

Reclamation Advisory Memorandum

RAM # 172

Kentucky Energy and Environment Cabinet Department for Natural Resources

From: Gordon Slone, Commissioner

Date: December 16, 2025

Subject: KPDES Permits

Introduction

During the 2025 Regular Session, the Kentucky General Assembly passed Senate Bill 89 (SB 89), which amended KRS 224.1-010 to change the definition of "water" or "waters of the Commonwealth" and was enacted effective March 27, 2025. In light of this definition change, some Kentucky coal mine permittees may decide to seek modification of their Surface Mining Control and Reclamation Act of 1977 (SMCRA) permits to remove certain Kentucky Pollutant Discharge Elimination System (KPDES) outfalls¹. The Department for Natural Resources (DNR) cannot remove any KPDES outfall from a SMCRA permit *unless the permittee requests and obtains approval from the Kentucky Division of Water (DOW) to terminate that outfall*. Even if the DOW approves termination of an outfall from the mining operation's KPDES permit or termination of the KPDES permit itself, all discharges of water from mining disturbed areas on a SMCRA permit must meet state and federal water quality standards as required by 405 KAR 16:070 and/or 405 KAR 18:070. This RAM provides guidance to any mining permittee that is seeking to remove a KPDES outfall or outfalls from its SMCRA permit as a result of SB 89.

Related to new SMCRA permit applications, it is the responsibility of the applicant to obtain the applicable permits pursuant to KRS Chapter 224 and 405 KAR 16:070 and/or 405 KAR 18:070.

¹ SMCRA establishes a program of cooperative federalism that allows the states to enact and administer their own coal mining regulatory programs within limits established by federal minimum standards and with prescribed oversight enforcement, Page 6 of 9 authority by DOI, 30 U.S.C. § 1253. On May 18, 1982, the Department of Interior, Office of Surface Mining, approved Kentucky's SMCRA program, which is now administered by the DNR and enacted in KRS Chapter 350 and 405 KAR Chapters 7 through 24.

KPDES Permits and Outfalls

Any request for termination of either the KPDES permit as a whole, or specific outfalls, should be directed to DOW as the Clean Water Act (CWA) authority of the Commonwealth. Any coal mine permittee requesting that the DNR remove a KPDES outfall from their SMCRA permit must provide documentation from the DOW that approves termination of the KPDES outfall. The DNR will deny any request to remove a KPDES outfall from a SMCRA permit that fails to provide the required documentation from DOW.

Regulation of Water Quality Under Kentucky's SMCRA Primacy Program

Permittees should be mindful that KRS Chapter 350 and 405 KAR Chapters 7 through 24 thereunder establish requirements for water quality standards and effluent limitations that were not affected by the change of definition to "waters of the Commonwealth" in KRS 224.1-010. With respect to surface mining activities, 405 KAR 16:070 Section 1(1)(g) states:

Discharges of water from areas disturbed by surface mining activities shall at all times be in compliance with all applicable federal and state water quality standards and either:

1. If the operation does not have a KPDES permit, the effluent limitations guidelines for coal mining promulgated by the U.S. EPA in 40 CFR 434; or
2. The effluent limitations established by the KPDES permit for the operation.

With respect to underground mining activities, 405 KAR 18:070 Section 1(1)(g) requires as follows:

Discharges of water from areas disturbed by underground mining activities shall at all times be in compliance with all applicable federal and state water quality standards and either:

1. If the operation does not have a KPDES permit, the effluent limitations guidelines of coal mining promulgated by the U.S. EPA in 40 CFR 434; or
2. The effluent limitations established by the KPDES permit for the operation.

Obtaining approval from DOW to terminate a KPDES outfall or an entire KPDES permit does not exempt a mining operation from compliance with the water quality requirements established under 405 KAR 16:070 and 405 KAR 18:070. Under 405 KAR 16:070 and 405 KAR 18:070, if an operation has a KPDES permit, all discharges of water from areas disturbed by surface or underground mining activities shall at all times comply with the effluent limitations established by the KPDES permit for the operation. The effluent limitations established by the existing KPDES permit for the operation apply to the discharge even if the discharge is not an approved KPDES outfall (e.g. if the DOW has approved termination of a KPDES outfall at the location of the discharge).

If the operation does not have a KPDES permit, all discharges of water from areas disturbed by surface or underground mining activities shall at all times comply with the effluent limitations

established by the U.S. EPA in 40 CFR 434. See 405 KAR 16:070 Section 1(1)(g)1 and 405 KAR 18:070 Section 1(1)(g)1. Even if the DOW approves the termination of the entire KPDES permit associated with a mining operation, all discharges of water from areas disturbed by mining on the SMCRA permit must still comply with the effluent limitations contained in 40 CFR 434.

The DNR is also authorized to require the installation of surface water monitoring stations to ensure that permittees are not violating federal and state water quality statutes, regulations, standards, or effluent limitations. See 405 KAR 16:110 Section 1(1)(b) and 405 KAR 16:110 Section 1(6). The DNR has independent authority to require surface water monitoring for a discharge, *even if the DOW has approved the termination of a KPDES outfall or KPDES permit for that same discharge.*

Modifications to Remove Terminated Outfalls from the SMCRA Permit

Upon written notification from DOW granting approval to terminate the KPDES permit or an individual outfall, the face of the SMCRA permit will be re-issued. The re-issued permit face will direct the permittee to submit a permit application to the Division of Mine Permits (DMP) to address and revise the SMCRA permit for compliance with 405 KAR 16:070 and 405 KAR 18:070. Failure to submit a permit application within the time frame provided on the permit face and/or failure to diligently pursue the required revision may result in the Kentucky Division of Mine Reclamation and Enforcement (DMRE) taking enforcement action against the permittee for failing to comply with the terms and conditions of the SMCRA permit.

When a coal mine permittee submits its application to remove a terminated KPDES outfall from a SMCRA permit, the permittee must provide sufficient information in its application so that the DMP can (1) confirm that DOW has approved removal of the KPDES outfall(s), (2) determine the necessity and location of surface water monitoring points for discharges from areas disturbed by mining, if any, and (3) verify the effluent standards applicable to such discharges comply with 405 KAR 16:070 and 405 KAR 18:070.

The permit application submitted to the DMP shall include, at a minimum

1. All discharge points for sediment control structures not included as monitoring points as part of the KPDES permit. These will be identified as “surface water monitoring points for discharge” and included in the submittal of the SME-90 for quarterly ground and surface water monitoring. For operations where a KPDES permit is not required, only the limits identified under 40 CFR 434 will be required to be reported. A table is provided within this RAM for further clarification.
2. Updates to all narratives to ensure that the correct effluent standards required by 405 KAR 16:070 and 405 KAR 18:070 are reflected for discharges from areas disturbed by mining. If the mine site is not covered by a KPDES permit, the DMP may request additional modeling by the Permittee to ensure the sediment control structures are designed to meet the effluent limits required under 40 CFR 434.

3. Maps:

- a. All appropriate maps shall be revised to remove any terminated KPDES outfalls as approved by DOW. Any outfalls not approved for removal by DOW shall remain as part of the approved SMCRA permit and the permittee shall adhere to those requirements as approved under the KPDES permit.
- b. Revise the Mine Reclamation Plan (MRP) Map to account for the new surface water monitoring points for discharge.

40 CFR 434 Effluent Limitations

In the event that DOW approves termination of the entire KPDES permit, the DNR provides the following guidance for the effluent limitations that apply to discharges from areas disturbed by mining.

Limitations for Surface Mining Operations and Preparation Plants

The DNR has summarized the effluent limitations contained in 40 CFR 434 for surface mining operations and preparation plants in the following tables. Any facility constructed and/or permit issued prior to May 4, 1984, shall be required to utilize the Best Practicable Technology (BPT) or Best Available Technology (BAT) parameters, pursuant to 40 CFR 434. Any new facility and/or permit which commenced operations or was constructed after May 4, 1984, shall adhere to the New Source Performance Standards (NSPS) set forth in the tables.

Table 1A. BPT/BAT* - Acid or Ferruginous Mine Drainage - pH of less than 6 (<6.0)

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
Iron, Total	3.5	7.0
Manganese, Total	2.0	4.0
pH	within range of 6 to 9	within range of 6 to 9
TSS	35	70

* A permittee will be required to demonstrate permitting and/or construction for any permit issued and/or structure constructed before May 4, 1984.

Table 1B. NSPS - Acid or Ferruginous Mine Drainage - pH of less than 6 (<6.0)

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
Iron, Total	3.0	6.0
Manganese, Total	2.0	4.0
pH	within range of 6 to 9	within range of 6 to 9
TSS	35	70

Table 2A. BPT/BAT* - Alkaline Mine Drainage - pH greater than 6.0 (>6.0)

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
Iron, Total	3.5	7.0
pH	within range of 6 to 9	within range of 6 to 9
TSS	35	70

* A permittee will be required to demonstrate permitting and/or construction for any permit issued and/or structure constructed before May 4, 1984.

Table 2B. NSPS - Alkaline Mine Drainage - pH greater than 6.0 (>6.0)

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
Iron, Total	3.0	6.0
pH	within range of 6 to 9	within range of 6 to 9
TSS	35	70

Post Mining Areas

40 CFR 434 provides effluent limitations for those areas defined as a “post-mining area” or “reclamation areas.” Post-mining area is defined under 40 CFR 434.11(k) as:

- “A Reclamation Area or
- The underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.”

Reclamation Area is defined under 40 CFR 434.11(l) as “the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.”

The EPA definition of Reclamation Area is met by an area that has achieved a Phase I bond release standard pursuant to 405 KAR 10:040 Section 2(4)(a).

Permittees may request a Post Mining Area effluent standard through a permitting action submitted to the DMP and after consultation with the DMRE.

Effluent limitations for post mining areas shall comply with the following table. Again, NSPS shall apply to operations that commenced or structures that were constructed after May 4, 1984, and BPT/BAT limits shall apply to those operations commencing prior to May 4, 1984.

Table 3A. BPT/BAT* - Reclamation (Surface) Areas

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
pH	within range of 6 to 9	within range of 6 to 9
Settleable Solids	0.5 mL/L	NA

* A permittee will be required to demonstrate permitting and/or construction for any permit issued and/or structure constructed before May 4, 1984.

Table 3B. NSPS - Reclamation (Surface) Areas

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
pH	within range of 6 to 9	within range of 6 to 9
Settleable Solids	0.5 mL/L	NA

Table 4A. BPT/BAT* - Underground Mine Drainage – Acid or Ferruginous - pH of less than 6 (<6.0)

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
Iron, Total	3.5	7.0
Manganese, Total	2.0	4.0
pH	within range of 6 to 9	within range of 6 to 9
TSS	35.0	70.0

* A permittee will be required to demonstrate permitting and/or construction for any permit issued and/or structure constructed before May 4, 1984.

Table 4B. NSPS - Underground Mine Drainage – Acid or Ferruginous - pH of less than 6 (<6.0)

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
Iron, Total	3.0	6.0
Manganese, Total	2.0	4.0
pH	within range of 6 to 9	within range of 6 to 9
TSS	35.0	70.0

Table 5A. BPT/BAT* - Underground Mine Drainage – Alkaline - pH greater than 6.0 (>6.0)

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
Iron, Total	3.5	7.0
pH	within range of 6 to 9	within range of 6 to 9
TSS	35.0	70.0

* A permittee will be required to demonstrate permitting and/or construction for any permit issued and/or structure constructed before May 4, 1984.

Table 5B. NSPS - Underground Mine Drainage – Alkaline - pH greater than 6.0 (>6.0)

Parameter	30-day Average (mg/L)	Daily Maximum (mg/L)
Iron, Total	3.0	6.0
pH	within range of 6 to 9	within range of 6 to 9
TSS	35.0	70.0

Alternative Limitations

40 CFR 434 does provide for alternative effluent limitations. Any request for alternative effluent limitations should be made to the Director of the DMRE and will be reviewed on a case-by-case basis.

Key Considerations

- The DOW is the CWA and KPDES authority. The Department for Natural Resources (DNR) has no jurisdiction to determine whether a KPDES permit and/or outfall is eligible for termination. Any request to terminate a KPDES permit and/or outfall must be reviewed and approved by the DOW.
- If a permittee receives approval to terminate an outfall, or outfalls, but the KPDES remains in place, all discharges from areas disturbed by mining must meet the effluent standards established in the KPDES permit. If a permittee receives approval to terminate the KPDES permit, all discharges from areas disturbed by mining must meet effluent standards under 400 CFR 434. In either case, the permittee must pursue a revision so that the approved permit reflects that all discharges from mining disturbed areas will meet effluent standards established under state and federal law.
- The DMP may require the addition of surface water monitoring points for discharges in order to ensure that discharges meet required effluent standards.
- Upon notification from DOW of its approval of the elimination of the KPDES permit or individual outfalls, a permittee must still update its SMCRA permit through the DMP.
- Quarterly sampling and reporting are still required for discharges but will now be reported through the SME-90 and to the DMRE.

If you have questions or comments related to the DNR SMCRA permitting requirements, the DNR SMCRA enforcement requirements, and/or the Quarterly monitoring requirements, please contact the Director of the Division of Mine Permits, Wes Jones, via email at Wes.Jones@ky.gov.

If you have questions or comments related to the DOW KPDES and CWA requirements monitoring requirements, please contact the Commissioner of the Department for Environmental Protection, Anthony R. Hatton, via email at Tony.Hatton@ky.gov.

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