

ANDY BESHEAR
GOVERNOR



REBECCA W. GOODMAN
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

November 6, 2020

Todd Tillinger
Chief, Regulatory Division
U.S. Army Corps of Engineers, Nashville District
3701 Bell Road
Nashville, TN 37214-2660

Re: §401 Water Quality Certification
Regional General Permit (RGP) 20-01

Dear Mr. Tillinger:

The Kentucky Division of Water has reviewed the Provisional Determination of Eligibility for Regional General Permit (RGP) 20-01 issued by the US Army Corps of Engineers, Nashville District for the purposes of providing State certification in accordance with Section 401 of the Clean Water Act (CWA). This regional general permit authorizes minor structures, fill, dredging, and work within the Nashville District, U.S. Army Corps of Engineers Reservoirs boundaries in the following waters of the Commonwealth of Kentucky: Dale Hollow Lake, Lake Barkley, Lake Cumberland, Laurel River Lake, and Martins Fork Lake.

Pursuant to Section 401 of the Clean Water Act (CWA), the Commonwealth of Kentucky certifies it has reasonable assurances that applicable water quality standards under Kentucky Administrative Regulations Title 401, Chapter 10, established pursuant to Sections 301, 302, 303, 304, 306, and 307 of the CWA, will not be violated by the above referenced regional general permits. The Kentucky Division of Water hereby **certifies with conditions** the Regional General Permit (RGP) 20-01 for minor structures, fill, dredging, and work in Dale Hollow Lake, Lake Barkley, Lake Cumberland, Laurel River Lake, and Martins Fork Lake. Please contact the Water Quality Certification Section with any questions by calling (502) 564-3410 or by emailing 401WQC@ky.gov.

Sincerely,

 Recoverable Signature

A handwritten signature in black ink that reads "Elizabeth M Harrod".

Elizabeth M Harrod, Supervisor
Water Quality Certification Section
Kentucky Division of Water

EH:EMM

WQC Conditions Enclosure

cc: Lee Andrews, USFWS: Frankfort (via email: kentuckyes@fws.gov)
Ashley Monroe, USEPA: Region 4 (via email Monroe.Ashely@epa.gov)
Doug Dawson, KDFWR: Frankfort (via email: doug.dawson@ky.gov)

General Water Quality Certification – Regional General Permit 20-RGP-01
Minor Structures, Fill, Dredging, and Work in
Dale Hollow Lake, Lake Barkley, Lake Cumberland, Laurel River Lake, and Martins Fork Lake

This Regional General Certification is issued September 1, 2020, in conformity with the requirements of Section 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341), as well as Kentucky Statute KRS 224.16-050.

For this regional general permit 20-RGP-01, the definition of surface water is as per 401 KAR 10:001 Chapter 10, Section 1(80): Surface Waters means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

The Commonwealth of Kentucky hereby certifies under Section 401 of the Clean Water Act (CWA) that it has reasonable assurances that applicable water quality standards under Kentucky Administrative Regulations Title 401, Chapter 10, established pursuant to Sections 301, 302, 304, 306, and 307 of the CWA, will not be violated for the activity covered under REGIONAL PERMIT 20-RGP-01, namely Minor Structures, Fill, Dredging, and Work in Dale Hollow Lake, Lake Barkley, Lake Cumberland, Laurel River Lake, and Martins Fork Lake, provided the following conditions are met:

1. The activity will not occur within a surface waters of the Commonwealth identified by the Kentucky Division of Water as Outstanding State or National Resource Water, Cold Water Aquatic Habitat, Exceptional Waters, or candidate waters.
2. The activity will not occur within surface waters of the Commonwealth identified as perpetually-protected (e.g. deed restriction, conservation easement) mitigation sites.
3. The activity will impact less than ½ acre of wetland/marsh.
4. The activity will impact less than a cumulative 500 linear feet of stream. If opposite banks are stabilized, impacts to both banks are summed together to calculate the cumulative impact.
5. Use of creek rock for bank stabilization; grouted rip-rap; unformed, poured grout; unformed, poured concrete; poured asphalt; or asphalt pieces is not authorized under this certification. Poured concrete or grout will be permitted when contained by tightly sealed forms or cells. Equipment shall not discharge waste washwater into surface waters at any time without adequate wastewater treatments.
6. This certification does not cover the installation and filling of barge mooring cells in surface waters of the Commonwealth; an individual water quality certification is required in all cases.
7. In-stream work shall not be conducted during fish spawning season, April 15th through June 15th.

8. The Kentucky Division of Water may require submission of a formal application for an individual certification for any project if the project has been determined to likely have a significant adverse effect upon water quality or degrade the waters of the Commonwealth so that existing uses of the water body or downstream waters are precluded.
9. Activities that do not meet the conditions of this General Water Quality Certification require an Individual Section 401 Water Quality Certification.
10. Activities qualifying for coverage under this General Water Quality Certification are subject to the following conditions:
 - Projects requiring in-stream stormwater detention/retention basins shall require individual water quality certifications.
 - Erosion and sedimentation pollution control plans and Best Management Practices must be designed, installed, and maintained in effective operating condition at all times during construction activities so that violations of state water quality standards do not occur.
 - Sediment and erosion control measures, such as check-dams constructed of any material, silt fencing, hay bales, etc., shall not be placed within surface waters of the Commonwealth, either temporarily or permanently, without prior approval by the Kentucky Division of Water's Water Quality Certification Section. If placement of sediment and erosion control measures in surface waters is unavoidable, design and placement of temporary erosion control measures shall not be constructed in such a manner that may result in instability of streams that are adjacent to, upstream, or downstream of the structures. All sediment and erosion control devices shall be removed and the natural grade restored within the completion timeline of the activities.
 - Measures shall be taken to prevent or control spills of fuels, lubricants, or other toxic materials used in construction from entering the watercourse.
 - Removal of riparian vegetation shall be limited to that necessary for equipment access.
 - To the maximum extent practicable, all in-stream work under this certification shall be performed under low-flow conditions.
 - Heavy equipment, e.g. bulldozers, backhoes, draglines, etc., if required for this project, should not be used or operated within the stream channel. In those instances in which such in-stream work is unavoidable, then it shall be performed in such a manner and duration as to minimize turbidity and disturbance to substrates and bank or riparian vegetation.
 - Any fill shall be of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters and/or cause violations of water quality standards. If riprap is utilized, it should be of such weight and size that bank stress or slump conditions will not be created because of its placement.
 - If there are water supply intakes located downstream that may be affected by increased turbidity and suspended solids, the permittee shall notify the operator when such work will be done.
 - Should evidence of stream pollution or jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the Kentucky Division of Water shall be notified immediately by calling (800) 928-2380.

Non-compliance with the conditions of this general certification or violation of Kentucky state water quality standards may result in civil penalties.