 27, 2008 to the facility. Because the most recent EA was prepared within six years from the previous one, EPA relies on the previous environmental review. Since there have been no significant changes, EPA will not issue another FNSI for no significant impacts anticipated at the project site. The proposed modifications make no change in term of the environmental review requirement.

VIII. ENDANGERED SPECIES CONSIDERATIONS

Modification for TDS is proposed to < 366 ton/year from < 1 ton/day. The new proposed limit is not increased in term of yearly basis and consistent with the State WQS. EPA anticipates there is no effect on the endangered/threatened species due to this modification.

IX. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

The proposed permit modifications should have no impact on historical and/or archeological sites since no construction activities outside the permitted area are planned in the reissuance.

XI. PERMIT REOPENER

The permit may be reopened and modified during the life of the permit if NMWQS are promulgated or revised. In addition, if the State develops a TMDL, this permit may be reopened to establish effluent limitations for the parameter(s) to be consistent with that TMDL. Modification of the permit is subject to the provisions of 40 CFR §124.5.

XII. CERTIFICATION

The permit is in the process of certification by the State Agency following regulations promulgated at 40 CFR 124.53. A draft permit and draft public notice will be sent to the District Engineer of COE, to the Regional Director of FWS and to the National Marine Fisheries Service prior to the publication of that notice.

XIII. FINAL DETERMINATION

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

XIV. ADMINISTRATIVE RECORD

Permit NM0030996 issued September 30, 2014, the proposed modified permit, and documents used to issue the permit and propose this modification.