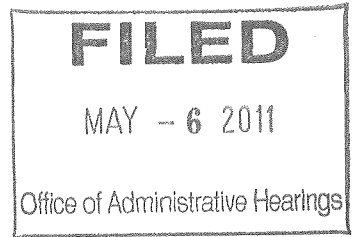


COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
FILE NO. DOW-\_\_\_\_\_



ENERGY AND ENVIRONMENT CABINET

PLAINTIFF

VS.

ADMINISTRATIVE COMPLAINT

NALLY AND HAMILTON ENTERPRISES, INC.

DEFENDANT

Service via certified mail:

Stephen Hamilton, Registered Agent  
109 S. 4<sup>th</sup> St.  
Bardstown, KY 40004

For service on:

Nally and Hamilton Enterprises, Inc.  
109 S. 4<sup>th</sup> St.  
Bardstown, KY 40004-1029

\*\*\*\*\*

Comes now the Plaintiff, Commonwealth of Kentucky, Energy and Environment Cabinet (hereinafter the "Cabinet"), by and through counsel, and for its Administrative Complaint against the Defendant, Nally and Hamilton Enterprises, Inc. (hereinafter "Nally and Hamilton" or "Defendant"), states and alleges as follows:

1. The Cabinet is charged with the statutory duty of protecting public health and the environment pursuant to KRS Chapter 224 and the regulations promulgated pursuant thereto.
2. According to the website of the Kentucky Secretary of State, the Defendant, Nally and Hamilton is a Kentucky corporation in good standing. The Defendant owns and operates multiple coal facilities within Kentucky. Their principal office is located at 109 S. 4<sup>th</sup> Street, P.O. Box 157, Bardstown, KY 40004.

3. Nally and Hamilton has been issued multiple Kentucky Pollution Discharge Elimination System (hereinafter "KPDES") permits by the Cabinet's Division of Water (hereinafter "DOW") for discharge of treated effluent from its surface mining facilities to waters of the Commonwealth. Nally and Hamilton has also been issued multiple permits from the Kentucky Division of Mine Reclamation and Enforcement (hereinafter "DMRE") to conduct their surface coal mining operations. Nally and Hamilton contracts with Technical Water Laboratories (hereinafter "TWL") to collect and analyze the samples for Discharge Monitoring Reports (hereinafter "DMR") submittal to the Cabinet.

4. TWL and the mine site were inspected by DOW staff on November 17, 2010 as part of a Performance Audit Inspection (hereinafter "PAI") on DSMRE Permit No. 867-0469/KPDES Permit No. KYG046418. In addition, DOW staff conducted a follow-up inspection of TWL on November 29, 2010.

5. On or about March 14, 2011 to April 26, 2011, the Cabinet's Division of Enforcement (hereinafter "DENF") reviewed numerous DMRs submitted by Nally and Hamilton covering the period of January 2008 through December 2010.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 807-0307/KPDES PERMIT NO. KYG046155**

6. Paragraphs 1-5 are incorporated by reference as if fully set forth below.

7. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 807-0307/KPDES Permit No. KYG046155, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

8. On or about April 25, 2011, DOW issued a Notice of Violation (hereinafter "NOV") to Nally and Hamilton for the conditions described in paragraph 7 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 1.

9. On or about March 7, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 807-0307/KPDES Permit No. KYG046155, including but not limited to, failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

10. On or about April 29, 2010, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 8 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 2.

11. Remedial measures are described in the NOVs identified in Paragraphs 8 and 10 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 807-0340/KPDES PERMIT NO. KYG041921**

12. Paragraphs 1 - 11 are incorporated by reference as if fully set forth below.

13. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 807-0340/KPDES Permit No. KYG041921, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

14. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 13 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 3.

15. On or about April 10, 2011 and April 28, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 807-0340/KPDES Permit No. KYG041921, including but not limited to, failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

16. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 15 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 4.

17. Remedial measures are described in the NOVs identified in Paragraphs 14 and 16 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 807-0341/KPDES PERMIT NO. KYG041924**

18. Paragraphs 1 – 17 are incorporated by reference as if fully set forth below.

19. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 807-0341/KPDES Permit No. KYG041924, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

20. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 19 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 5.

21. On or about April 28, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 807-0341/KPDES Permit No. KYG041924, including but not limited to, failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

22. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 21 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 6.

23. Remedial measures are described in the NOVs identified in Paragraphs 20 and 22 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 807-0342/KPDES PERMIT NO. KYG046205**

24. Paragraphs 1 - 23 are incorporated by reference as if fully set forth below.

25. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 807-0342/KPDES Permit No. KYG046205, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

26. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 25 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 7.

27. On or about March 17, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 807-0342/KPDES Permit No. KYG046205, including but not limited to, failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

28. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 27 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 8.

29. Remedial measures are described in the NOVs identified in Paragraph 26 and 28 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 807-0346/KPDES PERMIT NO. KYG042163**

30. Paragraphs 1 - 29 are incorporated by reference as if fully set forth below.

31. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 807-0346/KPDES Permit No. KYG042163, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

32. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 31 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 9.

33. On or about March 14, 2011 and April 28, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 807-0346/KPDES Permit No. KYG042163, including but not limited to, failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

34. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 33 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 10.

35. Remedial measures are described in the NOVs identified in Paragraphs 32 and 34 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 807-0347/KPDES PERMIT NO. KYG041895**

36. Paragraphs 1 - 35 are incorporated by reference as if fully set forth below.

37. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 807-0347/KPDES Permit No. KYG041895, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

38. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 37 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 11.

39. On or about March 17, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 807-0347/KPDES Permit No. KYG041895, for discharging from outfalls without a KPDES permit and failure to accurately report monitoring results on DMRs.

40. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 39 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 12.

41. Remedial measures are described in the NOVs identified in Paragraphs 38 and 40 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 807-8061/KPDES PERMIT NO. KYG042569**

42. Paragraphs 1 - 41 are incorporated by reference as if fully set forth below.

43. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 807-8061/KPDES Permit No. KYG042569, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

44. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 43 above, citing two violations of 401 KAR 5:065, Section



2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 13.

45. On or about March 17, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 807-8061/KPDES Permit No. KYG042569, including but not limited to, failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

46. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 45 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 14.

47. Remedial measures are described in the NOVs identified in Paragraphs 44 and 46 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 848-0233/KPDES PERMIT NO. KYG044528**

48. Paragraphs 1 - 47 are incorporated by reference as if fully set forth below.

49. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 848-0233/KPDES Permit No. KYG044528, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

50. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 49 above, citing two violations of 401 KAR 5:065, Section

2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 15.

51. On or about March 18, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 848-0233/KPDES Permit No. KYG044528, including but not limited to, failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

52. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 51 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 16.

53. Remedial measures are described in the NOVs identified in Paragraphs 50 and 52 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 860-0380/KPDES PERMIT NO. KYG045520**

54. Paragraphs 1 - 53 are incorporated by reference as if fully set forth below.

55. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 860-0380/KPDES Permit No. KYG045520, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

56. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 55 above, citing two violations of 401 KAR 5:065, Section

2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 17.

57. On or about March 24, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 860-0380/KPDES Permit No. KYG045520, including but not limited to, discharging from outfalls without a KPDES permit and failure to submit required monitoring data.

58. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 57 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 18.

59. Remedial measures are described in the NOVs identified in Paragraphs 56 and 58 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 861-0479/KPDES PERMIT NO. KYG046565**

60. Paragraphs 1 - 59 are incorporated by reference as if fully set forth below.

61. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 861-0479/KPDES Permit No. KYG046565, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

62. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 61 above, citing two violations of 401 KAR 5:065, Section

2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 19.

63. On or about March 16, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 861-0479/KPDES Permit No. KYG046565 for failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

64. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 63 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 20.

65. Remedial measures are described in the NOVs identified in Paragraphs 62 and 64 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 866-0276/KPDES PERMIT NO. KYG045935**

66. Paragraphs 1 - 65 are incorporated by reference as if fully set forth below.

67. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 866-0276/KPDES Permit No. KYG045935, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

68. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 67 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 21.

69. On or about April 16, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 866-0276/KPDES Permit No. KYG045935, including but not limited to, failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

70. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 69 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 22.

71. Remedial measures are described in the NOV identified in Paragraphs 68 and 70 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 866-0304/KPDES PERMIT NO. KYG046317**

72. Paragraphs 1 - 71 are incorporated by reference as if fully set forth below.

73. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 866-0304/KPDES Permit No. KYG046317, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

74. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 73 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 23.

75. On or about March 11, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 866-0304/KPDES Permit No. KYG046317, including but not limited to, failure to submit required monitoring data and for discharging from outfalls without a KPDES permit.

76. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 75 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 24.

77. Remedial measures are described in the NOV identified in Paragraphs 74 and 76 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 866-0311/KPDES PERMIT NO. KYG046293**

78. Paragraphs 1 - 77 are incorporated by reference as if fully set forth below.

79. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 866-0311/KPDES Permit No. KYG046293, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

80. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 79 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 25.

81. On or about March 17, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 866-0311/KPDES Permit No. KYG046293, including but not limited to, failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

82. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 81 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 26.

83. Remedial measures are described in the NOVs identified in Paragraphs 80 and 82 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 867-0469/KPDES PERMIT NO. KYG046418**

84. Paragraphs 1 - 83 are incorporated by reference as if fully set forth below.

85. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions observed, related to DMRE Permit No. 867-0469/KPDES Permit No. KYG046418, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

86. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 85 above, citing four violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records; 2) failure to submit all required monitoring results at intervals specified in the permit; 3) failure to report monitoring results on a DMR form

or format approved by DOW; and 4) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 27.

87. On or about April 22, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 867-0469/KPDES Permit No. KYG046418 for failure to submit required monitoring data and for discharging from outfalls without a KPDES permit.

88. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 87 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 28.

89. Remedial measures are described in the NOV identified in Paragraphs 86 and 88 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 897-0382/KPDES PERMIT NO. KYG045111**

90. Paragraphs 1 - 89 are incorporated by reference as if fully set forth below.

91. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 897-0382/KPDES Permit No. KYG045111, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

92. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 91 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 29.



93. On or about March 11, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of KRS 224.70-110 related to DMRE Permit No. 897-0382/KPDES Permit No. KYG045111 for failure to submit required monitoring data and failure to accurately report monitoring results on DMRs.

94. On or about April 29, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 93 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 30.

95. Remedial measures are described in the NOV identified in Paragraphs 92 and 94 above.

**COUNTS RELATED TO**  
**DMRE PERMIT NO. 897-0441/KPDES PERMIT NO. KY0105872**

96. Paragraphs 1 - 95 are incorporated by reference as if fully set forth below.

97. On or about November 17, 2010, authorized representatives of DOW conducted a PAI of Nally and Hamilton's coal mining facilities and contract laboratory. Among the conditions identified, related to DMRE Permit No. 897-0441/KPDES Permit No. KY0105872, were inadequate records for chains of custody, laboratory bench sheets and laboratory logs and improper quality assurance and quality control procedures, which are violations of 401 KAR 5:065, Section 2(1).

98. On or about April 25, 2011, DOW issued a NOV to Nally and Hamilton for the conditions described in paragraph 97 above, citing two violations of 401 KAR 5:065, Section 2(1) for: 1) failure to maintain required records and 2) improper operation and maintenance. A copy of the NOV is also attached hereto and incorporated herein as Plaintiff's Exhibit No. 31.

99. On or about March 17, 2011 and April 29, 2011, authorized representatives of the Cabinet reviewed DMRs submitted by Nally and Hamilton and identified multiple violations of

KRS 224.70-110 related to DMRE Permit No. 897-0441/KPDES Permit No. KY0105872, including but not limited to, failure to accurately report monitoring results on DMRs and discharging from outfalls without a KPDES permit.

100. On or about May 4, 2011, the Cabinet's DENF issued Nally and Hamilton a NOV for the violations described in paragraph 99 above. A copy of that NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 32.

101. Remedial measures are described in the NOVs identified in Paragraphs 98 and 100 above.

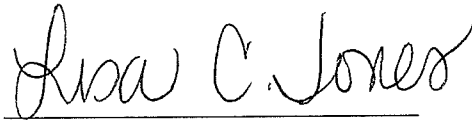
102. In total, the Cabinet's inspections of the Defendant's coal mining facilities and contract laboratory, as well as, the review of the Defendant's DMRs resulted in the identification of a total number of four thousand and six hundred thirty (4,630) violations of Kentucky's environmental statutes and implementing regulations.

**WHEREFORE**, the Plaintiff respectfully requests that judgment be entered finding the Defendant in violation of the statutes and regulations cited in the NOVs and awarding the Cabinet the following relief:

1. That the Defendant be ordered to pay a civil penalty of twenty-five thousand dollars (\$25,000.00) per day per violation identified above pursuant to KRS 224.90-010(1);
2. That the Defendant be ordered to complete all remedial measures listed in each NOV referenced above to the satisfaction of the Cabinet by a date certain;
3. That the Defendant be ordered to comply with all applicable statutes, regulations, and KPDES permit conditions;
4. That the Defendant be enjoined from further violations of KRS 224 and the regulations promulgated pursuant thereto; and

5. For any and all further relief to which the Cabinet is entitled.

Respectfully submitted,  
ENERGY AND ENVIRONMENT  
CABINET



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COUNSEL FOR PLAINTIFF



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water  
875 S Main St  
London, KY 40741-1902  
www.kentucky.gov

April 25, 2011

Certified No. 7008 1830 0003 6511 8038  
Return Receipt Requested

Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

Re: Notice of Violation  
AI ID: 106351  
AI Name: Nally & Hamilton Enterprises Inc  
(807-0307)  
Activity ID: ENV20110002  
Permit No. KYG046155  
Bell County, KY

Dear Mr. Hamilton:

Attached for your information and records is a copy of the Performance Audit Inspection performed at Nally and Hamilton Enterprises Inc on November 17, 2010.

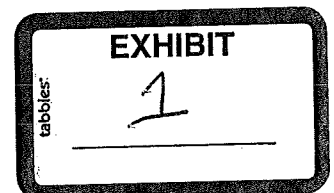
As a result of the inspection, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please feel free to contact me at 859-525-4923, or Thomas Gabbard at (502) 564-3410.

Sincerely,

Gretchen M. Bartley  
Environmental Scientist II  
Division of Water

Enclosure



Kentucky

COMMONWEALTH OF KENTUCKY  
 ENERGY AND ENVIRONMENT CABINET  
 DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
 Division of Water

**NOTICE OF VIOLATION**

To: Nally & Hamilton Enterprises Inc  
 109 S 4th St  
 PO Box 157  
 Bardstown, KY 40004

AI Name: Nally & Hamilton Enterprises Inc (807-0307)      AI ID: 106351 Activity ID: ENV20110002  
 Discovery ID: CIN20100001    County: Bell  
 Enforcement Case ID:  
 Date(s) Violation(s) Observed: 11/17/2010

This is to advise that you are in violation of the provisions cited below:

<b>1</b>	<b>Violation Description for Subject Item AIOO0000106351():</b>
	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 cabinet at any time. [401 KAR 5:065 Section 2(1)]
	<b>Description of Non Compliance:</b>
	<p>The facility has failed to maintain required records. Samples are taken from the permitted outfalls by TWL personnel. TWL samplers use a field log and transfer information onto what is labeled a Chain of Custody. The field log and chain of custody contain the name of the coal company and DNR Permit Number along with the date the sample is taken, sample ID, pH, conductivity, temperature and flow. There is no indication as to who took the sample or what time the sample was taken. In addition to the previously mentioned deficiencies, the chain of custody does not document when the sample was received at the lab, who received the sample in the lab, and who relinquished the sample/chain of custody. Outside of the field parameters, there is no documentation as to the parameter(s) to be analyzed by the lab or the preservative used.</p> <p>Once the sample arrives in the lab it is logged onto a "Bench Sheet". This bench sheet contains the coal company's name, the DNR Permit Number, Outfall/Pond ID and the required analytical parameters, including those measured in the field. The "Bench Sheet" does not contain the analyst's name or initials, the time and date the analysis was performed or any supporting documentation associated with the methodology. There is no documentation of calibration, standards or duplicates having been run. Reportedly, the analyst runs the samples and one of the assistants follows the analyst and sample through the lab and fills out the "bench sheet" as the analysis is completed and results are determined. The combination of these deficiencies is such that the sample results are not reproducible or legally defensible, and this significantly influences the validity of the data.</p>

	<p><b>The remedial measure(s), and date(s) to be completed by are as follows:</b></p>
	<p>The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of March 2011 shall be submitted with the written notification. [401 KAR 5:065 Section 2(1)]</p>
2	<p><b>Violation Description for Subject Item AIOO0000106351():</b></p>
	<p>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. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p>
	<p>The facility is not being properly operated and maintained as required. Specifically, the laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC). DOW personnel determined that all test methods observed at the TWL facility were performed using approved methodologies or a procedure approved under US EPA's Alternate Test Procedure (ATP) program, and the methodologies themselves were in compliance with the requirements of 40 CFR Part 136. However, the lab had a significant number of deficiencies in the area of quality control: The lab SOP is only partially developed; the chains of custody and bench sheets are inadequate because there is a lot of missing documentation, and we could not find adequate documentation of quality control processes such as instrument calibration, analysis of duplicate samples, spikes and/or standards. A set of "blind spike" samples provided and certified by a third party vendor was taken to the lab along with the DOW inspection team on 11/17/2010. TWL was unable to run those samples at that time because they had run out of reagent to perform several of the test methodologies. Reportedly, the reagents were on order and expected any day. A follow-up inspection was conducted on 11/29/2010 to allow DOW personnel to witness the analyst perform the test procedures, and to compare and evaluate the sample results with those determined and certified by the supplier. The analyst that performed the test procedures was reportedly not the primary analyst, and although he made a good effort, he did not convey proficiency with the methodologies. Of the six (6) parameters analyzed only three (alkalinity, acidity and conductivity) were within the acceptable range. Total suspended solids, iron and manganese were all outside of the acceptable range. A more detailed description of the findings of both the 11/17/2010 and 12/29/2010 inspections is contained on the Summary of Findings.</p>

**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;  
The individual(s) who performed the sampling or measurements;  
The date(s) analyses were performed;  
The individual(s) who performed the analyses;  
The analytical techniques or methods used; and  
The results of such analyses.

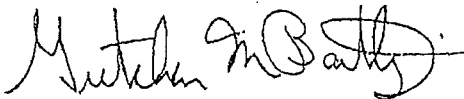
These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

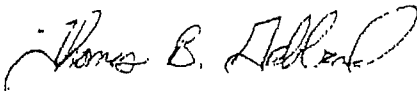
If you have questions or need further information, write or call the undersigned:

Division of Water  
Florence Regional Office  
8020 Veterans Memorial Drive Suite 110  
Florence, KY 41042  
859-525-4923 (8:00 AM - 4:30 PM)  
Gretchen M. Bartley, Environmental Scientist II



Issued By:

Gretchen M. Bartley, Environmental Scientist II  
Date: April 25, 2011



Issued By:

Mr. Thomas B. Gabbard, Environmental Control Manager  
Date: April 25, 2011

How Delivered: USPS Certified Mail  
Certified/Registered # 7008 1830 0003 6500 8038



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
DIVISION OF ENFORCEMENT  
300 FAIR OAKS LANE  
FRANKFORT KENTUCKY 40601  
www.kentucky.gov

April 29, 2011

Certified Mail: 7010 1670 0002 2552 2833

Nally & Hamilton Enterprises Inc  
Attn: Steven Hamilton  
PO Box 157  
Bardstown, KY 40004

Re: Notice of Violation  
AI ID: 106351  
AI Name: Nally & Hamilton Enterprises Inc  
KPDES Permit: Multiple  
DMRE Permit: Multiple

Dear Mr. Hamilton:

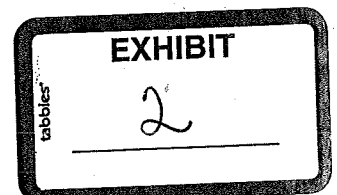
The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notices of Violation for violations discovered at your facilities. Please review these Notices of Violation carefully to ensure that any remedial measures are completed as specified.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at (502) 564-2150 extension 266.

Sincerely,

Lori E. Conway  
Environmental Enforcement Specialist  
Compliance and Operations Branch

Enclosures



Kentucky



COMMONWEALTH OF KENTUCKY  
ENERGY and ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Enforcement

NOTICE OF VIOLATION

To: Nally & Hamilton Enterprises Inc  
Steven Hamilton  
PO Box 157  
Bardstown, KY 40004

AI Name: Nally & Hamilton Enterprises Inc (807-0307)

AI ID: 106351 Activity ID: ENV20110001

County: Bell  
DMRE Permit: 807-0307  
KPDES Permit: KYG046155  
Date(s) Violation(s) Observed: 03/17/2011

This is to advise that you are in violation of the provisions cited below:

- 1 Violation Description for Subject Item AIOO0000106351():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065 Sec. 2(1)(a), which cites to 40 CFR 122.41(a) by failing to comply with the KPDES permit limits for **Monitoring and Reporting requirement**, as required by KPDES Coal General permit KYG046155, for the outfalls and monitoring periods listed below.

A total of two (2) samples shall be collected (if discharge occurs) each calendar month during a period of discharge resulting from a precipitation or pumpage event for all active mining areas and post mining underground drainage. Should either or both discharges be controlled discharges, then the requirement of Section B shall apply. If only one (1) discharge occurs during the calendar month, then the permittee must provide appropriate documentation.

**Only 1 sample/discharge** was reported for the following outfalls and monitorin periods.

**Appropriate documentation was not attached to the DMRs.**

Outfall 25: August 2010

Outfall 27: August 2010

Outfall 31: January, April, July and October of 2008; January, April and July of 2009; and August of 2010

Outfall 32: August of 2010

Outfall 33: January, April, July and October of 2008; and July and October of 2009

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG046155. [KRS 224.70-110]

2 Violation Description for Subject Item AIOO0000106351():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065, Section 2(1)(a), which cites to 40 CFR 122.41(a), by failing to submit the required **monitoring data** on the Discharge Monitoring Reports (DMRs) as required by the KPDES Coal General Permit #KYG046155, for the following outfalls and monitoring periods:

- Outfall 1:** 1 flow result was reported on the DMR for Nov of 2010. (2 samples were reported to have been taken) and the No Discharge was marked, although there are sample results reported.
- Outfall 2:** 1 flow result was reported on the DMR for Oct, Nov, and Dec of 2010. (2 samples were reported to have been taken)
- Outfall 5:** 1 flow result was reported on the DMR for Oct, Nov, Dec of 2010. (2 samples were reported to have been taken)
- Outfall 15:** 1 flow result was reported on the DMR for Oct, Nov, Dec of 2010. (2 samples were reported to have been taken)
- Outfall 16:** 1 flow result was reported on the DMR for Oct, Nov, Dec of 2010. (2 samples were reported to have been taken)
- Outfall 20:** 1 flow result was reported on the DMR for Oct, Nov, Dec of 2010. (2 samples were reported to have been taken)
- Outfall 21:** 1 flow result was reported on the DMR for Oct, Nov, Dec of 2010. (2 samples were reported to have been taken)
- Outfall 23:** 1 flow result was reported on the DMR for Oct and Nov of 2010. (2 samples were reported to have been taken)
- Outfall 25:** 1 flow result was reported on the DMR for Dec of 2010. (2 samples were reported to have been taken)
- Outfall 27:** 1 flow result was reported on the DMR for Dec of 2010. (2 samples were reported to have been taken)
- Outfall 29:** 1 flow result was reported on the DMR for Oct, Nov, Dec of 2010. (2 samples were reported to have been taken)
- Outfall 31:** 1 flow result was reported on the DMR for Dec of 2010. (2 samples were reported to have been taken)
- Outfall 32:** 1 flow result was reported on the DMR for Dec of 2010. (2 samples were reported to have been taken)
- Outfall 33:** 1 flow result was reported on the DMR for Oct and Dec of 2010. (2 samples were reported to have been taken)

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG046155. [KRS 224.70-110]

3 Violation Description for Subject Item AIOO0000106351():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton were discharging without a KPDES permit by constructing outfalls before receiving approval from the Division of Water to add those outfalls/structures to their existing KPDES Coal General Permit KYG046155. This was observed for the following outfalls and monitoring periods:

- Outfall 3: Apr-Dec of 2008; Jan-Dec of 2009; Jan-Dec of 2010
- Outfall 9: Oct-Dec of 2008; Jan-Dec of 2009; Jan-Dec of 2010
- Outfall 10: Jan-Dec of 2009; Jan-Dec of 2010
- Outfall 11: Oct-Dec of 2009; Jan-Dec of 2010
- Outfall 12: Oct-Dec of 2008; Jan-Dec of 2009; Jan-Dec of 2010
- Outfall 24: July-Dec of 2008; Jan-Dec of 2009; Jan-Dec of 2010
- Outfall MR5-2: Oct-Dec of 2009; Jan-Dec of 2010
- Outfall MR5-3: Oct-Dec of 2009; Jan-Dec of 2010
- Outfall MR5-4: Oct-Dec of 2009; Jan-Dec of 2010

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall cease discharging from unpermitted outfalls. Nally & Hamilton shall apply for a KPDES permit from the Division of Water for all outfalls. Nally & Hamilton shall not construct or discharge from a constructed outfall until coverage under a KPDES permit has been granted. [KRS 224.70-110]

4 Violation Description for Subject Item AIOO0000106351():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065, Section 2(1)(a), which cites to 40 CFR 122.41(a), by failing to submit the required monitoring data for **Conductivity** on the Discharge Monitoring Reports (DMRs) as required by the KPDES Coal General Permit #KYG046155, for the following outfalls and monitoring periods.

- Outfall 2: August and September of 2009
- Outfall 5: August, September, October and November of 2009
- Outfall 15: August, September, October and November of 2009
- Outfall 20: August, September, October and November of 2009
- Outfall 21: August, September, October and November fo 2009
- Outfall 25: August, September, October and November of 2009
- Outfall 27: August, September, October and November of 2009
- Outfall 29: October and November of 2009
- Outfall 31: August, September, October and November of 2009
- Outfall 32: August, September, October and November of 2009
- Outfall 33: August, September, October and November of 2009

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG046155. [KRS 224.70-110]

**5 Violation Description for Subject Item AIOO0000106351():**

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton Enterprises Inc violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(l)(4)(i), by failing to accurately report monitoring results on Discharge Monitoring Reports (DMRs) for KYG046155. Below are the specific findings: (Bench Sheets)

**Outfall 2:** February and March of 2010 - DMRs match.  
Bench sheets do not match DMRs.

**Outfall 5:** April of 2009 – Both samples ( 4/08/09 and 4/22/09) for April 2009 are identical on the Bench Sheets. The Bench sheet for 4/22/09 does not match the DMR.

**Outfall 32:** August of 2009 – Both samples (8/10/09 and 8/25/09 ) for August 2009 are identical on the Bench Sheets. The Bench sheet for 8/25/09 does not match the DMRs.

**Outfall 33:** July of 2008 – Facility reported data on the DMR; however, the Bench Sheet reports No Discharge.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG046155. [KRS 224.70-110]

**6 Violation Description for Subject Item AIOO0000106351():**

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton violated 401 KAR 5:065, Section 2(1), which cites to 40 CFR 122.41(a), by failing to demonstrate compliance with the KPDES Coal General permit limits for Acidity (as mg/l CaCO<sub>3</sub>), as required by KPDES Coal General permit KYG046155, for the following Outfalls and monitoring periods listed below.

The permitted limits require that at all times acidity shall be less than alkalinity. The reported results were an Acidity value reported as >5. With this value being reported, compliance can not be demonstrated.

**Outfall 2:** October, November and December of 2010  
**Outfall 5:** October, November and December of 2010  
**Outfall 15:** October, November and December of 2010  
**Outfall 16:** October, November and December of 2010  
**Outfall 20:** October, November and December of 2010  
**Outfall 21:** October, November and December of 2010  
**Outfall 23:** October and November of 2010  
**Outfall 25:** December of 2010  
**Outfall 27:** December of 2010  
**Outfall 29:** November and December of 2010  
**Outfall 31:** December of 2010  
**Outfall 32:** December of 2010  
**Outfall 33:** October and December of 2010

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG046155. [KRS 224.70-110]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection  
Division of Enforcement  
300 Fair Oaks Lane  
Frankfort, KY 40601  
502-564-2150 extension 266 (8:30 AM – 4:30 PM)  
Ms. Lori E. Conway, Enforcement Specialist

Issued By: \_\_\_\_\_

*Lori E. Conway*  
Ms. Lori E. Conway  
Environmental Enforcement Specialist  
Compliance and Operations Branch  
Date: April 29, 2011

How Delivered: Certified Mail

Certified Number: 7010 1670 0002 2552 2833



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water  
875 S Main St  
London, KY 40741-1902  
www.kentucky.gov

April 25, 2011

Certified No. 7008 1830 0003 6511 8038  
Return Receipt Requested

Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

Re: Notice of Violation  
AI ID: 98183  
AI Name: Nally & Hamilton Enterprises Inc  
(807-0340)  
Activity ID: ENV20110003  
Permit No. KYG041921  
Bell County, KY

Dear Mr. Hamilton:

Attached for your information and records is a copy of the Performance Audit Inspection performed at Nally and Hamilton Enterprises Inc on November 17, 2010.

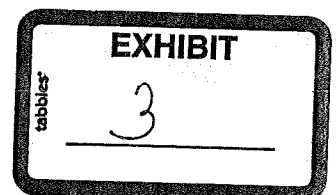
As a result of the inspection, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 606-330-2080.

Sincerely,

Gretchen M. Bartley,  
Environmental Scientist II  
Division of Water

Enclosure



COMMONWEALTH OF KENTUCKY  
 ENERGY AND ENVIRONMENT CABINET  
 DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
 Division of Water

**NOTICE OF VIOLATION**

To: Mr. Steven Hamilton  
 Nally & Hamilton Enterprises Inc  
 109 S 4th St  
 PO Box 157  
 Bardstown, KY 40004

**AI Name:** Nally & Hamilton Enterprises Inc (807-0340)      **AI ID:** 98183    **Activity ID:** ENV20110003  
**Discovery ID:** CIN20100001    **County:** Bell  
**Date(s) Violation(s) Observed:** 11/17/2010

This is to advise that you are in violation of the provisions cited below:

<b>1</b>	<b>Violation Description for Subject Item AIOO0000098183():</b>
	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 cabinet at any time. [401 KAR 5:065 Section 2(1)]
	<b>Description of Non Compliance:</b>
	<p>The facility has failed to maintain required records. Samples are taken from the permitted outfalls by TWL personnel. TWL samplers use a field log and transfer information onto what is labeled a Chain of Custody. The field log and chain of custody contain the name of the coal company and DNR Permit Number along with the date the sample is taken, sample ID, pH, conductivity, temperature and flow. There is no indication as to who took the sample or what time the sample was taken. In addition to the previously mentioned deficiencies, the chain of custody does not document when the sample was received at the lab, who received the sample in the lab, and who relinquished the sample/chain of custody. Outside of the field parameters, there is no documentation as to the parameter(s) to be analyzed by the lab or the preservative used.</p> <p>Once the sample arrives in the lab it is logged onto a "Bench Sheet". This bench sheet contains the coal company's name, the DNR Permit Number, Outfall/Pond ID and the required analytical parameters, including those measured in the field. The "Bench Sheet" does not contain the analyst's name or initials, the time and date the analysis was performed or any supporting documentation associated with the methodology. There is no documentation of calibration, standards or duplicates having been run. Reportedly, the analyst runs the samples and one of the assistants follows the analyst and sample through the lab and fills out the "bench sheet" as the analysis is completed and results are determined. The combination of these deficiencies is such that the sample results are not reproducible or legally defensible, and this significantly influences the validity of the data.</p>

	<p><b>The remedial measure(s), and date(s) to be completed by are as follows:</b></p> <p>The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of March 2011 shall be submitted with the written notification. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>2 Violation Description for Subject Item AIOO0000098183():</b></p> <p>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. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p> <p>The facility is not being properly operated and maintained as required. Specifically, the laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC). DOW personnel determined that all test methods observed at the TWL facility were performed using approved methodologies or a procedure approved under US EPA's Alternate Test Procedure (ATP) program, and the methodologies themselves were in compliance with the requirements of 40 CFR Part 136. However, the lab had a significant number of deficiencies in the area of quality control: The lab SOP is only partially developed; the chains of custody and bench sheets are inadequate because there is a lot of missing documentation, and we could not find adequate documentation of quality control processes such as instrument calibration, analysis of duplicate samples, spikes and/or standards. A set of "blind spike" samples provided and certified by a third party vendor was taken to the lab along with the DOW inspection team on 11/17/2010. TWL was unable to run those samples at that time because they had run out of reagent to perform several of the test methodologies. Reportedly, the reagents were on order and expected any day. A follow-up inspection was conducted on 11/29/2010 to allow DOW personnel to witness the analyst perform the test procedures, and to compare and evaluate the sample results with those determined and certified by the supplier. The analyst that performed the test procedures was reportedly not the primary analyst, and although he made a good effort, he did not convey proficiency with the methodologies. Of the six (6) parameters analyzed only three (alkalinity, acidity and conductivity) were within the acceptable range. Total suspended solids, iron and manganese were all outside of the acceptable range. A more detailed description of the findings of both the 11/17/2010 and 12/29/2010 inspections is contained on the Summary of Findings.</p>



**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

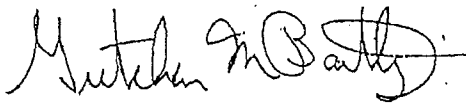
- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures. [401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

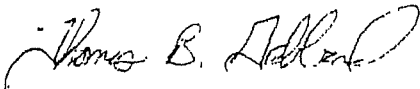
If you have questions or need further information, write or call the undersigned:

Division of Water  
Florence Regional Office  
8020 Veterans Memorial Drive, Suite 110  
Florence, KY 41042  
859-525-4923 (8:00 AM – 4:30 PM)  
Gretchen M. Bartley, Environmental Scientist II



Issued By:

Gretchen M. Bartley, Environmental Scientist II  
Date: April 25, 2011



Issued By:

Mr. Thomas B. Gabbard, Environmental Control Manager  
Date: April 25, 2011

How Delivered: USPS Certified/Registered # 7008 1830 0003 6511 8038

COMMONWEALTH OF KENTUCKY  
ENERGY and ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Enforcement

NOTICE OF VIOLATION

To: Nally & Hamilton Enterprises Inc  
Steven Hamilton  
PO Box 157  
Bardstown, KY 40004

AI Name: Nally & Hamilton Enterprises Inc (807-0340)      AI ID: 98183    Activity ID: ENV20110002

County: Bell  
DMRE Permit: 807-0340  
KPDES Permit: KYG041921  
Date(s) Violation(s) Observed: 04/10/2011, 04/28/2011

This is to advise that you are in violation of the provisions cited below:

- 1 Violation Description for Subject Item AIOO0000098183():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

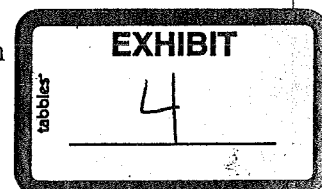
Nally & Hamilton violated 401 KAR 5:065, Section 2(1), which cites to 40 CFR 122.41(a), by **failing to submit Discharge Monitoring Reports (DMRs)** as required by KPDES Coal General Permit #KYG041921, for the following outfalls and monitoring periods:

Outfall 1TS: January through June of 2008  
Outfall 2LR: January, February, March and June of 2010  
Outfall 3LR: June of 2010  
Outfall 4LR: June of 2010  
Outfall 5LR: June of 2010  
Outfall 6LR: June of 2010  
Outfall 7LR: June of 2010

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General permit KYG041921. [KRS 224.70-110]

- 2 Violation Description for Subject Item AIOO0000098183():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in



contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065, Section 2(1)(a), which cites to 40 CFR 122.41(a), by failing to submit the required monitoring data for **Conductivity** on the Discharge Monitoring Reports (DMRs), as required by the KPDES Coal General Permit #KYG041921, for the following outfalls and monitoring periods:

Outfall 1LR: August, September, October and November of 2009

Outfall 2LR: August, September, October and November of 2009

Outfall 3LR: September and October of 2009

Outfall 4LR: August, September, October and November of 2009

Outfall 5LR: August, September, October and November of 2009

Outfall 6LR: August, September, October and November of 2009

Outfall 7LR: August, September, October and November of 2009

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General # KYG041921. [KRS 224.70-110]

3 Violation Description for Subject Item AIOO0000098183():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton violated 401 KAR 5:065, Section 2(1), which cites to 40 CFR 122.41(a), by failing to demonstrate compliance with the KPDES Coal General permit limits for Acidity (as mg/l CaCO<sub>3</sub>), as required by KPDES Coal General permit KYG041921, for the following Outfalls and monitoring periods listed below.

The permitted limits require that at all times acidity shall be less than alkalinity. The reported results were an Acidity value reported as >5. With this value being reported, compliance can not be demonstrated.

Outfall 1LR: October, November and December of 2010

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General permit KYG041921. [KRS 224.70-110]

4 Violation Description for Subject Item AIOO0000098183():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton Enterprises Inc violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(I)(4)(i), by failing to accurately report monitoring results on Discharge Monitoring Reports (DMRs) for KYG041921. Below are the specific findings: (Bench Sheets)

Outfall 1LR: March of 2010 - Data was reported on the DMR; however, data not reported on Bench sheet.

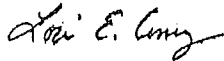
**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG041921. [KRS 224.70-110]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection  
Division of Enforcement  
300 Fair Oaks Lane  
Frankfort, KY 40601  
502-564-2150 extension 266 (8:30 AM – 4:30 PM)  
Ms. Lori E. Conway, Enforcement Specialist



Issued By: \_\_\_\_\_

Ms. Lori E. Conway  
Environmental Enforcement Specialist  
Compliance and Operations Branch  
Date: April 29, 2011

How Delivered: Certified Mail

Certified/Registered # 7010 1670 0002 2552 2833



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water  
8020 Veterans Memorial Dr Ste 110  
Florence, KY 41042  
www.kentucky.gov

April 25, 2011

Certified No. 7008 1830 0003 6511 8038  
Return Receipt Requested

Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc (807-0341)  
PO Box 157  
Bardstown, KY 40004

Re: Notice of Violation  
AI ID: 98185  
AI Name: Nally & Hamilton Enterprises Inc  
(807-0341)  
Activity ID: ENV20110002  
Permit No. KYG041924  
Bell County, KY

Dear Mr. Hamilton:

Attached for your information and records is a copy of the Performance Audit Inspection performed at Nally and Hamilton Enterprises Inc. on November 17, 2010.

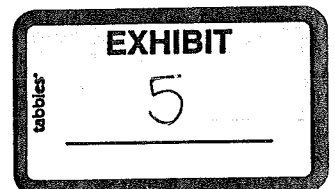
As a result of the inspection, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please feel free to contact me at 859-525-4923, or Thomas Gabbard at (502) 564-3410.

Sincerely,

Gretchen M. Bartley,  
Environmental Scientist II  
Division of Water

Enclosure



COMMONWEALTH OF KENTUCKY  
 ENERGY AND ENVIRONMENT CABINET  
 DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
 Division of Water

**NOTICE OF VIOLATION**

To: Nally & Hamilton Enterprises Inc (807-0341)  
 KY 2012  
 Balkan, KY 40977

AI Name: Nally & Hamilton Enterprises Inc (807-0341)      AI ID: 98185    Activity ID: ENV20110002  
 Discovery ID: CIN20100001    County: Bell  
 Enforcement Case ID:  
 Date(s) Violation(s) Observed: 11/17/2010

This is to advise that you are in violation of the provisions cited below:

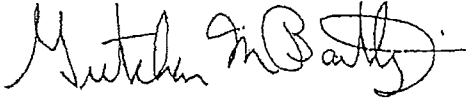
<b>1</b>	<p><b>Violation Description for Subject Item AIOO0000098185():</b></p> <p>The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports 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 cabinet at any time. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p> <p>The facility has failed to maintain required records. Samples are taken from the permitted outfalls by TWL personnel. TWL samplers use a field log and transfer information onto what is labeled a Chain of Custody. The field log and chain of custody contain the name of the coal company and DNR Permit Number along with the date the sample is taken, sample ID, pH, conductivity, temperature and flow. There is no indication as to who took the sample or what time the sample was taken. In addition to the previously mentioned deficiencies, the chain of custody does not document when the sample was received at the lab, who received the sample in the lab, and who relinquished the sample/chain of custody. Outside of the field parameters, there is no documentation as to the parameter(s) to be analyzed by the lab or the preservative used.</p> <p>Once the sample arrives in the lab it is logged onto a "Bench Sheet". This bench sheet contains the coal company's name, the DNR Permit Number, Outfall/Pond ID and the required analytical parameters, including those measured in the field. The "Bench Sheet" does not contain the analyst's name or initials, the time and date the analysis was performed or any supporting documentation associated with the methodology. There is no documentation of calibration, standards or duplicates having been run. Reportedly, the analyst runs the samples and one of the assistants follows the analyst and sample through the lab and fills out the "bench sheet" as the analysis is completed and results are determined. The combination of these deficiencies is such that the sample results are not reproducible or legally defensible, and this significantly influences the validity of the data.</p>
	<p><b>The remedial measure(s), and date(s) to be completed by are as follows:</b></p> <p>The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of March 2011 shall be submitted with the written notification. [401 KAR 5:065 Section 2(1)]</p>

2	<b>Violation Description for Subject Item AIOO000098185():</b>
	<p>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. [401 KAR 5:065 Section 2(1)]</p>
	<b>Description of Non Compliance:</b>
	<p>The facility is not being properly operated and maintained as required. Specifically, the laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC). DOW personnel determined that all test methods observed at the TWL facility were performed using approved methodologies or a procedure approved under US EPA's Alternate Test Procedure (ATP) program, and the methodologies themselves were in compliance with the requirements of 40 CFR Part 136. However, the lab had a significant number of deficiencies in the area of quality control: The lab SOP is only partially developed; the chains of custody and bench sheets are inadequate because there is a lot of missing documentation, and we could not find adequate documentation of quality control processes such as instrument calibration, analysis of duplicate samples, spikes and/or standards. A set of "blind spike" samples provided and certified by a third party vendor was taken to the lab along with the DOW inspection team on 11/17/2010. TWL was unable to run those samples at that time because they had run out of reagent to perform several of the test methodologies. Reportedly, the reagents were on order and expected any day. A follow-up inspection was conducted on 11/29/2010 to allow DOW personnel to witness the analyst perform the test procedures, and to compare and evaluate the sample results with those determined and certified by the supplier. The analyst that performed the test procedures was reportedly not the primary analyst, and although he made a good effort, he did not convey proficiency with the methodologies. Of the six (6) parameters analyzed only three (alkalinity, acidity and conductivity) were within the acceptable range. Total suspended solids, iron and manganese were all outside of the acceptable range. A more detailed description of the findings of both the 11/17/2010 and 12/29/2010 inspections is contained on the Summary of Findings.</p>
	<b>The remedial measure(s), and date(s) to be completed by are as follows:</b>
	<p>The permittee must, at all times, properly operate &amp; maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:</p> <ul style="list-style-type: none"> <li>The date, exact place, and time of sampling or measurements;</li> <li>The individual(s) who performed the sampling or measurements;</li> <li>The date(s) analyses were performed;</li> <li>The individual(s) who performed the analyses;</li> <li>The analytical techniques or methods used; and</li> <li>The results of such analyses.</li> </ul> <p>These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.</p> <p>[401 KAR 5:065 Section 2(1)]</p>

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water  
Florence Regional Office  
8020 Veterans Memorial Dr Ste 110  
Florence, KY 41042  
859-525-4923 (8:00 AM – 4:30 PM)  
Gretchen M. Bartley, Environmental Scientist II



Issued By:

Gretchen M. Bartley, Environmental Scientist II  
Date: April 25, 2011



Issued By:

Mr. Thomas B. Gabbard, Environmental Control Manager  
Date: April 25, 2011

How Delivered: USPS Certified Mail  
Certified/Registered # 7008 1830 0003 6511 8038



COMMONWEALTH OF KENTUCKY  
ENERGY and ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Enforcement

NOTICE OF VIOLATION

To: Nally & Hamilton Enterprises Inc  
Steven Hamilton  
PO Box 157  
Bardstown, KY 40004

AI Name: Nally & Hamilton Enterprises Inc (807-0341)      AI ID: 98185    Activity ID: ENV20110003

County: Bell  
DMRE Permit: 807-0341  
KPDES Permit: KYG041924  
Date(s) Violation(s) Observed: 04/28/2011

This is to advise that you are in violation of the provisions cited below:

- 1 Violation Description for Subject Item AIOO0000098185():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

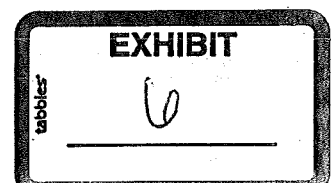
Failing to comply with 401 KAR 5:065, Section 2(1)(a), which cites to 40 CFR 122.41(a), by failing to submit the required monitoring data for **Conductivity** on the Discharge Monitoring Reports (DMRs), as required by the KPDES Coal General Permit #KYG041924, for the following outfalls and monitoring periods:

Outfall 1LR: August, September, October and November of 2009  
Outfall 4TC: September and October of 2009  
Outfall 5DB: August, October and November of 2009  
Outfall 5TC: October and November of 2009  
Outfall 6TC: September and October of 2009  
Outfall 7TC: August, September, October and November of 2009

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG041924. [KRS 224.70-110]

- 2 Violation Description for Subject Item AIOO0000098185():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]



**Description of Non Compliance:**

Nally & Hamilton Enterprises Inc violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(I)(4)(i), by failing to accurately report monitoring results on Discharge Monitoring Reports (DMRs) for KYG041924. Below are the specific findings: (Bench Sheets)

**Outfall 1TC:** December of 2008 - Bench sheets have data, and DMR does not for both sample dates of 12/08/08 and 12/22/08.

Outfall 1TC: September of 2009 - Bench sheets have data, and DMR does not for both sample dates of 9/15/09 and 9/28/09.

Outfall 1TC: December of 2009 - Bench sheets have data, and DMR does not for both sample dates of 12/08/09 and 12/23/09.

Outfall 1TC: September of 2008 - Bench sheets have data, and DMR does not for both sample dates of 9/12/08 and 9/25/08.

**Outfall 1TS:** December of 2008 - Bench sheets have data, but DMR reports No Discharge for both samples of 12/08/08 and 12/22/08.

**Outfall 3DB:** December of 2008 - Bench sheet have data, but DMR reports No Discharge for the sample date of 12/08/2008.

**Outfall 4TC:** December of 2008 - Bench sheets report No Discharge, but DMRs report data for sample dates of 12/08/08 and 12/22/08.

**Outfall 5TC:** December of 2008 - Data on DMR does not match Bench sheets for samples dated 12/08/08 and 12/22/08.

Outfall 5TC: December of 2008 - TSS data on DMR does not match Bench sheet. Bench sheet data exceeds daily and monthly limit for TSS.

Outfall 5TC: September of 2009 - Bench sheet data for sample dated 9/15/09 matches Bench sheet data for sample dated 12/08/09.

Outfall 5TC: September of 2009 - Bench sheet data for sample dated 9/28/09 matches Bench sheet data for sample dated 12/23/09.

**Outfall 6TC:** December of 2008 - DMR reports data, but Bench sheets report No discharge for both sample dates of 12/08/08 and 12/22/08.

**Outfall 7TC:** December of 2008 - DMR reports data, but Bench sheets report No discharge for both sample dates of 12/08/08 and 12/22/08.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG041924. [KRS 224.70-110]

- 3 Violation Description for Subject Item AIOO0000098185():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton were discharging without a KPDES permit by constructing outfalls before receiving approval from the Division of Water to add those outfalls/structures to their existing KPDES Coal General Permit KYG041924. This was observed for the following outfalls and monitoring periods:

**Outfall ITC:** September and December of 2008; September and December of 2009; and April - December of 2010.

**Outfall ITS:** January - December of 2008; January - December of 2009; and January - December of 2010.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall cease discharging from unpermitted outfalls. Nally & Hamilton shall apply for a KPDES permit from the Division of Water for all outfalls. Nally & Hamilton shall not construct or discharge from a constructed outfall until coverage under a KPDES permit has been granted. [KRS 224.70-110]

- 4 Violation Description for Subject Item AIOO0000098185():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065 Sec. 2(1)(a), which cites to 40 CFR 122.41(a) by failing to comply with the KPDES permit limits for Monitoring and Reporting requirement, as required by KPDES permit KYG041924, for the following outfalls and monitoring periods:.

A total of two (2) samples shall be collected (if discharge occurs) each calendar month during a period of discharge resulting from a precipitation or pumpage event for all active mining areas and post mining underground drainage. Should either or both discharges be controlled discharges, then the requirement of Section B shall apply. If only one (1) discharge occurs during the calendar month, then the permittee must provide appropriate documentation.

**Only 1 sample/discharge was reported during the month of October of 2010.**  
**Appropriate documentation was not attached to the DMRs.**

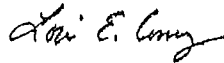
**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General permit KYG041924. [KRS 224.70-110]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection  
Division of Enforcement  
300 Fair Oaks Lane  
Frankfort, KY 40601  
502-564-2150 extension 266 (8:30 AM – 4:30 PM)  
Ms. Lori E. Conway, Enforcement Specialist



Issued By: \_\_\_\_\_

Ms. Lori E. Conway  
Environmental Enforcement Specialist  
Compliance and Operations Branch  
Date: April 29, 2011

How Delivered: Certified Mail

Certified/Registered # 7010 1670 0002 2552 2833



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water  
875 S Main St  
London, KY 40741-1902  
www.kentucky.gov

April 25, 2011

Certified No. 7008 1830 0003 6511 8038  
Return Receipt Requested

Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

Re: Notice of Violation  
AI ID: 82814  
AI Name: Nally & Hamilton Enterprises Inc  
(807-0342)  
Activity ID: ENV20110002  
Permit No. KYG046155  
Bell County, KY

Dear Mr. Hamilton:

Attached for your information and records is a copy of the Performance Audit Inspection performed at Nally and Hamilton Enterprises Inc on November 17, 2010.

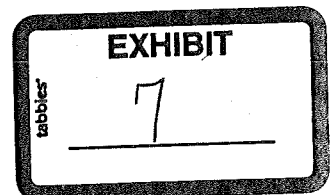
As a result of the inspection, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please feel free to contact me at 859-525-4923, or Thomas Gabbard at (502) 564-3410.

Sincerely,

Gretchen M. Bartley  
Environmental Scientist II  
Division of Water

Enclosure



COMMONWEALTH OF KENTUCKY  
 ENERGY AND ENVIRONMENT CABINET  
 DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
 Division of Water

**NOTICE OF VIOLATION**

To: Nally & Hamilton Enterprises Inc  
 109 S 4th St  
 PO Box 157  
 Bardstown, KY 40004

AI Name: Nally & Hamilton Enterprises Inc (807-0342)      AI ID: 82814    Activity ID: ENV20110002  
 Discovery ID: CIN20100001    County: Bell  
 Enforcement Case ID:  
 Date(s) Violation(s) Observed: 11/17/2010

This is to advise that you are in violation of the provisions cited below:

1	<p><b>Violation Description for Subject Item AIOO0000082814():</b></p> <p>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 cabinet at any time. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p> <p>The facility has failed to maintain required records. Samples are taken from the permitted outfalls by TWL personnel. TWL samplers use a field log and transfer information onto what is labeled a Chain of Custody. The field log and chain of custody contain the name of the coal company and DNR Permit Number along with the date the sample is taken, sample ID, pH, conductivity, temperature and flow. There is no indication as to who took the sample or what time the sample was taken. In addition to the previously mentioned deficiencies, the chain of custody does not document when the sample was received at the lab, who received the sample in the lab, and who relinquished the sample/chain of custody. Outside of the field parameters, there is no documentation as to the parameter(s) to be analyzed by the lab or the preservative used.</p> <p>Once the sample arrives in the lab it is logged onto a "Bench Sheet". This bench sheet contains the coal company's name, the DNR Permit Number, Outfall/Pond ID and the required analytical parameters, including those measured in the field. The "Bench Sheet" does not contain the analyst's name or initials, the time and date the analysis was performed or any supporting documentation associated with the methodology. There is no documentation of calibration, standards or duplicates having been run. Reportedly, the analyst runs the samples and one of the assistants follows the analyst and sample through the lab and fills out the "bench sheet" as the analysis is completed and results are determined. The combination of these deficiencies is such that the sample results are not reproducible or legally defensible, and this significantly influences the validity of the data.</p>

	<p><b>The remedial measure(s), and date(s) to be completed by are as follows:</b></p> <p>The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of March 2011 shall be submitted with the written notification. [401 KAR 5:065 Section 2(1)]</p>
2	<p><b>Violation Description for Subject Item AIOO00000828140:</b></p> <p>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. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p> <p>The facility is not being properly operated and maintained as required. Specifically, the laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC). DOW personnel determined that all test methods observed at the TWL facility were performed using approved methodologies or a procedure approved under US EPA's Alternate Test Procedure (ATP) program, and the methodologies themselves were in compliance with the requirements of 40 CFR Part 136. However, the lab had a significant number of deficiencies in the area of quality control: The lab SOP is only partially developed; the chains of custody and bench sheets are inadequate because there is a lot of missing documentation, and we could not find adequate documentation of quality control processes such as instrument calibration, analysis of duplicate samples, spikes and/or standards. A set of "blind spike" samples provided and certified by a third party vendor was taken to the lab along with the DOW inspection team on 11/17/2010. TWL was unable to run those samples at that time because they had run out of reagent to perform several of the test methodologies. Reportedly, the reagents were on order and expected any day. A follow-up inspection was conducted on 11/29/2010 to allow DOW personnel to witness the analyst perform the test procedures, and to compare and evaluate the sample results with those determined and certified by the supplier. The analyst that performed the test procedures was reportedly not the primary analyst, and although he made a good effort, he did not convey proficiency with the methodologies. Of the six (6) parameters analyzed only three (alkalinity, acidity and conductivity) were within the acceptable range. Total suspended solids, iron and manganese were all outside of the acceptable range. A more detailed description of the findings of both the 11/17/2010 and 12/29/2010 inspections is contained on the Summary of Findings.</p>

**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

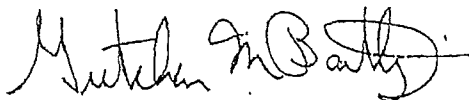
- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures. [401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

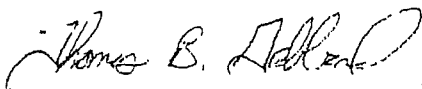
If you have questions or need further information, write or call the undersigned:

Division of Water  
Florence Regional Office  
8020 Veterans Memorial Drive Suite 110  
Florence, KY 41042  
859-525-4923 (8:00 AM – 4:30 PM)  
Gretchen M. Bartley, Environmental Scientist II



Issued By:

Gretchen M. Bartley, Environmental Scientist II  
Date: April 25, 2011



Issued By:

Mr. Thomas B. Gabbard, Environmental Control Manager  
Date: April 25, 2011

How Delivered: USPS Certified Mail  
Certified/Registered # 7008 1830 0003 6511 8038



COMMONWEALTH OF KENTUCKY  
ENERGY and ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Enforcement

NOTICE OF VIOLATION

To: Nally & Hamilton Enterprises Inc  
Attn: Steven Hamilton  
PO Box 157  
Bardstown, KY 40004

AI Name: Nally & Hamilton Enterprises Inc (807-0342)

AI ID: 82814 Activity ID: ENV20110001

County: Bell  
DMRE Permit: 807-0342  
KPDES Permit: KYG046205  
Date(s) Violation(s) Observed: 03/17/2011

This is to advise that you are in violation of the provisions cited below:

- 1 Violation Description for Subject Item AIOO0000082814():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

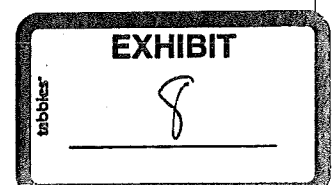
Failing to comply with 401 KAR 5:065, Section 2(1)(a), which cites to 40 CFR 122.41(a), by failing to submit the required monitoring data for **Conductivity** on the Discharge Monitoring Reports (DMRs) as required by the KPDES Coal General Permit #KYG046205, for the following Outfalls and monitoring periods:

- Outfall 1 - August, September, October and November of 2009
- Outfall 2 - August, September, October and November of 2009
- Outfall 3 - August, September, October and November of 2009
- Outfall 4 - August, September, October and November of 2009
- Outfall 33 - August and September of 2009
- Outfall 34 - August, September, October and November of 2009
- Outfall 25A - August, September, October and November of 2009

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG046205. [KRS 224.70-110]

- 2 Violation Description for Subject Item AIOO0000082814():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]



**Description of Non Compliance:**

Nally & Hamilton Enterprises Inc violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(a), by **failing to submit Discharge Monitoring Reports (DMRs)** as required by KPDES Coal General Permit #KYG046205 for the following outfalls, and monitoring periods:

- Outfall 3:** January through March of 2008
- Outfall 4:** January through September of 2008
- Outfall 5:** January through December 2008; January through December 2009; and January through December of 2010
- Outfall 6:** January through December 2008; for January through December of 2009; and January through December of 2010
- Outfall 7:** January through December of 2008; January through December of 2009; and January through December of 2010
- Outfall 8:** January through December of 2008; January through December of 2009; and January through December of 2010
- Outfall 9:** January through December of 2008; January through December of 2009; and January through December of 2010
- Outfall 21:** January, February and March of 2008
- Outfall 24:** January through December of 2008; January through September of 2009
- Outfall 25:** January through December of 2008; January through December of 2009; and January through December of 2010
- Outfall 26:** January through December of 2008; January through December of 2009; and January through December of 2010
- Outfall 27:** January through September of 2008
- Outfall 28:** January through December of 2008; January through December of 2009; and January through December of 2010
- Outfall 29:** January through December of 2008; January through December of 2009; and January through December of 2010
- Outfall 30:** January through September of 2008
- Outfall 31:** January through December of 2008; January through December of 2009; and January through March of 2010
- Outfall 32:** January through December of 2008; January through December of 2009; and January through December of 2010
- Outfall 27a:** January through March of 2008

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG046205. [KRS 224.70-110]

- 3 Violation Description for Subject Item AIOO0000082814Q):  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter: [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065 Sec. 2(1)(a), which cites to 40 CFR 122.41(a) by failing to comply with the KPDES permit limits for **Monitoring and Reporting** requirement, as required by KPDES Coal General permit KYG046205, for the following Outfalls and monitoring periods:

A total of two (2) samples shall be collected (if discharge occurs) each calendar month during a period of discharge resulting from a precipitation or pumpage event for all active mining areas and post mining underground drainage. Should either or both discharges be controlled discharges, then the requirement of Section B shall apply. If only one (1) discharge occurs during the calendar month, then the permittee must provide appropriate documentation.

**Only 1 sample/discharge** was reported for the following:

**Outfall 1:** October of 2010

**Outfall 2:** October of 2010

**Outfall 3:** October of 2010

**Appropriate documentation was not attached to the DMRs.**

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG046205. [KRS 224.70-110]

4 **Violation Description for Subject Item AIOO0000082814():**

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton Enterprises Inc violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(l)(4)(i), by **failing to accurately report monitoring results** on Discharge Monitoring Reports (DMRs) for KYG046205. Below are the specific findings: (Bench Sheets)

Outfall 1: April, May, and June of 2010 - DMRs do not match Bench sheets.

Outfall 2: April, May, and June of 2010 - DMRs do not match Bench sheets

Outfall 3: April, May and June of 2010 - DMRs do not match Bench sheets

Outfall 4: April, May and June of 2010 - DMRs do not match Bench sheets

The bench sheets did not match the data reported on the DMRs.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG046205. [KRS 224.70-110]

5 Violation Description for Subject Item AIOO0000082814():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton were discharging without a KPDES permit by constructing outfalls before receiving approval from the Division of Water to add those outfalls/structures to their existing KPDES Coal General Permit KYG046205. This was observed for the following outfalls and monitoring periods:

**Outfall 33:** January through December of 2010

**Outfall 34:** April through December of 2010

**Outfall 25A:** April through December of 2010

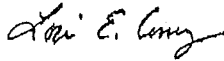
**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall cease discharging from unpermitted outfalls. Nally & Hamilton shall apply for a KPDES permit from the Division of Water for all outfalls. Nally & Hamilton shall not construct or discharge from a constructed outfall until coverage under a KPDES permit has been granted. [KRS 224.70-110]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection  
Division of Enforcement  
300 Fair Oaks Lane  
Frankfort, KY 40601  
502-564-2150 extension 266 (8:30 AM – 4:30 PM)  
Ms. Lori E. Conway, Enforcement Specialist



Issued By: \_\_\_\_\_

Ms. Lori E. Conway  
Environmental Enforcement Specialist  
Compliance and Operations Branch  
Date: April 29, 2011

How Delivered: Certified Mail

Certified Number: 7010 1670 0002 2552 2833



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water  
8020 Veterans Memorial Drive  
Suite 110  
Florence, Kentucky 41042  
www.kentucky.gov

April 25, 2011

Certified No. 7008 1830 0003 6511 8038  
Return Receipt Requested

Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

Re: Notice of Violation  
AI ID: 106102  
AI Name: Nally & Hamilton Enterprises Inc  
(807-0346)  
Activity ID: ENV20110002  
Permit No. KYG042163  
Bell County, KY

Dear Mr. Hamilton:

Attached for your information and records is a copy of the Performance Audit Inspection performed at Nally and Hamilton Enterprise Inc on November 17, 2010.

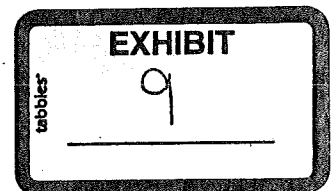
As a result of the inspection, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 85-525-4923 or Thomas Gabbard at 502-564-3410.

Sincerely,

Ms. Gretchen Bartley,  
Environmental Scientist  
Division of Water

Enclosure



COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water

**NOTICE OF VIOLATION**

To: Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

**AI Name:** Nally & Hamilton Enterprises Inc (807-0346)      **AI ID:** 106102 **Activity ID:** ENV20110002  
**Discovery ID:** CIN20100001    **County:** Bell  
**Date(s) Violation(s) Observed:** 11/17/2010

This is to advise that you are in violation of the provisions cited below:

1	<b>Violation Description for Subject Item AIOO0000106102():</b> 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 cabinet at any time. [401 KAR 5:065 Section 2(1)]
	<b>Description of Non Compliance:</b> The facility has failed to maintain required records. Samples are taken from the permitted outfalls by TWL personnel. TWL samplers use a field log and transfer information onto what is labeled a Chain of Custody. The field log and chain of custody contain the name of the coal company and DNR Permit Number along with the date the sample is taken, sample ID, pH, conductivity, temperature and flow. There is no indication as to who took the sample or what time the sample was taken. In addition to the previously mentioned deficiencies, the chain of custody does not document when the sample was received at the lab, who received the sample in the lab, and who relinquished the sample/chain of custody. Outside of the field parameters, there is no documentation as to the parameter(s) to be analyzed by the lab or the preservative used. Once the sample arrives in the lab it is logged onto a "Bench Sheet". This bench sheet contains the coal company's name, the DNR Permit Number, Outfall/Pond ID and the required analytical parameters, including those measured in the field. The "Bench Sheet" does not contain the analyst's name or initials, the time and date the analysis was performed or any supporting documentation associated with the methodology. There is no documentation of calibration, standards or duplicates having been run. Reportedly, the analyst runs the samples and one of the assistants follows the analyst and sample through the lab and fills out the "bench sheet" as the analysis is completed and results are determined. The combination of these deficiencies is such that the sample results are not reproducible or legally defensible, and this significantly influences the validity of the data.

	<p><b>The remedial measure(s), and date(s) to be completed by are as follows:</b></p>
	<p>The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of March 2011 shall be submitted with the written notification. [401 KAR 5:065 Section 2(1)]</p>
2	<p><b>Violation Description for Subject Item AIOO0000106102():</b></p>
	<p>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. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p>
	<p>The facility is not being properly operated and maintained as required. Specifically, the laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC). DOW personnel determined that all test methods observed at the TWL facility were performed using approved methodologies or a procedure approved under US EPA's Alternate Test Procedure (ATP) program, and the methodologies themselves were in compliance with the requirements of 40 CFR Part 136. However, the lab had a significant number of deficiencies in the area of quality control: The lab SOP is only partially developed; the chains of custody and bench sheets are inadequate because there is a lot of missing documentation, and we could not find adequate documentation of quality control processes such as instrument calibration, analysis of duplicate samples, spikes and/or standards. A set of "blind spike" samples provided and certified by a third party vendor was taken to the lab along with the DOW inspection team on 11/17/2010. TWL was unable to run those samples at that time because they had run out of reagent to perform several of the test methodologies. Reportedly, the reagents were on order and expected any day. A follow-up inspection was conducted on 11/29/2010 to allow DOW personnel to witness the analyst perform the test procedures, and to compare and evaluate the sample results with those determined and certified by the supplier. The analyst that performed the test procedures was reportedly not the primary analyst, and although he made a good effort, he did not convey proficiency with the methodologies. Of the six (6) parameters analyzed only three (alkalinity, acidity and conductivity) were within the acceptable range. Total suspended solids, iron and manganese were all outside of the acceptable range. A more detailed description of the findings of both the 11/17/2010 and 12/29/2010 inspections is contained on the Summary of Findings.</p>

**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

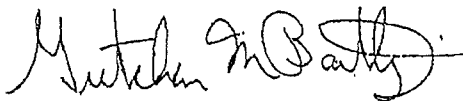
The date, exact place, and time of sampling or measurements;  
The individual(s) who performed the sampling or measurements;  
The date(s) analyses were performed;  
The individual(s) who performed the analyses;  
The analytical techniques or methods used; and  
The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures. [401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

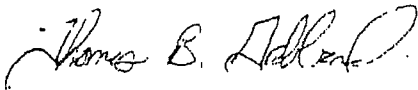
If you have questions or need further information, write or call the undersigned:

Division of Water  
Florence Regional Office  
8020 Veterans Memorial Drive  
Suite 110  
Florence, Kentucky 41042  
859-525-4923 (8:00 AM – 4:30 PM)  
Gretchen M. Bartley, Environmental Scientist



Issued By:

Gretchen M. Bartley, Environmental Scientist  
Date: April 25, 2011



Issued By:

Thomas B. Gabbard, Environmental Control Manager  
Date: April 25, 2011

How Delivered: USPS Certified/Registered # 7008 1830 0003 6511 8038



COMMONWEALTH OF KENTUCKY  
ENERGY and ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Enforcement

NOTICE OF VIOLATION

To: Nally & Hamilton Enterprises Inc  
Steven Hamilton  
PO Box 157  
Bardstown, KY 40004

AI Name: Nally & Hamilton Enterprises Inc (807-0346)

AI ID: 106102 Activity ID: ENV20110001

County: Bell

DSMRE Permit: 807-0346

KPDES Permit: KYG042163

Date(s) Violation(s) Observed: 03/14/2011, 04/28/2011

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000106102():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton violated 401 KAR 5:065, Section 2(1), which cites to 40 CFR 122.41(a), by failing to demonstrate compliance with the KPDES Coal General permit limits for Acidity (as mg/l CaCO<sub>3</sub>), as required by KPDES Coal General permit KYG042163, for the following Outfalls and monitoring periods listed below.

The permitted limits require that at all times acidity shall be less than alkalinity. The reported results were an Acidity value reported as >5. With this value being reported, compliance can not be demonstrated.

Outfall 10LR: October, November and December of 2010

Outfall 11LR: October, November and December of 2010

Outfall 1CH: October, November and December of 2010

Outfall 1LR: October, November and December of 2010

Outfall 9LR: October, November and December of 2010

Outfall 2CH: October, November and December fo 2010

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General permit KYG042163.

2 Violation Description for Subject Item AIOO0000106102():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the

EXHIBIT

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pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065, Section 2(1)(a), which cites to 40 CFR 122.41(a), by failing to submit the required monitoring data for **Conductivity** on the Discharge Monitoring Reports (DMRs), as required by the KPDES Coal General Permit #KYG042163, for the following Outfalls and monitoring periods:

- Outfall 10LR: August, September, October and November of 2009
- Outfall 11LR: August, September, October and November of 2009
- Outfall 1CH: August, September, October and November of 2009
- Outfall 1LR: August, September, October and November of 2009
- Outfall 3LR: September and October of 2009
- Outfall 4LR: August, September, October and November of 2009
- Outfall 5LR: August, September, October and November of 2009
- Outfall 6LR: August, September, October and November of 2009
- Outfall 7LR: August, September, October and November of 2009
- Outfall 9LR: September and October of 2009

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG042163. [KRS 224.70-110]

**3 Violation Description for Subject Item AIOO0000106102():**

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton Enterprises Inc violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(a), by **failing to submit Discharge Monitoring Reports (DMRs)**, as required by KPDES Coal General permit KYG042163, for the following Outfalls and monitoring periods:

- Outfall 10LRA: January – December 2008; January – December 2009; January – December 2010
- Outfall 3LR: March of 2008; and June - December of 2010
- Outfall 4LR: March of 2008; and April - December of 2010
- Outfall 5LR: March of 2008; and June - December of 2010
- Outfall 6LR: March of 2008; and June - December of 2010
- Outfall 7LR: March of 2008; and June - December of 2010
- Outfall 8LR: January – December 2008; January – December 2009; January – December 2010
- Outfall 9LR: June of 2010

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General permit KYG042163. [KRS 224.70-110]

4 Violation Description for Subject Item AIOO0000106102():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065 Sec. 2(1)(a), which cites to 40 CFR 122.41(a) by failing to comply with the KPDES permit limits for Monitoring and Reporting requirement, as required by KPDES Coal General permit: KYG042163, for the outfalls and monitoring periods listed below.

A total of two (2) samples shall be collected (if discharge occurs) each calendar month during a period of discharge resulting from a precipitation or pumpage event for all active mining areas and post mining underground drainage. Should either or both discharges be controlled discharges, then the requirement of Section B shall apply. If only one (1) discharge occurs during the calendar month, then the permittee must provide appropriate documentation.

**Only 1 sample/discharge** was reported for the outfalls and monitoring periods listed below.  
**Appropriate documentation was not attached to the DMRs.**

Outfall 9LR: January, February, March, April and May of 2010.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG042163. [KRS 224.70-110]

5 Violation Description for Subject Item AIOO0000106102():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065, Section 2(1)(a), which cites to 40 CFR 122.41(a), by failing to submit the required monitoring data on the Discharge Monitoring Reports (DMRs) as required by the KPDES Coal General Permit #KYG042163, for the following outfalls and monitoring periods:

**Outfall 10LR:** 1 flow result was reported on the DMR for July and October of 2008. (2 samples were reported to have been taken)

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General permit KYG042163. [KRS 224.70-110]

6 Violation Description for Subject Item AIOO0000106102():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton were discharging without a KPDES permit by constructing outfalls before receiving approval from the Division of Water to add those outfalls/structures to their existing KPDES Coal General Permit KYG042163. This was observed for the following outfalls and monitoring periods:

**Outfall 5:** January through December of 2008; January through December of 2009; and January through June of 2010.

**Outfall 6:** January through December of 2008; January through December of 2009; and January through June of 2010.

**Outfall 7:** January through December of 2008; January through December of 2009; and January through June of 2010.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall cease discharging from unpermitted outfalls. Nally & Hamilton shall apply for a KPDES permit from the Division of Water for all outfalls. Nally & Hamilton shall not construct or discharge from a constructed outfall until coverage under a KPDES permit has been granted. [KRS 224.70-110]

7 Violation Description for Subject Item AIOO0000106102():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton Enterprises Inc violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(l)(4)(i), by **failing to accurately report monitoring results** on Discharge Monitoring Reports (DMRs) for KYG042163. Below are the specific findings: (Bench Sheets)

**Outfall 10LR:** October of 2008 – DMR does not match Bench Sheet for 10/08/08; Bench sheet data for both samples (10/08/08 and 10/22/08) match each other.

**Outfall 11LR:** October of 2008 - DMR does not match Bench Sheet for 10/08/08; Bench sheet data for both samples (10/08/08 and 10/22/08) match each other.

**Outfall 1CH:** October of 2008 - DMR does not match Bench Sheet for 10/08/08; Bench sheet data for both samples (10/08/08 and 10/22/08) match each other.

**Outfall 1LR:** October of 2008 - DMR does not match Bench Sheet for 10/08/08; Bench sheet data for both samples (10/08/08 and 10/22/08) match each other.

Outfall PLR: October of 2008 - DMR does not match Bench Sheet for 10/08/08; Bench sheet data for both samples (10/08/08 and 10/22/08) match each other.

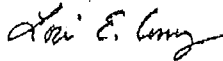
**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG042163. [KRS 224.70-110]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection  
Division of Enforcement  
300 Fair Oaks Lane  
Frankfort, KY 40601  
502-564-2150 extension 266 (8:30 AM – 4:30 PM)  
Ms. Lori E. Conway, Enforcement Specialist



Issued By: \_\_\_\_\_

Ms. Lori E. Conway  
Environmental Enforcement Specialist  
Compliance and Operations Branch  
Date: April 29, 2011

How Delivered: Certified Mail

Certified/Registered # 7010 1670 0002 2552 2833



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water  
875 S Main St  
London, KY 40741-1902  
www.kentucky.gov

April 25, 2011

Certified No. 7008 1830 0003 6511 8038  
Return Receipt Requested

Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

Re: Notice of Violation  
AI ID: 106022  
AI Name: Nally & Hamilton Enterprises Inc  
(807-0347)  
Activity ID: ENV20110002  
Permit No. KYG041895  
Bell County, KY

Dear Mr. Hamilton:

Attached for your information and records is a copy of the Performance Audit Inspection performed at Nally and Hamilton Enterprises Inc on November 17, 2010.

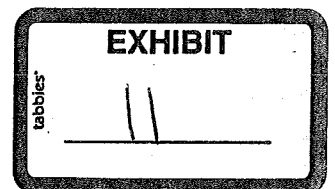
As a result of the inspection, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please feel free to contact me at 859-525-4923, or Thomas Gabbard at (502) 564-3410.

Sincerely,

Gretchen M. Bartley  
Environmental Scientist II  
Division of Water

Enclosure



COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water

**NOTICE OF VIOLATION**

To: Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

**AI Name:** Nally & Hamilton Enterprises Inc (807-0347)

**AI ID:** 106022 **Activity ID:** ENV20110002

**Discovery ID:** CIN20100001 **County:** Bell

**Enforcement Case ID:**

**Date(s) Violation(s) Observed:** 11/17/2010

This is to advise that you are in violation of the provisions cited below:

1	<b>Violation Description for Subject Item AIOO0000106022():</b>
	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 cabinet at any time. [401 KAR 5:065 Section 2(1)]
	<b>Description of Non Compliance:</b>
	<p>The facility has failed to maintain required records. Samples are taken from the permitted outfalls by TWL personnel. TWL samplers use a field log and transfer information onto what is labeled a Chain of Custody. The field log and chain of custody contain the name of the coal company and DNR Permit Number along with the date the sample is taken, sample ID, pH, conductivity, temperature and flow. There is no indication as to who took the sample or what time the sample was taken. In addition to the previously mentioned deficiencies, the chain of custody does not document when the sample was received at the lab, who received the sample in the lab, and who relinquished the sample/chain of custody. Outside of the field parameters, there is no documentation as to the parameter(s) to be analyzed by the lab or the preservative used.</p> <p>Once the sample arrives in the lab it is logged onto a "Bench Sheet". This bench sheet contains the coal company's name, the DNR Permit Number, Outfall/Pond ID and the required analytical parameters, including those measured in the field. The "Bench Sheet" does not contain the analyst's name or initials, the time and date the analysis was performed or any supporting documentation associated with the methodology. There is no documentation of calibration, standards or duplicates having been run. Reportedly, the analyst runs the samples and one of the assistants follows the analyst and sample through the lab and fills out the "bench sheet" as the analysis is completed and results are determined. The combination of these deficiencies is such that the sample results are not reproducible or legally defensible, and this significantly influences the validity of the data.</p>

	<p><b>The remedial measure(s), and date(s) to be completed by are as follows:</b></p> <p>The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of March 2011 shall be submitted with the written notification. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>2 Violation Description for Subject Item AIOO00001060220:</b></p> <p>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. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p> <p>The facility is not being properly operated and maintained as required. Specifically, the laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC). DOW personnel determined that all test methods observed at the TWL facility were performed using approved methodologies or a procedure approved under US EPA's Alternate Test Procedure (ATP) program, and the methodologies themselves were in compliance with the requirements of 40 CFR Part 136. However, the lab had a significant number of deficiencies in the area of quality control: The lab SOP is only partially developed; the chains of custody and bench sheets are inadequate because there is a lot of missing documentation, and we could not find adequate documentation of quality control processes such as instrument calibration, analysis of duplicate samples, spikes and/or standards. A set of "blind spike" samples provided and certified by a third party vendor was taken to the lab along with the DOW inspection team on 11/17/2010. TWL was unable to run those samples at that time because they had run out of reagent to perform several of the test methodologies. Reportedly, the reagents were on order and expected any day. A follow-up inspection was conducted on 11/29/2010 to allow DOW personnel to witness the analyst perform the test procedures, and to compare and evaluate the sample results with those determined and certified by the supplier. The analyst that performed the test procedures was reportedly not the primary analyst, and although he made a good effort, he did not convey proficiency with the methodologies. Of the six (6) parameters analyzed only three (alkalinity, acidity and conductivity) were within the acceptable range. Total suspended solids, iron and manganese were all outside of the acceptable range. A more detailed description of the findings of both the 11/17/2010 and 12/29/2010 inspections is contained on the Summary of Findings.</p>



**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures. [401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

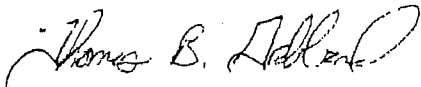
If you have questions or need further information, write or call the undersigned:

Division of Water  
Florence Regional Office  
8020 Veterans Memorial Drive, suite 110  
Florence, KY 41042  
859-525-4923 (8:00 AM – 4:30 PM)  
Gretchen M. Bartley, Environmental Scientist II



Issued By:

Gretchen M. Bartley, Environmental Scientist II  
Date: April 25, 2011



Issued By:

Mr. Thomas B. Gabbard, Environmental Control Manager  
Date: April 25, 2011

How Delivered: USPS Certified Mail  
Certified/Registered # 7008 1830 0003 6511 8038

COMMONWEALTH OF KENTUCKY  
ENERGY and ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Enforcement

NOTICE OF VIOLATION

To: Nally & Hamilton Enterprises Inc  
Steven Hamilton  
PO Box 157  
Bardstown, KY 40004

AI Name: Nally & Hamilton Enterprises Inc (807-0347)

AI ID: 106022 Activity ID: ENV20110003

County: Bell

DMRE Permit: 807-0347

KPDES Permit: KYG041895

Date(s) Violation(s) Observed: 03/17/2011

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000106022():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton were discharging without a KPDES permit by constructing outfalls before receiving approval from the Division of Water to add those outfalls/structures to their existing KPDES Coal General Permit KYG041895. This was observed for the following outfalls and monitoring periods:

Outfall 2: January - December of 2008; January - December of 2009; January - December of 2010.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall cease discharging from unpermitted outfalls. Nally & Hamilton shall apply for a KPDES permit from the Division of Water for all outfalls. Nally & Hamilton shall not construct or discharge from a constructed outfall until coverage under a KPDES permit has been granted. [KRS 224.70-110]

2 Violation Description for Subject Item AIOO0000106022():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

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**Description of Non Compliance:**

Nally & Hamilton Enterprises Inc violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(I)(4)(i), by **failing to accurately report monitoring results** on Discharge Monitoring Reports (DMRs) for KYG041895. Below are the specific findings: (Bench Sheets)

**Outfall BB1:**

January & April DMRs match - DMRs did not match Bench sheet for April 2010.  
February & May DMRs match - DMRs did not match Bench sheet for May 2010.  
March & June DMRs match - DMRs did not match Bench sheet for June 2010.

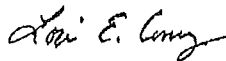
**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG041895. [KRS 224.70-110]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection  
Division of Enforcement  
300 Fair Oaks Lane  
Frankfort, KY 40601  
502-564-2150 extension 266 (8:30 AM – 4:30 PM)  
Ms. Lori E. Conway, Enforcement Specialist



Issued By: \_\_\_\_\_

Ms. Lori E. Conway  
Environmental Enforcement Specialist  
Compliance and Operations Branch  
Date: April 29, 2011

How Delivered: Certified Mail

Certified/Registered # 7010 1670 0002 2552 2833



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water  
875 S Main St  
London, KY 40741-1902  
www.kentucky.gov

April 25, 2011

Certified No. 7008 1830 0003 6511 8038  
Return Receipt Requested

Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

Re: Notice of Violation  
AI ID: 13289  
AI Name: Nally & Hamilton Enterprises Inc  
(807-8061)  
Activity ID: ENV20110002  
Permit No. KYG041895  
Harlan County, KY

Dear Mr. Hamilton:

Attached for your information and records is a copy of the Performance Audit Inspection performed at Nally and Hamilton Enterprises Inc on November 17, 2010.

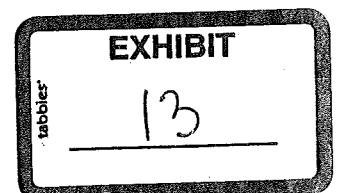
As a result of the inspection, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please feel free to contact me at 859-525-4923, or Thomas Gabbard at (502) 564-3410.

Sincerely,

Gretchen M. Bartley  
Environmental Scientist II  
Division of Water

Enclosure



COMMONWEALTH OF KENTUCKY  
 ENERGY AND ENVIRONMENT CABINET  
 DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
 Division of Water

**NOTICE OF VIOLATION**

To: Nally & Hamilton Enterprises Inc  
 109 S 4th St  
 PO Box 157  
 Bardstown, KY 40004

**AI Name:** Nally & Hamilton Enterprises Inc (807-8061)      **AI ID:** 13289    **Activity ID:** ENV20110002  
**Discovery ID:** CIN20100001    **County:** Harlan  
**Enforcement Case ID:**  
**Date(s) Violation(s) Observed:** 11/17/2010

This is to advise that you are in violation of the provisions cited below:

<b>1</b>	<p><b>Violation Description for Subject Item AIOO0000013289():</b></p> <p>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 cabinet at any time. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p> <p>The facility has failed to maintain required records. Samples are taken from the permitted outfalls by TWL personnel. TWL samplers use a field log and transfer information onto what is labeled a Chain of Custody. The field log and chain of custody contain the name of the coal company and DNR Permit Number along with the date the sample is taken, sample ID, pH, conductivity, temperature and flow. There is no indication as to who took the sample or what time the sample was taken. In addition to the previously mentioned deficiencies, the chain of custody does not document when the sample was received at the lab, who received the sample in the lab, and who relinquished the sample/chain of custody. Outside of the field parameters, there is no documentation as to the parameter(s) to be analyzed by the lab or the preservative used.</p> <p>Once the sample arrives in the lab it is logged onto a "Bench Sheet". This bench sheet contains the coal company's name, the DNR Permit Number, Outfall/Pond ID and the required analytical parameters, including those measured in the field. The "Bench Sheet" does not contain the analyst's name or initials, the time and date the analysis was performed or any supporting documentation associated with the methodology. There is no documentation of calibration, standards or duplicates having been run. Reportedly, the analyst runs the samples and one of the assistants follows the analyst and sample through the lab and fills out the "bench sheet" as the analysis is completed and results are determined. The combination of these deficiencies is such that the sample results are not reproducible or legally defensible, and this significantly influences the validity of the data.</p>

	<p><b>The remedial measure(s), and date(s) to be completed by are as follows:</b></p>
	<p>The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of March 2011 shall be submitted with the written notification. [401 KAR 5:065 Section 2(1)]</p>
2	<p><b>Violation Description for Subject Item AIOO00000132890:</b></p>
	<p>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. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p>
	<p>The facility is not being properly operated and maintained as required. Specifically, the laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC). DOW personnel determined that all test methods observed at the TWL facility were performed using approved methodologies or a procedure approved under US EPA's Alternate Test Procedure (ATP) program, and the methodologies themselves were in compliance with the requirements of 40 CFR Part 136. However, the lab had a significant number of deficiencies in the area of quality control: The lab SOP is only partially developed; the chains of custody and bench sheets are inadequate because there is a lot of missing documentation, and we could not find adequate documentation of quality control processes such as instrument calibration, analysis of duplicate samples, spikes and/or standards. A set of "blind spike" samples provided and certified by a third party vendor was taken to the lab along with the DOW inspection team on 11/17/2010. TWL was unable to run those samples at that time because they had run out of reagent to perform several of the test methodologies. Reportedly, the reagents were on order and expected any day. A follow-up inspection was conducted on 11/29/2010 to allow DOW personnel to witness the analyst perform the test procedures, and to compare and evaluate the sample results with those determined and certified by the supplier. The analyst that performed the test procedures was reportedly not the primary analyst, and although he made a good effort, he did not convey proficiency with the methodologies. Of the six (6) parameters analyzed only three (alkalinity, acidity and conductivity) were within the acceptable range. Total suspended solids, iron and manganese were all outside of the acceptable range. A more detailed description of the findings of both the 11/17/2010 and 12/29/2010 inspections is contained on the Summary of Findings.</p>

**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

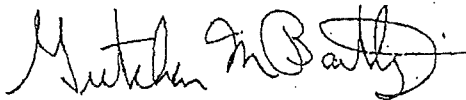
The date, exact place, and time of sampling or measurements;  
The individual(s) who performed the sampling or measurements;  
The date(s) analyses were performed;  
The individual(s) who performed the analyses;  
The analytical techniques or methods used; and  
The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures. [401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water  
Florence Regional Office  
8020 Veterans Memorial Drive, Suite 110  
Florence, KY 41042  
859-525-4923 (8:00 AM – 4:30 PM)  
Gretchen M. Bartley, Environmental Scientist II



Issued By:

Gretchen M. Bartley, Environmental Scientist II  
Date: April 25, 2011



Issued By:

Mr. Thomas B. Gabbard, Environmental Control Manager  
Date: April 25, 2011

How Delivered: USPS Certified Mail  
Certified/Registered # 7008 1830 0003 6511 8038

COMMONWEALTH OF KENTUCKY  
ENERGY and ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Enforcement

NOTICE OF VIOLATION

To: Nally & Hamilton Enterprises Inc  
Steven Hamilton  
PO Box 157  
Bardstown, KY 40004

AI Name: Nally & Hamilton Enterprises Inc (807-8061)

AI ID: 13289 Activity ID: ENV20110001

County: Harlan

DMRE Permit: 807-8061

KPDES Permit: KYG042569

Date(s) Violation(s) Observed: 03/17/2011

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000013289():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton violated 401 KAR 5:065, Section 2(1), which cites to 40 CFR 122.41(a), by failing to demonstrate compliance with the KPDES Coal General permit limits for Acidity (as mg/l CaCO<sub>3</sub>), as required by KPDES Coal General permit KYG042569, for the following Outfalls and monitoring periods listed below.

The permitted limits require that at all times acidity shall be less than alkalinity. The reported results were an Acidity value reported as >5. With this value being reported, compliance can not be demonstrated.

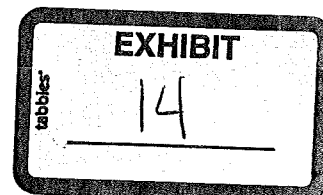
Outfall 1: October, November and December of 2010

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG042569. [KRS 224.70-110]

2 Violation Description for Subject Item AIOO0000013289():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]





**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065, Section 2(1)(a), which cites to 40 CFR 122.41(a), by failing to submit the **required monitoring data for FLOW** on the Discharge Monitoring Reports (DMRs) for **Outfall 1**, for the months of October, November and December of 2010, as required by the KPDES Coal General Permit #KYG042569.

Only 1 Flow value was reported on the above DMRs.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG042569. [KRS 224.70-110]

3 Violation Description for Subject Item AIOO0000013289):

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Nally & Hamilton Enterprises Inc violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(1)(4)(i), by **failing to accurately report monitoring results** on Discharge Monitoring Reports (DMRs) for KYG042569. Below are the specific findings: (Bench Sheets)

- Outfall 1: January 2010 DMRs match April 2010 DMRs.
- Outfall 1: February 2010 DMRs match May 2010 DMRs.
- Outfall 1: March 2010 DMRs match June 2010 DMRs.
- Outfall 1: April 2010 DMRs - Bench sheets do not match DMRs
- Outfall 1: May 2010 DMRs - Bench sheets do not match DMRs
- Outfall 1: June 2010 DMRs - Bench sheets do not match DMRs

**The remedial measure(s), and date(s) to be completed by are as follows:**

Nally & Hamilton shall comply with the terms and conditions of KPDES Coal General Permit # KYG042569. [KRS 224.70-110]

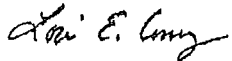
Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their

AI: Nally & Hamilton Enterprises Inc (807-8061) -- 13289

deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection  
Division of Enforcement  
300 Fair Oaks Lane  
Frankfort, KY 40601  
502-564-2150 extension 266 (8:30 AM – 4:30 PM)  
Ms. Lori E. Conway, Enforcement Specialist



Issued By: \_\_\_\_\_

Ms. Lori E. Conway  
Environmental Enforcement Specialist  
Compliance and Operations Branch  
Date: April 29, 2011

How Delivered: Certified Mail

Certified Registered # 7010 1670 0002 2552 2833



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water  
875 S Main St  
London, KY 40741-1902  
www.kentucky.gov

April 25, 2011

Certified No. 7008 1830 0003 6511 8038  
Return Receipt Requested

Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

Re: Notice of Violation  
AI ID: 84187  
AI Name: Nally & Hamilton Enterprises Inc  
(848-0233)  
Activity ID: ENV20110002  
Permit No. KYG044528  
Leslie County, KY

Dear Mr. Hamilton:

Attached for your information and records is a copy of the Performance Audit Inspection performed at Nally and Hamilton Enterprises Inc on November 17, 2010.

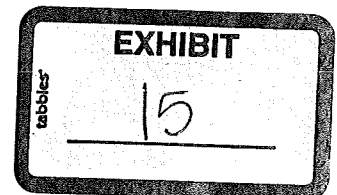
As a result of the inspection, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 859-525-4923 or Thomas Gabbard at 502-564-3410.

Sincerely,

Ms. Gretchen Bartley,  
Environmental Scientist II  
Division of Water

Enclosure



COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water

**NOTICE OF VIOLATION**

To: Mr. Steven Hamilton  
Nally & Hamilton Enterprises Inc  
109 S 4th St  
PO Box 157  
Bardstown, KY 40004

**AI Name:** Nally & Hamilton Enterprises Inc (848-0233)      **AI ID:** 84187    **Activity ID:** ENV20110002  
**Discovery ID:** CIN20100001    **County:** Leslie  
**Date(s) Violation(s) Observed:** 11/17/2010

This is to advise that you are in violation of the provisions cited below:

<b>1</b>	<b>Violation Description for Subject Item AIOO0000084187():</b>
	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 cabinet at any time. [401 KAR 5:065 Section 2(1)]
	<b>Description of Non Compliance:</b>
	<p>The facility has failed to maintain required records. Samples are taken from the permitted outfalls by TWL personnel. TWL samplers use a field log and transfer information onto what is labeled a Chain of Custody. The field log and chain of custody contain the name of the coal company and DNR Permit Number along with the date the sample is taken, sample ID, pH, conductivity, temperature and flow. There is no indication as to who took the sample or what time the sample was taken. In addition to the previously mentioned deficiencies, the chain of custody does not document when the sample was received at the lab, who received the sample in the lab, and who relinquished the sample/chain of custody. Outside of the field parameters, there is no documentation as to the parameter(s) to be analyzed by the lab or the preservative used.</p> <p>Once the sample arrives in the lab it is logged onto a "Bench Sheet". This bench sheet contains the coal company's name, the DNR Permit Number, Outfall/Pond ID and the required analytical parameters, including those measured in the field. The "Bench Sheet" does not contain the analyst's name or initials, the time and date the analysis was performed or any supporting documentation associated with the methodology. There is no documentation of calibration, standards or duplicates having been run. Reportedly, the analyst runs the samples and one of the assistants follows the analyst and sample through the lab and fills out the "bench sheet" as the analysis is completed and results are determined. The combination of these deficiencies is such that the sample results are not reproducible or legally defensible, and this significantly influences the validity of the data.</p>

	<p><b>The remedial measure(s), and date(s) to be completed by are as follows:</b></p>
	<p>The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of March 2011 shall be submitted with the written notification. [401 KAR 5:065 Section 2(1)]</p>
2	<p><b>Violation Description for Subject Item AIOO0000084187():</b></p>
	<p>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. [401 KAR 5:065 Section 2(1)]</p>
	<p><b>Description of Non Compliance:</b></p>
	<p>The facility is not being properly operated and maintained as required. Specifically, the laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC). DOW personnel determined that all test methods observed at the TWL facility were performed using approved methodologies or a procedure approved under US EPA's Alternate Test Procedure (ATP) program, and the methodologies themselves were in compliance with the requirements of 40 CFR Part 136. However, the lab had a significant number of deficiencies in the area of quality control: The lab SOP is only partially developed; the chains of custody and bench sheets are inadequate because there is a lot of missing documentation, and we could not find adequate documentation of quality control processes such as instrument calibration, analysis of duplicate samples, spikes and/or standards. A set of "blind spike" samples provided and certified by a third party vendor was taken to the lab along with the DOW inspection team on 11/17/2010. TWL was unable to run those samples at that time because they had run out of reagent to perform several of the test methodologies. Reportedly, the reagents were on order and expected any day. A follow-up inspection was conducted on 11/29/2010 to allow DOW personnel to witness the analyst perform the test procedures, and to compare and evaluate the sample results with those determined and certified by the supplier. The analyst that performed the test procedures was reportedly not the primary analyst, and although he made a good effort, he did not convey proficiency with the methodologies. Of the six (6) parameters analyzed only three (alkalinity, acidity and conductivity) were within the acceptable range. Total suspended solids, iron and manganese were all outside of the acceptable range. A more detailed description of the findings of both the 11/17/2010 and 12/29/2010 inspections is contained on the Summary of Findings.</p>

**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By May 15, 2011, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

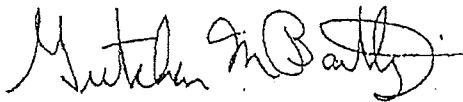
- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures. [401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water  
Florence Regional Office  
8020 Veterans Memorial Drive, Suite 110  
Florence, Kentucky 41042  
859-525-4923 (8:00 AM – 4:30 PM)  
Gretchen M. Bartley, Environmental Scientist II



Issued By:

Gretchen M. Bartley, Environmental Scientist II  
Date: April 25, 2011



Issued By:

Thomas B. Gabbard, Environmental Control Manager  
Date: April 25, 2011

How Delivered: USPS Certified/Registered # 7008 1830 0003 6511 8038