

March 9, 2011

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Nally & Hamilton Enterprises, Inc.
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Bardstown, KY 40004
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Stephen Hamilton
Registered Agent of Nally & Hamilton
Enterprises, Inc.
109 South 4th Street
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Re: Notice of Violations and Intent to File Suit Under the Federal Clean Water Act

Dear Sir or Madam:

On behalf of Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentuckians For The Commonwealth, Inc., Kentucky Riverkeeper, Inc., Ms. Pat Banks, Ms. Lanny Evans, Mr. Thomas H. Bonney, and Mr. Winston Merrill Combs (collectively, "Appalachian Voices"), we are writing in regard to violations of the Clean Water Act (CWA), 33 U.S.C. §§ 1251 *et seq.*, committed by Nally & Hamilton Enterprises, Inc. ("Nally and Hamilton"). This letter constitutes a Notice of Violations and Intent to File Suit ("Notice Letter") under Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b). Following sixty (60) days from the date of this Notice Letter, Appalachian Voices intends to file suit against Nally and Hamilton for its ongoing violations of an "effluent standard or limitation" within the meaning of Clean Water Act § 505(a)(1)(A), (f), 33 U.S.C. § 1365(a)(1)(A), (f).

A person violates an "effluent standard or limitation" by violating, *inter alia*, "a permit or condition thereof" that is in effect and issued under the National Pollutant Discharge Elimination System (NPDES). CWA §§ 505(a)(1)(A), (f), 402; 33 U.S.C. §§ 1365(a)(1)(A), (f), 1342. Nally and Hamilton's coal mining discharges are subject to an NPDES permit entitled the Kentucky Pollutant Discharge Elimination System Coal General Permit, Permit No. KYG040000 (the "General Permit"), which was issued by the Kentucky Department for Environmental Protection, Division of Water.¹ See *Kentucky Waterways Alliance v. Johnson*, 540 F.3d 466, 470 (6th Cir. 2008) (the U.S. Environmental Protection Agency has authorized Kentucky to issue NPDES permits under the Kentucky Pollution Discharge Elimination System program).

The Clean Water Act requires owners or operators of point sources that discharge pollutants to "(i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such

¹ The current General Permit became effective on August 1, 2009. The previous General Permit became effective on January 1, 2004. Unless otherwise noted, references and citations to the General Permit refer to the General Permit effective in 2009.

monitoring equipment or methods” and “(iv) sample such effluents” as the Administrator of the Environmental Protection Agency (EPA) may require. CWA § 308(a)(A), 33 U.S.C. § 1318(a)(A). The EPA has established by regulation applicable monitoring, recordkeeping, and reporting requirements. See 40 C.F.R. §§ 122.41(j) and (l), 122.48.

In accordance with these regulations, the General Permit mandates that permittees such as Nally and Hamilton monitor, sample, and test their discharged pollutants and report the results in Discharge Monitoring Reports (DMRs) to the Kentucky Department for Natural Resources.² As described in more detail below and in the attached Appendix, Nally and Hamilton has violated and continues to violate these conditions of the General Permit by submitting false and incomplete data regarding its discharged pollutants. Nally and Hamilton is therefore in violation of an “effluent standard or limitation” within the meaning of the Clean Water Act and is subject to liability in a citizen suit.

CONDITIONS OF THE GENERAL PERMIT

The General Permit imposes sampling, monitoring, testing and reporting requirements on Nally and Hamilton with respect to its coal mining discharges.

First, the General Permit requires that “[s]amples and measurements taken in accordance with the requirements” detailed elsewhere in the General Permit—which are applicable to Nally and Hamilton—“shall be representative of the volume and nature of the monitored discharge” Page I-15, Section D. Samples and measurements required to be taken and reported under the permit must be accurate and reported accurately.

Second, the General Permit requires that “[t]est procedures for the analysis of pollutants shall conform to all regulations published pursuant to KRS 224 (401 KAR 5:065, Section 1(10)).” Page I-18, Section F. The cited Kentucky Administrative Regulation (KAR) incorporates a federal regulation, 40 C.F.R. § 122.41, which requires that monitoring must be conducted according to specified, approved test procedures or methods.³ See 40 C.F.R. § 122.41(j)(4); *id.* § 136.3 (detailing testing methods applicable to each pollutant).

² The General Permit that became effective in 2009 controls for Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese, Oil and Grease, Conductivity, Acidity, Alkalinity, and pH. See, *e.g.*, Page I-1 (2009). For reclamation areas, the 2009 General Permit controls for Flow, Settleable Solids, Oil and Grease, Acidity, Alkalinity, Conductivity, and pH. See, *e.g.*, Page I-5 (2009). The limits and monitoring for Oil and Grease do not apply if the permittee implements a “Best Management Practices” plan. See, *e.g.*, Page I-1, I-5 (2009). The General Permit that became effective in 2004 controlled for Flow, Total Suspended Solids, Total Iron, Total Manganese (unless for Alkaline Mine Drainage), Oil and Grease, Acidity, Alkalinity, and pH. See, *e.g.*, Page I-1, I-3 (2004). As with the 2009 General Permit, the permittee was not subject to the requirements for Oil and Grease if it implemented a Coal Best Management Practices plan. Page I-11 (2004).

³ When the General Permit was signed on July 1, 2009, the cited regulation (401 KAR 5:065, Section 1) expressly incorporated substantive provisions of 40 C.F.R. § 122.41. The current version of the

Third, the General Permit states that “[i]t is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.” Page II-1.

Fourth, the General Permit requires that “[d]ischarge monitoring results obtained during the previous month shall be summarized for each outfall and reported using only . . . approved Discharge Monitoring Report (DMR) forms and formats.” Page I-15, Section D.

The General Permit therefore requires that Nally and Hamilton take accurate samples and measurements of the relevant effluents, use approved testing procedures and sufficiently sensitive analytical methods, and summarize the results for each outfall on approved DMR forms.

NALLY AND HAMILTON’S DISCHARGE MONITORING REPORTS

Nally and Hamilton’s submitted DMRs violate the General Permit’s monitoring and reporting conditions in multiple respects.

First, Nally and Hamilton’s DMRs from February 2008 to June 2010 include false or even fraudulent data. On many occasions, Nally and Hamilton submitted DMRs in which all effluent data reported for a certain outfall in a certain month repeat exactly the data reported for the same outfall in another month. In other words, Nally and Hamilton seems to have re-submitted the same data for different time periods rather than monitoring the discharge and submitting accurate data for each month.

For a detailed, DMR-specific identification of Nally and Hamilton’s submissions of false data, please see the items listed under heading A in the attached Appendix.

Second, Nally and Hamilton repeatedly submitted DMRs with missing information. On numerous occasions between July 2008 and June 2010, Nally and Hamilton submitted DMRs that failed to contain data required to be reported under the General Permit, such as data for a particular month or outfall.

For a detailed, DMR-specific identification of Nally and Hamilton’s failures to submit data, please see the items listed under heading B in the attached Appendix.

NALLY AND HAMILTON’S REPORTS VIOLATE THE GENERAL PERMIT

Nally and Hamilton’s DMRs violate numerous conditions of the General Permit. First, false or incomplete DMRs violate the requirement that “[d]ischarge monitoring results obtained during the previous month” be summarized for each outfall and reported. Page I-15, Section D. Instead of summarizing and reporting the results of any monitoring activities, Nally and Hamilton’s DMRs often report recycled data from other DMRs, or fail to report some of the required data.

Second, Nally and Hamilton’s submission of false or incomplete DMRs raises an inference that the company is failing to comply with the General Permit’s monitoring and testing requirements. Reporting

regulation, effective September 25, 2009, instead incorporates these provisions by reference. See 401 KAR 5:065, Section 2.

false data indicates a failure to collect accurate data in the first place; thus Nally and Hamilton is violating the General Permit's requirements to take accurate samples and measurements that are "representative of the volume and nature of the monitored discharge," and to use "[t]est procedures for the analysis of pollutants" that conform to applicable regulations. Page I-15, Section D; Page I-18, Section F. Nally and Hamilton's DMRs also fail to demonstrate compliance with permit parameter limitations "by utilization of sufficiently sensitive analytical methods." Page II-1. With respect to recycled or missing data, Nally and Hamilton has not demonstrated the use of *any* analytical methods with regard to its discharges, much less "sufficiently sensitive" methods.

The General Permit also incorporates by reference federal regulations applicable to State permits. See Page II-1; see also 40 C.F.R. §§ 122.41, 123.25(a)(12) (all State programs must be administered in conformance with Section 122.41(a)(1) and (b) through (n)). Nally and Hamilton's false and incomplete DMRs therefore violate the conditions of its permit for the additional reason that they violate requirements in applicable federal regulations. See, e.g., 40 C.F.R. § 122.41(j)(1) (samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity); *id.* § 122.41(l)(4)(i) (monitoring results must be reported on a Discharge Monitoring Report).

Each of Nally and Hamilton's violations of the General Permit described above and in the Appendix constitutes a violation of an "effluent standard or limitation" within the meaning of the Clean Water Act, which subjects Nally and Hamilton to liability in a citizen suit by Appalachian Voices. CWA § 505(a)(1)(A), (f), 33 U.S.C. § 1365(a)(1)(A), (f); *Menzel v. County Utils. Corp.*, 712 F.2d 91, 94 (4th Cir. 1983) ("[A] discharger that fails to file discharge-monitoring reports, or fails to file accurate reports, would be in violation of the provisions of its NPDES permit and would be subject to citizens' suits under 33 U.S.C. § 1365."). These ongoing and continuing violations subject Nally and Hamilton to civil penalties per day for each violation. CWA § 309(d), 33 U.S.C. § 1319(d); CWA § 505(a), 33 U.S.C. § 1365(a).⁴

NALLY AND HAMILTON'S VIOLATIONS ARE ONGOING AND CONTINUING

Nally and Hamilton's repeated practice of submitting false and incomplete data between 2008 and 2010 raises a good faith belief that such violations of its permit conditions are ongoing and continuing and have been ongoing for the past five years.

The DMRs currently available to Appalachian Voices show that Nally and Hamilton's practice of falsifying data and failing to submit required data has continued for at least two years, from February 2008 to June 2010. Appalachian Voices therefore has a good faith belief that this practice is ongoing and

⁴ Nally and Hamilton is liable for violations of the 2004 General Permit although that permit is not currently in effect because each of the provisions from the 2004 General Permit that Nally and Hamilton has violated was carried over to the current 2009 General Permit, and thus continues to apply. See *Louisiana Env'tl. Action Network, Inc. v. Evans Cooperage Co., Inc.*, 1997 WL 824310, No. Civ.A. 95-3002, at *7 (E.D. La. Sept. 30, 1997) (citizen suits may include violations of permits no longer in effect as long as the previous limitations have been carried over or made more stringent in the current permit); *Pub. Interest Research Group of New Jersey, Inc. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 119 (D.N.J. 1988) (same).

continuing through today, and that it will continue in the future unless enjoined by a court of law. Moreover, this practice raises an inference that Nally and Hamilton has submitted false or incomplete data in DMRs prior to 2008 as well, for the past five years. *See Pub. Interest Research Group of New Jersey, Inc. v. Powell Duffryn Terminals Inc.*, 913 F.2d 64, 75 (3d Cir. 1990) (five year statute of limitations applicable to Clean Water Act citizens' suits).

CIVIL PENALTIES AND OTHER RELIEF

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$32,500 per day (if the violations occurred between March 15, 2004 and January 12, 2009) and up to \$37,500 per day (if the violations occurred after January 12, 2009). Appalachian Voices will seek assessment of civil penalties as well as injunctive relief, *see* CWA § 505(a), 33 U.S.C. § 1365(a), litigation costs including attorneys' fees, CWA § 505(d), 33 U.S.C. § 1365(d), and such other relief as permitted by law.

CONTACT INFORMATION

The names, addresses and telephone numbers of each person giving notice pursuant to this Notice Letter are:

- Appalachian Voices, Inc. (contact person: Ms. Willa Mays, Executive Director, 191 Howard Street, Boone, North Carolina 28607, Phone: (828) 262-1500);
- Waterkeeper Alliance, Inc. (contact person: Mr. Scott Edwards, Director of Advocacy, 17 Battery Place, Suite 1329, New York, New York 10004, Phone: (212) 785-0816);
- Kentuckians For The Commonwealth, Inc. (contact person: Mr. Burt Lauderdale, Executive Director, P.O. Box 1450, London, Kentucky 40743, Phone: (606) 878-2161);
- Kentucky Riverkeeper, Inc. (contact person: Ms. Pat Banks, 300 Summit Street, Richmond, Kentucky 40475, Phone: (859) 622-3065);
- Ms. Pat Banks, in her capacity as Kentucky Riverkeeper, 300 Summit Street, Richmond, Kentucky 40475, Phone: (859) 527-3334;
- Ms. Lanny Evans, 4625 Four Mile Road, Winchester, Kentucky 40391, Phone: (859) 527-0134;
- Mr. Thomas H. Bonny, 1548 Wisemantown Road, Irvine, Kentucky 40336, Phone: (606) 723-5694; and
- Mr. Winston Merrill Combs, 7225 Old Boonesboro Road, Winchester, Kentucky 40391, Phone: (859) 595-9637.

Please address all communications regarding this Notice Letter to counsel. The names, addresses, and telephone numbers of counsel representing Appalachian Voices are:

- Aaron Colangelo and Steven Fleischli, Natural Resources Defense Council, 1200 New York Ave., NW, Suite 400, Washington, DC 20005, Phone: (202) 289-2376;
- Mitchell Bernard and Catherine Rahm, Natural Resources Defense Council, 40 W. 20th Street, New York, New York 10011, Phone: (212) 727-2700; and
- Burke A. Christensen, 350 Lancaster Avenue, Richmond, Kentucky 40475, Phone: (859) 622-1120.

Burke Christensen is admitted to practice in the State of Kentucky. Aaron Colangelo, Steven Fleischli, Mitchell Bernard and Catherine Rahm are admitted to practice in jurisdictions other than Kentucky, and plan to move for admission *pro hac vice* in the court where litigation is filed.

CONCLUSION

Upon expiration of the 60-day notice period, Appalachian Voices intends to file a citizen enforcement action pursuant to Section 505(a) of the Clean Water Act for the above violations. Given Nally and Hamilton's pattern and practice of falsifying its DMRs and failing to submit required data, Appalachian Voices reserves the right to add to the specific violations set forth in the Appendix additional claims based on the same or similar violations upon determining that such claims exist based on information made available after the service of this Notice Letter.

Sincerely,



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cc: (By certified mail, return receipt requested)

<p>Lisa P. Jackson, Administrator Environmental Protection Agency Headquarters Ariel Rios Building 1200 Pennsylvania Avenue, NW Mail Code: 1101A Washington, DC 20460</p>	<p>Sandy Gruzesky, Director Kentucky Department for Environmental Protection, Division of Water 200 Fair Oaks Lane, Fourth Floor Frankfort, KY 40601</p>
<p>Gwendolyn Keyes Fleming, Regional Administrator U.S. Environmental Protection Agency, Region 4 Sam Nunn Atlanta Federal Center 61 Forsyth Street, SW Mail Code: 9T25 Atlanta, GA 30303-8960</p>	<p>Peter Goodmann, Assistant Director Kentucky Department for Environmental Protection, Division of Water 200 Fair Oaks Lane, Fourth Floor Frankfort, KY 40601</p>
<p>Eric H. Holder, Jr., Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001</p>	<p>R. Bruce Scott, Commissioner Kentucky Department for Environmental Protection 300 Fair Oaks Lane Frankfort, KY 40601</p>
<p>Jack Conway, Attorney General Office of the Attorney General Capitol Suite 118 700 Capitol Avenue Frankfort, KY 40601-3449</p>	<p>Carl Campbell, Commissioner Kentucky Department for Natural Resources #2 Hudson Hollow Frankfort, KY 40601</p>
	<p>Dr. Len Peters, Cabinet Secretary Kentucky Energy and Environment Cabinet 500 Mero Street 5th Floor, Capital Plaza Tower Frankfort, KY 40601</p>

APPENDIX

A—False DMRs

Permit	Outfall	Monitoring Period	Description of Violation
8970441 [KYG046014]	16	1st and 2nd Quarters 2008	14 parameter measurements (all 7 parameters, 2 samples each) from February 2008 repeated in May 2008
8070341 [KYG041924]	5TC	3rd and 4th Quarters 2009	14 parameter measurements (all 7 parameters, 2 samples each) from September 2009 repeated in December 2009
8600380 [KYG045520]	105-A6	3rd and 4th Quarters 2009	14 parameter measurements (all 7 parameters, 2 samples each) from July 2009 repeated in October 2009
8600380 [KYG045520]	107-A6	3rd and 4th Quarters 2009	14 parameter measurements (all 7 parameters, 2 samples each) from July 2009 repeated in October 2009
8660311 [KYG046293]	2	1st and 2nd Quarters 2009	7 parameter measurements (all 7 parameters, 1 sample each ¹) from February 2009 repeated in May 2009
8070307 [KYG046155]	2	1st Quarter 2010	16 parameter measurements (all 8 parameters, excluding only Oil and Grease, 2 samples each) from January 2010 repeated in February 2010 and again in March 2010
8070342 [KYG046205]	1	1st and 2nd Quarters 2010	32 parameter measurements (all 8 parameters, excluding only Oil and Grease, 4 samples each) from February and March 2010 repeated in May and June 2010
8070342 [KYG046205]	2	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8070342 [KYG046205]	3	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8070342 [KYG046205]	4	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8070347 [KYG041895]	BB1	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8078061 [KYG042569]	1	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8660276 ² [KYG045935]	8	1st and 2nd Quarters 2010	16 parameter measurements (all 8 parameters, excluding only Oil and Grease, 2 samples each) from March 2010 repeated in June 2010
8480233 [KYG044528]	1MF	1st and 2nd Quarters 2010	16 parameter measurements (all 8 parameters, excluding only Oil and Grease, 2 samples each) from March 2010 repeated in June 2010
8600380 [KYG045520]	S27	1st and 2nd Quarters 2010	16 parameter measurements (all 8 parameters, excluding only Oil and Grease, 2 samples each) from January 2010 repeated in April 2010

¹ The DMR for February 2009 gives two measurements for Flow on the same sample date; only one of these measurements is repeated in May 2009.

² The Coal DMR Cover Sheet and Outfall Summary for the 1st Quarter 2010 lists the permit number as 8600380. However, the individual outfall reports list it as 8660276.

8600380 [KYG045520]	S-11	1st and 2nd Quarters 2010	16 parameter measurements (all 8 parameters, excluding only Oil and Grease, 2 samples each) from March 2010 repeated in June 2010
8600380 [KYG045520]	78-A3	1st and 2nd Quarters 2010	16 parameter measurements (all 8 parameters, excluding only Oil and Grease, 2 samples each) from March 2010 repeated in June 2010
8610479 [KYG046305] ³ [KYG046565] ⁴	2	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8610479 [KYG046305] ³ [KYG046565] ⁴	3	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8610479 [KYG046305] ³ [KYG046565] ⁴	5	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8610479 [KYG046305] ³ [KYG046565] ⁴	6	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8610479 [KYG046305] ³ [KYG046565] ⁴	21	1st and 2nd Quarters 2010	48 parameter measurements (all 8 parameters, excluding only Oil and Grease, 6 samples each) from January, February and March 2010 repeated in April, May and June 2010
8070340 [KYG041921]	1LR	1st and 2nd Quarters 2010	6 parameter measurements (all 6 parameters, excluding only Oil and Grease, 1 sample each) from March 2010 repeated in June 2010
8970382 [KYG045111]	4	1st and 2nd Quarters 2010	18 parameter measurements (all 6 parameters, excluding only Oil and Grease, 3 samples each) from January, February and March 2010 repeated in April, May and June 2010

B—DMRs With Missing Data

Permit	Outfall	Monitoring Period	Description of Violation
8070307 [KYG046155]	31	3rd Quarter 2008	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for July 2008
8070307 [KYG046155]	31	4th Quarter 2008	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for October 2008
8070307 [KYG046155]	31	1st Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for January 2009
8070307 [KYG046155]	31	2nd Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for April 2009

³ Permit number in DMR.

⁴ Permit number as identified by Division of Mine Permits.

8070307 [KYG046155]	31	3rd Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for July 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for August and September 2009
8070307 [KYG046155]	31	4th Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) were reported only once for October 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for October and November 2009
8070307 [KYG046155]	33	3rd Quarter 2008	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for July 2008
8070307 [KYG046155]	33	4th Quarter 2008	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for October 2008
8070307 [KYG046155]	33	1st Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for January 2009
8070307 [KYG046155]	33	2nd Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for April 2009
8070307 [KYG046155]	33	3rd Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for July 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for August and September 2009
8070307 [KYG046155]	33	4th Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) were reported only once for October 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for October and November 2009
8070346 [KYG042163]	10LR	3rd Quarter 2008	1 parameter required to be reported twice per month (Flow) reported only once for July 2008
8070346 [KYG042163]	10LR	4th Quarter 2008	1 parameter required to be reported twice per month (Flow) reported only once for October 2008
8480233 [KYG044528]	1	1st Quarter 2009	1 parameter required to be reported twice per month (Flow) reported only once for February 2009
8480233 [KYG044528]	1	2nd Quarter 2009	2 parameters required to be reported twice per month (Flow and Total Suspended Solids) reported only once for May 2009
8480233 [KYG044528]	1	3rd Quarter 2009	1 parameter required to be reported twice per month (Flow) reported only once for August 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for August and September 2009
8480233 [KYG044528]	1	4th Quarter 2009	1 parameter required to be reported twice per month (Flow) reported only once for November 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for October and November 2009

8610479 [KYG046305] ⁵ [KYG046565] ⁶	5	2nd Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for April 2009
8610479 [KYG046305] ⁵ [KYG046565] ⁶	5	3rd Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for July 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for August and September 2009
8610479 [KYG046305] ⁵ [KYG046565] ⁶	5	4th Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) were reported only once for October 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for October and November 2009
8660304 [KYG046317]	15	2nd Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for April 2009
8660304 [KYG046317]	15	3rd Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for July 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for September 2009
8660304 [KYG046317]	15	4th Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) were reported only once for October 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for October 2009
8660311 [KYG046293]	2	1st Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) were reported only once for February 2009 ⁷
8660311 [KYG046293]	13	2nd and 3rd Quarters 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Iron, Total Manganese and pH) and 2 parameters required to be reported once per month (Acidity and Alkalinity) were not reported at all for August 2009 and reported only once for June and September 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for August and September 2009

⁵ Permit number in DMR.

⁶ Permit number as identified by Division of Mine Permits.

⁷ The DMR for February 2009 gives two measurements for Flow, but on the same sample date.

8660311 [KYG046293]	3	3rd Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 2 parameters required to be reported once per month (Acidity and Alkalinity) were not reported at all for August 2009 and reported only once for September 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for August and September 2009
8660311 [KYG046293]	3	4th Quarter 2009	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) were reported only once for December 2009; 1 parameter required to be reported once per month (Conductivity) not reported at all for October and November 2009
8660311 [KYG046293]	265	1st Quarter 2009	1 parameter required to be reported twice per month (Flow) reported only once for February 2009
8070340 [KYG041921]	2LR	1st and 2nd Quarter 2010	6 parameters required to be reported once per month (Flow, Settleable Solids, Acidity, Alkalinity, Conductivity and pH) were not reported at all for January, February, March and June 2010
8070340 [KYG041921]	3LR	2nd Quarter 2010	6 parameters required to be reported once per month (Flow, Settleable Solids, Acidity, Alkalinity, Conductivity and pH) were not reported at all for June 2010
8070340 [KYG041921]	4LR	2nd Quarter 2010	6 parameters required to be reported once per month (Flow, Settleable Solids, Acidity, Alkalinity, Conductivity and pH) were not reported at all for June 2010
8070340 [KYG041921]	5LR	2nd Quarter 2010	6 parameters required to be reported once per month (Flow, Settleable Solids, Acidity, Alkalinity, Conductivity and pH) were not reported at all for June 2010
8070340 [KYG041921]	6LR	2nd Quarter 2010	6 parameters required to be reported once per month (Flow, Settleable Solids, Acidity, Alkalinity, Conductivity and pH) were not reported at all for June 2010
8070340 [KYG041921]	7LR	2nd Quarter 2010	6 parameters required to be reported once per month (Flow, Settleable Solids, Acidity, Alkalinity, Conductivity and pH) were not reported at all for June 2010
8600380 [KYG045520]	S21	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) only reported once for May 2010; 5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010
8600380 [KYG045520]	50A2	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) only reported once for May 2010; 5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010

8600380 [KYG045520]	49A2	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) only reported once for May 2010; 5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010
8600380 [KYG045520]	S22	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010
8600380 [KYG045520]	S9	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010
8600380 [KYG045520]	S10	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010
8600380 [KYG045520]	S17A	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010
8600380 [KYG045520]	57A2	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010
8600380 [KYG045520]	56A2	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010
8600380 [KYG045520]	55A2	2nd Quarter 2010	5 parameters required to be reported twice per month (Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese and pH) and 3 parameters required to be reported once per month (Acidity, Alkalinity, and Conductivity) not reported at all for June 2010