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GOVERNOR

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DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF WATER
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LEONARD K PETERS
SECRETARY

FACT SHEET

KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT TO DISCHARGE TREATED WASTEWATER INTO WATERS OF THE COMMONWEALTH

KPDES No.: KYG050000 Permit Writer: Larry Sowder Date: April 20, 2009
AI No.: 35050

SYNOPSIS OF APPLICATION

Name and Address of Applicant

The surface owners/controllers of lands that contain abandoned pre-SMCRA coal mined lands and abandoned mineral mined lands.

Facility Location

Those lands are located within the 120 counties of the Commonwealth of Kentucky.

Description of Applicant's Operation

Abandoned pre-SCMRE coal mined lands and abandoned mineral mined lands.

Production Capacity of Facility

Not Applicable

Description of Existing Pollution Abatement Facilities

Treatment provided ranges from none to neutralization and sedimentation, depending upon the quality of the discharge.

Permitting Action

Reissuance of a general permit for existing discharges associated with abandoned pre-SMCRA coal mined lands, abandoned mineral mined lands and associated activities previously conducted in the Commonwealth of Kentucky.

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RECEIVING WATERS

Receiving Water Name

Those water bodies of the Commonwealth that comprise the Mississippi and Ohio River basins and sub-basins within the political and geographic boundaries of Kentucky.

Stream Segment Use Classifications

Classifications are those designated in 401 KAR 5:026, Section 1(2).

Some of these watersheds may be listed in Kentucky's most recent 303(d) list of impaired waters. Watersheds on this list may be impaired for a variety of reasons and may require the development of Total Maximum Daily Loads (TMDLs) for certain pollutants. Should a TDML be developed for a watershed covered by this permit, then sites covered by this permit may be required to obtain an individual permit to implement the recommendations of the TDML.

Stream Segment Antidegradation Categorization

Includes those water bodies which have been categorized as High Quality Waters, pursuant to 401 KAR 5:030, Section 3, and the permittee has accepted the more stringent limitations.

Included are those water bodies which have been categorized as Impaired Waters, pursuant to 401 KAR 5:030, Section 4, and which have been listed in the most recently developed 305 (b) report or 303(d) list, as impaired for pollutants not commonly associated with coal mining.

Stream Low Flow Condition

The 7-day, 10-year low flow conditions of the receiving streams can range from zero (0) cubic feet per second (cfs) to 111,000 cfs for the Mississippi River.

3. REPORTED DISCHARGE AND PROPOSED LIMITS

Description of Discharge - Surface water runoff from abandoned mined areas, seeps from abandoned underground mined areas, abandoned treatment facilities, etc.

Effluent Characteristics	Reported Discharge		Proposed Limits		Applicable Water Quality Criteria and/or Effluent Guidelines
	Monthly	Daily	Monthly	Daily	
	Average	Maximum	Average	Maximum	

Effluent characteristics from these areas include but are not limited to: Flow, Total Suspended Solids, Dissolved Solids, Settleable Solids, Total Recoverable Metals, Hardness, Sulfates, Sulfides, Nitrates, Nitrites, Phosphorous, ph, etc. in varying amounts and concentrations. With the implementation of the Kentucky Watershed Management Plan and the on-going development of various TMDLs, the Division on Water is not proposing imitations on theses discharges. As the TMDLs are complete and watersheds are evaluated under the Kentucky Watershed Management Plan, sites covered under this permit may be required to obtain individual permits to implement the results. In the interim, the surface owners/controllers of these sites shall employ Best Management Practices (BMPs) in an effort to control adverse environmental impact. Should these sites become the focus of federal, state, local, or private remediation, reclamation, or demonstration projects, then the contract, agreement or other enabling document shall be incorporated by reference as conditions of this permit. The entity or entities performing these functions shall adhere to the conditions of these documents until such time as the documents expire. At that time the surface owner/controller shall again employ appropriate BMPs to control adverse environmental impact.

METHODOLOGY USED IN DETERMINING LIMITATIONS

Serial Number

Surface water runoff from abandoned mined areas, seeps from abandoned underground mined areas, abandoned treatment facilities, etc.

Effluent Characteristics

Effluent characteristics from these areas include but are not limited to: Flow, Total Suspended Solids, Dissolved Solids, Settleable Solids, Total Recoverable Metals, Hardness, Sulfates, Sulfites, Nitrates, Nitrites, Phosphorous, pH, etc.

Pertinent Factors

These abandoned pre-SMCRA coal mined lands and abandoned mineral mined lands may or may not have been affected since mining ceased and the site was abandoned

These sites may become the focus of federal, state, local, or private remediation, reclamation, or demonstration projects.

The surface owner/controller has the overall responsibility for the environmental impact a site may have on a water of the Commonwealth.

The Division of Water is implementing the Kentucky Watershed Management Plan and developing TMDLs for various impaired watersheds throughout the Commonwealth.

Monitoring Requirements

No monitoring requirements are being imposed.

Justification of Limits

The Kentucky Administrative Regulations (KARs) cited below have been duly promulgated pursuant to the requirements of Chapter 224 of the Kentucky Revised Statutes (KRSs).

In the "Best Professional Judgment" (BPJ) of the Division of Water, pursuant to 401 KAR 5:080, Section 1(2)(c)2, the use of the source BMPs for the control of adverse environmental impact from these sites is more effective than the application of effluent limitations and monitoring. The Division of Water has based this determination on the following factors:

Variations in the size and type of abandoned mined lands. Types of abandoned mine lands include pre SMRCA coal mines, clay mines, limestone quarries, sand and gravel pits, tar sand mining, rock asphalt mines, shale mines, fluorspar mines, and other mineral mines. These mines range in size from less than one acre to over a hundreds acres.

The variability of the volume, frequency, chemical composition, and quality of the effluents from these sites. The volume of the discharge is precipitation dependent and may range from less than a gallon per minute base flow to several cubic feet per minute depending on the volume of precipitation and environmental conditions. The frequency of the discharges will vary from intermittent to continuous. The chemical composition is dependent upon the type mineral extracted, the overlying and underlying formations, and the processing of the extracted mineral. The quality of the discharge may vary from extremely poor to meeting the criteria established for the support of aquatic life.

Justification of Limits -continued

The implementation of the Kentucky Water Management Plan and the development of TMDLs by the Division of Water. With the implementation of this plan, the Division of Water is coordinating the evaluation of the watersheds comprising the Ohio and Mississippi River basins within the physical and political boundaries of the Commonwealth of Kentucky. As a result of this process, a TMDL may be developed for a watershed which could result in the imposition of specific requirements on those dischargers within that watershed.

Antidegradation

The conditions of 401 KAR 5:029, Section 1 have been satisfied by this permit action. This permit action involves the reissuance of a general permit for storm water runoff from abandoned mine lands. The requirements specified by 401 KAR 5:030, Section 1(2)(b)1 a or (3)(b)1 a have been satisfied. Further review under 401 KAR 5:030 Section 1 is not applicable.

Proposed Compliance Schedule for Attaining Effluent Limitations

Permittee shall comply with the effluent limitations by the effective date of the permit.

Proposed Special Conditions Which Will Have A Significant Impact On The Discharge

Best Management Practices (BMP) Plan

Pursuant to 401 KAR 5:065, Section 2(10), a BMP requirement shall be included to control or abate the discharge of pollutants from ancillary areas containing toxic or hazardous substances which could result in an environmental emergency, where numeric effluent limitations are infeasible, or to carry out the purposes and intent of KRS 224. The facility has several areas where support activities occur which have a potential of the discharge of such substances through storm water runoff or spillage. Some of these areas will drain to present wastewater treatment plants, others will not.

Permit Duration

5 years

Permit Information

The application, draft permit, fact sheet, public notice, comments received, and additional information is available from the Division of Water at 200 Fair Oaks Lane, Frankfort, Kentucky 40601.

Reference And Cited Documents

All materials and documents referenced or cited in this fact sheet are a part of the permit information as described above and are readily available at the Division of Water Central Office. Information regarding these materials may be obtained for the person listed below.

Contact

For further information contact the individual identified on the Public Notice or the Permit Writer- Ross Bishop at (502)564-8158, extension 459 or e-mail Ross.Bishop@ky.gov.

Public Notice Information

Please refer to the attached Public Notice for details regarding the procedures for a final permit decision, deadline for comments, and other information required by KAR 5:075, Section 4(2)(e).

KPDES



KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

PERMIT

PERMIT NO.: KYG050000
AI NO.: 35050

AUTHORIZATION TO DISCHARGE UNDER THE KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

Pursuant to Authority in KRS 224,

The surface owners/controllers of lands that contain abandoned pre-SMCRA coal mined lands and abandoned mineral mined lands.

is authorized to discharge from a facility located at

Those coal mining operations located within the 120 counties of the Commonwealth of Kentucky.

to receiving waters named

Those water bodies of the Commonwealth that comprise the Mississippi and Ohio River basins and sub-basins within the political and geographic boundaries of Kentucky.

in accordance with effluent limitations, monitoring requirements, and other conditions set forth in PARTS I, II, III, and IV hereof. The permit consists of this cover sheet, and PART I 2 pages, PART II 6 page, PART III 2 page, and PART IV 3 pages.

This permit shall become effective on June 1, 2009.

This permit and the authorization to discharge shall expire at midnight, May 31, 2014.

A handwritten signature in black ink, appearing to read 'Sandra L. Gruzesky', located above the printed name of the Director.

April 20, 2009
Date Signed

Sandra L. Gruzesky, Director
Division of Water

A1. REPORTED DISCHARGE AND PROPOSED LIMITS

Description of Discharge Surface water runoff from abandoned mined areas, seeps from abandoned underground mined areas, abandoned treatment facilities, etc.

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
	(lbs/day)		Other Units (Specify)		Measurement <u>Frequency</u>	Sample <u>Type</u>
	Monthly <u>Avg.</u>	Daily <u>Max.</u>	Monthly <u>Avg.</u>	Daily <u>Max.</u>		

Effluent characteristics from these areas include but are not limited to: Flow, Total Suspended Solids, Dissolved Solids, Settleable Solids, Total Recoverable Metals, Hardness, Sulfates, Sulfides, Nitrates, Nitrites, Phosphorous, ph, etc. in varying amounts and concentrations. With the implementation of the Kentucky Watershed Management Plan and the on-going development of various TMDLs, the Division on Water is not proposing imitations on theses discharges. As the TMDLs are complete and watersheds are evaluated under the Kentucky Watershed Management Plan, sites covered under this permit may be required to obtain individual permits to implement the results. In the interim, the surface owners/controllers of these sites shall employ Best Management Practices (BMPs) in an effort to control adverse environmental impact. Should these sites become the focus of federal, state, local, or private remediation, reclamation, or demonstration projects, then the contract, agreement or other enabling document shall be incorporated by reference as conditions of this permit. The entity or entities performing these functions shall adhere to the conditions of these documents until such time as the documents expire. At that time the surface owner/controller shall again employ appropriate BMPs to control adverse environmental impact.

B. SCHEDULE OF COMPLIANCE

The permittees shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated.

STANDARD CONDITIONS FOR KPDES PERMIT

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

The following KPDES permit conditions apply to all discharges authorized by this permit pursuant to 401 KAR 5:065, Section 1.

(1) Duty to comply.

(a) General requirement.

The permittee shall comply with all conditions of this permit. Any permit noncompliance shall constitute a violation of KRS Chapter 224, among which shall be the following remedies: enforcement action, permit revocation, revocation and reissuance, or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions established under 40 CFR Part 129 as of July 1, 2001, as adopted without change, within the time provided in the federal regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Any person who violates a permit condition as set forth in the KPDES administrative regulations shall be subject to penalties under KRS 224.99-010(1) and (4).

(2) Duty to reapply.

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit as required in 401 KAR 5:060, Section 1.

(3) Need to halt or reduce activity not a defense.

It shall not be a defense for a 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.

(4) Duty to mitigate.

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper operation and maintenance.

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also shall include adequate laboratory controls, and appropriate quality assurance procedures. This provision shall require the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only if the operation is necessary to achieve compliance with the conditions of the permit.

STANDARD CONDITIONS FOR KPDES PERMIT

(6) Permit actions.

The permit may be modified, revoked and reissued, or revoked for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, shall not stay any permit condition.

(7) Property rights.

This permit shall not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to provide information.

The permittee shall furnish to the cabinet, within a reasonable time, any information which the cabinet may request to determine whether cause exists for modifying, revoking and reissuing, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the cabinet, upon request, copies of records required to be kept by this permit.

(9) Inspection and entry.

The permittee shall allow the cabinet, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records pertinent to the KPDES program are or may be kept;

(b) Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring KPDES program compliance or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individuals who performed the sampling or measurements;
3. The dates analyses were performed;
4. The individuals who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of the analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.

(e) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

STANDARD CONDITIONS FOR KPDES PERMIT

(11) Signatory requirement.

All applications, reports, or information submitted to the cabinet shall be signed and certified as indicated in 401 KAR 5:060, Section 9. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

(12) Reporting requirements.

(a) Planned changes.

The permittee shall give notice to the cabinet as soon as possible of any planned physical alteration or additions to the permitted facility. Notice shall be required only if:

1. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in 401 KAR 5:080, Section 5; or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification only applies to pollutants which are subject either to effluent limitations in the permit, or to notification requirements under 401 KAR 5:080, Section 5.

(b) Anticipated noncompliance.

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

(c) Transfers.

The permit shall not be transferable to any person except after notice to the cabinet. The cabinet may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate other requirements as may be necessary under KRS Chapter 224.

(d) Monitoring reports.

Monitoring results shall be reported at the intervals specified in the permit. Monitoring results shall be reported as follows:

1. Monitoring results shall be reported on a Discharge Monitoring Report (DMR).
2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.
3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the cabinet in the permit.

(e) Compliance schedules.

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

STANDARD CONDITIONS FOR KPDES PERMIT

(f) Twenty-four (24) hour reporting.

The permittee shall follow the provisions of 401 KAR 5:015 and shall orally report any noncompliance which may endanger health or the environment, within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. This report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The cabinet may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours. The following shall be included as events which shall be reported within twenty-four (24) hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in subsection (13) of this section.
2. Any upset which exceeds any effluent limitation in the permit.
3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the cabinet in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this administrative regulation.

(g) Other noncompliance.

The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this subsection, when monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.

(h) Other information.

Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the cabinet, it shall promptly submit these facts or information.

(13) Occurrence of a bypass.

(a) Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. This type of bypass shall not be subject to the provisions of paragraphs (b) and (c) of this subsection.

(b) Notice.

1. Anticipated bypass.

If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 1.

2. Unanticipated bypass.

The permittee shall submit notice of an unanticipated bypass as required in subsection (12)(f) of this section, twenty-four (24) hour notice. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.

STANDARD CONDITIONS FOR KPDES PERMIT

(c) Prohibition of a bypass.

1. Bypassing shall be prohibited, and the cabinet may take enforcement action against a permittee for bypass, unless:

a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition shall not be satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The permittee submitted notices as required under paragraph (b) of this subsection.

2. The cabinet may approve an anticipated bypass, after considering its adverse effects, if the cabinet determines that it will meet the three (3) conditions listed in subparagraph 1a, b, and c of this paragraph.

(14) Occurrence of an upset.

(a) Effect of an upset.

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of paragraph (b) of this subsection are met.

(b) Conditions necessary for a demonstration of an upset.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the causes of the upset;

2. The permitted facility was at the time being properly operated;

3. The permittee submitted notice of the upset as required in subsection (12)(f) of this section; and

4. The permittee complied with any remedial measures required under subsection (4) of this section.

(c) Burden of proof.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset shall have the burden of proof.

(15) Additional conditions applicable to specified categories of KPDES permits.

The following conditions, in addition to others set forth in this administrative regulation, shall apply to all KPDES permits within the categories specified below:

STANDARD CONDITIONS FOR KPDES PERMIT

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers.

In addition to the reporting requirements under subsections (12), (13), and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the cabinet as soon as it knows or has reason to know:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. 100 micrograms per liter (100 µg/l);

b. 200 micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2(7);

d. The level established by the cabinet in accordance with Section 2(6) of this administrative regulation.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. 500 micrograms per liter (500 µg/l);

b. One (1) milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2(7); or

d. The level established by the cabinet in accordance with Section 2(6) of this administrative regulation.

(b) POTWs.

1. POTWs shall provide adequate notice to the cabinet of the following:

a. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the KPDES administrative regulations if it were directly discharging those pollutants; or

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

2. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTWs and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PART III

ADDITIONAL REQUIREMENTS

NOTICE OF INTENT (NOI) CONTENTS

Due to the number of potential sites that are eligible for this permit, the wide variability of the surface owners/controllers and their resources, and the limited resources of the Division of Water, only large surface owners/controllers will be required to submit an NOI for coverage under this permit. All others will receive automatic inclusion unless the Division of Water specifically requests a notice of intent. Large surface owners/controllers are those individuals or entities that control an accumulative 25% or more of the surface area within a watershed or control surface areas in more than one (1) watershed.

Section I - Permittee Information

Applicant Name, Mailing Address, City, State, Zip Code, Contact Name, Contact Telephone Number and E-mail Address

Section II - General Site Description

Give a narrative description of the types of land use, abandoned mined lands, number of discharges, acreage, condition of discharges and receiving stream, etc.

Section III - Map Requirements

Provide a map or maps of appropriate scale with following minimum information to be included - property boundary, discharge points with latitudes and longitudes, name of permittee

Section IV - Certification

Name, Official Title, Signature and Date of person certifying the information provide is true and accurate, and the date signed.

Section V - NOI Preparer Information

Preparer Name, Mailing Address, City, State, Zip Code, Phone Number and E-mail Address

The Notice of Intent (NOI) shall be submitted to the Division of Water electronically using a CD or e-mail as an Adobe Acrobat PDF file.

PART III

ADDITIONAL REQUIREMENTS - continued

REOPENER CLAUSE

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under 401 KAR 5:050 through 5:086, if the effluent standard or limitation so issued or approved:

1. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
2. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.

INDIVIDUAL PERMIT

An individual KPDES permit may be required if the Division of Water determines that such a permit is necessary to facilitate the reclamation or remediation of a watershed or should the activities of the permittee result in degradation of the waters of the Commonwealth beyond the current conditions.

PART IV

BEST MANAGEMENT PRACTICES

SECTION A. GENERAL CONDITIONS

1. Applicability

These conditions apply to all permittees who use, manufacture, store, handle, or discharge any pollutant listed as: (1) toxic under Section 307(a)(1) of the Clean Water Act; (2) oil, as defined in Section 311(a)(1) of the Act; (3) any pollutant listed as hazardous under Section 311 of the Act; or (4) is defined as a pollutant pursuant to KRS 224.01-010(35) and who have ancillary manufacturing operations which could result in (1) the release of a hazardous substance, pollutant, or contaminant, or (2) an environmental emergency, as defined in KRS 224.01-400, as amended, or any regulation promulgated pursuant thereto (hereinafter, the "BMP pollutants"). These operations include material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas.

2. BMP Plan

The permittee shall develop and implement a Best Management Practices (BMP) plan consistent with 401 KAR 5:065, Section 2(10) pursuant to KRS 224.70-110, which prevents or minimizes the potential for the release of "BMP pollutants" from ancillary activities through plant site runoff; spillage or leaks, sludge or waste disposal; or drainage from raw material storage. A Best Management Practices (BMP) plan will be prepared by the permittee unless the permittee can demonstrate through the submission of a BMP outline that the elements and intent of the BMP have been fulfilled through the use of existing plans such as the Spill Prevention Control and Countermeasure (SPCC) plans, contingency plans, and other applicable documents.

3. Implementation

If this is the first time for the BMP requirement, then the plan shall be developed within 90 days of the effective date of the permit. Implementation shall be within 180 days of that submission. For permit renewals the plan in effect at the time of permit reissuance shall remain in effect. Modifications to the plan as a result of ineffectiveness or plan changes to the facility shall be submitted to the Division of Water and implemented as soon as possible.

4. General Requirements

The BMP plan shall:

- a. Be documented in narrative form, and shall include any necessary plot plans, drawings, or maps.
- b. Establish specific objectives for the control of toxic and hazardous pollutants.
 - (1) Each facility component or system shall be examined for its potential for causing a release of "BMP pollutants" due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.

- (2) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances which could result in a release of "BMP pollutants," the plan should include a prediction of the direction, rate of flow, and total quantity of the pollutants which could be released from the facility as result of each condition or circumstance.
- c. Establish specific Best Management Practices to meet the objectives identified under paragraph b of this section, addressing each component or system capable of causing a release of "BMP pollutants."
- d. Include any special conditions established in part b of this section.
- e. Be reviewed by plant engineering staff and the plant manager.

5. Specific Requirements

The plan shall be consistent with the general guidance contained in the publication entitled "NPDES Best Management Practices Guidance Document," and shall include the following baseline BMPs as a minimum.

- a. BMP Committee
- b. Reporting of BMP Incidents
- c. Risk Identification and Assessment
- d. Employee Training
- e. Inspections and Records
- f. Preventive Maintenance
- g. Good Housekeeping
- h. Materials Compatibility
- i. Security
- j. Materials Inventory

6. SPCC Plans

The BMP plan may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under Section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMP plan by reference.

7. Hazardous Waste Management

The permittee shall assure the proper management of solid and hazardous waste in accordance with the regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1978 (RCRA) (40 U.S.C. 6901 et seq.) Management practices required under RCRA regulations shall be referenced in the BMP plan.

8. Documentation

The permittee shall maintain a description of the BMP plan at the facility and shall make the plan available upon request to NREPC personnel. Initial copies and modifications thereof shall be sent to the following addresses when required by Section 3:

Division of Water
Surface Water Permits Branch
Permit Support Section
200 Fair Oaks Lane
Frankfort, Kentucky 40601

9. **BMP Plan Modification**

The permittee shall amend the BMP plan whenever there is a change in the facility or change in the operation of the facility which materially increases the potential for the ancillary activities to result in the release of "BMP pollutants."

10. **Modification for Ineffectiveness**

If the BMP plan proves to be ineffective in achieving the general objective of preventing the release of "BMP pollutants," then the specific objectives and requirements under paragraphs b and c of Section 4, the permit, and/or the BMP plan shall be subject to modification to incorporate revised BMP requirements. If at any time following the issuance of this permit the BMP plan is found to be inadequate pursuant to a state or federal site inspection or plan review, the plan shall be modified to incorporate such changes necessary to resolve the concerns.

SECTION B. SPECIFIC CONDITIONS

The following items may be incorporated into the BMP plan:

Management of the stormwater runoff within the DNR Surface Disturbance Mining Permit boundary that is not directed to the pit or a sediment structure shall be addressed under the BMP plan.

The Groundwater Protection Plan as required by 401 KAR 5:037

The conditions of any 401 Water Quality Certification granted to the operation.



STEVEN L BESHEAR
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF WATER
200 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40601-1190
www.kentucky.gov

LEONARD K PETERS
SECRETARY

April 20, 2009

Ms Judith Petersen
Executive Director
Kentucky Waterways Alliance
222 Bakery Square
120 Webster Street
Louisville, Kentucky 40206

Re: General Permit for Abandoned Mine Lands
KPDES No.: KYG050000
AI No.: 35050

Dear Ms Petersen:

Your comments concerning the above-referenced draft permit have been reviewed and responses prepared in accordance with Kentucky Pollutant Discharge Elimination System (KPDES) regulation 401 KAR 5:075, Section 12. The comments have been briefly described below and our responses to those comments follow:

COMMENT 1: The Kentucky Waterways Alliance (KWA) recommends that the Division of Water require individual permits for those sites discharging to "High Quality Waters". The Sixth Court has remanded those portions of 401 KAR 5:030 that grant blanket exemptions to coal mining activities. In regards to discharges to impaired waters the Division of Water must ensure that discharges from mining activities do not cause or contribute to the impairment. KWA recommends the Division require individual permits for these sites also and establish monitoring requirements.

RESPONSE 1: The Division of Water must first apologize for the conflicting nature of the language in the permit. This general permit does not provide authorization for any active mining activities. The permit is only for those existing sites where coal mining ceased prior to the passage of the Surface Mining Reclamation and Enforcement Act of 1977 or where other mineral extraction sites were abandoned prior to the implementation of current reclamation requirements. The permit authorizes the discharge of stormwater runoff from these sites.

RESPONSE TO COMMENTS

KPDES Permit No: KYG050000

AI No.: 35050

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Any person aggrieved by the issuance of a permit final decision may demand a hearing pursuant to KRS 224.10-420(2) within thirty (30) days from the date of the issuance of this letter. Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470, and the regulations promulgated thereto. The request for hearing should be submitted in writing to the Natural Resources and Environmental Protection Cabinet, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions regarding these responses, please contact Larry Sowder, KPDES Branch, at (502) 564-8158, extension 472.

Further information on procedures and legal matters pertaining to the hearing request may be obtained by contacting the Office of Administrative Hearings at (502) 564-7312.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra L. Gruzesky". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Sandra L. Gruzesky, Director
Division of Water

SLG:JMB:LJS