



**STATE OF MISSISSIPPI**  
TATE REEVES  
GOVERNOR

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**  
CHRIS WELLS, EXECUTIVE DIRECTOR  
December 11, 2020

Ms. Jennifer Mallard  
U.S Army Corps of Engineers,  
Vicksburg District  
4155 Clay Street  
Vicksburg, Mississippi 39183-3435

Re: US Army COE,  
Nationwide Permit No. 21  
WQC No. WQC2020048

Pursuant to Section 401 of the Federal Water Pollution Control Act (33 U. S. C. 1251, 1341), the Office of Pollution Control (OPC) issues this Certification, after public notice and opportunity for public hearing, to the U.S. Army Corps of Engineers, an applicant for a Federal License or permit to conduct the following activity:

US Army COE, Nationwide Permit No. 21:

Nationwide Permits (NWP) are general permits issued on a nationwide basis to streamline the authorization of activities that have no more than minimal and cumulative adverse effects on the aquatic environment. The U.S. Army Corps of Engineers issues NWPs to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.

21. *Surface Coal Mining Activities*. Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:

(a) 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 by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;

(b) The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

December 11, 2020

(c) 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:* The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.) (Authorities: Sections 10 and 404) [NWP No. 21, WQC2020048].

On October 29, 2020, the Department issued a letter stating intentions to deny the project based on the concern that the proposed activity in conjunction with other activities may result in adverse cumulative impacts. As required for Water Quality Certification as set forth in 11 Mississippi Administrative Code Part 6, Chapter 1, Subchapter 3, the Department has provided 30 days for these concerns to be addressed. To date no further correspondence regarding this denial has been received by the Department. Therefore, the Department denies your request for a Section 401 Water Quality Certification.

Chapter 3 Section VI, Part A of the State of Mississippi Water Quality Certification Regulations provides as follows:

2. Within thirty days after the date the Department denies and/or revokes certification, an applicant may file a written request for an informal review with the Department. The Department shall fix the time and place of such informal review and shall notify the applicant thereof.
3. Within thirty days after (1) the date the Department denies certification or (2) the date of the informal review in which the Department makes a decision to continue to deny certification, the applicant may file a written request for a formal hearing before the Permit Board. The request shall set forth grounds for the hearing request and be made in accordance with Miss. Code Ann. 49-17-29(4)(b).

If you have any questions, please contact Leah Drinnon of my staff at (601) 961-5624.

Sincerely,



Chris Sanders, P.E. BCEE,  
Office of Pollution Control Director

CS: ld

cc: U.S. Army Corps of Engineers, Mobile District  
U.S. Army Corps of Engineers, Memphis District  
U.S. Army Corps of Engineers, Nashville District  
U.S. Army Corps of Engineers, New Orleans District  
Department of Marine Resources  
U.S. Fish and Wildlife Service  
U.S Environmental Protection Agency, Region 4