

General Permit for Coal Mining

What is this? The federal Clean Water Act requires all point sources (coming from a pipe) of pollution to apply for and receive a permit allowing the discharge. The permit sets limits on the amount or concentration of the pollution that is allowed. In Kentucky, the permitting program is named the Kentucky Pollutant Discharge Elimination System, or KPDES, run by the state Division of Water.



Why a General Permit? Under the KPDES system, polluters can get either an individual or general permit. The General Permit sets limits on discharges that apply to all those who get a general permit, no matter what part of the state it is located or the existing quality of the stream into which it is going. An Individual Permit, on the other hand, sets discharge limits based on the specific conditions of that mining operation or that watershed. Individual permit applicants also must show consideration of alternatives to the proposed pollution, and there are more opportunities for review of the permit conditions, including by U.S. EPA.

What is the problem with this approach? This “one-size-fits-all” approach for general permits does not consider individual stream conditions and the potential impacts of the pollution on that specific stream and its uses. Therefore, it does not always provide the needed protections for our waterways. And since the general permit is updated only once every five years, when information becomes available about new pollutants not covered in the current permit, there is not an immediate chance to add limits for this pollutant (there would be for individual permits). Such is the case with the current General Permit for Coal Mining issued in 2009 – it contains no limits on selenium though we’ve known for years that selenium pollution below coal mining valley fills is a serious problem in many areas.

What’s happening now? The law requires that the General Permit for Coal Mining be updated and renewed every five years. The current General Permit expires on July 31. State officials have drafted an updated permit and are accepting public comments on the proposal until July 1.

There will be a public hearing on the draft General Permit on

**Wednesday, June 18,
6-9 p.m.
300 Fair Oaks Lane,
Room 301D
Frankfort, Kentucky**

The first 90 minutes is for accepting comments about the draft permit for eastern Kentucky, and the second 90 minutes is for the western Kentucky draft permit.

What other ways does the draft General Permit fall short?
There are several.

√ The 2009 General Permit included 14 automatic exclusions – situations in which a general permit would not be allowed and an individual permit would be required. The 2014 draft proposal reduces this number to only five and omits several important exclusions. One of the exclusions left out prohibited general permit discharges within five miles upstream of an existing drinking water intake. This exclusion is what has protected the public water source for the towns of Benham and Lynch in Harlan County for the last several years from endangerment by proposed mining in the sources’ watershed.

By omitting this exclusion, state officials may be finding a way for these mining permits – sought by big-time Beshear donor James Justice – to be approved. Another exclusion omitted in the 2014 proposal prevented General Permit discharges into a first or second order tributary of a publicly-owned lake or reservoir.

- √ Since Congress passed the Clean Water Act in 1972, Kentucky officials have refused to set any Total Maximum Daily Load limits for any stream polluted by coal mining operations in eastern Kentucky (which is a majority of eastern Kentucky streams, according to the state's own data). TMDLs are “a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards,” according to the U.S. EPA.

In other words, even when a stream is already severely degraded it can continue to get more pollution dumped into it because the state refuses to create TMDLs for streams impaired by mining pollution. The General Permit sets limits only for individual discharges regardless of the condition of the receiving stream. So severely degraded streams can get worse, and good quality streams can get polluted.

- √ State officials also did not propose a stream standard for conductivity, a general measure of a stream's health. Scientific data specific to the Appalachian region show that life in a stream starts to diminish when conductivity rises above 300 micro-Siemens ($\mu\text{S}/\text{cm}$) and that most native aquatic life cannot exist when levels rise above 500 $\mu\text{S}/\text{cm}$. Many streams below coal mining operations already exceed those levels.
- √ The proposed permit adds for the first time limits on selenium, but uses the weak standard recently adopted by state officials that is currently under legislative review and court challenge.
- √ The draft permit also drops protection of waters designated as Exceptional Waters and narrows the protection for Outstanding State Resource Waters by limiting to a small subset of streams with these designations (ones that received that designation because of a federally listed threatened or endangered species). There are not many stream miles with these designations now in southeastern Kentucky.

Written comments will also be accepted and may be mailed to the Division of Water at 200 Fair Oaks Lane, Frankfort, Kentucky 40601 or emailed to DOWPublicNotice@ky.gov. The deadline for written comments is July 1.



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