



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 9859

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. 44
Warren County
COE No. MVK-2017-114
WQC No. WQC2017044

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. 44 *Mining Activities*, which reads as follows:

44. *Mining Activities*. Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities, provided the activity meets all of the following criteria:

(a) For mining activities involving discharges of dredged or fill material into non-tidal wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal wetlands;

(b) For mining activities involving discharges of dredged or fill material in non-tidal open waters (*e.g.*, rivers, streams, lakes, and ponds) the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed 1/2-acre; and

(c) The acreage loss under paragraph (a) plus the acreage impact under paragraph (b) does not exceed 1/2-acre.

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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 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 non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction-notification to the district engineer prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification. [MVK-2017-114, WQC2017044]

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

