



**STATE OF MISSISSIPPI**

PHIL BRYANT  
GOVERNOR

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

TRUDY D. FISHER, EXECUTIVE DIRECTOR

April 20, 2012

Certified Mail No. 7011 3500 0000 3106 4522  
Mr. Michael F. McNair  
Regulatory Branch Chief  
U.S. Army Corps of Engineers, Vicksburg District  
4155 Clay Street  
Vicksburg, Mississippi 39183-3435

Dear Mr. McNair:

Re: U.S. Army Corps of Engineers  
Nationwide Permit 44  
Warren County  
COE No. MVK-2012-196  
WQC No. WQC2012053

The Mississippi Department of Environmental Quality (Department) has received and reviewed the public notice dated February 21, 2012, 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 44, which reads as follows:

Nationwide Permit No. 44 – Mining Activities authorizes discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no 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 minimal adverse effects. This NWP does not authorize discharges into non-tidal wetland 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 31.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification.

24319 WQC20120043

OFFICE OF POLLUTION CONTROL

POST OFFICE BOX 2261 • JACKSON, MISSISSIPPI 39225-2261 • TEL: (601) 961-5171 • FAX: (601) 354-6612 • [www.deq.state.ms.us](http://www.deq.state.ms.us)

AN EQUAL OPPORTUNITY EMPLOYER

On March 15, 2012, the Department issued a letter stating intentions to deny the project based on the concern that proposed activity in conjunction with other activities may result in adverse cumulative impacts. As required in Chapter 3 of the Mississippi Wastewater Regulations, the Department has provided 30 days for these concerns to be addressed. To date no further correspondence regarding this denial has been received by the Department. Therefore, the Department denies the request for a Section 401 Water Quality Certification for Nationwide Permit 44.

Chapter 3 Section VI, Part A of the State of Mississippi's *Wastewater Regulations for National Pollutant Discharge Elimination System (NPDES) Permits, Underground Injection Control (UIC) Permits, State Permits, Water Quality Based Effluent Limitations and Water Quality Certification* regulations 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 Carrie Barefoot of my staff at (601) 961-5322.

Sincerely,



Richard Harrell, P.E., DEE, Director  
Office of Pollution Control

RH: chb

cc: U.S. Army Corps of Engineers, Mobile District  
Attn: Mr. Craig Litteken, Regulatory Branch Chief  
U.S. Army Corps of Engineers, Memphis District  
Attn: Mr. Tim H. Flinn, Acting Regulatory Branch Chief  
U.S. Army Corps of Engineers, Nashville District  
Attn: Mr. Brad Bishop, Western Regulatory Section Chief  
Mr. Jan Boyd, Department of Marine Resources  
Ms. Kathy Lunceford, U.S. Fish and Wildlife Service

Mr. William Cox, Environmental Protection Agency