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General Certification--Nationwide Permit # 21 Surface Coal Mining Operations 2021

This General Certification is effective **December 18, 2020**, in conformity with the requirements of Section 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341), as well as Kentucky Statutes KRS 224.16-050 and KRS 224.16-070.

For this General Certification and all General Certifications of Nationwide Permits (NWP), the term 'surface water' is defined pursuant to 401 KAR Chapter 10, Section 1(72): Surface Waters means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

As required by 40 CFR Part 121 – State Certification of Activities Requiring a Federal License or Permit, all conditions include a statement explaining why the condition is necessary to assure that any discharge authorized under the general permit will comply with water quality requirements and a citation to federal, state, or tribal law that authorizes the condition. The statements and citations are included with each condition. The statements are written entirely at the end of the certification under the section *Statements of Necessity*.

The Commonwealth of Kentucky hereby certifies under Section 401 of the Clean Water Act (CWA) that it has reasonable assurances that applicable water quality standards under Kentucky Administrative Regulations Title 401, Chapter 10, established pursuant to Sections 301, 302, 306 and 307 of the CWA, will not be violated for the activity covered under NATIONWIDE PERMIT 21, namely Surface Coal Mining Operations, provided that the conditions in this General Certification are met. Activities that do not meet the conditions of this General Certification require an Individual Section 401 Water Quality Certification.

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1. Activities occurring within surface waters assessed by the Kentucky Division of Water as designated Outstanding State Resource Waters, National Resource Waters, or Cold Water Aquatic Habitat are not authorized under this General Certification and require an Individual Certification. [Statement A and citations KRS 224.16-070(1)(c), KRS 224.70-110, 401 KAR 10:030, Section 1(1), Section 1(2), & Section 1(3); and 401 KAR 10:031, Section 4(2) & Section 8] These surface waters can be identified using the [401 Water Quality Certification Web Viewer](#).
2. This activity is not authorized under this General Certification if cumulative impacts will impact more than 1 acre of wetland. [Statement A and citations KRS 224.16-070(1)(c), KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]
3. Stream impacts that occur in a stream with a watershed less than 480 acres in drainage above the most downstream permanent structure. For projects without permanent structures, stream impacts are limited to those with a watershed less than 480 acres in drainage above the most downstream point of disturbance. [Statement A and citations KRS 224.16-070(1)(c), KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]
4. All earthwork operations shall be carried out so that sediment runoff and soil erosion to waters of the Commonwealth are controlled and minimized. Best management practices (BMPs) for water pollution control shall be used by the surface coal mining operation. [Statement A and citations KRS 224.16-070(2)(a) KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]
5. Heavy equipment, such as bulldozers, backhoes, and draglines, shall not be used or operated within waters of the Commonwealth outside of the boundaries of a permanent structure, unless that use cannot be avoided. If use of heavy equipment within waters of the Commonwealth outside the boundaries of a permanent structure is unavoidable, then the work shall be performed so as to minimize resuspension of sediments and disturbance to substrates, banks, or riparian vegetation. [Statement A and citations KRS 224.16-070(2)(b) KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]
6. Measures shall be taken to prevent and to control spills of fuels, lubricants, and other materials from entering waters of the Commonwealth. [Statement A and citations KRS 224.16-070(2)(c) KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]
7. Any fill or riprap shall be of a composition that shall not cause violations of water quality standards by adversely affecting the biological, chemical, or physical

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properties of waters of the Commonwealth. If riprap is used, it shall be of a weight and size that bank stress or slump conditions shall not occur. [Statement A and citations KRS 224.16-070(2)(d) KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]

8. Removal of riparian vegetation outside the boundaries of a permanent structure shall be minimized. [Statement A and citations KRS 224.16-070(2)(e) KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]
9. The Kentucky Division of Water requires submission of a formal application for any federal applicant that is not required to submit a Preconstruction Notification that would typically be required of any non-federal applicant. [Statements A and D and citations KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]
10. The Kentucky Division of Water may require submission of a formal application for an Individual Certification for any project that has been determined to likely have a significant adverse effect upon water quality or degrade surface waters so that existing uses of the water body or downstream waters are precluded. [Statement A and citations KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]
11. If the final issued General Permit for this Nationwide Permit changes significantly, the Division of Water may opt to deny certification for this permit. [Statements A and D and citations KRS 224.70-110, 401 KAR 10:030, Section 1(3)(b) & Section 1(4)(b); and 401 KAR 10:031, Section 2 & Section 4]

Statements of Necessity

- A. This condition is necessary to protect waters categorized under the anti-degradation policy to protect the designated and existing uses and to maintain the associated water quality criteria necessary to protect these water resources.
- B. This condition is necessary to protect existing uses and the level of water quality necessary to protect those existing uses shall be assured in impaired water.
- C. This condition is necessary for long-term protection of compensatory mitigation sites.
- D. This condition is necessary to provide for the prevention, abatement, and control of all water pollution and to conserve water resources for legitimate uses, safeguard from pollution the uncontaminated waters, prevent the creation of any new pollution, and abate any existing pollution.
- E. This condition is necessary to protect domestic water supply use.

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F. This condition is necessary to evaluate, develop, and improve best-management practices in conservation plans, compliance plans, and forest stewardship management plans; establish statewide and regional agriculture water quality plans; and otherwise promote soil and water conservation activities that protect surface waters from the adverse impacts of agriculture operations within the Commonwealth.

Violation of Kentucky state water quality standards may result in civil penalties and remediation actions.

For assistance contact the Kentucky Division of Water, Water Quality Certification Section by email (401WQC@ky.gov) or by phone (502)-564-3410.