

# Exhibit 4

## **DECLARATION OF RANDY JOHNSON**

1. My name is Randy Johnson and I am the President of Best Coal, Inc. I am an adult, competent to testify, and have personal knowledge of the facts set forth in this declaration. I am making, and I understand that I am making, this statement under penalty of perjury.

2. Best Coal, Inc. is a member of the Alabama Coal Association. The Alabama Coal Association is a member of the National Mining Association.

3. Best Coal, Inc. was incorporated in Alabama on March 9, 1988. Best Coal, Inc.'s principal place of business is 2910 Glovers Bend Road, Dora, Alabama 35062. Our main office is located at 300 2<sup>nd</sup> Avenue SW, Suite 201, Wachovia Bank Building, Cullman, Alabama 35055. We have surface mined coal in Jefferson, Tuscaloosa, Walker and Marion counties.

4. Best Coal, Inc. has always mined coal in accordance with all county, state and federal regulations. Our mining performance history with all government agencies has been one of cooperation and compliance. We have been awarded numerous Sentinels of Safety Awards by the United States Department of Labor, Mine Safety and Health Administration for our outstanding safety record. We were a host mine for the Office of Surface Mining's (OSM) training sessions in 2008 and 2009. We also reclaim our mining in a timely manner.

5. Best Coal, Inc. is a member of the Alabama Coal Cooperative (“ACC”) and under contract to mine/sell 240,000 tons of coal each year (20,000 tons per month) to fulfill the ACC’s current contract with Alabama Power Company that runs through December 31, 2015.

6. Best Coal, Inc. is presently mining the Narley Mine reserve in Jefferson County. This mine was opened in 2004.

7. Best Coal, Inc. applied originally with ADEM for an NPDES permit for the Narley Mine on August 7, 2003. Best Coal Inc.’s original NPDES permit for the Narley Mine (ADEM NPDES Permit No. AL0075752) was issued by ADEM on October 31, 2003. Permit No. 0075752 covered 8 total outfalls. Permit No. AL0075752 expired on October 31, 2008.

8. In 2005, in order to provide Alabama Power Company with 20,000 tons of coal per month under the ACC’s contract with Alabama Power Company, Best Coal, Inc. made the commitment to increase the production at the Narley Mine, and to secure leases for the Jagger Mine reserve<sup>1</sup> and the proposed Narley #3 Mine reserve. To meet the contract, it was necessary to add the Jagger reserve because recoverable tonnage at the Narley mine was expected to start decreasing. Adding the Narley #3 Mine reserve would be necessary for the same reason.

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<sup>1</sup> The Jagger Mine site was originally named Narley Mine #2.

9. Best Coal, Inc. applied to ADEM for a renewal and a modification of Permit No. AL0075752 on July 15, 2008. The modification would provide for the addition of 17 additional outfalls that would be associated with the operation of the Jagger Mine site and 16 additional outfalls for the Narley No. 3 Mine site. Best Coal, Inc. submitted a check in the amount of \$3470.00 to ADEM to pay the renewal fee for the permit on July 9, 2008.

10. ADEM acknowledged that Best Coal Inc.'s permit renewal and modification application was complete on October 29, 2009. On the same date, ADEM released a draft permit reissuing Permit No. AL0075752 and modifying it to include the additional 17 outfalls needed for the Jagger Mine site operations and 16 more outfalls for the Narley No. 3 Mine. ADEM issued a permit rationale on the same day, justifying ADEM's issuance of the renewed and modified permit.

11. Around the time that ADEM released a draft reissued and modified Permit No. AL0075752, Best Coal, Inc. was informed by ADEM that EPA had requested an additional 90 days to review the contents of the draft permit and to provide comments to ADEM regarding the same. ADEM also informed Best Coal, Inc. that EPA would not be approving the issuance of any NPDES permits for coal mining operations until certain changes were made to ADEM's NPDES permitting standards for surface mining operations. Best Coal, Inc. was informed that EPA had entered into a Memorandum of Understanding ("MOU") with the U.S. Army

Corps of Engineers concerning surface coal mining and that EPA's concerns over water quality related to surface coal mining was the reason for the delay. ADEM stated that they would not be issuing any additional final NPDES permits for coal mining operations until these issues were resolved with EPA. In the spring of 2010, Best Coal, Inc. was informed by ADEM that final renewal and modification of Permit No. AL0075752 would be further delayed by new EPA guidance concerning conductivity issued in April of 2010.

12. The permitting process for reissuance and modification of NPDES permit No. AL0075752 has already taken much longer than any previous NPDES permit application submitted to ADEM by Best Coal, Inc. In the past, six months has been a more normal time line. Of the last 3 total NPDES permit applications submitted to ADEM by Best Coal, Inc. it never took more than 12 months from the time of permit application to issuance of a final NPDES permit. In 2008-2009, the process to renew our NPDES Permit No. AL0072052 for the Cooper Mine took 12 months due to delays caused by EPA involvement.

13. In September of 2008, Best Coal, Inc. also conducted a jurisdictional determination under Section 404 of the Clean Water Act for dredge and fill activity associated with the proposed Jagger Mine. All jurisdictional and related mitigation documentation was submitted to the Mobile, Alabama District Office of the U.S. Army Corps of Engineers on approximately September 10, 2008, as part of Best

Coal, Inc.'s Section 404 permit application for the Jagger Mine. A revised jurisdictional determination and mitigation document was submitted to the Corps on approximately December 20, 2009. Best Coal, Inc.'s jurisdictional determination and mitigation document was again revised in May and July of 2010.

14. The Corps has failed to take any final action on Best Coal Inc.'s Section 404 permit application for the proposed Jagger Mine and Mine#3 activities. The Corps has informed Best Coal, Inc. that the delay in issuance of a modified Section 404 permit is due to EPA's review of the project and EPA's concerns over water quality based on EPA's MOU with the Corps. Through the MOU, EPA required that the Corps include in Best Coal, Inc.'s 404 permit many limitations and monitoring requirements that had never before been included in any Section 404 permit prior to the MOU. Among other things, EPA asked the Corps to include conductivity monitoring and remedial requirements in the event instream conductivity levels rose to more than 500  $\mu\text{S}/\text{cm}$  as a monthly average for two successive quarters at any sampling location. Remedial measures would include reducing the disturbed area footprint, instituting additional controls, or ceasing further mining activity. The Corps never before included water monitoring requirements of any kind in Best Coal, Inc.'s Section 404 permits.

15. Best Coal, Inc. developed a ten year plan to meet the terms of the ACC's contract with Alabama Power. In addition to expanding mining operations to include the Jagger reserve and Narley Mine #3, we hired 10 new employees and purchased equipment totaling approximately \$6,700,000.

16. Best Coal, Inc. mined/sold 88,613 tons in 2004, 167,557 tons in 2005, 221,232 tons in 2006, 254,442 tons in 2007, 252,530 tons in 2008 and 195,295 tons in 2009. Through June 2010, we have mined and sold only 75,863 tons. We were not able to ship our contract tonnage in 2009 and through June 2010 because our NPDES 402 and U.S. Corps 404 Permits for the Jagger Mine and Mine #3 have been held up due to EPA's directive concerning enhanced water quality standards.

17. Based on past experience with ADEM and the Corps, we anticipated the renewal and modification of our current NPDES permit and issuance of a Section 404 permit at the beginning of 2009. If these permits had been issued in 2009, the Jagger Mine would have been opened and we could have mined and sold the following tonnage thru June 2010:

<u>Period</u>	<u>Contract Tonnage</u>	<u>Actual Mined/Sold</u>	<u>Shortage</u>
2009 (12 months)	240,000	195,285	44,715
2010 (6 months)	120,000	75,863	44,138

18. The total shortage for this 18 month period, described above, is 88,853 tons. This shortage has created a severe hardship for Best Coal, Inc. as summarized below:

- Best Coal, Inc. contracted through Alabama Coal Cooperative to sell Alabama Power Company 1,200,000 tons of coal. Without NPDES and Section 404 permits for the Jagger Mine and Narley #3 Mine, we will not be able to honor our contract.
- The total lost revenue through June 2010 suffered by Best Coal, Inc. due to the shortfall described above is as follows:

2009 – 44,715 Tons @ \$78.52 =	\$3,511,022
<u>2010 – 44,138 Tons @ \$71.95 =</u>	<u>\$3,175,729</u>
Total Lost Revenue.....	\$6,686,751

- Best Coal, Inc. laid off four production operators and one equipment mechanic on October 13, 2009. We would have transferred these five employees and added another 2 employees to mine the Jagger reserve.
- We already purchased additional equipment in 2009 to use at the Jagger Mine. This equipment cost approximately \$2,800,000. The equipment is idle but the bank notes for this equipment are right at \$60,705 per month.
- The life of our company will be shortened by 4 years and 6 months if the NPDES and Section 404 permits are not issued. Without these

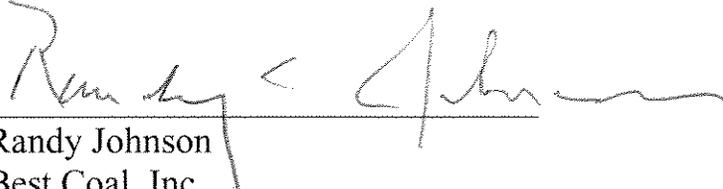
permits, we will be forced to close mining operations in approximately 18 months. In fact, due to the decreasing production at Narley Mine, we need to start laying off employees and selling equipment to lower our cost and loan debt in the very near future.

- We currently have 23 employees and one equipment mechanic. Our employees' annual earnings range between \$48,000-\$94,000. We provide life and short term disability insurance. We pay 81% of their health/dental insurance (\$1,115/month family coverage, \$430 single coverage.) The loss of these jobs and insurance coverage will devastate their lives.
- Engineering Cost: Through June 2010, we have spent \$115,243 on the permit process for the Jagger Mine and \$63,456 for the Narley #3 Mine.
- Advance Royalties: Through June 2010, we have spent \$27,500 on advance royalties in order to secure leases from land owners.

19. In closing, our company is in a crisis. We want to finish our 10 year plan but we are not mining the tonnage sufficient to support even our equipment payments. We survived to this point in 2010 with cash from prior years profit but that cash is now gone. We literally exist from week to week. We have cost that cannot be recovered if the NPDES and Section 404 permits are not issued. Today,

we are mining every possible ton to pay our employees, vendor bills, and bank note payments. If these permits are not issued, we will be out of business within 18 months.

20. In accordance with 28 U.S.C. § 1746, I hereby verify and state under penalty of perjury that the foregoing is true and correct. Executed by me on this 15th day of September, 2010.

  
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Randy Johnson  
Best Coal, Inc.