

June 5 & 7, 2012

**Kentucky DEP Comments to the U.S. Environmental Protection Agency:
Notice of Public Hearings Regarding 36 EPA Objections to Draft Kentucky NPDES
Permits for Discharges Associated with Coal Mining.**

Public Notice Issuance Date: April 16, 2012

Water Docket - Docket ID:EPA-HQ-OW-2012-0315
Environmental Protection Agency
Mail Code: 2822-1T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Good afternoon/evening. My name is Bruce Scott. I am the Commissioner of the Kentucky Department for Environmental Protection. Thank you for the opportunity to provide comments today regarding EPA's pending objections to 36 draft Kentucky NPDES permits for discharges associated with coal mining operations in Eastern Kentucky.

The Commonwealth of Kentucky has been delegated authority by USEPA to administer the NPDES program in Kentucky since 1983. Since 1983 there have been ten's of thousands of NPDES permits proposed and issued by Kentucky for wastewater and stormwater discharges across the Commonwealth ranging from individual homes, to cities, to industries, to coal mining operations. The agency is aware of only one prior instance where an EPA permit objection of a Kentucky proposed draft NPDES permit may have occurred. That was approximately 25 years ago for an industrial operation. No previously proposed NPDES permit for a coal mining operation has ever previously been objected to. However, since April 2010, EPA has objected to approximately 40 proposed individual NPDES coal mining permits and has approved only one individual NPDES permit for a new or expanded surface coal mining operation in Eastern Kentucky.

Since receiving NPDES program delegation in 1983, Kentucky has maintained conformance with federal EPA regulatory requirements. Simply stated, Kentucky's regulations and regulatory requirements are the same as the federal EPA regulations and regulatory requirements. With regard to the 36 EPA permit objections subject to the public hearing here today, it is noteworthy to point out that EPA has not made any changes to the federal NPDES regulations that are subject to these permits since April 2010. In addition, there have been no changes to the applicable state or federal water quality standards that apply to Kentucky waters that are at issue in these permit objections since April 2010. The question therefore must be asked, what state or federal regulations have changed that has resulted in these EPA permit objections since April 2010.

While that question remains pending, Kentucky has continued to work extensively with EPA to address EPA's evolving comments and concerns that have been expressed over the past two plus years. Kentucky has provided numerous proposed draft permits both formally and informally consistent with existing state and federal regulations in an effort to resolve these objections. We remain committed and hopeful that resolution to these objections can be achieved.

With specific respect to the EPA permit objections subject to this public hearing, EPA's stated concerns primarily fall into two categories. First, with respect to how the reasonable potential analysis – or RPA - was performed to determine whether the proposed discharges have a reasonable potential to cause or contribute to a violation of Kentucky's water quality standards, and secondly, the establishment of permit requirements in accordance with the determinations of that reasonable potential analysis.

With respect to the first issue, Kentucky followed existing EPA approved RPA procedures, regulations, and application requirements consistent with 40 CFR 122.44 and 40 CFR 122.21. Specifically, Kentucky evaluated available discharge data and/or requested discharge data where it was unavailable, as per existing regulatory requirements and permitting procedures.

With respect to the second issue, Kentucky imposed a combination of chemical specific limitations and monitoring requirements, whole effluent toxicity (WET) limitations and monitoring requirements, Best Management Practices (BMP's) requirements, and instream biological assessment requirements and limitations. In addition to addressing individual parameter RPA requirements, the narrative water quality standard for conductivity and total dissolved solids is met via the combination of these permit requirements consistent with 40 CFR 122.44. In addition, the instream biological assessment requirements are designed to address the site specific nature of the receiving stream as specified in the narrative water quality standard cited in 401 KAR 10:031 Section 4(1)(f).

In light of these facts, we respectfully request that EPA withdraw its permit objections. We look forward to continuing to work with EPA in our ongoing effort to bring resolution to these issues in a timely manner.

Thank you again for the opportunity to provide these brief comments. We will be providing additional written comments on these EPA permit objections. Thank you.