



# KENTUCKY RESOURCES COUNCIL

Post Office Box 1070  
Frankfort, Kentucky 40602  
502-875-2428  
ashley@kyrc.org  
www.kyrc.org

Ashley Wilmes  
*Executive Director*

**Board of Directors**

Tim Heine  
*Chair*

Jeanne Marie  
Hibberd  
*Vice-Chair*

Abigail Fletcher  
*Secretary*

Joe Childers

Betsy Rudd Bennett

Alison Brotzge-Elder

Roy Crawford

Sarah Lynn  
Cunningham

Arnita Gadson

Jim Hays

Hannah Weinstein

**Board Emeritus**  
Roger Shott

**Of Counsel**  
Tom FitzGerald

December 1, 2023

Jim Ward, Director  
Division of Mine Reclamation and Enforcement

Brenda Taylor  
Non-Coal Section Supervisor

RE: Harrod Concrete & Stone Company  
Permit 037-9400 Amendment 7

Dear Mr. Ward, Ms. Taylor, and the Department of Natural Resource/Division of Mine Reclamation and Enforcement:

These comments are submitted by Kentucky Resources Council, Inc. (“KRC”), a statewide public-interest environmental law and advocacy organization. We work to protect Kentucky’s natural resources, promote policies for healthy communities, and assure that those who pollute our land, air, or water are held to account.

## **INTRODUCTION**

On behalf of KRC and its membership, and at the request of individuals who live and work near the property on which the proposed expansion of noncoal mining operation would occur, including Freddy Goins, I am writing to convey opposition to the issuance of the requested Amendment 7 of Permit 037-9400 to add 170.88 acres of new underground mine area to the existing permit.

These comments are timely filed 10 business days from the date of the permit conference for Harrod Concrete & Stone Company #037-9400 AMD-7 on November 15th, 2023 at 5:00 pm at the Energy and Environment Cabinet. In his introduction, Jim Ward stated that comments would be accepted for 10 business days from the date of the meeting. This meeting was recorded and on doctree. KRC appreciates the scheduling of that permit conference.

KAR 5:075 Section 11 (a) requires the cabinet to provide written notice to each person who submitted written comments or requested notice of the determination.

**Failure to Comply with 405 KAR 5:032. Permit requirements.**

Pursuant to KAR 5:032 Section 26, this permit application should be denied or technically withdrawn, as the applicant failed to submit the required components for a preliminary map. *See* KAR 5:032 Section 1(2)(a) (“A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas, including location of access roads, spoil or waste areas, and sedimentation ponds.”). The Preliminary Map also contains insufficient and incorrect information for an on-site investigation by the Department of Natural Resources (DNR) as required by KAR 5:032 Section 1(2)(a) (“Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with the applicant or the applicant's designated representatives.”).

Following is the list of items that were incorrect or completely missing from the preliminary permit requirements map titled “Preliminary Map 2023-10-06 (11-17-2023).”

(1) There is no sediment pond at the location listed on the Preliminary Map. More information on this issue is provided below. *See also*, attached maps.

(1) The proposed permit area was not clearly defined in the map. All the ‘Existing Underground Mine Area’ is marked in the legend as being orange. There are no lines on the map showing the proposed area, not any indication of what is being proposed. There is no indication where the original permit area stopped, and the expansion area began. Pursuant to KAR 5:032 Section 1(2)(a) (preliminary permit requirements), this information must be shown.

(2) The required notations with locations of existing KPDES outfalls and sediment ponds are missing or incorrect. The locations of outfalls reported in the Kentucky Pollutant Discharge Elimination System (KPDES) are also incorrect. We used both KPDES (KYG84 General Permit Coverage AI No.: 1397 KPDES ID: KYG840123 DNR No.: 037-9400) locations and the locations notated in Preliminary Map 2023-10-06 to determine as follows:

(a) Outfall # 001:

KPDES permit location 38.169444 -84.850000 is located on a pile of gravel. Preliminary Map 2023-10-06 location 38° 10’ 10”, 84° 50’ 56” converted to decimal degrees 38.169444 -84.848889 is located on a piece of equipment within the Aggregate Processing area. The two different lat long for Outfall 001 are approximately 325 ft apart, and both of them are over 600 ft from the notation on the map. Additionally we would ask DNR and Division of Water to recognize and correct these locations on both permit applications along with having the applicant to update the map with the actual location of this outfall and have it verified by an on-site investigation.

(b) Outfall #002

KPDES permit location 38.171111 -84.846944  
Application map location 38 °10’ 16” 84° 50’ 49” converted to decimal degrees 38.171111, -84.846944 - the location of outfall is marked as proposed sediment pond #1,

KPDES outfall 002 according to Permit Map Certified 2023-09-2023. As of May 2023, on arial imagery, this location is a mowed field. There is no dug sediment pond in this area. There is no sediment pond indicated on the map except for the notation that contains the lat long of a mowed field. The lat longs are the same for both the DNR and KPDES permits but there is no outfall at this location, nor is there a dug-out sediment pond. Outfall #002 is not proposed, it is existing.

See Maps, attached.

Both Outfall #001 and Outfall #002 have little detail provided as to the protection of the hydraulic system. The applicant has not provided design information or a narrative description of how surface drainage will be controlled and routed to the sediment control devices, which should include a sequence of construction for each of the locations listed. The narratives description should identify all diversions, pipes, drains, berms and Rock Check Dams and any other devices that are used, or proposed for use, to control or route surface drainage around these sites or within these sites to the sediment control devices.

These insufficiencies and inaccuracies require the Cabinet to deny the permit application, or it should be technically withdrawn. See KAR 5:032 Section 26. If the application is withdrawn and resubmitted, we ask that the Cabinet ensure that the preliminary permit requirements of KAR 5:032 Section 1 (2)(a) are met, followed by an on-site investigation from personnel of the Cabinet to verify the location of the proposed permit area, spoil or waste areas, and sediment pond. KRC also submits the following additional comments.

### **Potential Clean Water Act Violation**

The applicant's reported dug out sediment pond #1 with its associated Outfall#002 38.171111 -84.846944 into UT of Vaughn Branch was issued in a permit by KPDES Non-Coal General Perm Coverage Agency Interest ID: 1397 (KPDES No.: KYG840123 DNR No.: 037-9400 Renewal Harrod Concrete & Stone Co., Inc.) on October 29, 2015 by Jonathan L. Trout (Resource Extraction Section Surface Water Permits Branch Division of Water). This permit shows Outfall #002 as being proposed.

The current permit, KYG84 General Permit Coverage, AI No.: 1397, KPDES ID: KYG840123, DNR No.: 037-9400, Harrod Concrete & Stone Co., Inc., issued May 24, 2023 by Paul Tangel (Permit Writer Stormwater Section Surface Water Permits Branch Division of Water) indicates that Outfall #002 is existing.

DNR Permit application #037-9400 Submitted for permit revision describes the dug out sediment pond. The DMRE Surface mining Permit map drawn on November 4, 2014, lists Sediment Pond #1 (dug out type) KPDES outfall as 0.48 acres. Given the reported size of the dug out type sediment pond, we would expect to see this feature from aerial views from 2014 until current day. No sediment pond is present at this location from aerial views in any year during this time frame. The area is a mowed grass field from 2014-2023.

The only structure present onsite that would be similar in size to the reported 0.48 acre Sediment Pond #1 is located in the intermittent stream that appears on the 24K NHD Flowline Features (Streams, ditches, etc.) layer is identified as ReachCode 05100205006418, Hydrographic Category = intermittent. This stream is considered a Water of the Commonwealth, and a Water of the United States. Using this stream as a sediment pond is a clear violation of the Clean Water Act and should be investigated immediately.

Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action and for permit termination, revocation and reissuance, modification, or denial of a permit renewal application. Any person who violates applicable statutes, who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99-010.

Upon investigation by the Cabinet, if Harrod Concrete is found to be using an intermittent stream as a sediment pond, this would be a violation of 405 KAR 5:050 Sections 1, 2 and 3, and 405 KAR 5:048. Under KRS Chapters KAR 5:032 Section 29(4)(5) this permit should be denied and no permit should be issued until proof is supplied that fulfills KAR 5:032 Section 29(5).

### **General Comments**

KRC believes that it is important to place the application in context. The Cabinet reviews and makes determinations on applications for non-coal mining permits under KRS 350.300, which provides the specific statutory backdrop against which the implementation of the non-coal regulations must be measured. KRS 350.300 represents the General Assembly's decision to join the Inter-state Mining Compact (IMC), and the enactment of the Compact into state law by the General Assembly obligated Kentucky as a "party state" to the Compact. Among the commitments of the legislature in enacting the IMC are these concerning non-coal mining regulation:

#### **ARTICLE III. State Programs**

Each party State agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water.
3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past, and future.

KRS 350.300.

The Cabinet has broad regulatory authority, both under statute and through the non-coal permitting regulations, to impose such conditions as are deemed necessary or advisable to assure that the purposes of KRS Chapter 350 are satisfied. With that authority comes a concomitant duty to impose such conditions where the record demonstrates that, in the absence of such conditions, harm may be manifest.

### **Failure to Minimize Adverse Impacts**

KRC listened to the recording of the permit conference held on November 15, 2023, and the many complaints of citizens who have had property destroyed related to the mining activities of Harrod Concrete. As this expansion is going in the direction of densely populated areas, these testimonies need to be given great consideration by the Cabinet. Whereas the current permit affects hundreds, the expansion will now be affecting thousands of citizens of the Commonwealth. The protesters who attended the meeting are organizing and deserve to have their concerns addressed.

It was said by Jim Ward at the Permit Conference that permit review is done based on regulation and that “We really don’t take the human factor into account.” This comment was followed by an outcry of the people that were present at the meeting. As set forth in the introduction to 405 KAR 5:032, “KRS 350.028 requires the Energy and Environment Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth.” Also, 405 KAR 5:032 Section 27 states that the approval and denial of an application requires consideration of other pertinent information. Pertinent information should include comments by affected residents at this meeting, proof of damaged homes, successful citizens lawsuits against Harrod Concrete for damaged property, and all written comments DNR receives as to this application.

Further, 405 KAR 5:032 Section 27(3) states:

The proposed mineral operation shall not constitute a hazard to, or do physical damage to life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property, or to members of the public or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation that constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation;

*Id.* The proper control of the adverse effects of non-coal mining operations demands that the Cabinet independently review and determine the sufficiency of plans for the mining and

reclamation prior to permit issuance. To do less would make the permitting process wholly ineffective in assuring protection of the public and the environment, and in contravention of the requirement of KRS 350.300 that the non-coal regulatory program be an “effective program for the conservation and use of mined land . . . accomplish[ing] . . . [t]he protection of the public and the protection of adjoining and other landowners from damage to their lands[.]” and that the regulation accomplish “[t]he prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future[.]”; assuring that “[t]he conduct of mining and the handling of refuse and other mining wastes [be accomplished] in ways that will reduce adverse effects[.]” KRS 350.300 Article III 1, 2, 4.

### **Failure to Address Past Deficiencies**

Past Letters of Deficiency have not received a proper response from the applicant. In the first “Deficiency Letter to Harrod Concrete and Stone Co. Permit No. 037-9400 Renewal 6” issued by Brenda Taylor on May 22, 2023, RE: 1st Deficiency Letter Item 35 Enlarged USGS Map, the applicant was told to “Correct existing Pond 2’s location.” There is no mention of Pond 2 in the applicant’s response, and we still have no information regarding Pond 2’s location.

The applicant as also instructed to “show intermittent/perennial stream that existing rock check dams 3 and 4 flow into.” In response, there is now a stream indicator that flows near rock check dam 3, but it appears that diversion ditches #2 and #3 are flowing into rock check dam 3. These outfalls and rock check dams need to be clearly identified.

### **Surface Water Quantity and Quality Protection Plan**

Among the requirements of a permit application is a surface water quantity and quality protection plan, which “shall demonstrate compliance with 405 KAR 5:050 and 405 KAR 5:055.” 405 KAR 5:032 Section 12. 405 KAR 5:050 (Protection of surface water quantity and quality) requires that “Appropriate protection measures shall be designed, constructed, and maintained to minimize disturbance of surface water quantity and quality within the permit area, to prevent material damage to surface water quantity and quality outside the permit area, and to prevent additional contributions of sediment to streamflow or to run-off outside the permit area.” This regulation is clear that sediment control measures must prevent any additional contribution of sediment to streamflow or runoff outside the permit area. According to the regulation, “[m]aximum utilization shall be made of onsite sediment control practices.” *Id.* at Section 1(5). After listing those measures that should be evaluated in assuring that the requirement of zero additional contribution of sediment to streamflow and run-off is met, the regulation further requires that the mineral operation comply with state and federal water quality standards and effluent limitations established in regulations of the Kentucky Division of Water. 405 KAR 5:050 Section 1(7).

Against the backdrop of 405 KAR 5:050 Section 1(1) and the mandate to prevent additional contribution of sediment to streamflow or run-off, the application must contain a proposed surface water quantity and quality protection plan in the permit application that fully addresses these concerns. Among KRC’s concerns is the lack of a water protection plan, with no

protections offered to streams within the site area and with the lack of outfalls related to rock check dams:

The intermittent stream that flows through the site and is shown to be flowing freely through the area between rock check dams 3 and 4 on the applications map, appears to partially dammed and is being used as a sediment basin through arial views. The stream on 24K NHD Flowline Features (Streams, ditches, etc.) layer is identified as ReachCode 05100205006418, Hydrographic Category = intermittent. Despite being impacted greatly by Harrod Concrete, this stream remains a Water of the United States (WOTUS) and a Water of the Commonwealth.

The applicant stated in the 2023-03-23 applications that “Both underground and surface operations are ongoing, but no surface disturbed areas have been partially or fully reclaimed, nor are any reclamation activities planned before the next renewal after this one.” The applicant also checked the box under the Environmental Resource Information, indicating that there are disturbances within the channel of or within 100 feet of an intermittent or perennial stream. A buffer zone of at least 100-feet on either side of this intermittent stream is necessary in order to assure compliance with the environmental performance standards both of 405 KAR Chapter 5 and of 401 KAR 10:031 Section 4(2). No instream work should be approved and crossings and or culverting of this stream should be minimized.

Rock check dams are an effective means of providing sediment control for relatively small areas; however, to function as designed they must be maintained properly. A maintenance plan must be provided that will provide a maintenance and replacement schedule for the rock check dams. Rock Check Dams 1-5 lack detailed information in the application. Consideration needs to be given as to why no outfall is at a rock check dam that drains acres of disturbed property.

The permit application also lacks adequate background information regarding surface and ground water quality, and the biological integrity of the receiving and downstream waters that would be affected by runoff from the mining operation. This is necessary to support the review of the adequacy of the mine plans and to allow for a determination during and after mining of adverse effects, including that the mandates of 405 KAR 5:050 Section 1(1) of minimization of on-site adverse impacts, prevention of material damage off-site, and prevention of additional sediment loading will be met.

### **Impacts of Extraction of Limestone**

A detailed explanation of the equipment and manner of extraction and processing – including the potential impacts of the equipment that will be used to dislodge and size the excavated limestone – must be provided and an evaluation of the potential impact of serial vibrational damage to nearby landowners and land uses should be completed. Many attendees to the Permit Conference specifically asked for this information.

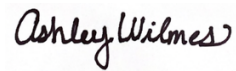
Overall, the permitted actions for this property seem below the permitting standard of other Limestone Mining Operators within the state. We would encourage KPDES and DNR to review The Allen company INC DNR permit # 076-9400 and KPDES AI # 4272. The Cabinet

has a duty to require sufficient information, analysis, and mitigation of both on and off-site impacts associated with excavation, blasting, mining, processing, and haulage, in order to fully protect the residents of this area and homes, churches, businesses, and environment from all the adverse effects of the proposed mining expansion.

### **Conclusion**

Until the numerous deficient informational items and analyses requested above are supplied and evaluated, we request that the Cabinet deny this application. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Ashley Wilmes". The signature is written in a cursive style.

Ashley Wilmes, Esq.


Executive Director




# Harrod Concrete


KPDES Outfall#001 and KPDES outfall according to Preliminary map.

## Legend

 38.169444 -84.850000 and 38° 10' 10"N, 84° 50' 56"W



38.169444 -84.850000 

 38°10'10.00"N -84°50'56.00"W

# Harrod Concrete

KPDES Outfall #002

**Legend**  
📍 38.171111 -84.84694

📍 38.171111 -84.84694

Google Earth

Image © 2023 Airbus

