



STATE OF MISSISSIPPI  
PHIL BRYANT  
GOVERNOR  
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
GARY C. RIKARD, EXECUTIVE DIRECTOR

March 6, 2017

Certified Mail No. 7016 2070 0000 7232 9842

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

Dear Ms. Mallard:

Re: US Army Corps of Engineers  
Nationwide Permit No. 21  
Warren County  
COE No. MVK-2017-114  
WQC No. WQC2017021

The Mississippi Department of Environmental Quality (Department) has received and reviewed the public noticed dated January 6, 2017, in which the U.S. Army Corps of Engineers requested Section 401 Water Quality Certification for the Nationwide Permits. This letter pertains solely to Nationwide Permit No. 21 *Surface Coal Mining Activities*, which reads as follows:

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 as part of an integrated permit processing procedure by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;

WQC2017021

OFFICE OF POLLUTION CONTROL

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(b) The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear 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 no more than minimal individual and cumulative adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

(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 and receive written authorization prior to commencing the activity. (See general condition 32.) [MVK2017-114, WQC2017021]

On February 2, 2017, 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 address. 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.

11 Miss. Admin. Code Pt. 6, R. 1.3.6 *Review and Appeals* 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 Ms. Leah Drinnon of my staff at (601) 961-5520.

Sincerely,



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

CS: ld

cc: U.S. Army Corps of Engineers, Mobile District  
Attn: Mr. Craig Litteken  
U.S. Army Corps of Engineers, Memphis District  
Attn: Mr. Tim Fudge  
U.S. Army Corps of Engineers, Nashville District  
Attn: Mr. Timothy Wilder  
U.S. Army Corps of Engineers, New Orleans District  
Attn: Mr. Michael Farabee  
Ms. Willa Brantley, Department of Marine Resources  
Mr. David Felder, U.S. Fish and Wildlife Service  
Mr. William Ainsley, Environmental Protection Agency