

# KPDES



KENTUCKY POLLUTANT  
DISCHARGE ELIMINATION  
SYSTEM

# PERMIT

PERMIT NO.: KYG840000  
AI NO.: 35050

**AUTHORIZATION TO DISCHARGE UNDER THE  
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM (KPDES)**

**Pursuant to Authority in KRS 224,**

Mineral Mining and On-Site Processing Activities

**is authorized to discharge from a facility located at**

Within any of the 120 counties of the Commonwealth of Kentucky

**to receiving waters named**

Those water bodies of the Commonwealth that comprise the Mississippi and Ohio River basins and sub-basins within the political and geographic boundaries of Kentucky

**in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.**

This permit shall become effective on February 1, 2015.

This permit and the authorization to discharge shall expire at midnight, January 31, 2020.

January 30, 2015

**Date Signed**

A handwritten signature in black ink, appearing to read 'Peter T. Goodmann', located above the signature line.

**Peter T. Goodmann, Director  
Division of Water**

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601**

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# **SECTION 1**

## **COVERAGES**

## **1. COVERAGE**

Establishments engaged in the extraction of mineral natural resources and the on-site processing of such minerals within the physical and political boundaries of the Commonwealth of Kentucky. Mineral mining operations include: (1) mining of limestone and dolomite; (2) mining of sand and gravel; (3) dredging of river or creek sand and gravel; (4) mining of clay; (5) mining of rock asphalt; (6) mining of fluorspar and other vein minerals. On-site processing activities include: (1) classifying, crushing, sizing, and washing of the mined mineral; (2) hot mix asphalt plants; and (3) concrete ready-mix plants.

### **1.1. Eligibility**

Only those mineral mining operations that have obtained a Surface Disturbance Mining Permit (SDMP) from the Division of Mine Reclamation and Enforcement (DMRE) or are in the process of obtaining a SDMP are eligible for coverage under this version of KYG840000 (KYG84). Hot mix asphalt plants and concrete ready-mix plants within the approved permit area of the SDMP and operated by the mineral mining permit holder, do not require separate KPDES permits.

### **1.2. Exclusions**

The following are excluded from coverage under this general permit:

- 1) Coal mining and processing activities;
- 2) Oil shale mining and processing activities;
- 3) Tar sand mining and processing activities;
- 4) Mineral mines that discharge to or propose to discharge to a receiving water body that has been categorized as an "Impaired Water" for a pollutant or pollutants of concern that maybe associated with the mineral mining activity and for which an approved Total Maximum Daily Load (TMDL) has been developed;
- 5) Mineral mines that discharge to or propose to discharge to a receiving water body that has been designated as Coldwater Aquatic Habitat (CAH) as listed in Table C of 401 KAR 10:026, Section 5;
- 6) Mineral mines that discharge to or propose to discharge to a receiving water body that has been designated as an Outstanding State Resource Water (OSRW) as listed in Table C of 401 KAR 10:026, Section 5;
- 7) Mineral mines that discharge to or propose to discharge to a receiving water body that has been classified as an Outstanding National Resource Water (ONRW) or as an Exceptional Waters (EW) as listed in 401 KAR 10:030, Section 1;
- 8) Offsite hot mix asphalt plants;
- 9) Offsite concrete ready-mix plants;
- 10) Any operation that disposes of solid or special wastes within the mining area; and
- 11) Mineral mining and processing activities that the Division of Water (DOW) has determined would be more appropriately addressed by an individual permit or an alternate general permit.

**SECTION 2**

**LIMITATIONS**

**AND**

**MONITORING REQUIREMENTS**

**2. LIMITATIONS AND MONITORING REQUIREMENTS**

This section of the permit establishes the effluent limitations and monitoring requirements applicable to the wastewaters associated with mineral mining and on-site processing operations.

**2.1. Mine Dewatering**

Controlled mine dewatering is water that is impounded or that collects in the mine and is pumped, drained or otherwise removed from the mine through the efforts of the mine operator. Non-controlled precipitation influenced mine dewatering is the discharge of water from the active mining area that occurs independent of the efforts of the mine operator. Such discharges may occur in response to a specific precipitation event or the accumulation of precipitation from several events.

Beginning on the effective date of this permit and lasting through the term of this permit, the discharge of controlled mine dewatering from mineral mining operations shall at a minimum, comply with the requirements in the following table.

**Table 1. - Controlled Mine Dewatering**

Effluent Characteristic	Effluent Limitations						Monitoring Requirements	
	STORET Code	Units	Minimum	Monthly Average	Daily Maximum	Maximum	Frequency	Sample Type
Flow	50050	MGD	N/A	Report	Report	N/A	2/Month	Instantaneous
Total Suspended Solids	00530	mg/l	N/A	35	70	N/A	2/Month	Grab
pH	00400	Standard Units	6.0	N/A	N/A	9.0	2/Month	Grab
Oil & Grease	00556	mg/l	N/A	10	15	N/A	1/Month	Grab

The abbreviation N/A in the preceding tables means Not Applicable.

Beginning on the effective date of this permit and lasting through the term of this permit, the discharge of non-controlled precipitation influenced mine dewatering from mineral mining operations shall at a minimum, comply with the requirements in the following table.

**Table 2. - Non-Controlled Mine Dewatering**

Effluent Characteristic	Effluent Limitations						Monitoring Requirements	
	STORET Code	Units	Minimum	Monthly Average	Daily Maximum	Maximum	Frequency	Sample Type
Flow	50050	MGD	N/A	Report	Report	N/A	2/Month	Instantaneous
Precipitation Volume	79777	Inches	N/A	Report	Report	N/A	2/Month	Grab
Settleable Solids	00545	ml/l	N/A	Report	0.5	N/A	2/Month	Grab
pH	00400	Standard Units	6.0	N/A	N/A	9.0	2/Month	Grab
Oil & Grease	00556	mg/l	N/A	10	15	N/A	1/Month	Grab

The abbreviation N/A in the preceding tables means Not Applicable.

**2.2. Process Wastewaters**

Process wastewater means any water used in the slurry transport of mined material, air emissions control, or processing exclusive of mining.

Process wastewaters also include any other water which becomes commingled with such wastewater in a pit, pond, lagoon, mine or other facility used for treatment of such wastewater but does not include wastewater used for the suction dredging of deposits in a body of water and returned directly to the body of water without being used for other purposes or combined with other wastewater.

There shall be no discharge of process wastewaters from Hot Mix Plants.

There shall be no discharge of process wastewaters from concrete ready-mix plants or mineral mining operations except when the permittee recycles the process wastewaters to the maximum extent practicable (MEP). Such discharges are subject to the requirements in Table 1. Outfalls that do not practice recycling to the MEP shall not discharge process wastewaters.

**2.3. Dredge Return Water**

Dredge return water from a sand dredging operation shall be returned to the dredge pit and not discharged to other surface waters of the Commonwealth.

**2.4. Uncontaminated Stormwater Runoff**

Stormwater runoff from undisturbed areas of the mineral mining operation shall be addressed under the Best Management Practices (BMP) Plan required in Section 3 of this permit.

**2.5. Standard Effluent Requirements**

The discharges to waters of the Commonwealth shall not produce floating solids, visible foam or a visible sheen on the surface of the receiving waters.

**2.6. Asphalt Additives and Concrete Admixtures**

There shall be no detectable quantities of any asphalt additive or concrete admixture in any discharge from the permitted facility. The preventive measures taken by the permit to insure that no such discharge occurs shall be documented in the BMP Plan (BMPP) for the facility.

**SECTION 3**

**BMPP REQUIREMENTS**

### **3. BMPP REQUIREMENTS**

The permittee shall develop and implement a BMPP consistent with 401 KAR 5:065, Section 2(4).

#### **3.1. General Conditions**

##### **3.1.1. Applicability**

These conditions apply to all permittees who use, manufacture, store, handle, or discharge any pollutant listed as: (1) toxic under Section 307(a)(1) of the Clean Water Act; (2) oil, as defined in Section 311(a)(1) of the Act; (3) any pollutant listed as hazardous under Section 311 of the Act; or (4) is defined as a pollutant pursuant to KRS 224.01-010(35) and who have operations which could result in (1) the release of a hazardous substance, pollutant, or contaminant, or (2) an environmental emergency, as defined in KRS 224.01-400, as amended, or any regulation promulgated pursuant thereto (hereinafter, the "BMP pollutants"). These operations include material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas.

##### **3.1.2. Plan**

The permittee shall develop and implement a BMPP consistent with 401 KAR 5:065, Section 2(10) pursuant to KRS 224.70-110, which prevents or minimizes the potential for the release of "BMP pollutants" from ancillary activities through site runoff; spillage or leaks, sludge or waste disposal; or drainage from raw material storage.

##### **3.1.3. Implementation**

The permittee shall implement the BMPP upon the commencement of regulated activity. Modifications to the plan as a result of ineffectiveness or plan changes to the facility shall be implemented as soon as possible.

Within 90 days of the effective date of the permit, the permittee shall evaluate the current BMPP and make any necessary modifications to insure its continued effectiveness.

##### **3.1.4. General Requirements**

The BMPP shall:

- 1) Be documented in narrative form, and shall include any necessary plot plans, drawings, or maps.
- 2) Establish specific objectives for the control of toxic and hazardous pollutants.
  - a. Each facility component or system shall be examined for its potential for causing a release of "BMP pollutants" due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.
  - b. Where experience indicates, a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances which could result in a release of "BMP pollutants", the plan should include a prediction of the direction, rate of flow, and total quantity of the pollutants which could be released from the facility as result of each condition or circumstance.
- 3) Establish specific BMPs to meet the objectives identified under paragraph b of this section, addressing each component or system capable of causing a release of "BMP pollutants".
- 4) Include any special conditions established in part b of this section.
- 5) Be reviewed by plant engineering staff and the site manager.

#### **3.2. Specific Requirements**

The plan shall be consistent with the general guidance contained in the publication entitled "NPDES Best Management Practices Guidance Document", and shall include the following baseline BMPs as a minimum.

- 1) BMP Committee
- 2) Reporting of BMP Incidents
- 3) Risk Identification and Assessment
- 4) Employee Training
- 5) Inspections and Records
- 6) Preventive Maintenance
- 7) Good Housekeeping
- 8) Materials Compatibility
- 9) Security
- 10) Materials Inventory

### **3.2.1. BMP - SPCC Plans**

The BMPP may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under Section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMPP by reference.

### **3.2.2. BMP - Hazardous Waste Management**

The permittee shall assure the proper management of solid and hazardous waste in accordance with the regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1978 (RCRA) (40 U.S.C. 6901 et seq). Management practices required under RCRA regulations shall be referenced in the BMPP.

### **3.2.3. BMP - Documentation**

The permittee shall maintain a description of the BMPP at the facility and shall make the plan available upon request to the Energy and Environmental Cabinet (EEC) personnel.

### **3.2.4. BMP - Modification**

The permittee shall amend the BMPP whenever there is a change in the facility or change in the operation of the facility which materially increases the potential for the ancillary activities to result in the release of "BMP pollutants".

### **3.2.5. BMP - Modification for Ineffectiveness**

If the BMPP proves to be ineffective in achieving the general objective of preventing the release of "BMP pollutants", then the specific objectives and requirements under paragraphs b and c of Section 4, the permit, and/or the BMPP shall be subject to modification to incorporate revised BMP requirements. If at any time following the issuance of this permit, the BMPP is found to be inadequate pursuant to a state or federal site inspection or plan review, the plan shall be modified to incorporate such changes necessary to resolve the concerns.

## **3.3. BMP - Specific Conditions**

### **3.3.1. Groundwater Protection Plan (GPP)**

The permittee may incorporate into the BMPP the elements of the GPP required by 401 KAR 5:037.

## **SECTION 4**

### **MONITORING AND REPORTING REQUIREMENTS**

#### 4. MONITORING AND REPORTING REQUIREMENTS

##### 4.1. KPDES Outfalls

Discharge samples and measurements shall be collected at the compliance point for each KPDES Outfall identified in the coverage document issued for the permitted facility.

##### 4.2. Compliance Point

The compliance point for each KPDES outfall is the nearest accessible point after final treatment, but prior to actual discharge to or mixing with the receiving waters or wastestreams from other outfalls.

##### 4.3. Number of Required Samples

Monthly grab samples for each physical/chemical specific parameter shall be collected at the frequency listed in Table 1 of Section 2.1 during a period of discharge resulting from a precipitation or pumpage event.

##### 4.4. Sample Collection

Samples and measurements taken to determine compliance with permit effluent limitations in Section 2 of this permit shall be representative volume and nature of the monitored discharge. In the event the minimum number of samples cannot be obtained, the permittee shall provide the necessary documentation specified in Section 4.5 to the Cabinet upon request.

##### 4.5. No Discharge Reporting

If the permittee is unable to collect one or more of the required number of samples specified in Section 4.3, the permittee shall report the appropriate No Discharge (NODI) Code for each uncollected sample on the monthly Discharge Monitoring Reports (DMRs) for that outfall. The permittee shall document its claim that only one, or no discharge occurred during the monitoring period. Such documentation shall be made available to the cabinet upon request. The use of a NODI Code is conditionally approved until such time as the Cabinet determines the submitted documentation for the use of that NODI CODE is inadequate.

NODI Codes are used in EPA's Integrated Compliance Information System (ICIS) to report a No Discharge on a DMR. Table 2 lists the NODI codes that DOW has determined to be appropriate for use on mineral mining and on-site processing DMRs.

<b>NODI Code</b>	<b>Definition</b>
2	Operation Shutdown
5	Frozen Conditions
C	No Discharge
K	Natural Disaster
Q	Not Quantifiable
V	Weather Related

The circumstances under which each code is used and the required documentation in addition to the documentation and certification requirements of Sections 7.10 and 7.11 of this permit are as follows:

##### **NODI Code 2**

This code is to be used when the operation has been shut down.

##### **NODI Code 5**

This code is to be used when the discharge or outfall structure is frozen. Additional documentation includes: (1) dated photographs; and (2) a narrative of the severity and duration of the condition shall be included.

**NODI Code C**

This code is to be used when there are no discharges during the monitoring period.

**NODI Code K**

This code is to be used when the outfall is destroyed or inaccessible due to a natural disaster such as flooding, tornado, etc. Additional documentation includes: (1) dated photographs; and (2) a narrative of the severity and duration of the condition shall be included.

**NODI Code Q**

This code is to be used when an outfall is discharging however due to the shallowness of the discharge a valid sample could not be collected. Additional documentation includes: (1) dated photographs; and (2) estimated flow rate.

**NODI Code V**

This code is to be used when outfalls are inaccessible due to extreme weather conditions. Additional documentation includes: (1) a description of the weather conditions; (2) dated photographs of the conditions; and (3) duration of the conditions preventing access.

**4.6. Sufficiently Sensitive Analytical Methods**

Analytical methods utilized to demonstrate compliance with the effluent limitations established in this permit, shall be sufficiently sensitive to detect pollutant levels at or below the required effluent limit. It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

**4.7. Reporting of Monitoring Results**

Monitoring results obtained during each monitoring period must be reported. The completed DMR for each monitoring period must be submitted no later than the 28<sup>th</sup> day of the month following the monitoring period for which monitoring results were obtained.

**4.7.1. Electronic Submittal**

The completed DMR for each monitoring period must be entered into the DOWs approved electronic system no later than midnight on the 28<sup>th</sup> day of the month following the monitoring period for which monitoring results were obtained.

For more information regarding electronic submittal of DMRs, please visit the Division's website at: <http://water.ky.gov/permitting/Pages/netDMRInformation.aspx> or contact the DMR Coordinator at (502) 564-3410.

## **SECTION 5**

### **ADDITIONAL REQUIREMENTS**

## 5. Additional Requirements

### 5.1. Schedule of Compliance

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated.

### 5.2. Other Permits

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

### 5.3. Continuation of Expiring Permit

In the event the permit expires prior to reissuance by DOW, the conditions and requirements of this version of KYG84 shall continue in effect until DOW reissues the permit. However, new or expanded coverages cannot be authorized until the permit is reissued.

### 5.4. Antidegradation

For those discharges subject to the provisions of 401 KAR 10:030, Section 1(3)(b)5, the permittee shall install, operate, and maintain wastewater treatment facilities consistent with those identified in the Socioeconomic Demonstration and Alternatives Analysis (SDAA) submitted with the electronic Notice of Intent (eNOI-KYG84).

### 5.5. Discharge and Monitoring Point Accessibility

The permittee is required to conduct monitoring that is representative of the regulated discharges. Additionally, in accordance with the conditions that apply to all permits as stated in Section 7.9, the permittee shall allow authorized agency representatives to inspect the facility and collect samples to determine compliance. In order for such monitoring to be conducted either by the permittee or authorized agency personnel, all monitoring and discharge points required by this permit shall be readily and safely accessible.

### 5.6. Additional Conditions Specific to Mining Permits

The permittee shall notify the Director as soon as they know or have reason to believe that toxic pollutants not limited in the permit have been or shall be discharge in excess of the highest of the following notification levels:

<b>TABLE 4.</b>		
<b>POLLUTANT</b>	<b>ROUTINE/FREQUENT</b>	<b>NON-ROUTINE/INFREQUENT</b>
Any Toxic Pollutant	100 µg/l <sup>1</sup>	500 µg/l <sup>1</sup>
Acrolein	200 µg/l	500 µg/l <sup>1</sup>
Acrylonitrile	200 µg/l	500 µg/l <sup>1</sup>
2,4-dinitrophenol	500 µg/l	500 µg/l <sup>1</sup>
2-methyl-4,6-dinitrophenol	500 µg/l	500 µg/l <sup>1</sup>
Antimony	1 mg/l	1 mg/l
Pollutant reported in permit application	Five (5) times the maximum concentration value	Ten (10) times the maximum concentration value

<sup>1</sup>Or level established by the Director

### 5.7. Reopener Clause

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, if the effluent standard or limitation so issued or approved:

- 1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
- 2) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.

#### **5.8. Domestic Water Supply (DWS) Intake**

In addition to the requirements of Section 3.4 of this permit, coal mining and/or processing operations that discharge within 5 miles upstream of an existing domestic water supply intake shall incorporate within the operation's BMPP language addressing catastrophic releases and the notification procedures.

The language shall be included under the Specific Conditions Section of the BMPP and shall provide the following:

1. The criteria for determining a catastrophic release;
2. The notification method(s) to be used to inform the affected DWS intake that a catastrophic release has occurred;
3. The names, telephone numbers, and e-mail addresses of the contacts with the subject water supply; and
4. The names, telephone numbers, and e-mail addresses of the contacts with the permittee.

#### **5.9. Outfall Signage**

For discharges to the Ohio River, the permittee shall comply with the permanent marker requirements of Part V, Section A 3 of the Ohio River Valley Water Sanitation Commission (ORSANCO)'s Pollution Control Standards.

For discharges to receiving waters other than the Ohio River, the permittee may place and maintain permanent markers at each of the monitoring locations to better document and clarify these locations.

#### **5.10. Groundwater Protection Plan**

The permittee shall develop and implement a GPP consistent with the requirements of 401 KAR 5:037.

## **SECTION 6**

### **NOTICE OF INTENT (NOI) REQUIREMENTS**

## **6. NOI REQUIREMENTS**

### **6.1. NOI**

Operators seeking to obtain a new coverage, to modify an existing coverage, or to renew an existing coverage shall use DOW's electronic web based eNOI-KYG84, available on DEP's forms library site at: <https://dep.gateway.ky.gov/eForms/default.aspx?FormID=38>. DOW shall not process any NOI that is incomplete, inaccurate, or in an incorrect format.

#### **6.1.1. NOI Contents**

Electronic form eNOI-KYG84 is comprised of the following sections: (1) Permittee Information, (2) General Site Information, (3) Specific Site Information, (4) Outfall Information, (5) Other Environmental Approvals and Permit Information, (6) Discharge Monitoring Reports, (7) NOI Preparer Information, (8) Attachments, and (9) Certification.

#### **6.1.2. NOI Submission Deadlines**

Operators seeking initial coverage for a new facility shall electronically submit the eNOI-KYG84 and required attachments (Mining Reclamation Plan (MRP) map, USGS 71/2-minute quadrangle map with the facility location, line drawing showing water flow through the facility, and Socioeconomic Demonstration and Alternative Analysis (SDAA) form) a minimum of 90 days prior to commencement of discharge.

Operators seeking modification of an existing coverage to address facility modifications shall electronically submit an updated eNOI-KYG84 and required attachments (MRP map, USGS 71/2-minute quadrangle map with the facility location, line drawing showing water flow through the facility, and SDAA form (when expanded)) a minimum of 90 days prior to the modification of the facility.

Operators seeking renewal of existing coverages shall electronically submit an updated eNOI-KYG84 and required attachments (MRP map, USGS 71/2-minute quadrangle map with the facility location, and line drawing showing water flow through the facility) within 90 days of the effective date of the permit. Failure to submit the updated eNOI-KYG84 within the specified timeframe shall result in the termination of coverage.

**SECTION 7**

**STANDARD CONDITIONS**

## **7. STANDARD CONDITIONS**

### **7.1. Duty to Comply**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Any person who violates applicable statutes or who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

### **7.2. Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

### **7.3. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **7.4. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### **7.5. Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

### **7.6. Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### **7.7. Property Rights**

This permit does not convey any property rights of any sort, or any exclusive privilege.

### **7.8. Duty to Provide Information**

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

### **7.9. Inspection and Entry**

The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

- (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by KRS 224, any substances or parameters at any location.

#### **7.10. Monitoring and Records**

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065, Section 2(10), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- (3) Records of monitoring information shall include:
  - (i) The date, exact place, and time of sampling or measurements;
  - (ii) The individual(s) who performed the sampling or measurements;
  - (iii) The date(s) analyses were performed;
  - (iv) The individual(s) who performed the analyses;
  - (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- (4) Monitoring must be conducted according to test procedures approved under 401 KAR 5:065, Section 2(8) unless another method is required under 401 KAR 5:065, Section 2(9) or (10).
- (5) KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000), or by imprisonment for not more than one (1) year, or both. Each day upon which a violation occurs shall constitute a separate violation.

#### **7.11. Signatory Requirement**

- (1) All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4.
- (2) KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

#### **7.12. Reporting Requirements**

##### **7.12.1. Planned Changes**

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in KRS 224.16-050;
- (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under KRS 224.16-050; or
- (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

#### **7.12.2. Anticipated Noncompliance**

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

#### **7.12.3. Transfers**

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224; see 401KAR 5:070, Section 5; in some cases, modification or revocation and reissuance is mandatory.

#### **7.12.4. Monitoring Reports**

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

- (i) Monitoring results must be reported on a DMR or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
- (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065, Section 2(8), or another method required for an industry-specific waste stream under 401 KAR 5:065, Section 2(9) or (10), the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
- (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

#### **7.12.5. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

#### **7.12.6. Twenty-four Hour Reporting**

- (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- (ii) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph.
  - (A) Any unanticipated bypass which exceeds any effluent limitation in the permit.
  - (B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph ii of this section if the oral report has been received within twenty-four (24) hours.

#### **7.12.7. Other Noncompliance**

The permittee shall report all instances of noncompliance not reported under Sections 7.12.17.12.1, 7.12.4, 7.12.5, and 7.12.6 at the time monitoring reports are submitted. The reports shall contain the information listed in Section 7.12.6.

#### **7.12.8. Other Information**

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

### **7.13. Bypass**

#### **7.13.1. Definitions**

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

#### **7.13.2. Bypass Not Exceeding Limitations**

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section 7.13.1.

#### **7.13.3. Notice**

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section 7.12.6.

#### **7.13.4. Prohibition of Bypass**

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under Section 7.13.3.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Section 7.13.3.

### **7.14. Upset**

#### **7.14.1. Definition**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the

permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

**7.14.2. Effect of an Upset**

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section 7.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

**7.14.3. Conditions Necessary for a Demonstration of Upset**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (ii) The permitted facility was at the time being properly operated;
- (iii) The permittee submitted notice of the upset as required in Section 7.12.6; and
- (iv) The permittee complied with any remedial measures required under Section 7.4.

**7.14.4. Burden of Proof**

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.