



STATE OF MISSISSIPPI
PHIL BRYANT
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
TRUDY D. FISHER, EXECUTIVE DIRECTOR

March 15, 2012

Certified Mail No. 7011 3500 0000 3106 4270
Mr. Michael F. McNair
Regulatory Branch Chief
U.S. Army Corps of Engineers, Vicksburg District
4155 Clay Street
Vicksburg, Mississippi 39183-3435

Dear Mr. McNair:

Re: Intent to Deny
Nationwide Permit No. 21b
Warren County
COE No. MVK-2012-196
WQC No. WQC2012031b

The Department of Environmental Quality (Department) has reviewed the public notice submitted to our office dated February 21, 2012. This notice served as a request for Section 401 Water Quality Certification of the U.S. Army Corps of Engineer's Nationwide Permits.

This letter pertains in particular to Nationwide Permit 21 (b), which reads as follows:

Nationwide Permit No. 21b – Surface Coal Mining Activities authorizes discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations.

(b) Other Surface Coal Mining Activities. Surface coal mining activities that were not previously authorized by the NWP 21 issued on March 12, 2007, are authorized by this NWP, provided the following criteria are met:

- (1) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or as part of an integrated permit processing procedure by the Department of Interior, Office of Surface Mining Reclamation and Enforcement;
- (2) The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear

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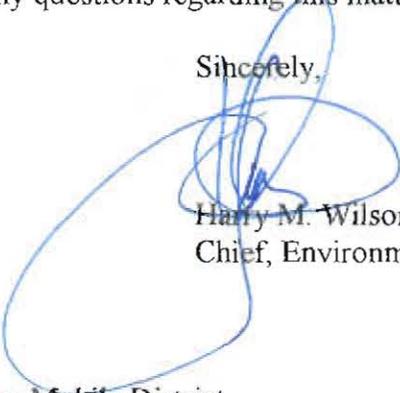
feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal individual and cumulative adverse effects. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

- (3) The discharge is not associated with the construction of valley fills. A “valley fill” is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

Notification: For activities under paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 31.)

Because the proposed activity in conjunction with other activities may result in adverse cumulative impacts, the Department has not been assured that appropriate measures will be taken to eliminate unreasonable degradation and irreparable harm to waters of the State. Therefore, the Department cannot certify that the project will be in compliance with Section 401 Water Quality Certification Regulations and intends to deny the request. Please contact Carrie Barefoot of my staff at (601) 961-5322 if you have any questions regarding this matter.

Sincerely,



Harry M. Wilson III, P.E., DEE
Chief, Environmental Permits Division

HMW: cb

cc: U.S. Army Corps of Engineers, Mobile District
Attn: Mr. Craig Litteken, Regulatory Branch Chief
U.S. Army Corps of Engineers, Memphis District
Attn: Mr. Tim H. Flinn, Acting Regulatory Branch Chief
U.S. Army Corps of Engineers, Nashville District
Attn: Mr. Brad Bishop, Western Regulatory Section Chief
Mr. Jan Boyd, Department of Marine Resources
Ms. Kathy Lunceford, U.S. Fish and Wildlife Service
Mr. William Cox, Environmental Protection Agency