PERMIT FOR A SOLID WASTE MANAGEMENT FACILITY

NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL QUALITY – DIVISION OF WASTE MANAGEMENT
TELEPHONE: 701-328-5166 REV. 04/2026

Pursuant to Chapter 23.1-08 of the North Dakota Century Code (NDCC), (Solid Waste Management and Land Protection Act), and Article 33.1-20 of the North Dakota Administrative Code (NDAC), (Solid Waste Management Rules), and in reliance on statements and representations heretofore made by the owner or owner's representative designated below, a permit is hereby issued authorizing such Permittee (Permittee) to construct and operate a solid waste management facility at the designated location under any and all conditions.

A. Owner/Operator (Permittee):

1. **Name:** Rainbow Energy Center, LLC – Coal Creek Station

2. **Mailing Address:** 2875 3rd St SW., Underwood, ND 58576

3. **Location Address:** 2875 3rd St SW., Underwood, ND 58576

B. Permit Number: 0033

C. Solid Waste Management Units:

1. CCR Landfill
- **a.** Southeast Section 16

2. CCR Surface Impoundment – To Be Closed with Waste-In Place
- **a.** Upstream Raise 91

3. CCR Surface Impoundment
- **a.** Drains Pond System (West Cell and Center Cell)

4. Closed CCR Unit
- **a.** Upstream Raise 92

5. Non-CCR Surface Impoundments
- **a.** Drains Pond System (East Cell)
- **b.** Southeast Section 16 Contact Water Collection Area

D. Location Information:

1. **General: Sections** 16 and 17, **Township** 145 North, **Range** 82 West of McLean County

2. **Permit Area:** As described in referenced documents and facility files – approximately 3,270 (Coal Creek Station Facility) acres of which 320 acres are usable for solid waste activities.

3. **Latitude:** 47.388315º **Longitude:** -101.13613º

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E. General Conditions:

E.1. The Permittee of the facility is subject to the Solid Waste Management and Land Protection Act (NDCC Chapter 23.1-08), the Solid Waste Management Rules (NDAC Article 33.1-20), all other North Dakota and federal laws, rules or regulations and orders now or hereafter effected by the North Dakota Department of Environmental Quality (hereinafter the Department), and to all conditions of this permit.

E.2. Compliance with terms of this permit does not constitute a defense to any order issued or any action brought under NDCC Chapter 23.1-08, NDAC Article 33.1-20, NDCC Chapter 23.1-04, NDAC Article 33.1-24, Sections 3013, 7003, or 3008(a) of Resource Conservation and Recovery Act (RCRA), Sections 106(a), 104 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et. seq.) or any other law providing for protection of public health or the environment.

E.3. Issuance of this permit does not convey property rights of any sort or any exclusive privilege, nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of state or local law or regulations. (NDAC Section 33.1-20-02.1-06)

E.4. It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. (NDAC Section 33.1-20-02.1-04)

E.5. This permit is based on the premise that the information submitted by the Permittee is accurate and that the facility will be or has been constructed and will be operated or has been as specified in the application and all related documents. Any inaccuracies or misrepresentations found in the application may be grounds for the termination or modification of this permit. The Permittee must inform the Department of any deviation from, or changes in, the information in the application which would affect the Permittee's ability to comply with the applicable rules or permit conditions. (NDAC Section 33.1-20-02.1-07)

E.6. The Permittee shall at all times properly operate and maintain the facility, solid waste management units, and related appurtenances which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance/quality control procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of this permit. (NDAC Section 33.1-20-02.1-04)

E.7. The Permittee shall give notice to the Department of any planned physical alterations or additions to permitted solid waste management units. Any physical change in, or change in the method of the operation of, a treatment or disposal operation shall be considered to be construction, installation or establishment of a

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new operation. No construction, installation or establishment of a new operation shall be commenced unless the Permittee thereof shall file an application for, and receive, a permit from the Department. (NDAC Section 33.1-20-02.1-04 and NDAC Section 33.1-20-02.1-07)

a. The Permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

b. The Permittee shall provide to appropriate representatives that will be involved in routine operation of the facility a copy of the approved Plan of Operation (including waste acceptance procedures). The training and educational material shall be repeated and/or amended as necessary to ensure compliance with the waste acceptance procedures and the permit.

c. Whenever the Permittee becomes aware that the Permittee failed to submit any relevant facts in the permit application or submitted incorrect information in the permit application or in any report to the Department, the Permittee shall promptly submit such facts or information.

E.8. The Permittee shall construct, operate, maintain and close the solid waste management units and the facility according to the criteria of law and rule, conditions of this permit, and other reasonable precautions to prevent or minimize, if applicable, any environmental impacts including, but not limited to, fugitive dust emissions, objectionable odors, air toxics and gas emissions, spills, litter, and contamination of surface water and groundwater. (NDAC Section 33.1-20-02.1-04 and NDAC Subsections 33.1-20-04.1-02(1) – (6))

E.9. The Permittee shall furnish to the Department, within a reasonable time, any relevant information which the Department may request to determine whether cause exists for modifying, reissuing or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit. (NDAC Section 33.1-20-02.1-07 and NDAC Section 33.1-20-04.1-04)

E.10. This permit may be modified, revoked and reissued, or terminated for cause as specified in NDAC Section 33.1-20-02.1-07. The filing of a request for permit modification, revocation and reissuance, termination, or the notification of planned changes or anticipated noncompliance on the part of the Permittee does not stay the applicability or enforceability of any permit condition.

This permit may be renewed as specified in NDAC Section 33.1-20-02.1-08. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology, compliance with state rules and permit, as well as changes in applicable regulations.

E.11. This permit addresses only the environmental aspects and operational procedures of the facility. It does not supersede local zoning authority or any other requirements of any political subdivision of the state. The Permittee must obtain

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any and all local zoning, conditional use permits, or meet any other county, township or municipal requirements prior to commencing construction and/or operation. (NDAC Section 33.1-20-02.1-06 and SFN 19269)

E.12. The Permittee shall design, close, maintain and operate the facility in a manner to minimize the possibility of a fire, explosion or any unplanned sudden or nonsudden release of solid waste or solid waste constituents to air, soil, groundwater or surface water which could threaten human health or the environment. (NDAC Section 33.1-20-04.1-02)

E.13. Any entity that controls the permit holder (Permittee) agrees to accept responsibility for any remedial measures, closure and postclosure care or penalties incurred by the Permittee. For purposes of this permit, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote 25% or more of any class of voting shares of a permit holder, or the direct or indirect power to control in any manner the election of a majority of the directors of a permit holder, or to direct the management or policies of a permit holder, whether by individuals, corporations, partnerships, trusts, or other entities or organization of any type. Within thirty (30) days of the issuance of this permit, if not previously provided with the application, or within thirty (30) days of the existence of any new controlling entity, the Permittee shall submit to the Department the name of the controlling entity, a statement signed by the controlling entity in which the controlling entity agrees to accept responsibility for any remedial measures, closure, and postclosure care or penalties incurred by the Permittee and a disclosure statement from the controlling entity containing the same information as required from permit applicants under NDCC Section 23.1-08-17. (NDCC Subsection 23.1-08-09(1))

E.14. All personnel involved in solid waste handling and in the facility operation or monitoring must be provided a copy of this permit and shall be instructed in specific procedures to ensure compliance with the permit, the facility plans and the state rules as necessary to prevent accidents and environmental impacts. Documentation of training such as names, dates, description of instruction methods and copies of certificates awarded must be placed in the facility's operating record. (NDAC Section 33.1-20-04.1-02)

E.15. Except as modified by conditions of this permit or future approvals from the Department, this facility and related solid waste management units and structures shall be designed, constructed, operated and closed in accordance with previous correspondence and documents contained in Departmental files pertaining to this facility. Future submittals approved by the Department may supersede or supplement items that were submitted previously. (NDAC Section 33.1-20-02.1-04)

E.16. All facility reports shall be submitted to the Department in a digital or electronic format as a searchable PDF format document unless otherwise requested and shall be submitted via the Combined Environmental Regulatory Information System – North Dakota (CERIS-ND) at https://ceris.deq.nd.gov/ext/ncore/external/home. In some cases, the Department

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may request hard copies in addition to electronic format.

Recordkeeping and reporting shall be in accordance with NDAC Section 33.1-20-04.1-04 and as described in the approved Plan of Operations.

The Permittee shall submit an annual report to the Department by March 1st of each year in accordance with NDAC Subsection 33.1-20-04.1-04(3).

The Permittee shall submit an annual ground water monitoring and corrective action report to the Department by March 1st of each year in accordance with NDAC Subdivision 33.1-20-08-06(1)(e).

E.17. The Permittee shall notify the Department within five (5) days of any wastes rejected and not accepted by the facility and submit the Department's Waste Rejection Report (SFN 60120) via the Combined Environmental Regulatory Information System – North Dakota (CERIS-ND) at https://ceris.deq.nd.gov/ext/ncore/external/home. (NDAC Subsection 33.1-20-04.1-02(8))

E.18. Within sixty (60) days of the issuance of this permit, if not already completed, the Permittee shall record a notarized affidavit with the County Recorder. The affidavit shall specify that this facility, as noted in the legal description, is permitted to accept solid wastes for disposal. This affidavit shall specify that another affidavit must be recorded upon the facility's final closure.

Upon closure, a second affidavit shall be recorded specifying any final details regarding the types of waste disposed at the facility, as well as any final details regarding the facility's location, construction, management, etc.

The Department must be provided a copy of both affidavits, certified by the County Recorder of the county in which the facility is located. The copies must be forwarded to the Department within thirty (30) days of recorded dates, or if notification has already been completed, within thirty (30) days of the permit issuance date. (NDAC Section 33.1-20-02.1-05)

F. CCR Landfill Specific Conditions:

F.1. The following wastes are prohibited from disposal at this facility:

- Hazardous waste
- Regulated infectious waste;
- TENORM waste; and
- Used oil as a free liquid;

(NDAC Section 33.1-20-02.1-04)

F.2. The facility is approved only for the disposal of coal combustion residuals and other wastes as identified in the permit application, Departmentally approved facility waste acceptance plan, elsewhere in this permit, or through Departmental

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correspondence. The facility may accept other types of special waste upon approval from the Department.

"Coal combustion residuals (CCR)" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. Coal combustion residuals is a subset of special waste. (NDAC Subsection 33.1-20-01.1-03(11))

"Special waste" means solid waste that is not a hazardous waste regulated under chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste. (NDCC Subsection 23.1-08-02(16))

F.3. The facility shall be operated in accordance with the Fugitive Dust Control Plan (NDAC Subdivision 33.1-20-08-05(1)(b))

F.4. The annual fugitive dust control report shall be submitted with the annual report due March 1st of each year in accordance with Condition E.16. (NDAC Subdivision 33.1-20-08-05(1)(c))

F.5. The Permittee shall prepare a Run-On and Run-Off Control System Plan in accordance with NDAC Subdivision 33.1-20-08-05(2)(c).

At a minimum, the plan shall be revised every five (5) years from the date of the previous revision in accordance with NDAC Paragraph 33.1-20-08-05(2)(c)(4).

The Permittee shall submit the plan to the Department for review and approval. The plan shall be placed in the facility's operating record upon Department approval.

F.6. The facility shall be operated in full accordance with the approved plan of operation and the waste screening provisions. (NDAC Section 33.1-20-04.1-03)

F.7. Waste accepted at the facility shall not be stored, stockpiled or placed anywhere on the facility other than the approved disposal area. (NDAC Subdivision 33.1-20-04.1-03(1)(b))

F.8. The Permittee shall conduct inspections in accordance with NDAC Subsection 33.1-20-08-05(5).

F.9. No area of the landfill final cover, including, but not limited to, support berms and the outer slopes of any drainage control berm/swale shall be greater than the 25% (4:1) maximum slope allowed by NDAC Paragraph 33.1-20-04.1-09(4)(b)(3).

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F.10. All earthen material must be maintained on-site (to be used for all construction, cover, closure and revegetation activities) unless removal from the site is approved by the Department. (NDAC Subdivision 33.1-20-04.1-09(2)(k))

F.11. Suitable plant growth material (SPGM) topsoil and SPGM subsoil shall be used for site closure. Any extra material shall be stored in approved areas for use in site maintenance and closure repair. All SPGM shall be replaced upon site or area reclamation. (NDAC Subdivision 33.1-20-04.1-09(2)(f))

G. CCR Surface Impoundment Specific Conditions:

G.1. The following wastes are prohibited from disposal at this facility:

- Hazardous waste
- Regulated infectious waste;
- TENORM waste; and
- Used oil as a free liquid;

(NDAC Section 33.1-20-02.1-04)

G.2. The facility is approved only for the disposal of coal combustion residuals and other wastes as identified in the permit application, Departmentally approved facility waste acceptance plan, elsewhere in this permit, or through Departmental correspondence. The facility may accept other types of special waste upon approval from the Department.

"Coal combustion residuals (CCR)" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. Coal combustion residuals is a subset of special waste. (NDAC Subsection 33.1-20-01.1-03(11))

"Special waste" means solid waste that is not a hazardous waste regulated under chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste. (NDCC Subsection 23.1-08-02(16))

G.3. The facility shall be operated in full accordance with the approved plan of operation and the waste screening provisions. (NDAC Section 33.1-20-04.1-03)

G.4. The Permittee shall conduct inspections in accordance with NDAC Subsection 33.1-20-08-05(4).

G.5. At a minimum, the Permittee shall conduct and complete the following periodic assessments every five (5) years from the date of the previous assessment in accordance with NDAC Paragraph 33.1-20-08-04(3)(f)(3):

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a. Hazard potential classification assessment (NDAC Paragraph 33.1-20-08-04(3)(a)(2))

b. Structural stability assessment (NDAC Paragraphs 33.1-20-08-04(3)(d)(1) – (3))

c. Safety factor assessment (NDAC Paragraphs 33.1-20-08-04(3)(e)(1) and (2))

Upon completion of an assessment, the Permittee shall submit the assessment to the Department for review and approval. The assessment shall be placed in the facility's operating record upon Department approval.

G.6. The Permittee shall prepare an Inflow Design Flood Control System Plan in accordance with NDAC Subdivision 33.1-20-08-05(3)(c).

At a minimum, the plan shall be revised every five (5) years from the date of the previous revision in accordance with NDAC Paragraph 33.1-20-08-05(2)(c)(4).

Upon completion of a revision to a plan, the Permittee shall submit the plan to the Department for review and approval. The plan shall be placed in the facility's operating record upon Department approval.

H. Closed CCR Unit Specific Conditions:

H.1. The facility shall be closed in accordance with the approved closure plan. (NDAC Subdivision 33.1-20-08-07(3)(b))

H.2. Postclosure care shall be conducted in accordance with NDAC Subdivision 33.1-20-08-07(5)(b) and the approved postclosure plan. (NDAC Subdivision 33.1-20-08-07(5)(d))

I. Non-CCR Surface Impoundment Specific Conditions:

I.1. All non-CCR surface impoundments shall be constructed, operated, maintained and inspected in accordance with NDAC Chapter 33.1-20-08.1.

All non-CCR surface impoundments shall be maintained and inspected to ensure orderly operation and ensure adequate storage capacity, and two (2) foot of freeboard must be maintained. After significant runoff events, prior to winter freeze-up, and/or in anticipation of a period of heavy precipitation, the non-CCR surface impoundment's capacity shall be restored as soon as practicable to ensure at least a 25-year, 24-hour stormwater management capacity. (NDAC Subdivision 33.1-20-04.1-09(3)(a))

The non-CCR surface impoundments shall not be used for management of stormwater that has not been in contact with waste. The non-CCR surface impoundments shall be protected from surface water run-on from adjacent areas. (NDAC Subdivision 33.1-20-04.1-09(3)(d))

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I.2. The facility shall be operated in full accordance with the approved plan of operation and the waste screening provisions. (NDAC Section 33.1-20-04.1-03)

I.3. The liquid within the non-CCR surface impoundments shall be sampled at the same frequency and for the same parameters as in the facility's approved Groundwater Monitoring Plan. The analytical results shall be submitted to the Department with the groundwater monitoring report. (NDAC Subdivision 33.1-20-04.1-04(4))

J. Facility Specific Conditions:

J.1 The facility is approved to accept the following wastes:

- Coal combustion residuals from Coal Creek Station
- Coal combustion residuals from Spiritwood Energy Plant
- Inert waste from Coal Creek Station
- Other wastes identified in the facility's approved waste acceptance plan

J.2. Sequential closure of solid waste disposal units shall be implemented as described in the approved closure plan. (NDAC Subdivision 33.1-20-04.1-03(1)(g), NDAC Subsection 33.1-20-04.1-05(2), NDAC Subdivision 33.1-20-04.1-05(5)(d) and NDAC Subdivision 33.1-20-08-07(3)(b))

The largest approved open area is 246 acres before sequential partial closure must be initiated. (NDAC Subparagraph 33.1-20-08-07(3)(b)(1)(e))

J.3. The Permittee shall obtain and analyze a representative sample of leachate/contact water contained in any leachate collection or accumulation or system, sump and/or other accumulation area, any surface impoundment and stormwater pond at the same frequency and for the same parameters in the facility's approved groundwater monitoring program. The analytical results shall be submitted to the Department with the groundwater monitoring report. (NDAC Paragraph 33.1-20-04.1-09(3)(e)(2))

Should questions or issues arise, the Permittee shall contact the North Dakota Department of Environmental Quality at 701-328-5166.

In consideration of information provided regarding the facility and its operation and in consideration of the conditions above, the North Dakota Department of Environmental Quality hereby issues a permit to the **Rainbow Energy Center, LLC**.

This permit is effective as of **Permit Effective Date** and shall remain in effect until **Permit Expiration Date**, unless modified, superseded, or revoked under Section 33.1-20-02.1-07 NDAC or continued in accordance with Section 33.1-20-02.1-08 NDAC.

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Charles R. Hyatt, Director
Division of Waste Management

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