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FACT SHEET

KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM (KPDES) GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES (KYR10)

KPDES No.: KYR100000 Permit Writer: Larry Sowder Date: June 29, 2009
AI No.: 35050

1. INTRODUCTION

The Kentucky Division of Water (DOW) is reissuing the general permit that authorizes the discharge of pollutants in storm water discharges associated with both small and large construction activities (also known as the "construction general permit" or "KYR10"). As used in this permit, "storm water associated with construction activity" refers to the disturbance of one or more acres or is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more.

This KYR10 will replace all previous versions of KYR10 issued by DOW. The conditions and requirements contained herein shall supersede the conditions and requirements of all previous versions except as delineated within the permit.

The most significant changes from the 2002 KYR10 include:

- The creation of a Notice of Intent specifically for construction activities (NOI-SWCA). The new NOI-SWCA requirements for specific information regarding the scope and size of the proposed construction activity and the receiving waters impacted.
- New language in KYR10 to support the ability of operators to submit NOIs and NOTs using DOW's ePermitting system when it becomes available.
- Added definitions for terms used in the KYR10.
- An exclusion of eligibility for coverage under this permit for any project that discharges to an Impaired Water listed in the most recent Integrated Report, §305(b) as impaired for sediment and for which an approved TMDL has been developed, a Cold Water Aquatic Habitat, an Exceptional Water, an Outstanding National Resource Water or an Outstanding State Resource Water.
- A requirement to minimize disturbance.
- A requirement to maintain a buffer between the edge of the receiving waters and any disturbance for all projects.

- A requirement to conduct immediate stabilization practices in critical areas near receiving waters for all projects.
- No automatic coverage within 48 hours of submission of the Notice of Intent. Applicant will receive notification of coverage or notice of deficiency within 7 days for those submitting complete NOIs using DOW's ePermitting system, 30 days for those submitting complete paper NOIs.

A. Definitions of Terms and Acronyms

The Division of Water is providing definitions of commonly used terms in this Fact Sheet and Draft Permit for the convenience of the reader and to provide clarity of the terms. Some of these terms were extracted from other sources including EPA's Construction General Permit without modification and some have been modified to reflect specific Kentucky Revised Statute requirements. Beside each such definition the source of the definition will be cited (in italics).

"As Soon As Practical" for the purposes of this permit means at the earliest possible time when external factors such as inclement weather would not prevent completion of the task.

"Bankfull Elevation" for the purposes of this permit means the water level, or stage, at which a stream, river, or lake is at the top of its banks and any further rise would result in water moving into the flood plain (*NOAA Glossary*).

"Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, and practice to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. (*EPA CGP*)

"Cold Water Aquatic Habitats" or "CAH" means those "waters of the Commonwealth" that meet the criterion of 401 KAR 10:031, Section 4(2) and have been listed in 401 KAR 10:026, Section 5.

"Commencement of Construction Activities" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material). (*EPA CGP*)

"Common Plan of Development or Sale" for the purposes of this permit means any announcement or piece of documentation (e.g., sign, public notice, or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (e.g., boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. Where discrete construction projects within a larger common plan of development or sale are located 0.25 mile or more apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed.

"Construction and Construction-related activities" include all clearing, grading, excavation, and stockpiling activities that will result in the disturbance of one or more acres of land area. Construction does not include routine earth disturbing activities that are part of the normal day-to-day operation of a completed facility (e.g., daily cover for landfills, maintenance of gravel roads or parking areas, landscape maintenance, etc). Also, it does not include activities under a State or Federal reclamation program to return an abandoned property into an agricultural or open land use.

"Control Measure" as used in this permit, refers to any BMP or other method used to prevent or reduce the discharge of pollutants to waters of the Commonwealth. *(modified EPA CGP)*

"Co-permittees" means when two or more operators are required to jointly file a single Notice of Intent (NOI) to obtain joint authorization. Co-permittees may be found on larger common plans of development or sale.

"Critical Areas" for the purposes of this permit means areas within 25 feet of, and on a positive slope toward a water of the Commonwealth.

"Discharge" when used without qualification means the "discharge of a pollutant." *(EPA CGP)*

"Discharge of Stormwater Associated with Construction Activity" as used in this permit refers to a discharge of pollutants in stormwater from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck chute washdown, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located. *(EPA CGP)*

"Edge of the Receiving Water" for the purposes of this permit is defined as the bankfull elevation of a water of the Commonwealth.

"Eligible" means qualified for authorization to discharge stormwater under this general permit. *(EPA CGP)*

"Equivalent Analysis Waiver" means a waiver, available only to "small construction activities" which discharge to non-impaired waters only, that is based on the applicant performance of an equivalent analysis using existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety.

"Exceptional Waters" or "EW" means those "waters of the Commonwealth" that have been listed in Table 2 of 401 KAR 10:030, Section 1(2).

"Facility or Activity" means any "point source" or other facility or activity (including land or appurtenances thereto) that is subject to regulation under the KPDES program. *(EPA CGP)*

"Final Stabilization" means that:

1. All soil disturbing activities at the site have been completed and either of the two following criteria are met:
 - a. a uniform(e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or
 - b. equivalent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
2. For individual lots in residential construction, final stabilization means, that either :
 - a. The homebuilder has completed final stabilization as specified above, or
 - b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.
- 3 For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging area for highway construction, etc.) final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural uses. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to waters of the Commonwealth and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria in item 1. *(modified EPA CGP)*

"High Quality Waters" or "HQW" means those "waters of the Commonwealth" that have categorized by the Division of Water as high quality pursuant to the requirements of 401 KAR 10:030, Section 1(3).

"Impaired Waters" or "IW" means those "waters of the Commonwealth" that have been categorized by the Division of Water as impaired for applicable designated uses and have been identified pursuant to 33 U.S.C. 1315(b) and listed in the most recently approved 305(b) report.

"Large Construction Activity" is defined at 401 KAR 5:002, Section 1(292). A large construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than five acres of land or will disturb less than five acres of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than five acres. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or original purpose of the site. *(modified EPA CGP)*

"Municipal Separate Storm Sewer System" or "MS4" is defined at 401 KAR 5:002, Section 1(188). Means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the Commonwealth;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of Publicly Owned Treatment Works (POTW) as defined in 40 CFR § 122.2. (*modified from EPA CGP*)

"New Project" means the "commencement of construction activities" occurs after the effective date of this permit. (*EPA CGP*)

"Ongoing Project" means the "commencement of construction activities" occurred before the effective date of this permit (*modified EPA CGP*)

"Operator" means any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over either the construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., they are authorized to direct workers at the site to carry out activities required by the SWPPP or comply with other permit conditions). (*modified EPA CGP*)

"Outstanding National Resource Waters" or "ONRW" means those "waters of the Commonwealth" that have been listed in Table 1 of 401 KAR 10:030, Section 1(1).

"Outstanding State Resource Waters" or "OSRW" means those "waters of the Commonwealth" that meet the criterion of 401 KAR 10:031, Section 8.

"Owner or operator" means the owner or operator of any "facility or activity" subject to regulation under the KPDES program. (*modified EPA CGP*)

"Permittee" for the purpose of this permit means the operator who obtains authorization under this permit.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body. (*KRS 244.01-010(17)*)

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or a agricultural stormwater runoff. (401 KAR 5:002 (222) & EPA CGP)

"Pollutant" means and includes dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water. (KRS 244.01-010(35))

"Rainfall Erosivity Factor" or "R Factor" means a measure of the erosive force and intensity of rain in a normal year. Two components of the factor are total energy and the maximum 30-min intensity of storms. The R-Factor is the sum of the product of these two components for all major storms in the area during an average year. (USDA Handbook 703)

"Rainfall Erosivity Waiver" means a waiver, available only to "small construction activities", that is based on the "rainfall erosivity" factor for the project.

"Receiving Water" means the "water of the Commonwealth" as defined in KRS 224.01-010 (33) into which the regulated stormwater discharges. (modified EPA CGP)

"Revised Universal Soil Loss Equation or RUSLE" means an equation used to predict soil loss in an area. (USDA Handbook 703)

"Runoff Coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff. (EPA CGP)

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land use in connection with the facility or activity. (EPA CGP)

"Small Construction Activity" is defined at 401 KAR 5:002, Section 1(293). A small construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than one acre and less than five acres of land or will disturb less than one acre of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre and less five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or original purpose of the site. (modified EPA CGP)

"Stormwater" means storm water run-off, snow melt run-off, and surface run-off and drainage. (EPA CGP)

"Stormwater Discharge Related Activities" as used in this permit include: activities that cause, contribute to, or result in stormwater point source pollutant discharges, including but not limited to: excavation, site development, grading and other surface disturbance activities; and measures to control stormwater including the siting, construction and operation of BMPs to control, reduce or prevent stormwater pollution. (EPA CGP)

"Stormwater Pollutant Prevention Plan (SWPPP)" means a site-specific, written document that: (1) identifies potential sources of stormwater pollution at the construction site; (2) describes practices to reduce pollutants in stormwater discharges from the construction site; and identifies procedures the operator will implement to comply with the terms and conditions of a construction general permit. (*modified EPA Developing Your Stormwater Pollution Prevention Plan Guide For Construction Sites [Interim] January 2007*).

"TMDL Waiver" means a waiver, available only to "small construction activities", based on an EPA established or approved TMDL.

"Total Maximum Daily Load" or "TMDL" means the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint source pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of mass per time, toxicity, or other appropriate measure. (*EPA CGP*)

"Water or Waters of the Commonwealth" as defined in KRS 224.01-010(33) means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction. (*KRS 244.01-010(33)*)

"Water Pollution" means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the Commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes. (*KRS 244.01-010(34)*)

"2-year, 24-hour event" means mean the maximum 24-hour precipitation event with a probable recurrence interval of once in two (2), years, respectively, as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed there from.

"305 (b) Report" means the approved biennial Clean Water Act Integrated Water Quality Report to Congress, §305(b).

"401 Water Quality Certification" means the certification issued by a state in response to a federally issued permit. In this case the certification DOW issues in response to a COE §404 permit.

"404 Permit" means the permit issued by the United States Army Corps of Engineers (USACE) for activities that discharge dredged or fill material into the navigable waters.

ACRONYMS

BMP	-	Best Management Practices
CAH	-	Cold Water Aquatic Habitat
CPESC	-	Certified Professional in Erosion and Sediment Control
CESSWI	-	Certified Erosion, Sediment and Stormwater Inspector
CPSWQ	-	Certified Professional in Stormwater Quality
CWA	-	Clean Water Act
DOW	-	Division of Water
EPA CGP	-	Environmental Protection Agency Construction General Permit
EW	-	Exceptional Water
HQW	-	High Quality Water
IW	-	Impaired Water
KEPSC	-	Kentucky Erosion Prevention and Sediment Control Course
KYTC	-	Kentucky Transportation Cabinet
MS4	-	Municipal Separate Storm Sewer System
NOI-SWCA	-	Notice of Intent - Stormwater Construction Activities
NOT	-	Notice of Termination
NOAA	-	National Oceanic and Atmospheric Administration
ONRW	-	Outstanding National Resource Water
OSRW	-	Outstanding State Resource Water
RUSLE	-	Revised Universal Soil Loss Equation
SWPPP	-	Stormwater Pollution Prevention Plan
TMDL	-	Total Maximum Daily Load

B. Answers to Common Questions

In this section, the Division of Water attempts to provide answers to some of the more common questions on the construction storm water permitting program. It is intended to help potential users understand the permit. N.B. These answers are general and may not take into account all scenarios possible at construction sites.

What is the Goal of This Permit?

The Kentucky Revised Statutes at KRS 224.10-100 and KRS 224.70-100 establish the duties and the powers of the Cabinet, the Commonwealth's policy and purposes as to water quality and a general prohibition against water pollution. Vested by these laws the Cabinet has the authority, power, and duty to "Provide for the prevention, abatement, and control of all water, land, and air pollution, including but not limited to that related to particulates, pesticides, gases, dust, vapors, noise, radiation, nutrients, heated liquid, or other contaminants. It is the policy of the Commonwealth "to conserve the waters of the Commonwealth for public water supplies, for propagation of fish, aquatic life, for fowl, animal wildlife and arborous growth, and for agricultural, industrial, recreational and other legitimate uses; to provide a comprehensive program in the public interest for the prevention, abatement and control of pollution;..." and its purposes are "to safeguard from pollution the uncontaminated waters of the Commonwealth; to prevent the creation of any new pollution of the waters of the Commonwealth; and to abate any existing pollution."

The goal of this permit is to implement these laws by requiring operators to plan and implement appropriate and adequate erosion prevention measures, sediment controls measures, and other site management practices necessary to manage storm water runoff during the construction period. These practices are aimed primarily at controlling erosion and sediment transport, but also include controls, including good housekeeping practices, aimed at other pollutants such as construction chemicals and solid waste (e.g., litter).

What Types of Construction Activities Must Have a Storm Water Permit?

Any construction activity including one that is part of a "common plan" of development or sale that will disturb one or more acres and has the potential to discharge storm water to a water of the Commonwealth must have a permit. Under Kentucky's environmental laws, it is illegal to have a point-source discharge of pollutants to a water of the Commonwealth that is not authorized by a permit. If there is a potential for a discharge, you need to apply for coverage under this permit or for an individual stormwater construction permit.

Construction and construction-related activities refer to the actual earth disturbing construction activities and those activities supporting the construction project such as construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), measures used to control the quality for storm water associated with construction activity, or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants).

Are There Situations Where a Storm Water Permit is Not Needed?

Yes, if all of the storm water from the construction activity is captured on-site and allowed to evaporate, soak into the ground on-site, or is used for irrigation you do not need coverage under this permit. Construction and construction-related activities unrelated to earth disturbing activities such as interior remodeling, completion of interiors of structures, etc. "Construction" does not include routine earth disturbing activities that are part of the normal day-to-day operation of a completed facility (e.g., daily cover for landfills, maintenance of gravel roads or parking areas, landscape maintenance, etc). Also, it does not include activities under a State or Federal reclamation program to return an abandoned property into an agricultural or open land use.

With All the People Involved in a Construction Project, How Do I Know If I Am the One That Needs to Apply for the Permit?

You must apply if you meet one or more parts of the definition of "Operator." Where your activity is part of a larger common plan of development or sale, you are only responsible for the portions of the project for which you meet the definition of "operator."

In many instances, there may be more than one person at a site performing tasks related to "operational control" and hence, more than one operator must submit an NOI. Depending on the site and the relationship between the parties (e.g., owner, developer, general contractor), there can either be a single person acting as site operator and consequently be responsible for obtaining permit coverage, or there can be two or more persons acting as operators needing permit coverage. Exactly who is considered an operator is largely controlled by how the "owner" of the project chooses to structure the contracts with the "contractors" hired to design and/or build the project. The following are three general operator scenarios (variations on any of these three are possible, especially as the number of "owners" and contractors increases):

- "Owner" as sole permittee. The property owner designs the structures for the site, develops and implements the SWPPP, and serves as general contractor (or has an on-site representative with full authority to direct day-to-day operations). The "Owner" is the only party that needs permit coverage, in which case everyone else on the site may be considered subcontractors and not need permit coverage.
- "Operator" as sole permittee. The property owner hires one company (i.e., a contractor) to design the project and oversee all aspects of the construction project, including preparation and implementation of the SWPPP and compliance with the permit (e.g., a "turnkey" project). Here, the contractor would likely be the only party needing a permit. It is under this scenario that an individual having a personal residence built for his own use (e.g., not those to be sold for profit or used as rental property) would not be considered an operator. DOW believes that the general contractor, being a professional in the building industry, should be the entity rather than the individual who is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing a SWPPP. However, individuals would meet the definition of "operator" and require permit coverage in instances where they perform general contracting duties for construction of their personal residences.

- "Owner" and "Operator" as co-permittees. The owner retains control over any changes to site plans, SWPPPs, or storm water conveyance or control designs; but the contractor is responsible for overseeing actual earth disturbing activities and daily implementation of SWPPP and other permit conditions. In this case, which is the most common scenario, both parties need to apply for coverage.

However, you are probably not an "operator" and subsequently do not need permit coverage if:

- You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (i.e., if the contractor directs your activities on-site, you probably are not an operator); or
- Your activities on site result in earth disturbance and you are not legally a subcontractor, but a SWPPP specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities may have on storm water quality (i.e., another operator has assumed responsibility for the impacts of your construction activities). DOW anticipates that this will be the case for many, if not most, utility service line installations.

In addition, for purposes of this permit and determining who is an operator, "owner" refers to the party that owns the structure being built. Ownership of the land where construction is occurring does not necessarily imply the property owner is an operator (e.g., a landowner whose property is being disturbed by construction of a gas pipeline). Likewise, if the erection of a structure has been contracted for, but possession of the title or lease to the land or structure is not to occur until after construction, the would-be owner may not be considered an operator (e.g., having a house built by a residential homebuilder).

My Project Will Disturb Less Than One Acre, But it May Be Part of a "Larger Common Plan of Development or Sale." How Can I Tell and What Must I Do?

In many cases, a common plan of development or sale consists of many small construction projects. For example, a common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale.

If your smaller project is part of a larger common plan of development or sale that collectively will disturb one or more acres (e.g., you are building on 6 half-acre residential lots in a 10-acre development or are putting in a fast food restaurant on a 0.75 acre pad that is part of a 20 acre retail center) you need permit coverage.

"Common plan" is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely permit coverage would be needed.

However, where only a small portion of the original common plan of development remains undeveloped and there has been a period of time where there is no ongoing construction activities (i.e., all areas are either undisturbed or have been finally stabilized), you may re-evaluate your individual project based on the acreage remaining from the original "common plan." If less than five but more than one acre remains to build out the original "common plan" permit coverage may still be required, but you can treat your project as part of a "small" construction activity and may be eligible for the waivers available for small construction activities (e.g., one of six lots totaling 2 acres in a 50 acre subdivision can be treated as part of a 2 acre rather than 50 acre "common plan"). If less than one acre remains of the original common plan, your individual project may be treated as part of a less than one acre development and no permit would be required.

When Can You Consider Future Construction on a Property to be Part of a Separate Plan of Development or Sale?

After the initial "common plan" construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development. For example, after a house is built and occupied, any future construction on that lot (e.g., reconstructing after fire, adding a pool or parking area, etc.), would stand alone as a new "common plan" for purposes of calculating acreage disturbed to determine if a permit was required. This would also apply to similar situations at an industrial facility, such as adding new buildings, a pipeline, new wastewater treatment facility, etc. that was not part of the original plan.

What If the Extent of the Common Plan of Development or Sale is Contingent on Future Activities?

The Division of Water recognizes that there are situations where you will not know beforehand exactly how many acres will be disturbed, or whether some activities will ever occur. If you are not sure exactly how many acres will be disturbed, you should make the best estimate possible and may wish to overestimate to ensure you do not run into the situation where you should have a permit, but don't. This could result in delays in obtaining permit authorization and costs associated with contract changes to implement permit requirements - in addition to being responsible for any unpermitted discharges.

If you have a long-range master plan of development where some portions of the master plan are a conceptual rather than a specific plan of future development and the future construction activities would, if they occur at all, happen over an extended time period, you may consider the "conceptual" phases of development to be separate "common plans" provided the periods of construction for the physically interconnected phases will not overlap. For example, a university or an airport may have a long-range development concept for their property, with future development based largely on future needs and available funding. A school district could buy more land than needed for a high school with an indefinite plan to add more classrooms and a sports facility some day. An oil and gas exploration and production company could have a broad plan to develop wells within a lease or production area, but decisions on how many wells would be drilled within what time frame and which wells would be tied to a pipeline would be largely driven by current market conditions and which, if any, wells proved to be commercially viable.

What if the "Common Plan of Development or Sale" Actually Consists of Non-Contiguous Separate Projects?

There are several situations where discrete projects, that could be considered part of a larger "common plan," can actually be treated as separate projects for the purposes of permitting:

- A public entity (e.g., a municipality, state, tribe, or federal agency) need not consider all construction projects within their entire jurisdiction to be part of an overall "common plan." For example, construction of roads or buildings in different parts of a state, county, or city could be considered separate "common plans." Only the interconnected parts of a project would be considered to be a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.)
- Where discrete construction projects within a larger common plan of development or sale are located 0.25 mile or more apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed. For example, two oil and gas well pads separated by 1/2 mile could be treated as separate "common plans." However, if the same two well pads and an interconnecting access road were all under construction at the same time, they would generally be considered as part of a single "common plan" for permitting purposes. If a utility company was constructing new trunk lines off an existing transmission line to serve separate residential subdivisions located more than 0.25 mile apart, the two trunk line projects could be considered to be separate projects.

What Do You Need to Do to Apply for Coverage Under KYR10?

For "new projects", projects that will commence construction activities after the effective date of this permit, you will need to complete the Notice of Intent for Storm Water Construction Activities (NOI-SWCA) a minimum of seven (7) days prior to commencement of construction activities if utilizing DOW's online e-permitting web site located at the following address:

<http://eppdepfs01/eforms/depdefault.aspx>.

If you can not obtain access to the e-permitting web site then you may complete a paper NOI-SWCA and submit to DOW a minimum of thirty (30) days prior to commencement of construction activities.

For "ongoing projects", projects that commenced construction activities prior to the effective date of this permit, unless otherwise notified by one of the following methods DOW will consider the project complete and terminate coverage 180 days from the effective date of the permit:

- For those projects which received a notification letter from DOW granting authorization under the previous KYR10 the permittee shall provide written notification of their request for reauthorization which shall include the KYR10 permit number assigned to that project by DOW. DOW will process these requests within 30 days of receipt.
- For those projects which did not receive such a notification shall submit an NOI-SWCA either through the DOW's online e-permitting web site or hard copy.

- Included are those projects which submitted NOIs after the expiration of the previous KYR10, September 30, 2007. DOW will provide responses to these NOI-SWCAs in the timeframes specified for "new projects".

If My Project Is Reauthorized Under The New KYR10 Do I Need To Retrofit My Site To Comply With The New Requirements?

No, if you receive reauthorization under the new KYR10 you do not need to retrofit your site to meet the new requirements. If however DOW must take enforcement action regarding the failure of your SWPP then you may be required to make changes.

What are My Options For Meeting the "Final Stabilization" Criteria?

In most cases, you can terminate permit coverage as soon as the portion(s) of the project for which you are an operator are finally stabilized. "Final Stabilization" as defined in Part II of this Fact Sheet is achieved when all soil disturbing activities at the site have been completed and either a uniform perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures or equivalent permanent stabilization measures have been employed. There are two instances when the aforementioned criteria do not apply:

The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation by the homeowner, for example, the homeowner completing the landscaping of the lot.

The construction project has disturbed land used for agricultural purposes such as cropland, rangeland, or silviculture. In these cases the site shall be returned to its preconstruction agricultural use.

Perennial vegetation could include grasses, ground covers, trees, shrubs, etc. Non-vegetative stabilization could include rip-rap, gravel, gabions, etc. Impervious cover such as concrete or asphalt should be avoided as a final stabilization technique. Long-term, semi-permanent erosion control practices combined with seeds that would establish vegetative stabilization (e.g., properly secured seed impregnated erosion control mats, etc.) could also be used as "final stabilization." To qualify as "long-term," the erosion control practice must be selected, designed, and installed so as to provide at least three years of erosion control.

The Division of Water believes, where the environmental threat is low "final stabilization" can also include techniques that employ re-vegetation combined with other stabilization measures. "Other stabilization measures" in this context include what are known as "temporary degradable rolled erosion control products," a.k.a., "erosion control blankets" (ECBs) along with an appropriate seed base. With proper selection (degradability, application, siting, etc), design, and installation, ECBs can be very effective in preventing the detachment and transportation of soil until they naturally degrade and vegetation has assumed this function. Therefore, upon proper selection, design, and installation of the combination ECB-seed technique in arid or semi-arid areas, a permittee can be considered to have achieved final stabilization and can terminate permit coverage. If more than 3 years (i.e., three growing seasons) is required to establish the 70 percent of the natural vegetative cover, this technique cannot be used or cited for fulfillment of permit termination requirements prior to actual establishment of vegetative cover.

N.B. Construction sites have the potential to generate polluted runoff after all construction activity is complete unless appropriate post-construction management practices are implemented. Numerous post-construction management measures are planned and designed during the planning process for new construction or redevelopment. An effective post-construction runoff management plan requires proper site design, pollutant source controls, and treatment controls to protect water quality by minimizing runoff and infiltrating runoff at the source. Of the three, proper site design has the potential to provide the greatest pollutant reduction with the least costs. Permittees are encouraged to design the site, the erosion prevention measures, sediment controls measures, and other site management practices with an eye toward minimizing post-construction stormwater runoff, including facilitating the use of low-impact technologies. (*N.B.* Additional resources regarding post-construction runoff management are included in the Kentucky Construction Site BMP Planning and Technical Specifications Manual located at www.water.ky.gov/permitting/wastewaterpermitting/KPDES/storm/ and EPA's Post-Construction website

http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=min_measure&min_measure_id=5.)

What if the Operator(s) Changes Before the Project is Completed?

If operational control changes, the old operator submits a Notice of Termination (NOT) and the new operator submits a Notice of Intent (NOI) before taking over operational control.

In many instances, operational control changes, but only for a portion of the site. In these instances, the new operator must:

- submit an NOI; and
- develop and implement their own SWPPP or adopt the SWPPP of the previous operator if it's still applicable (with appropriate revisions).

What if Earth Disturbance is a Normal Part of the Post-Construction Use of the Site?

Earth disturbing activity must be part of a project to build, demolish, or replace a structure (e.g., building, road, pad, pipeline, transmission line, etc.) to trigger the need for permit coverage. Earth disturbance that is a normal part of the long-term use or maintenance of the property is not covered by the construction general permit. For example, re-grading a dirt road or cleaning out a roadside drainage ditch to maintain its "as built" state is road maintenance and not construction. Restoring the well pad of an existing oil or gas well is operation of a well and not construction. Re-grading and re-graveling a gravel parking lot or equipment pad is site maintenance and not construction. Repaving is routine maintenance unless underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation. Where clearing, grading, or excavating (i.e., down to bare soils) takes place, permit coverage is required if more than one acre is disturbed. Reworking planters that are part of the landscaping at a building is landscape maintenance and not construction. Applying daily cover at a landfill is part of the operation of a landfill and not construction.

How Many Notices of Intent (NOIs) Must I Submit?

You only need to submit one NOI to cover all activities for which you are considered the operator in any given project. The site map you develop for the SWPPP identifies which parts of the overall project are under your control. For example, if you are a homebuilder in a residential development, you need submit only one NOI to cover all your lots, even if they are on opposite sides of the development.

Do I Have Flexibility in Preparing the Storm Water Pollution Prevention Plan (SWPPP) and Selecting erosion prevention measures, sediment controls measures, and other site management practices For My Site?

Storm water pollution prevention plan requirements were designed to allow flexibility to develop erosion prevention measures, sediment controls measures, and other site management practices based on the specific conditions of the site. Some of the factors you might consider include: more stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby water bodies; safety concerns (e.g., potential hazards of water in storm water retention ponds to the safety of children; and coordination with other site operators.

The approach and control measures used for controlling pollutants in storm water discharges from small construction sites may vary from those used for large sites since their characteristics can differ in many ways. Operators of small sites may have more limited access to qualified design personnel and technical information. Sites may also have less space for installing and maintaining certain control measures. A number of structural practices (e.g., use of inlet protection, or silt fence) and non-structural practices (minimizing disturbance, good housekeeping) have shown to be efficient, cost effective, and versatile for construction site operators to implement. As is the case with large construction sites, erosion and sediment control at small construction sites is best accomplished with proper planning, installation, and maintenance of controls.

Must Every Permittee Have His or Her Own Separate SWPPP or is a Joint Plan Allowed?

The only requirement is that there be at least one SWPPP for a site that incorporates the required elements for all operators, but there can be separate SWPPPS if individual permittees so desire. DOW encourages permittees to explore possible cost savings by having a joint SWPPP. For example, the general contractor could assume the inspection responsibilities for the entire site, while each homebuilder shares in the installation and maintenance of sediment traps serving common areas.

If a Project Will Not Be Completed Before This Permit Expires, How Can I Keep Permit Coverage?

If the permit is reissued or replaced with a new one before the current one expires, you will need to comply with the new permit conditions in order to transition coverage from the old permit. This will likely include submitting a new NOI. If the permit expires before a replacement permit can be issued, the permittee is required to continue to comply with the requirements of the expired permit until a new permit can be issued. You are automatically covered under the continued permit, without needing to submit anything to EPA, until the earliest of:

- The permit being reissued or replaced;
- Submittal of a Notice of Termination (NOT);
- Issuance of an individual permit for your activity; or
- DOW issues a formal decision not to reissue the permit, at which time you must seek coverage under an alternative permit.

How Can I Terminate Permit Coverage? Can I Terminate Coverage (i.e., Liability for Permit Compliance) Before the Entire Project is Finished?

You can submit an NOT for your portion of a site providing: (1) You have achieved final stabilization of the portion of the site for which you are responsible; (2) another operator/permittee has assumed control over all areas of the site that have not been finally stabilized for which you are responsible (for example, a developer can pass permit responsibility for lots in a subdivision to the homebuilder who purchases those lots, providing the homebuilder has filed his or her own NOI); (3) coverage under an alternative KPDES permit has been obtained for the discharge; or (4) for residential construction only, you have completed temporary stabilization and the residence has been transferred to the homeowner.

What Permit Waivers are Available For "Small Construction Activities"?

Both the federal and state regulations provide three types waivers for "small construction activities" to exempt out of needing a permit.

The first known as the "Rainfall Erosivity Waiver" is based on the "R" factor from the "Revised Universal Soil Loss Equation (RUSLE) and applies to those projects where and when negligible rainfall/runoff erosivity is expected. To qualify for this waiver the calculated "R" factor for your project must be less than 5. You must provide a certification that the "R" factor is less than 5.

The next two waivers are water quality waivers and are essentially based on an analysis that stormwater discharges would not cause or contribute to exceedances of water quality standards. The first of these is the "TMDL Waiver" which is available if EPA has established or approved a TMDL that addresses the pollutant(s) of concern (such as total suspended solids, turbidity or siltation) and has determined that controls on stormwater discharges from a construction activity are not needed to protect water quality. The applicant must provide a certification the site is eligible for this waiver.

The third waiver is known as the Equivalent Analysis Waiver and is available for non-impaired waters only. The applicant must develop an equivalent analysis based on existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety. The applicant must provide a certification the site is eligible for this waiver. The Equivalent Analysis performed by the applicant must be submitted with the certification.

C. Area of Coverage

The Commonwealth of Kentucky

D. Discharges Eligible for Coverage

Pursuant to authority in KRS 224, this permit is applicable to stormwater discharges associated with construction activities that meet the eligibility requirements of this permit. This permit applies to stormwater discharges associated with construction activities disturbing individually one (1) acre or more, including, in the case of a common plan of development, contiguous construction activities that cumulatively equal one (1) acre or more of disturbance. Non-contiguous construction activities (i.e. activities separate by at least 0.25 miles that disturb more than one (1) acre shall be considered independent activities. The Kentucky Division of Water (DOW) is also making this permit available, for stormwater discharges from any other construction activity, those disturbing less than one acre, designated by DOW based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the Commonwealth.

E. Limitations on Coverage

This permit does not authorize the discharge of stormwater runoff from construction projects that:

- Are conducted at or on properties that have obtained an individual KPDES permit for the discharge of other wastewaters which requires the development and implementation of a Best Management Practices (BMP) plan;
- Any operation that the DOW determines an individual permit would better address the discharges from that operation;
- An exclusion of eligibility for coverage under this permit for any project that discharges to an Impaired Water listed in the most recent Integrated Report, §305(b) as impaired for sediment and for which an approved TMDL has been developed, a Cold Water Aquatic Habitat, an Exceptional Water, an Outstanding National Resource Water or an Outstanding State Resource Water.

F. Permitting Action

The DOW is reissuing the KPDES Stormwater General Permit (KYR10) for those construction activities:

- Are new or expanded activities, and the cumulative disturbance is greater than one (1) acre, or where required by DOW for smaller sites;
- Authorized under the previous KYR10 general permit; and
- For which a Notice of Intent (NOI) was submitted between September 30, 2007 and the date of issuance of this permit.

2. PERMIT REQUIREMENTS

A. Stormwater Pollution Prevention Plan (SWPPP)

Permittees are required to develop a Stormwater Pollution Prevention Plan (SWPPP) and implement the SWPPP at the commencement of the construction disturbance. The SWPPP must include erosion prevention measures, sediment controls measures, and other site management practices necessary to prevent the discharge of sediment and other pollutants into waters of the Commonwealth that would result in those waters being degraded or non-supportive of their designated uses. These sediment controls measures including retention basins, erosion control measures, and other site management practices are required to be properly selected based on site-specific conditions, and installed and maintained to effectively minimize such discharges for storm events up to an including a 2-year, 24-hour event. Permittees are encouraged to design the site, the erosion prevention measures, sediment controls measures, and other site management practices with an eye toward minimizing post-construction stormwater runoff, including facilitating the use of low-impact technologies.

B. Minimize Size and Duration of Disturbance

Permittees are required to minimize the area of disturbance and the period of time the disturbed area is exposed without implementation of temporary or final stabilization practices. In "critical areas" erosion prevention measures such as erosion control mats/blankets, mulch, or straw blown in and stabilized with tackifiers or by treading, etc shall be implemented on disturbed areas within 24 hours or "as soon as practical" after completion of disturbance/grading or following cessation of activities.

C. Stabilization Requirements

Permittees are required to initiate final stabilization practices on those portions of the project where, construction activities have permanently ceased within fourteen (14) days of the date of cessation of construction activities. Final stabilization practices shall be initiated on any site where construction activities have been suspended for more than 180 days. In such cases final stabilization practices shall be implemented as soon as practical but not later than 14 days after the 180th day of suspended activities.

Permittees are required to initiate temporary stabilization practices on those portions of the project where construction activities have temporarily ceased within fourteen (14) days of the date of cessation of construction activities.

D. Buffer Zone

For discharges to waters categorized as High Quality Waters or Impaired Waters (Non-construction related impairment) permittees are required maintain at a minimum a 25-foot buffer zone between any disturbance and all edges of the receiving water as means of providing adequate protection to receiving waters.

For discharges to waters categorized as Impaired Waters (Sediment impaired, but no TMDL), permittees are required maintain at a minimum a 50-foot buffer zone between any disturbance and all edges of the receiving water as means of providing adequate protection to receiving waters.

If the buffer zone between any disturbance and the edge of the receiving water on all edges of the water body cannot be maintained, an adequately protective alternate practices may be employed. The SWPPP shall explain any alternate practices and how these practices are adequately protective. Such cases include but are not limited to stream crossings and dredge and fill areas. In these cases the permittee shall minimize disturbances in the buffer zones by using hand held or other low-impact equipment.

3. NOTICE OF INTENT (NOI)

In order to obtain coverage under this general permit, a NOI-SWCA shall be completed by operators seeking authorization for stormwater discharges and submitted to KDOW. If the project is part of a larger "common plan of development" each project is required to obtain its own coverage, unless the entire "common plan of development" is being developed by one operator.

A. Contents

The NOI-SWCA form requires information necessary to make a determination of eligibility for coverage under this general permit. The NOI is also intended to provide DOW with sufficient information regarding the proposed location, discharges, and activities at the site to conduct on-site inspections. That information generally includes:

- Facility operator information
- Facility/site location information
- Site activity information
- Other required environmental approvals, permits or certification
- NOI preparer information
- Topographic site map

B. NOI Submission Requirements and Deadlines

For "New Projects", those projects commencing construction activities after the effective date of this KYR10, applicants have two filing options:

Option 1: DOW has created an electronic web based NOI submission system that will allow the applicant to complete and submit the NOI-SWCA form online. Applicants can access this system at the following web address: <http://eppdepfs01/eforms/depdefault.aspx>. When using this system the applicant shall complete and submit the NOI-SWCA a minimum of seven (7) days before the proposed date for commencement of construction activities.

Option 2: If the applicant does not have access to the internet then a complete NOI-SWCA shall be submitted to DOW's Surface Water Permits Branch a minimum of thirty (30) days before the proposed date for commencement of construction activities.

For "Ongoing Projects", DOW will extend coverage for a period of one year terminating on July 31, 2010. Projects that will not achieve final stabilization by this date are required to submit an up-to-date NOI to extend coverage under this general permit. "Ongoing Projects" include both authorized and pending requests for coverage received prior to July 1, 2009.

4. Small Construction Activity Waivers

The Phase II rule allows for the exclusion of certain sources the necessity of obtaining a permit based on a demonstration of the lack of impact on water quality. There are waivers available only to "small construction activities", "large construction activities" are not eligible. An applicant wishing to take advantage of one of these waivers must provide a certification of eligibility and supporting documentation.

A. Rainfall Erosivity Waiver

This waiver applies to those "small construction activities" where and when negligible rainfall/runoff erosivity is expected. To qualify for this waiver the applicant must calculate the "R factor" for the proposed project using the procedures specified in the permit. If the calculation produces an "R factor" of less than R=5, then the site is eligible for the waiver and a certification may be filed with DOW.

B. TMDL Waiver

This waiver applies to those "small construction activities" which plan to discharge to a receiving stream where an approved TMDL addresses pollutant(s) of concern (sediment - total suspended solids, turbidity or siltation) and has determined that controls on stormwater discharges from "small construction activities" are not needed to protect water quality. The applicant must determine if such a TMDL exists for the "water of the Commonwealth" to which the discharge will occur. If such a TMDL does exist, then the site is eligible for the waiver and a certification may be filed with DOW.

C. Equivalent Analysis Waiver

This waiver applies to those "small construction activities" where the "operator" develops an equivalent analysis that determines pollutant of concern allocations for his site or determines that no such allocations are necessary to protect water quality. This analysis requires the "operator" to develop a wasteload allocation for the site based on the existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety. If the "operator" performs an equivalent analysis and wasteload allocation, then the site is eligible for the waiver and a certification may be filed with DOW.

5. Authorization to Discharge

Authorization to discharge under the terms of this general permit shall be effective upon the issuance of written notification by the DOW. For those operators who have an e-mail address DOW will provide this written notification electronically.

6. Termination of Coverage

This issuance will be the fifth issuance of KYR10 as such the number of coverages has been in excess of 5,000. A significant number of these coverages remain active, however the DOW suspects that a large number of these projects have been completed but proper Notices of Termination have not been received. Consequently DOW has decided the most effective method for updating the coverage list is to terminate all existing coverages effective 180 days after the effective date of this KYR10 unless the permittee submits a written request for reauthorization.

When one or more of the following conditions have been met "operators shall submit a completed Notice of Termination (NOT) to DOW:

- Final stabilization has been achieved on all portions of the site for which the permittee is responsible;
- Another permittee has assumed control over all areas of the site that have not been finally stabilized;
- Coverage under an individual KPDES permit has been obtained;

7. ANTIDegradation

In the decision rendered by the U.S. Court of Appeals for the Sixth Circuit in *Kentucky Waterways Alliance, et al. v. Johnson, et al.*, the court remanded to EPA its approval of certain sections of Kentucky's Antidegradation Policy Implementation Methodology as codified in 401 KAR 10:030. One of EPA's remanded approvals pertained to Kentucky's exclusion of discharges covered by KPDES general stormwater permits from further antidegradation review. In that regard, the Division of Water has been working with various parties, including parties to the *Kentucky Waterways Alliance, et al. v. Johnson, et al.* case, to determine an approach to satisfy antidegradation considerations under 40 CFR 131.12. The consensus is that the options available are to conduct an antidegradation Tier II review for each general permit coverage issued under the general permit, or to include within the general permit erosion prevention measures, sediment controls measures, and other site management practices requirements that are adequately protective to address antidegradation concerns.

The Division of Water, has determined to include within the general permit additional protective requirements for construction activities discharging to "High Quality Waters" (waters otherwise requiring antidegradation review) such that compliance with these requirements result in no significant degradation in receiving waters due to the permitted construction activity. These additional permit requirements include:

- In addition to the erosion prevention measures, sediment controls measures, and other site management practices identified in the SWPPP, the permittee shall implement the following practices:
 - a. Installation of erosion prevention measures such as erosion control mats/blankets, mulch, or straw blown in and stabilized with tackifiers or by treading, etc. shall be implemented, in critical areas, on all disturbed areas within 24-hours or "as soon as practical" after completion of the disturbance/grading or following cessation of activities;
 - b. Utilize retention basins constructed for the control of stormwater runoff from disturbed areas designed to hold a 2-year 24-hour storm;

- Ensuring that steps are taken to minimize any discharge of suspended or settleable solids from the site for storm events up to and including a 2-year 24-hour event.
- Maintaining a 25-foot buffer zone between any disturbance and the edge of the receiving water.

In addition, KYR10 coverage is not available for any project discharging to Impaired Waters impaired for sediment for which there is an approved TMDL.

With the imposition of the aforementioned requirements DOW has clarified its expectation of operators to meet antidegradation requirements as part of the permit authorization process as well as to comply with these provisions after authorization to discharge is received. The goal of these requirements is to minimize degradation and to prevent any permanent lowering of water quality of waters of the Commonwealth.

With the expanded informational requirements of the new NOI-SWCA DOW will be better enabled to assess whether any more information, or more stringent requirements are necessary. Should DOW receive an NOI-SWCA that upon review DOW determines that a potential for degradation or permanent lowering of water quality could result DOW will request additional information, which may include the SWPPP. DOW will base its determination on a number of factors including but not limited to the amount disturbance within the watershed, the proximity to drinking water sources or waters not categorized as "High Quality", size and duration of the project, etc. If, based upon review of the additional information, DOW determines that additional controls and requirements beyond those in the KYR10 general permit are needed to meet antidegradation requirements the applicant shall be required to obtain an individual permit.

Purpose: This provision implements applicable antidegradation requirements. For background, water quality standards are required to contain an antidegradation implementation policy. In addition, states are required to identify implementation methods that, at a minimum, provide a level of protection that is consistent with the federal antidegradation policy in 40 CFR 131.12. Waters designated as High Quality means a surface water categorized as high quality by the cabinet pursuant to 401 KAR 10:030, Section 1. The process for making a determination of whether water quality will be lowered in these waters to a level that would interfere with existing or designated uses is what is commonly known as "Tier 2 review." The essence of a Tier 2 review is an analysis of alternatives to the discharge. 63 Fed. Reg. 36, 742, 36,784 (col. 1)(July 8, 1998). In no case may water quality be lowered to a level that would interfere with existing or designated uses (401 KAR 10:030).

Kentucky is adopting an approach herein that allows a temporally limited and insignificant lowering of water quality which does not require a Tier 2 review.

This permit establishes additional requirements for discharges to "High Quality Waters" and an opportunity for DOW to determine the need for an individual permit. In general, stormwater discharges from construction activities may produce temporally limited and minimal lowering of water quality, however it is not anticipated that such discharges will result in permanent degradation or loss of assimilative capacity. The DOW intends to authorize discharges under the KYR10 without necessarily going through Tier 2 review. Such authorization is permissible if the DOW determines that compliance with the more stringent conditions of this permit will minimize degradation and prevent a permanent lowering of water quality and thus would not require Tier 2 review. However, DOW will assess whether any additional procedures and requirements are necessary to comply with the applicable antidegradation requirements. As a result of this assessment, the DOW may determine that it is necessary for the permittee to submit an individual permit application if, for instance, it is found that there is or will be a lowering of water quality such that a Tier 2 review is necessary.

The optional use of Tier 2 review in this permit relies on an expectation that the effluent limits and permit conditions in the KYR10 will be sufficient to protect the "High Quality Waters." Thus DOW has determined that compliance with KYR10 generally will be sufficient to satisfy antidegradation requirements because the controls will not result in a permanent lowering of water quality, making individualized Tier 2 review unnecessary. However, in cases where information submitted with the NOI-SWCA, or available from other sources, indicates that a Tier 2 review and/or conditions are necessary, DOW will require this review and any additional information or appropriate additional controls.

The conclusion that compliance with the KYR10 will generally meet the Tier 2 antidegradation requirements depends on several key aspects of the permit. First, implementation of erosion prevention measures, sediment controls measures, and other site management practices selected in light of best industry practice, are equivalent to the best available control technology economically achievable (BAT), best conventional control technology (BCT), and best practicable control technology (BPT) limits for discharges from the type of industrial activities covered by the KYR10. All permittees are required to comply with the non-numeric effluent limits set out in the permit. Through compliance with these limits alone, DOW expects that the discharge of pollutants will be reduced and/or eliminated so that there permanent lowering of water quality will not occur. The DOW bases this conclusion in part on the standard by which permittees are required to select, design, install, and implement the control measures to be used to meet these non-numeric effluent limits. KYR10 requires the selection, design, installation, and implementation of erosion prevention measures, sediment controls measures, and other site management practices that are technologically available and economically practicable and achievable in light of best industry practice to reduce and/or eliminate pollutants in the stormwater discharge. Furthermore, once installed and implemented, the permittee is obligated to maintain control measures and to correct deficiencies where regular inspection determines that deficiencies exist. Lastly, where DOW determines through its oversight activities (e.g., on-site inspection) that a discharger is not meeting its requirements under this permit, such a deficiency will constitute a violation of the permit and will require follow-up corrective action. Additionally, where implementations of the technology-based requirements in this permit are not sufficient to protect the applicable water quality standards for the receiving water, the permittee shall be informed that an individual permit is necessary.

There may very well be individual cases where DOW determines that further controls are necessary or that coverage under the KYR10 is no longer appropriate to protect the "High Quality Water" status of the receiving water. For this reason, DOW has included the following language: "If you discharge directly to waters designated by DOW as "High Quality Waters" for antidegradation purposes under 401 KAR 10:030 the DOW may notify you that additional analyses or that an individual permit application is necessary."

The DOW believes the conditions of 401 KAR 10:030 have been satisfied by this permit action. For existing projects that received coverage under previous versions of KYR10 and are not expanded this reissued general permit is consistent with the requirements of 401 KAR 10:030. The process described above for new or expanded discharges of stormwater runoff associated with construction activities is consistent with the requirements of 401 KAR 10:029, Section 1, 401 KAR 10:030, Section 1 and the ruling of the Sixth Circuit Court.

8. PROPOSED COMPLIANCE SCHEDULE FOR ATTAINING EFFLUENT LIMITATIONS

For "New Projects" compliance with the requirements of this permit shall be upon the effective date of this permit.

For "Ongoing Projects" existing SWPPPs and BMPs shall be deemed in compliance with the requirements of this permit. However should DOW take enforcement action regarding the failure of a SWPPP and/or BMPs to protect water quality the permit holder may be required to make changes to the SWPP and/or BMPs.

9. PROPOSED SPECIAL CONDITIONS THAT WILL HAVE A SIGNIFICANT IMPACT ON THE DISCHARGE

Commingling of wastewaters

Stormwater runoff commingled with other wastewaters covered by an individual KPDES permit is not eligible for coverage under this KYR10. Such discharges shall be addressed by the applicable KPDES permit.

Facilities holding an Individual KPDES Permit

Stormwater runoff associated with construction activities taking place at a facility with an individual KPDES permit for other wastewaters shall be addressed under the Best Management Practices (BMP) Plan for that facility and shall not be eligible for coverage under this KYR10. However at sites not required by their individual KPDES permit implement a BMP plan construction activities are eligible for KYR10

In-stream Treatment or Disposal Facilities

This permit does not authorize the construction or use of in-stream treatment or disposal facilities (rock checks, sediment ponds, hollow fills, valley fills, etc.). Such authorization is within the jurisdiction of the U.S. Army Corps of Engineers (USCOE) and is implemented through the Section 404 permitting program of the Clean Water Act. Since the USCOE is a federal agency, this permitting action requires the issuance of a Section 401 Water Quality Certification by DOW. This certification shall be obtained on a site specific basis as the DOW does not recognize the USCOE Nationwide Permits for areas that impact more than 200 linear feet of stream or one (1) acre of wetlands. The conditions of this certification are to be incorporated into the Best Management Practices (BMP) Plan.

Discharges to High Quality Waters

If project will discharge directly to waters designated as High Quality Waters for antidegradation purposes under 401 KAR 10:030 the Division of Water may notify the applicant that additional analyses, control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or notify the applicant that an individual permit application is necessary.

10. PERMIT DURATION

Five (5) years. This permit duration should provide KDOW with sufficient time to address any outstanding anti-degradation issues associated with this general permit, evaluate the effectiveness of this permit, especially in High Quality Waters, and to work with the regulated public to develop needed guidance and standards of practice, and other general and individual permits, as necessary.

11. PERMIT INFORMATION

The application, draft permit fact sheet, public notice, comments received and additional information is available by writing the Division of Water at 200 Fair Oaks Lane, Frankfort, Kentucky 40601.

12. REFERENCES AND CITED DOCUMENTS

All materials and documents referenced or cited in this fact sheet are parts of the permit information as described above and are readily available at the Division of Water Central Office. Information regarding these materials may be obtained from the person listed below.

13. CONTACT

For further information contact the individual identified on the Public Notice or the Permit Writer - Larry Sowder at (502) 564-3410, extension 4924 or e-mail Larry.Sowder@ky.gov.

14. PUBLIC NOTICE INFORMATION

Please refer to the attached Public Notice for details regarding the procedures for a final permit decision, deadline for comments, and other information required by 401 KAR 5:075, Section 4(2)(e).

KPDES



KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

PERMIT

PERMIT NO.: KYR100000
AI NO.: 35050

AUTHORIZATION TO DISCHARGE UNDER THE KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

Pursuant to Authority in KRS 224,

this permit is applicable to stormwater discharges associated with construction activities that meet the eligibility requirements of this permit. This permit applies to stormwater discharges associated with construction activities disturbing individually one (1) acre or more, including, in the case of a common plan of development, contiguous construction activities that cumulatively equal one (1) acre or more of disturbance. Non-contiguous construction activities (i.e. activities separated by at least 0.25 miles that disturb more than one (1) acre shall be considered independent activities.

The permittee is authorized to discharge from a facility located within the Commonwealth of Kentucky to receiving waters named:

Those water bodies of the Commonwealth that comprise the Mississippi and Ohio River basins and sub-basins within the political and geographic boundaries of Kentucky

in accordance with effluent limitations, monitoring requirements, and other conditions set forth in PARTS I, II, III and IV hereof. The permit consists of this cover sheet, PART I 8 pages), PART II 11 pages. PART III 8 pages and PART IV 2 pages

This permit shall become effective on August 1, 2009.
This permit and the authorization to discharge shall expire at midnight,
July 31, 2014.

A handwritten signature in black ink, appearing to read 'Peter T. Goodmann', located in the lower right quadrant of the page.

July 1, 2009
Date Signed

Peter T. Goodmann, Assistant Director
Division of Water

I GENERAL INFORMATION

A. Definitions of Terms and Acronyms

The Division of Water is providing definitions of commonly used terms in this Permit for the convenience of the reader and to provide clarity of the terms. Some of these terms were extracted from other sources including EPA's Construction General Permit without modification and some have been modified to reflect specific Kentucky Revised Statute requirements. Beside each such definition in italics the source of the definition will be cited.

"As Soon As Practical" for the purposes of this permit means at the earliest possible time when external factors such as inclement weather would not prevent completion of the task.

"Bankfull Elevation" for the purposes of this permit means the water level, or stage, at which a stream, river, or lake is at the top of its banks and any further rise would result in water moving into the flood plain (*NOAA Glossary*).

"Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, and practice to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. (*EPA CGP*)

"Cold Water Aquatic Habitats" or "CAH" means those "waters of the Commonwealth" that meet the criterion of 401 KAR 10:031, Section 4(2) and have been listed in 401 KAR 10:026, Section 5.

"Commencement of Construction Activities" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material). (*EPA CGP*)

"Common Plan of Development or Sale" for the purposes of this permit means any announcement or piece of documentation (e.g., sign, public notice, or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (e.g., boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. Where discrete construction projects within a larger common plan of development or sale are located 0.25 mile or more apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed.

"Construction and Construction-related activities" include all clearing, grading, excavation, and stockpiling activities that will result in the disturbance of one or more acres of land area. Construction does not include routine earth disturbing activities that are part of the normal day-to-day operation of a completed facility (e.g., daily cover for landfills, maintenance of gravel roads or parking areas, landscape maintenance, etc). Also, it does not include activities under a State or Federal reclamation program to return an abandoned property into an agricultural or open land use.

"Control Measure" as used in this permit, refers to any BMP or other method used to prevent or reduce the discharge of pollutants to waters of the Commonwealth. *(modified EPA CGP)*

"Co-permittees" means when two or more operators are required to jointly file a single Notice of Intent (NOI) to obtain joint authorization. Co-permittees may be found on larger common plans of development or sale.

"Critical Areas" for the purposes of this permit means areas within 25 feet of, and on a positive slope toward a water of the Commonwealth.

"Discharge" when used without qualification means the "discharge of a pollutant." *(EPA CGP)*

"Discharge of Stormwater Associated with Construction Activity" as used in this permit refers to a discharge of pollutants in stormwater from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck chute washdown, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located. *(EPA CGP)*

"Edge of the Receiving Water" for the purposes of this permit is defined as the bankfull elevation of a water of the Commonwealth.

"Eligible" means qualified for authorization to discharge stormwater under this general permit. *(EPA CGP)*

"Equivalent Analysis Waiver" means a waiver, available only to "small construction activities" which discharge to non-impaired waters only, that is based on the applicant performance of an equivalent analysis using existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety.

"Exceptional Waters" or "EW" means those "waters of the Commonwealth" that have been listed in Table 2 of 401 KAR 10:030, Section 1(2).

"Facility or Activity" means any "point source" or other facility or activity (including land or appurtenances thereto) that is subject to regulation under the KPDES program. *(EPA CGP)*

"Final Stabilization" means that:

1. All soil disturbing activities at the site have been completed and either of the two following criteria are met:
 - c. a uniform(e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or
 - d. equivalent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
2. For individual lots in residential construction, final stabilization means, that either :
 - e. The homebuilder has completed final stabilization as specified above, or
 - f. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.
- 3 For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging area for highway construction, etc.) final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural uses. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to waters of the Commonwealth and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria in item 1. (*modified EPA CGP*)

"High Quality Waters" or "HQW" means those "waters of the Commonwealth" that have categorized by the Division of Water as high quality pursuant to the requirements of 401 KAR 10:030, Section 1(3).

"Impaired Waters" or "IW" means those "waters of the Commonwealth" that have been categorized by the Division of Water as impaired for applicable designated uses and have been identified pursuant to 33 U.S.C. 1315(b) and listed in the most recently approved 305(b) report.

"Large Construction Activity" is defined at 401 KAR 5:002, Section 1(292). A large construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than five acres of land or will disturb less than five acres of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than five acres. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or original purpose of the site. (*modified EPA CGP*)

"Municipal Separate Storm Sewer System" or "MS4" is defined at 401 KAR 5:002, Section 1(188). Means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated

- and approved management agency under section 208 of the CWA that discharges to waters of the Commonwealth;
2. Designed or used for collecting or conveying stormwater;
 3. Which is not a combined sewer; and
 4. Which is not part of Publicly Owned Treatment Works (POTW) as defined in 40 CFR § 122.2. (*modified from EPA CGP*)

"New Project" means the "commencement of construction activities" occurs after the effective date of this permit. (*EPA CGP*)

"Ongoing Project" means the "commencement of construction activities" occurred before the effective date of this permit (*modified EPA CGP*)

"Operator" means any party associated with a construction project that meets either of the following two criteria:

3. The party has operational control over either the construction plans and specifications, including the ability to make modifications to those plans and specifications; or
4. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., they are authorized to direct workers at the site to carry out activities required by the SWPPP or comply with other permit conditions). (*modified EPA CGP*)

"Outstanding National Resource Waters" or "ONRW" means those "waters of the Commonwealth" that have been listed in Table 1 of 401 KAR 10:030, Section 1(1).

"Outstanding State Resource Waters" or "OSRW" means those "waters of the Commonwealth" that meet the criterion of 401 KAR 10:031, Section 8.

"Owner or operator" means the owner or operator of any "facility or activity" subject to regulation under the KPDES program. (*modified EPA CGP*)

"Permittee" for the purpose of this permit means the operator who obtains authorization under this permit.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body. (*KRS 244.01-010(17)*)

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or a agricultural stormwater runoff. (*401 KAR 5:002 (222) & EPA CGP*)

"Pollutant" means and includes dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water. (*KRS 244.01-010(35)*)

"Rainfall Erosivity Factor" or "R Factor" means a measure of the erosive force and intensity of rain in a normal year. Two components of the factor are total energy and the maximum 30-min intensity of storms. The R-Factor is the sum of the product of these two components for all major storms in the area during an average year. (*USDA Handbook 703*)

"Rainfall Erosivity Waiver" means a waiver, available only to "small construction activities", that is based on the "rainfall erosivity" factor for the project.

"Receiving Water" means the "water of the Commonwealth" as defined in KRS 224.01-010 (33) into which the regulated stormwater discharges. (*modified EPA CGP*)

"Revised Universal Soil Loss Equation or RUSLE" means an equation used to predict soil loss in an area. (*USDA Handbook 703*)

"Runoff Coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff. (*EPA CGP*)

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land use in connection with the facility or activity. (*EPA CGP*)

"Small Construction Activity" is defined at 401 KAR 5:002, Section 1(293). A small construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than one acre and less than five acres of land or will disturb less than one acre of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre and less five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or original purpose of the site. (*modified EPA CGP*)

"Stormwater" means storm water run-off, snow melt run-off, and surface run-off and drainage. (*EPA CGP*)

"Stormwater Discharge Related Activities" as used in this permit include: activities that cause, contribute to, or result in stormwater point source pollutant discharges, including but not limited to: excavation, site development, grading and other surface disturbance activities; and measures to control stormwater including the siting, construction and operation of BMPs to control, reduce or prevent stormwater pollution. (*EPA CGP*)

"Stormwater Pollutant Prevention Plan (SWPPP)" means a site-specific, written document that: (1) identifies potential sources of stormwater pollution at the construction site; (2) describes practices to reduce pollutants in stormwater discharges from the construction site; and identifies procedures the operator will implement to comply with the terms and conditions of a construction general permit. (*modified EPA Developing Your Stormwater Pollution Prevention Plan Guide For Construction Sites [Interim] January 2007*).

"TMDL Wavier" means a waiver, available only to "small construction activities", based on an EPA established or approved TMDL.

"Total Maximum Daily Load" or "TMDL" means the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint source pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of mass per time, toxicity, or other appropriate measure. (EPA CGP)

"Water or Waters of the Commonwealth" as defined in KRS 224.01-010(33) means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction. (KRS 244.01-010(33))

"Water Pollution" means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the Commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes. (KRS 244.01-010(34))

"2-year, 24-hour event" means mean the maximum 24-hour precipitation event with a probable recurrence interval of once in two (2), years, respectively, as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed there from.

"305 (b) Report" means the approved biennial Clean Water Act Integrated Water Quality Report to Congress, §305(b).

"401 Water Quality Certification" means the certification issued by a state in response to a federally issued permit. In this case the certification DOW issues in response to a COE §404 permit.

"404 Permit" means the permit issued by the United States Army Corps of Engineers (USACE) for activities that discharge dredged or fill material into the navigable waters.

ACRONYMS

BMP	-	Best Management Practices
CAH	-	Cold Water Aquatic Habitat
CPESC	-	Certified Professional in Erosion and Sediment Control
CESSWI	-	Certified Erosion, Sediment and Stormwater Inspector
CPSWQ	-	Certified Professional in Stormwater Quality
CWA	-	Clean Water Act
DOW	-	Division of Water
EPA CGP	-	Environmental Protection Agency Construction General Permit
EW	-	Exceptional Water
HQW	-	High Quality Water
IW	-	Impaired Water
KEPSC	-	Kentucky Erosion Prevention and Sediment Control Course
KYTC	-	Kentucky Transportation Cabinet
MS4	-	Municipal Separate Storm Sewer System
NOI-SWCA	-	Notice of Intent - Stormwater Construction Activities
NOT	-	Notice of Termination
NOAA	-	National Oceanic and Atmospheric Administration
ONRW	-	Outstanding National Resource Water
OSRW	-	Outstanding State Resource Water
RUSLE	-	Revised Universal Soil Loss Equation
SWPPP	-	Stormwater Pollution Prevention Plan
TMDL	-	Total Maximum Daily Load

B. Eligible Activities

1. This permit authorizes stormwater discharges from construction-related activities that result in a cumulative land disturbance of equal to or greater than one acre, or in the case of a common plan of development contiguous construction activities that cumulatively equal one (1) acre or more of disturbance, where those discharges enter surface waters of the Commonwealth or a Municipal Separate Storm Sewer System (MS4). Non-contiguous construction activities (i.e. activities separate by at least ¼ mile), that disturb more than one (1) acre, shall be considered independent activities.
2. The Kentucky Division of Water (DOW) is also making this permit available, for stormwater discharges from any other construction activity, those disturbing less than one acre, designated by DOW based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the Commonwealth.
3. If project will discharge directly to waters designated as High Quality Waters for antidegradation purposes under 401 KAR 10:030 the Division of Water may notify the applicant that additional analyses, control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or notify the applicant that an individual permit application is necessary.

C. Limitations on Coverage

This permit does not authorize the discharge of stormwater runoff from construction projects that:

1. Are conducted at or on properties that have obtained an individual KPDES permit for the discharge of other wastewaters which requires the development and implementation of a Best Management Practices (BMP) plan;
2. Any operation that the DOW determines an individual permit would better address the discharges from that operation;
3. Discharges to an Impaired Water listed in the most recent §305(b)/303(d) Integrated Report, as impaired for sediment and for which an approved TMDL has been developed, to a Cold Water Aquatic Habitat, to an Exceptional Water, to an Outstanding National Resource Water, or to an Outstanding State Resource Water.

D. Permitting Action

The DOW is reissuing the KPDES Stormwater General Permit (KYR10) for those construction activities:

1. Are new or expanded activities, and the cumulative disturbance is greater than one (1) acre, or where required by DOW for smaller sites;
2. Authorized under the previous KYR10 general permit; and
3. For which a Notice of Intent (NOI) was submitted between September 30, 2007 and the date of issuance of this permit.

II PERMIT REQUIREMENTS

A. Stormwater Pollution Prevention Plan (SWPPP)

The permittee shall develop a Stormwater Pollution Prevention Plan (SWPPP) and implement the SWPPP at the commencement of construction disturbance. All operators working on this project are required to comply with the SWPPP or obtain separate coverage under this permit. For KYTC projects, the Best Management Practices Plan shall serve as the SWPPP.

The SWPPP shall include erosion prevention measures, sediment controls measures, and other site management practices necessary to prevent the discharge of sediment and other pollutants into waters of the Commonwealth that are adequately protective to minimize receiving waters from being degraded and failing to supportive their designated uses. These sediment controls measures including retention basins, erosion control measures, and other site management practices are required to be properly selected based on site-specific conditions, and installed and maintained to effectively minimize such discharges for storm events up to an including a 2-year, 24-hour event. Permittees are encouraged to design the site, the erosion prevention measures, sediment controls measures, and other site management practices with an eye toward minimizing post-construction stormwater runoff, including facilitating the use of low-impact technologies.

KYTC projects shall, at a minimum, utilize the Kentucky 2008 Standards Specifications for Road and Bridge Construction published by the Transportation Cabinet, Department of Highways, as a means of establishing sediment controls measures, erosion control measures, and other site management practices for this permit coverage.

The Stormwater Pollution Prevention Plan (SWPPP) shall contain the following:

1. A site description that identifies sources of pollution to stormwater discharges associated with construction activity on site; and
2. A description of the erosion prevention measures, sediment controls measures, and other site management practices used at the site to prevent or reduce pollutants in stormwater discharges to ensure compliance with the terms and conditions of this permit. All stormwater controls shall be developed and implemented in accordance with sound practices and shall be developed specific to the site. The goal of these devices should be 80% removal of Total Suspended Solids that exceed predevelopment levels. (For purposes of guidance/technical assistance, the reader is referred to the Kentucky Erosion Prevention and Sediment Control Field Guide and the (Draft) Kentucky Best Management Practices Technical Manual located on DOW's Stormwater Webpage at:
<http://www.water.ky.gov/permitting/wastewaterpermitting/KPDES/storm/>)
3. For a common plan of development a comprehensive SWPPP shall be prepared that addresses all construction activities within the common plan of development. Each individual site operator shall be a signatory of the SWPPP and shall not conduct activities that are not consistent with the SWPPP or result in the failure or ineffectiveness of the sediment controls measures, erosion control measures, and other site management practices implemented. Otherwise, an operator not utilizing the SWPPP for the common plan of development shall seek coverage under this permit or an individual permit and develop a SWPPP for those separate activities.

1. Site Description

The SWPPP shall be based on an accurate assessment of the potential for generating and discharging pollutants from the site. Hence, the permit requires a description of the site and intended construction activities in the SWPPP in order to provide a better understanding of the characteristics of site runoff. At a minimum, the SWPPP shall describe the nature of the construction activity, including:

- a. The function of the project (e.g., box store, strip mall, shopping mall, school, electrical transmission line, oil or natural gas pipeline, factory, industrial park, residential development, transportation construction, etc.);
- b. The intended significant activities, presented sequentially, that disturb soil over major portions of the site (e.g., grubbing, excavation, grading);
- c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading or other activities, including off-site borrow/fill areas; and
- d. Provide a description of the water quality classification of the receiving water(s).

2. Site Map

The SWPPP shall contain a legible site map of sufficient scale to depict the following:

- a. Property boundary of the project, If subdivided, show all lots and indicate on which lots construction activities will occur.
- b. Anticipated drainage patterns and slopes after major grading activities, including impervious structures;
- c. Areas of soil disturbance and areas that will not be disturbed including fill and borrow areas;
- d. Locations and types of sediment control measures, erosion control measures, planned stabilization measures, and other site management practices;
- e. Locations of surface waters, including wetlands, and riparian zones;
- f. Locations of karst features such as sinkholes, springs, etc.;
- g. Locations of discharge points;
- h. Locations of equipment storage areas, materials storage areas including but not limited to top soil; storage, fuels, fertilizers, herbicides, etc.;
- i. Location of concrete wash out areas, waste management areas, area of site egress;
- j. If applicable, locations where final stabilization has been accomplished and no further construction-phase permit requirements apply; and
- k. Other major features and potential pollutant sources.

For KYTC projects which have Roadway Plans, locations of BMPs may be recorded and off-set as the BMPs are installed.

3. Other Industrial Activities

The SWPPP shall provide a description of any discharge associated with industrial activity other than construction (including stormwater discharges from dedicated asphalt plants, concrete plants, etc.) and the location of that activity on the construction site.

4. Documentation of Stormwater Controls to Reduce Pollutants

The SWPPP shall include:

- a. Documentation of the erosion prevention measures, sediment controls measures, and other site management practices designed to site-specific conditions that will be implemented to reduce the pollutants in stormwater discharges from the site and assure compliance with the conditions of the permit.
- b. It is imperative that stabilization be employed as soon as practicable in critical areas. Erosion prevention measures, sediment controls measures, and other site management practices shall be properly selected based on site-specific conditions, and installed and maintained in accordance with sound sediment controls, erosion prevention, or other site management practices and relevant manufacturers' specifications.
- c. The use of erosion control measures is widely recognized as of limiting soil detachment and mobilizing sediment by minimizing the time that bare soil is exposed, preventing the detachment of soil, and reducing the mobilization and transportation of soil particles off site. Selection of erosion control measures will depend on site-specific conditions (e.g. topography, soil types). The SWPPP shall include a description of the general location of, and how and where the following erosion controls measures will be implemented:
 - i. The plan to minimize disturbance and the period of time the disturbed area is exposed without stabilization practices, including:
 1. Minimizing the overall area of disturbed acreage;
 2. Phasing construction so that only a portion of the site is disturbed at any one time; or
 3. Scheduling clearing and grading events to reduce the probability that bare soils will be exposed to rainfall.
 - ii. Managing stormwater flows on the site to avoid stormwater contact with disturbed areas by:
 1. Diversion berms;
 2. Conveyance channels;
 3. Vegetated buffers;
 4. Slope drains; or
 5. Other adequately protective alternate practices.
 - iii. Using energy dissipation approaches to prevent high velocity runoff and concentrated flows that are erosive, by:
 1. Use of vegetated filter strips; or
 2. Other adequately protective alternate practices
 - iv. The practices to be used to minimize exposure of bare soils by covering and stabilization, including:
 1. Vegetative stabilization with annual grasses or other plants;
 2. Geotextiles;
 3. Straw;
 4. Rolled erosion control mats or other products;

5. Mulch; or
6. Other adequately protective alternate practices.

d. Sediment control measures are used to control and trap sediment that is entrained in stormwater runoff. The SWPPP shall include a description of how and where the following sediment controls measures will be implemented:

- i. Sediment Barriers
 1. Silt fences constructed with filter fabric;
 2. Fiber rolls; or
 3. Other adequately protective alternate practices
- ii. Slope Protection
 1. Tread tracking;
 2. Erosion blankets;
 3. Mulching; or
 4. Other adequately protective alternate practices
- iii. Conduit/Ditch Protection
 1. Inlet protection;
 2. Outlet protection;
 3. Other adequately protective alternate practices
- iv. Stabilizing Drainage Ditches
 1. Check dams;
 2. Lining deep ditches; or
 3. Other protective equivalent practices
- v. Sediment trapping devices used to settle out sediment eroded from disturbed areas, including:
 1. Sediment traps;
 2. Basins; or
 3. Any performance enhancement practices that will be used, such as:
 - a. Baffles;
 - b. Skimmers;
 - c. Electro coagulation;
 - d. Filtration;
 - e. Chemically enhanced settling (e.g. polymers); or
 - f. Other adequately protective alternate practices; or
 4. Other adequately protective alternate practices.
- vi. Perimeter controls, such as:
 1. Silt fences;
 2. Berms;
 3. Swales; or
 4. Other adequately protective alternate practices.

e. Other Construction and Development Site Management Practices. Construction activity generates a variety of wastes and wastewater, including concrete truck rinsate, municipal solid waste, trash, and other pollutants.

- i. Construction materials shall be handled, stored, maintained, and disposed of properly to avoid contamination of runoff to the maximum extent practicable and as noted below.
- ii. The SWPPP shall describe which practices will be implemented to manage Construction and Development Site wastes and prevent or minimize discharges to surface water, including:
 - a) Protecting construction materials, chemicals, and lubricants from exposure to rainfall;
 - b) Preventing litter, construction debris, and construction chemicals from entering receiving water.
 - c) Limiting exposure of freshly placed concrete to exposure to rainfall that results in runoff;
 - d) Segregating stormwaters and other wastewaters from fuels, lubricants, sanitary wastes, and other chemicals such as pesticides, herbicides, and fertilizers to prevent runoff being contaminated;
 - e) Neat and orderly storage of chemicals, pesticides, herbicides, fertilizers and fuels that are being stored on the site;
 - f) Prompt collection and management of trash and sanitary waste;
 - g) Prompt cleanup of spills of liquids and solid materials that could pose a pollutant risk;
 - h) Regular removal of off-site accumulations of sediment to minimize the potential for discharge; and
 - i) Other adequately protective alternate practices.

f. A description of all intended alternate protective practices substituting for those practices required by the permit and a demonstration that the alternate practices are adequately protective, including how the substitute practices implement acceptable mitigation measures.

g. A description of the intended sequence of major stormwater controls and an implementation schedule in relation to the construction process.

h. A description of interim and permanent stabilization practices, including a schedule of their implementation.

i. The proposed location(s) of off-site equipment storage, material storage, waste storage and borrow/fill areas.

j. A proposed construction schedule as a means for the operator(s) and KDOW to determine applicability and implementation status of SWPPP requirements.

k. A explanation of practices employed to reduce pollutants from construction-related materials that are stored on site, including:

- a. A description of said construction materials (with updates as appropriate);
- b. A description of pollutant sources from areas untouched by construction; and
- c. A description of stormwater controls that will be implemented in those areas.

5. Maintenance of Stormwater Controls

- a. Erosion prevention measures, sediment controls measures, and other site management practices are required to be maintained in an effective, operating condition. The permittee shall develop a schedule of maintenance activities to ensure the proper function of these devices. The USEPA recommends that sediment control devices be maintained at no more than 1/3 capacity to allow for sediment capture.
- b. If site inspections identify sediment controls measures, erosion control measures, and other site management practices that are not operating effectively or otherwise require maintenance, maintenance shall be performed, before the next storm event. If maintenance before the next storm event is impracticable, the required maintenance shall be completed as soon as possible.

6. Non-Stormwater Discharge Management

The SWPPP shall identify appropriate pollution prevention measures for each of the following eligible non-stormwater components of the discharge authorized under this permit, when combined with stormwater discharges associated with construction activity.

- a. Discharges from fire-fighting activities;
- b. Fire hydrant flushing;
- c. Waters used for vehicle washing where detergents are not used;
- d. Water used for dust control;
- e. Potable water including uncontaminated water-line flushing;
- f. Routine external building wash down that does not use detergents;
- g. Pavement wash waters where spills or leaks or toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
- h. Landscape irrigation;
- i. Clean, non-turbid water-well discharges of groundwater; and
- j. Construction dewatering provided the requirements of this permit are met.

7. Inspections - Permittee Conducted

- a. Permittees shall provide for regular inspections of the site. For purposes of this part, DOW defines "regularly" to mean either
 - i. At least once every seven (7) calendar days, or
 - ii. At least once every fourteen (14) calendar days, and within 24 hours after any storm event of 0.5 inch or greater. (DOW recommends that the permit holder perform a "walk through" inspection of the construction site before anticipated storm events.)
- b. For areas of the site that have undergone temporary or final stabilization inspections shall be conducted at least once a month until the coverage is terminated.
- c. Inspections shall be performed by personnel knowledgeable and skilled in assessing conditions at the construction site that could impact stormwater quality and assessing the effectiveness of erosion prevention measures, sediment controls measures, and other site management practices chosen to control the quality of the stormwater discharges. Inspectors shall have training in stormwater construction management such as KEPSC, CEPSC, CPSWQ, TNEPSC, CESSWI, or other similar training.
- d. Inspectors shall conduct visual inspections to determine:
 - i. Whether erosion prevention measures, sediment controls measures, and other site management practices are:
 - a) properly installed;
 - b) properly maintained;
 - c) effective in minimizing discharges to the receiving water; and
 - ii. Whether excessive pollutants are entering the drainage system.
- e. Visual inspections shall comprise, at a minimum:
 - i. Erosion prevention measures;
 - ii. Sediment controls measures;
 - iii. Other site management practices and points of site egress;
 - iv. Disturbed areas;
 - v. Areas used for storage of materials exposed to precipitation;
 - vi. Discharge points shall be inspected to ascertain whether erosion prevention measures, sediment controls measures, other site management practices and points of site egress are effective in preventing impacts to waters of the Commonwealth. This can be done by inspecting the receiving water bodies for evidence of new erosion and/or the introduction of newly deposited sediment or other pollutants; and
 - vii. If discharge points are inaccessible, then nearby downstream locations shall be inspected.

For linear construction activities (e.g., utility line installation, pipeline construction), representative inspections are acceptable. This permit allows for inspection of the project 0.25 miles above and below each point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the construction site.

- f. Inspection reports shall be prepared for all inspections and shall be retained with the SWPPP. Inspection reports should include:
- i. The date and of inspection;
 - ii. The name and title of the inspector;
 - iii. A synopsis of weather information for the period since the last inspection (or since commencement of construction activity of the initial inspection performed) including a best estimate of the beginning of each storm event, the duration of each storm event, and the approximate amount of rainfall for each storm event (in inches);
 - iv. Weather conditions and a description of any discharges occurring at the time of the inspection;
 - v. Location(s) of discharges of sediment or other pollutants from the site;
 - vi. Location(s) of sediment controls measures, erosion control measures, or other site management practices that require maintenance;
 - vii. Location(s) of any erosion prevention measures, sediment controls measures, or other site management practices that failed to operate as designed or proved inadequate for a particular location;
 - viii. Location(s) where additional erosion prevention measures, sediment controls measures, or other site management practices are needed that did not exist at the time of the inspection;
 - ix. Identify any actions taken in response to inspection findings; and
 - x. Identify any incidents of non-compliance with the SWPPP.
 - xi. If no incidents of non-compliance with the SWPPP were identified, the report shall contain a certification that the site is in compliance with the SWPPP.
 - xii. The inspection report shall be signed in accordance with the signatory requirements in 401 KAR 5:065, Section 1(11).

8. Maintaining an Updated Plan

- a. Stormwater Pollution Prevention Plans (SWPPPs) shall be revised whenever erosion prevention measures, sediment controls measures, or other site management practices are significantly modified in response to a change in design, construction method, operation, maintenance procedure, etc., that may cause a significant effect on the discharge of pollutants to receiving waters or municipal separate storm sewer systems.
- b. For KYTC projects, the BMP Plan shall be revised whenever erosion prevention measures, sediment controls measures, or other site management practices are modified in response to a change in design, construction method, operation, maintenance procedure, etc., that may cause a significant effect on the discharge of pollutants to receiving waters or municipal separate storm sewer systems. The location of BMPs shall be documented in the daily work report for the highway construction project.
- c. The SWPPP shall be amended if inspections or investigations by site staff or by local, state, or federal officials determine that the existing sediment controls measures, erosion control measures, or other site management practices are ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the construction site.
- d. If an inspection reveals design inadequacies, the site description and sediment controls measures, erosion control measures, or other site management practices identified in the SWPPP shall be revised.
- e. All necessary modifications to the SWPPP shall be made within seven (7) calendar days following the inspection unless granted an extension of time by DOW.
- f. If existing sediment controls measures, erosion control measures, or other site management practices need to be modified or if additional sediment controls measures, erosion control measures, or other site management practices are necessary, implementation shall be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, the situation should be documented in the SWPPP and the changes shall be implemented as soon as practicable.

9. Signature, Plan Review, and Making Plans Available

- a. The SWPPP shall be signed and certified in accordance with the signatory requirements in 401 KAR 5:065, Section 1(11).
- b. For KYTC projects, the BMP Plan shall be signed and certified in accordance with the signatory requirements in 401 KAR 5:065, Section 1(11).
- c. A current copy of the SWPPP shall be readily available to the construction site from the date of project initiation to the date of Notice of Termination.
- d. The person with day-to-day operational control over the plan's implementation shall keep a copy of the SWPPP readily available whenever on site (a central location accessible by all on-site operators is sufficient for sites that are part of a common plan of development).
- e. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location shall be posted near the main entrance at the construction site.
- f. The permittee shall make the SWPPP available to DOW or its authorized representative for review and copying during on-site inspection.
- g. The permittee shall make the SWPPP available, upon request, to the Environmental Protection Agency and other federal agencies or their contractor, and local governmental agencies and officials approving sediment and erosion plans, grading plans or stormwater management plans; including the operator of a MS4 receiving discharges from the site.

B. Minimize Size and Duration of Disturbance

The permittee shall at all times minimize disturbance and the period of time that the disturbed area is exposed without stabilization practices. In "critical areas" erosion prevention measures such as erosion control mats/blankets, mulch, or straw blown in and stabilized with tackifiers or by treading, etc shall be implemented on disturbed areas within 24 hours or "as soon as practical" after completion of disturbance/grading or following cessation of activities.

C. Stabilization Requirements

Final stabilization practices on those portions of the project where construction activities have permanently ceased shall be initiated within fourteen (14) days of the date of cessation of construction activities. Final stabilization shall be initiated on any site where construction activities have been suspended for more than 180 days. In such cases final stabilization practices shall be implemented as soon as practical but not later than 14 days after the 180th day of suspended activities.

Temporary stabilization practices on those portions of the project where construction activities have temporarily ceased shall be initiated within fourteen (14) days of the date of cessation of construction activities.

D. Buffer Zone

For discharges to waters categorized as High Quality Waters or Impaired Waters (Non-construction related impairment) permittees are required maintain at a minimum a 25-foot buffer zone between any disturbance and all edges of the receiving water as means of providing adequate protection to receiving waters.

For discharges to waters categorized as Impaired Waters (Sediment impaired, but no TMDL), permittees are required maintain at a minimum a 50-foot buffer zone between any disturbance and all edges of the receiving water as means of providing adequate protection to receiving waters.

If the buffer zone between any disturbance and the edge of the receiving water on all edges of the water body cannot be maintained, an adequately protective alternate practices may be employed. The SWPPP shall explain any alternate practices and how these practices are adequately protective. Such cases include but are not limited to stream crossings and dredge and fill areas. In these cases the permittee shall minimize disturbances in the buffer zones by using hand held or other low-impact equipment.

III. NOTICE OF INTENT (NOI-SWCA) REQUIREMENTS

1. An NOI-SWCA shall be submitted by all operators seeking authorization under this permit for stormwater discharges from any construction site.
2. If the project is part of a larger "common plan of development," each project operator is required to obtain coverage for each site, individually or collectively, unless a single operator is developing the entire project.
3. Those persons or activities requiring an individual stormwater permit **shall not** use the NOI-SWCA. Those person seeking an individual permit must use KPDES program Form 1 and Form F which can be located at:

http://www.water.ky.gov/homepage_repository/kpdes_permit_aps.htm

A. Contents

The NOI-SWCA form requires the following information:

1. Facility Operator Information

- a. Names of All Operators co-permitting under this NOI
- b. Contact information for all operators, including:
 - i. Mailing Address
 - ii. Telephone Number
 - iii. Status of Operators (federal, state, public, or private)
 - iv. Contact Name
 - v. Email address

2. Facility/Site Location Information

- a. Name of Project
- b. Physical Location/Address
- c. Site Latitude (decimal degrees)
- d. Site Longitude (decimal degrees)
- e. County
- f. Nearest Community, if applicable

3. Site Activity Information

- a. **For single projects provide following information:**
 - i. Total number of acres in project
 - ii. Total number of acres to be disturbed
 - iii. Anticipated start date
 - iv. Anticipated completion date
- b. **For "common plans of development" provide the following information:**
 - i. Total number of acres in development;
 - ii. Number of individual lots in development, if applicable;
 - iii. Number of lots to be developed;
 - iv. Total acreage of lots you intend to develop;
 - v. Total acreage you intend to disturb;
 - vi. Number of acres you intend to disturb at any one time;
 - vii. Anticipated start dates; and
 - viii. Anticipated completion dates.

4. If the permitted site discharges to a water body the following information is required:

- a. Name of Receiving Water(s)
- b. Anticipated number of discharge points
- c. Location (Latitude and Longitude in decimal degrees) of anticipated discharge points

d. Receiving Water Body Stream-Use Designation

5. If the permitted site discharges to an MS4 the following information is required:

- a. Name of MS4
- b. Number of discharge points to the MS4
- c. Latitude and Longitude location (decimal degrees) of each discharge point
- d. Date of application or notification to the MS4 for construction site permit coverage

6. Construction activities in or along a water body

Will the project require construction activities in a water body or the riparian zone?

- a. If yes, describe the scope of the activity including how many linear feet of water body and acres of riparian zone will be impacted?
- b. Is a Clean Water Act §404 permit (individual or nationwide) required?
- c. Is a Clean Water Act §401 Water Quality Certification? (Individual or general) required?

7. Certification

The NOI-SWCA contains a certification that all information provided on the NOI and the attachments is correct and accurate. Following the certification is a signature block for the authorized agent, including the agents name and title, telephone number and date. Note the signature requirements of the NOI-SWCA shall be consistent with the requirements of 401 KAR 5:060, Section 11.

8. NOI Preparer Information

- a. Name of the person who completed the NOI
- b. Contact information of the person who completed the NOI, including:
 - i. Mailing Address
 - ii. Telephone Number
 - iii. Email address

9. Attachments - Topographic Map

A legible topographic map of appropriate scale sufficient to clearly illustrate the following:

- a. Property boundary of the project;
- b. Areas to be disturbed;
- c. Location of anticipated discharge points; and
- d. Location of receiving waters.

For KYTC projects, the roadway plan shall substitute for the topographic map.

B. NOI Submission Requirements and Deadlines

For "New Projects", those projects commencing construction activities after the effective date of this KYR10, applicants have two filing options:

Option 1: DOW has created an electronic web based NOI submission system that will allow the applicant to complete and submit the NOI-SWCA form online. Applicants can access this system at the following web address: <http://eppdepts01/eforms/depdefault.aspx>. When using this system the applicant shall complete and submit the NOI-SWCA a minimum of seven (7) days before the proposed date for commencement of construction activities.

Option 2: If the applicant does not have access to the internet then a complete NOI-SWCA shall be submitted to DOW's Surface Water Permits Branch a minimum of thirty (30) days before the proposed date for commencement of construction activities.

For "Ongoing Projects", DOW will extend coverage for a period of one year terminating on July 31, 2010. Projects that will not achieve final stabilization by this date are required to submit an up-to-date NOI to extend coverage under this general permit. "Ongoing Projects" include both authorized and pending requests for coverage received prior to July 1, 2009.

DOW shall not process any NOI that is incomplete, inaccurate, or in an incorrect format.

C. Small Construction Activity Waivers

The Phase II rule allows for the exclusion of certain sources the necessity of obtaining a permit based on a demonstration of the lack of impact on water quality. There are waivers available only to "small construction activities"; "large construction activities" are not eligible. An applicant wishing to take advantage of one of these waivers must provide a certification of eligibility and supporting documentation.

1. Rainfall Erosivity Waiver

This waiver applies to those "small construction activities" where and when negligible rainfall/runoff erosivity is expected. To qualify for this waiver the applicant must calculate the "R factor" for the proposed project. If the calculation produces an "R factor" of less than 5, then the site is eligible for the waiver and a certification may be filed with DOW. To calculate the "R Factor" the "operator" shall follow the procedures outlined in EPA's Fact Sheet 3.1 titled Storm Water Phase II Final Rule, Construction Rainfall Erosivity Waiver. These procedures are presented in the following pages for the applicant's convenience.

The "R Factor" is calculated using the Revised Universal Soil Loss Equation (RUSLE) developed by the U.S. Department of Agriculture (USDA). The USDA has established estimates of annual erosivity values (R) for sites throughout the country. The "R Factors" are surrogate measures of the impact that rainfall has on erosion from a particular site. These "R Factors" have been mapped using isoerodent contours (Figure 2). Table 1 is the Erosivity Index Table developed by the USDA to illustrate how annual erosivity is distributed throughout the year. The table is presented in two week increments. To determine which zone a project is in the Erosivity Index Zone Map is presented in Figure 1.

To calculate the "R Factor":

Step 1: The applicant must estimate the expected date of "commencement of construction activities" and the expected date "final stabilization" will be achieved.

Step 2: Using Figure 1 determine the Erosivity Index Zone for your project location. There are five such zones in Kentucky (104, 105, 106, 109 and 110).

Step 3: Referring to Table 1 locate the 15 day periods that correspond to the dates determined in Step 1. Table 1 has been truncated to present only those Erosivity Index Zones in Kentucky.

Step 4: Subtract the value corresponding to the start date from the value corresponding to the end date to find the %EI for your site. If the project starts in one calendar year and ends in the next, the %EI must be calculated from the start date to December 30 and from January 1 to the end date. The results of these two calculations are then added to get the total %EI for the project. The %EI can not exceed 100%

Step 5: Using Figure 2 interpolate between the annual isoerodent values for your area. The following table provides the high and the low isoerodent values for the five Erosivity Index Zones in Kentucky

Erosivity Index Zone	Isoerodent Range	
	Low	High
104	125	175
105	150	250
106	200	225
109	150	175
110	125	150

Step 6: Multiply the %EI by the isoerodent value determined in Step 5. This is the resultant "R Factor" for your project. To qualify for this waiver the "R Factor" must be less than 5.

If the resultant "R Factor" for your project is less than 5 then to obtain the waiver you must file with DOW a certification using EPA's Low Erosivity Waiver Certification (available at the following web address: http://www.epa.gov/npdes/pubs/construction_waiver_form.pdf)

Figure 1. Erosivity Index Zone Map

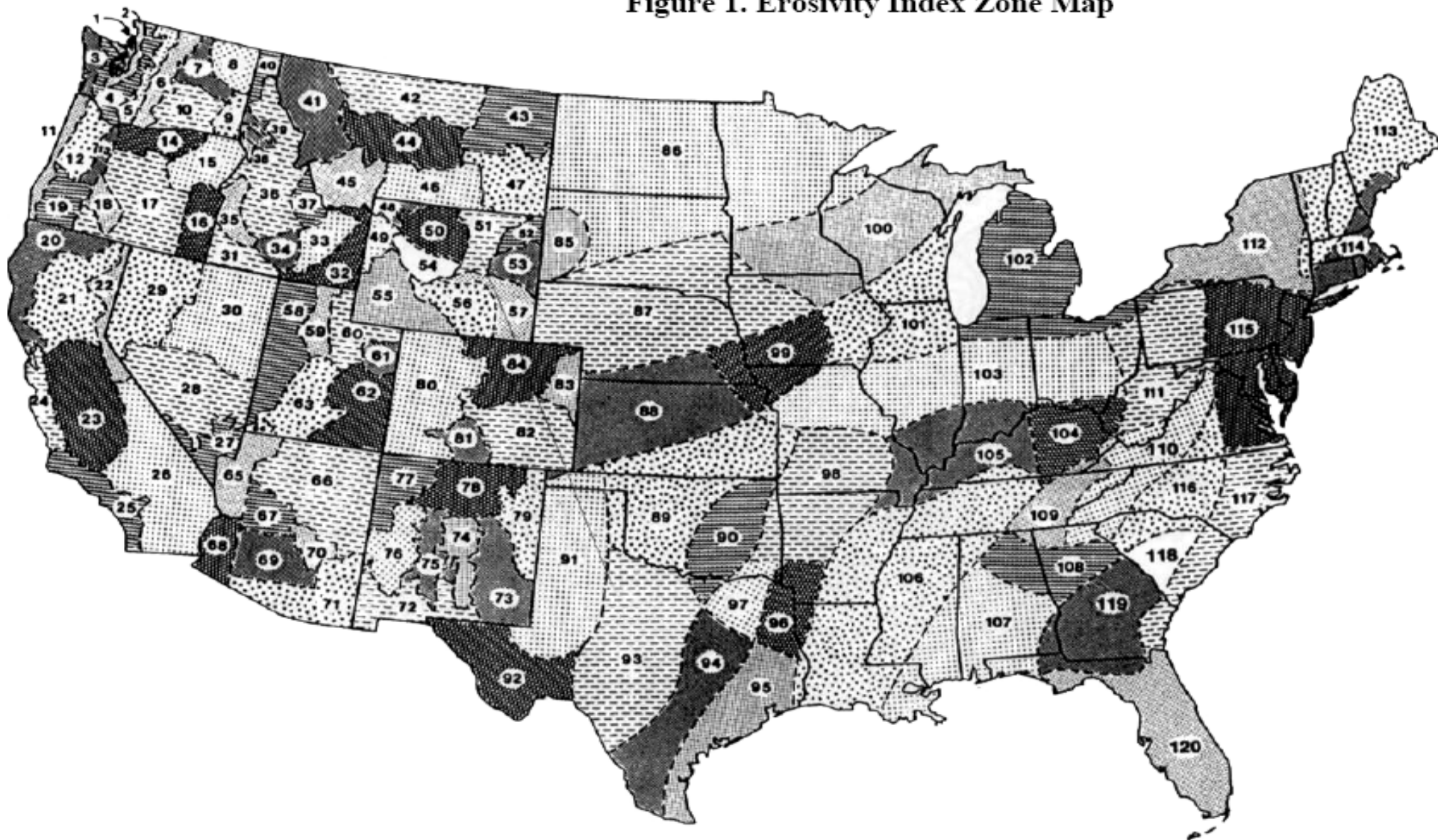
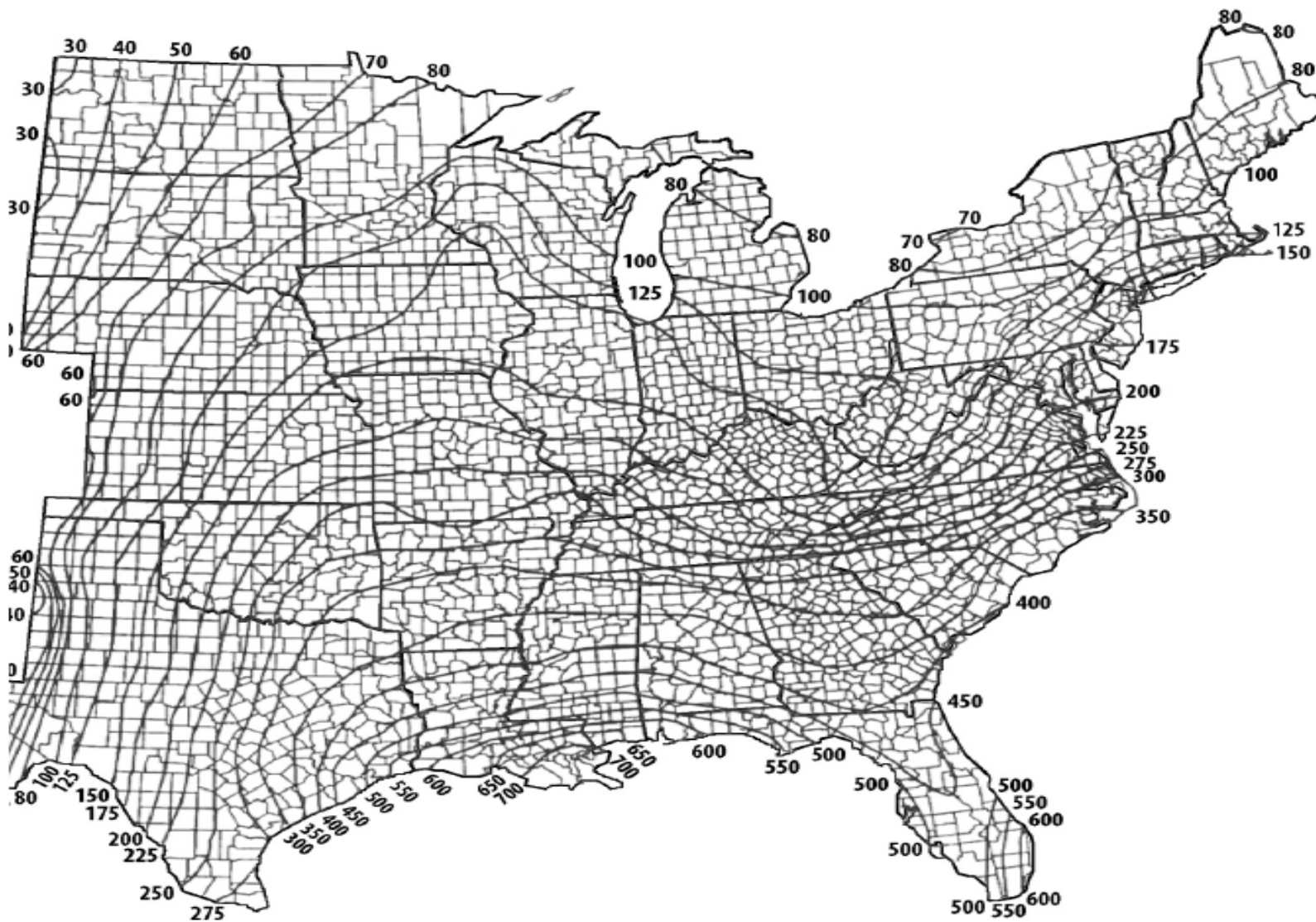


Table 1. Erosivity Index Table

EI#	Jan		Feb		Mar		Apr		May		Jun		Jul		Aug		Sep		Oct		Nov		Dec	
	1-15	16-31	1-15	16-29	1-15	16-31	1-15	16-30	1-15	16-31	1-15	16-30	1-15	16-31	1-15	16-31	1-15	16-31	1-15	16-31	1-15	16-31	1-15	16-31
104	0	2	3	5	7	10	13	16	19	23	27	34	44	54	63	72	80	85	89	91	93	95	96	98
105	0	1	3	6	9	12	16	21	26	31	37	43	50	57	64	71	77	81	85	88	91	93	95	97
106	0	3	6	9	13	17	21	27	33	38	44	49	55	61	67	71	75	78	81	84	86	90	94	97
109	0	3	6	10	13	16	19	23	26	29	33	39	47	56	66	75	80	83	86	88	90	92	95	97
110	0	1	3	5	7	9	12	15	18	21	25	29	36	45	56	68	77	83	88	91	93	95	97	99

Figure 2. Isoerodent Map of the Eastern U.S.



2. TMDL Waiver

This waiver applies to those "small construction activities" which plan to discharge to a receiving stream where an EPA established or approved TMDL addresses pollutant(s) of concern (sediment - total suspended solids, turbidity or siltation) and has determined that controls on stormwater discharges from "small construction activities" are not need to protect water quality. The applicant must determine if such a TMDL exists for the "water of the Commonwealth" to which the discharge will occur. If such a TMDL does exist, then the site is eligible for the waiver and a certification may be filed with DOW. The certification shall contain the following information:

- a. Name, address and telephone number of the construction site operator(s);
- b. Name (or other identifier), address, county and latitude/longitude of the construction project or site;
- c. Estimated construction start and completion dates, and total acreage to be disturbed;
- d. The name of the water body(s) that would be receiving stormwater discharges from your construction project;
- e. The name and approval date of the TMDL;
- f. A statement, signed and date by an authorized representative as provided in 401 KAR 5:065, Section 2(11), that certifies that the construction activity will take place and that the stormwater discharges will occur, within the drainage addressed by the TMDL.

3. Equivalent Analysis Waiver

This waiver applies to those "small construction activities" where the "operator" develops an equivalent analysis that determines pollutant of concern allocations for his site or determines that no such allocations are necessary to protect water quality. This analysis requires the "operator" to develop a wasteload allocation for the site based on the existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety. If the "operator" performs an equivalent analysis and wasteload allocation, then the site is eligible for the waiver and a certification may be filed with DOW. The certification shall contain the following information:

- a. Name, address and telephone number of the construction site operator(s);
- b. Name (or other identifier), address, county and latitude/longitude of the construction project or site;
- c. Estimated construction start and completion dates, and total acreage to be disturbed;
- d. The name of the water body(s) that would be receiving stormwater discharges from your construction project;
- e. Your equivalent analysis;
- f. A statement, signed and date by an authorized representative as provided in 401 KAR 5:065, Section 2(11), that certifies that the construction activity will take place and that the stormwater discharges will occur, within the drainage addressed by the TMDL.

4. Certification Submittal Deadlines

Waiver certifications shall be submitted a minimum of 30 days prior to the proposed commencement of construction activities.

IV. OTHER REQUIREMENTS

A. Authorization to Discharge

Authorization to discharge under the terms of this general permit shall be effective upon the issuance of written notification by the DOW. For those operators who have provided an e-mail address DOW will provide this written notification electronically.

B. Termination of Coverage

All existing coverages shall be terminated by DOW effective 180 days after the effective date of this KYR10 unless the permittee submits a written request for reauthorization.

When one or more of the following conditions have been met "operators shall submit a completed Notice of Termination (NOT) to DOW:

1. Final stabilization has been achieved on all portions of the site for which the permittee is responsible;
2. Another permittee has assumed control over all areas of the site that have not been finally stabilized;
3. Coverage under an individual KPDES permit has been obtained;

C. In-stream Treatment or Disposal Facilities

This permit does not authorize the construction or use of in-stream treatment or disposal facilities (sediment ponds, hollow fills, valley fills, etc.). Such authorization is within the jurisdiction of the U.S. Army Corps of Engineers and is implemented through the Clean Water Act §404 permitting program. A §404 permit action also requires the issuance of a Clean Water Act §401 Water Quality Certification by the Kentucky Division of Water. This certification shall be obtained on a site-specific basis as the U.S. Army Corps of Engineers §404 Nationwide permit does not provide automatic Clean Water Act §401 Water Quality Certification coverage for areas that impact more than 200 linear feet of stream or one (1) acre of wetlands. The conditions of the Clean Water Act §404 permit and the §401 Water Quality Certification shall be incorporated into the SWPPP.

D. SCHEDULE OF COMPLIANCE

For "New Projects" compliance with the requirements of this permit shall be upon the effective date of this permit.

For "Ongoing Projects" existing SWPPPs and BMPs shall be deemed in compliance with the requirements of this permit. However should DOW take enforcement action regarding the failure of a SWPPP and/or BMPs to protect water quality the permit holder may be required to make changes to the SWPP and/or BMPs.

E. Reopener Clause

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved pursuant to 401 KAR 5:050 through 5:086, if the effluent standard or limitation so issued or approved:

1. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
2. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224, as applicable.

F. Retention of Records

The permit requires that all records and reports required by the CGP be retained, including SWPPPs and information used to complete the NOI, for at least three years from the termination of coverage or expiration of the permit.

G. Standard Conditions For KPDES Permit

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

The relevant KPDES permit conditions in 401 KAR 5:065, Section 1 shall apply to all discharges authorized by this permit.



STEVEN L. BESHEAR
GOVERNOR

ENERGY AND ENVIRONMENT CABINET

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

DIVISION OF WATER

200 FAIR OAKS LANE

FRANKFORT, KENTUCKY 40601-1190

www.kentucky.gov

July 1, 2009

LEONARD K. PETERS
SECRETARY

Re: Construction Stormwater General Permit
KPDES No.: KYR100000
AI No.: 35050
Kentucky

Dear Commenter:

Your comments concerning the above-referenced draft permit have been reviewed and responses prepared in accordance with Kentucky Pollutant Discharge Elimination System (KPDES) regulation 401 KAR 5:075, Section 12. The comments have been categorized and briefly described below and our responses to those comments follow:

NOI:

A number of comments were received regarding the contents, submission requirements, and review procedures for the Notices of Intents (NOI-SWCA):

Comment 1: **Timeframes for Submission of NOI** - DOW should be required to respond within 30 days of the filing of an NOI; Time limitations should be apart of the permit review requirements, DOW should be required to review and accept within 7 business days after 7 days if no DOW respond automatic acceptance; Seven days is inadequate, CWA Section 402 permits require a minimum of 30 days public notice, permit should specify no activities may occur pursuant to KYR10 less than 30 days after the NOI is posted on the DOW website; Clarify Fact Sheet that coverage is not automatic after 7 business days; and In the event the website is down or the applicant does not have access to the internet allowances should be made for paper submittals.

Response 1: DOW is cognizant of the time sensitive nature of the projects seeking authorization under this general permit. However DOW must have sufficient time to review the NOI for completeness and determine eligibility. In an effort to expeditiously accomplish these tasks, DOW is developing an electronic NOI submission process utilizing DEP's Web Page. The electronic NOI includes features preventing submission of incomplete NOIs thus maximizing DOW staff time devoted to determination of eligibility. Upon successful submission of the NOI the system will electronically notify the applicant that the NOI has been accepted and review will be initiated. Seven days from the date of acceptance the applicant will receive either a notification of coverage, a notice of deficiency, or a notice of requirement that the applicant must obtain an individual permit. Should the applicant not avail themselves of this resource and choose to submit a paper NOI, DOW will process the NOI within 30 days of receipt. In either case, coverage will not be automatically granted in the event that DOW does not issue the appropriate notification within the specified timeframe.

RESPONSE TO COMMENTS

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AI No.: 35050

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Comment 2: **SWPPP Submittal** - Support the submittal of SWPPP with NOI; and Submittal of SWPPP is not required by USEPA Stormwater GP nor justified by the "Waterkeeper" decision.

Response 2: Upon further consideration DOW has concluded that it is under no regulatory obligation to require the SWPPP be submitted with the NOI. Therefore the requirement to submit the SWPPP has been removed.

Comment 3: **Informational Requirements** - Does "percentage of acreage to be disturbed at any one time" have any practical relevance; Map - temporary features cannot be specifically located at time of NOI submission; and Remove requirement to identify off-site equipment storage, materials storage, and waste storage & borrow areas.

Response 3: DOW has re-evaluated the necessity of this information being provided in the NOI and has determined to remove these requirements.

Comment 4: **Informational Requirements** - Information required in Item 3b are not absolute values at time of submission can estimates be used; and Not all operators will be known at time of NOI submittal NOI should specify if additional operators are anticipated;

Response 4: DOW recognizes that at the time of NOI submittal some information may be tentative or not available. In those cases the applicant should provide the best available information.

Comment 5: **Submission of Copies** - Clarify that NOI should be submitted to local MS4 authority where discharge is to MS4;

Response 5: In accordance with the requirements of 401 KAR 10:030, Section 1(3)(b)2a(iii) DOW will provide public notification of coverage under this general permit. The division acknowledges that an MS4 may choose to require an entity to copy the MS4 on the NOI. The division will defer to the respective MS4s to make that determination for their respective programs.

DEFINITION COMMENTS:

A number of comments were received regarding clarification of the following terms:

Comment 6: **Common Plan of Development**

Response 6: DOW has added clarification to the term "common plan of development" to address those discrete construction projects that are non-contiguous.

Comment 7: **Critical Areas**

Response 7: In regards to the definition of critical areas DOW has corrected the typographical error from 250 to 25 feet. However, DOW did not modify the definition to include discharge to an MS4. The division will defer to the respective MS4s to make that determination for their respective programs.

Comment 8: **Operator**

RESPONSE TO COMMENTS

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Response 8: DOW as replaced the definition of "operator" in the draft permit with the definition in EPA's Construction General Permit.

Comment 9: **Person**

Response 9: DOW has included the term "Person" as defined in KRS 224.01-010.

Comment 10: **Receiving Water**

Response 10: The definition of receiving water has been clarified to mean "waters of the Commonwealth."

Comment 11: **MS4**

Response 11: In regards to the definition of Municipal Separate Storm Sewer System (MS4) DOW did not remove the exclusion of combined sewers. The definition is consistent with that found in the EPA Construction General Permit and both federal and state regulations.

Comment 12: **As Soon as Practicable**

Response 12: DOW has defined the term "as soon as practicable" as "at the earliest possible time when external factors such as inclement weather would not prevent completion of the task."

Comment 13: **Riparian Zone**

Response 13: The term has been deleted as it is not used in the Fact Sheet or General Permit.

Comment 14: **Transportation Cabinet's T2 Center**

Response 14: This term has been deleted as it is not used in the Fact Sheet or General Permit.

Comment 15: **Point Source**

Response 15: DOW has included the term as defined in 401 KAR 5:002 and EPA'S Construction General Permit.

Comment 16: **Qualified Personnel**

Response 16: This term has not been included as it is not used in the Fact Sheet or General Permit.

Comment 17: **Special Use Waters**

Response 17: This term has not been included as it is not used in the Fact Sheet or General Permit.

In addition a number of definitions have been included in the Fact Sheet and General Permit to clarify terms are used in these documents. The sources of these terms have been derived from KRS 224, 401 KAR 5:002, EPA's Construction General Permit, the National Oceanic and Atmospheric Administration and the United States Department of Agricultural.

RESPONSE TO COMMENTS

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PERMIT REQUIREMENTS COMMENTS

A variety of comments were received regarding the conditions and requirements of the permit:

Comment 18: **Riparian Buffer Zone** - Several commenters called for the removal of the 25 foot buffer requirement about the riparian zone. Reasoning that many sites would be undevelopable and that the §404 Permit and §401 Water Quality Certification and not KYR10 were the appropriate regulatory vehicles to address this issue;

Response 18: DOW has removed the requirement.

Comment 19: **"Ongoing Projects"** - Those projects that submitted NOIs after September 30, 2007 should be grandfathered under the previous permit conditions; and Forty-five days is not enough time for a permittee to transition from old permit requirements to new permit requirements suggestions of 90 and 180 days. These comments speak to "Ongoing Projects", which are defined as having submitted an NOI for coverage after the expiration of the previous KYR10 or had been authorized under the previous KYR10, and what conditions apply to these projects. A number of the commenters called for these projects to be allowed to continue under the requirements of the previous KYR10. Other commenters interpreted the 45 day NOI submission requirement for these types of projects as a transition period for the project to come into compliance with the requirements of the new KYR10.

Response 19: For "Ongoing Projects", DOW will extend coverage for a period of one year terminating on July 31, 2010. Projects that will not achieve final stabilization by this date are required to submit an up-to-date NOI to extend coverage under this general permit. "Ongoing Projects" include both authorized and pending requests for coverage received prior to July 1, 2009. "Ongoing Projects" that have developed and implemented a SWPPP in accordance with the previous KYR10 will not be required to amend the SWPPP or implement the buffer zone requirements of the KYR10 unless DOW takes enforcement action regarding the failure of your SWPPP and/or BMPs then you may be required to make changes.

Comment 20: **Limitations on Coverage** - Permit excludes OSRWS from coverage which would exclude large segments of water bodies due to presence of federally listed threatened and endangered species a provision should be included to allow coverage under KYR10 if DOW determines discharge will not impact species; Limitations on coverage should also apply to sites discharging indirectly through MS4s to protected waters; Sediment impaired waters should be excluded from permit;

Response 20: OSRWS like the other excluded water bodies require the implementation of more rigorous requirements to protect water quality and designated use, and the cabinet has determined this situation is better addressed by an individual permit.

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Comment 21: **Eligibility** - Under the "Eligible Activities" section paragraph 2, lines 3 and 4 "lack of" should be inserted between "the" and "potential";

Response 21: The agency disagrees. The paragraph is intended to allow sites disturbing less than one acre which had the potential to cause a violation of water quality to obtain coverage under KYR10.

Comment 22: **Limitation on Coverage for Holders of Individual KPDES Permits** - Should not limit coverage under KYR10 if site holds a KPDES permit for sanitary discharges only;

Response 22: DOW concurs with the recommendation and has amended the language of the Fact Sheet and Permit accordingly.

Comment 23: **Final stabilization on suspended sites** - Need clarification of final stabilization after 180 days of suspended activity in some cases 180 days may be too long;

Response 23: Projects on which activities have been suspended for six months or more DOW has clarified the permit language to require commencement of final stabilization practices on a project that has been suspended for 180 days or longer. In such cases final stabilization practices shall be implemented as soon as practical but not later than 14 days after the 180th day of suspended activities.

Comment 24: **Erosion Control** - Erosion prevention measures in critical areas are to be implemented within 24 hours or as soon as practicable after completion of disturbance - needs clarification; There are three possible interpretations of the phrase "install erosion prevention measures on all disturbed areas within 24 hours or as soon as practical after completion of disturbance/grading or following cessation of activities."

Response 24: In regards the implementation of erosion control measures on all disturbed sections of "critical areas" within 24 hours or as soon as practical after completion of disturbance. Disturbed areas within the "critical areas" of a project present the greatest potential for the release of sediment to receiving waters. As such, DOW is requiring that erosion prevention measures must be implemented as soon as final grading is complete within the critical area. The condition that DOW has imposed requires the permittee to initiate these control measures within 24 hours of final grading or in the event of inclement weather as soon as site conditions allow.

Comment 25: **Equivalents** - For "High Quality and Sediment Impaired Waters" effective protective equivalents are allowed as alternatives to stream buffer zones and retention ponds however some sites may not be able to use equivalents if term is intended to mean equal suggest the "effective protective substitute" or "adequately protective"

Response 25: DOW concurs with the comment and has made the suggested language change. Comment relates to the use of "effective protective equivalents" in lieu of a buffer zone. The commenters have interpreted this requirement to mean equivalent in size and thus have concerns that on some projects there be insufficient area to install these equivalents. DOW recognizes that the size and/or the orientation

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of certain projects may preclude the use of a buffer zone in those cases. The applicant/permittee has the option of providing DOW with alternative measures which alone or in combination are as effective in protecting the receiving waters as the buffer zone.

Comment 26: **Critical Area Controls** - Should require controls, practices and measures for critical areas discharging to "High Quality or Sediment Impaired Waters" for indirect discharges through MS4s to these types of receiving waters

Response 26: The division acknowledges that an MS4 may choose to require additional controls, practices and measures for critical areas discharging to MS4s which discharge to "High Quality or Sediment Impaired Waters". The division will defer to the respective MS4s to make that determination for their respective programs.

Comment 27: **Inconsistent with KRS 224.16-050(4)** - The buffer zone requirements, definition of receiving waters, and the exclusions of waivers are inconsistent with KRS 224.16-050(4) as they are more stringent than the federal permit requirements

Response 27: A number of commenter indicate that the proposed KYR10 is inconsistent with KRS 224.16-050(4) as the conditions related to buffer zones, receiving waters and the exclusion of allowable waivers are more stringent than those imposed in EPA's Construction General Permit (CGP). DOW appreciates the commenters position however disagrees. The buffer zone requirements are a result of Kentucky's antidegradation analysis which is consistent with EPA's CGP as that permit also requires an antidegradation analysis of projects by affected states. The term receiving waters has been redefined to mean waters of the Commonwealth which is consistent with the requirements of KRS 224. In previous drafts, DOW had evaluated and determined the utility or probability of a project qualifying for one of the allowable waivers as being of marginal use. However, DOW has included these waivers in the final permit to allow applicants the opportunity to apply for such a waiver.

SWPPP REQUIREMENTS COMMENTS

DOW received a number of comments addressing the requirements of the SWPPP:

Comment 28: **Previous KYR10 Requirements** - Under non-stormwater discharge management items 1, 2, 3 and 5 are beyond the control of the applicant; previous versions included 80% removal of TSS

Response 28: Comments relate to conditions found in previous versions of KYR10. The discharges listed under the "Non-Stormwater Discharge Management" section of the SWPPP were in the previous versions of KYR10 and are consistent with EPA's CGP issued in 2008. The omission of the 80% removal of TSS was an oversight that has been corrected in the final permit.

Comment 29: **Identify any permanent control structures** - SWPPP should require permittees to identify any stormwater control measures that are intended to be permanent

Response 29: The SWPPP requires that all stormwater control measures both permanent and temporary to be identified.

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Comment 30: **KYTC projects documentation** - Add for KYTC projects documentation shall be maintained at the resident engineer's office;

Response 30: KYTC requested that the resident engineer be allowed to keep copies of the SWPPP and other documentation for KYTC projects at their office in lieu of maintaining on site. The purpose of maintaining the SWPPP and documentation on-site is so that it may be readily available for state or federal inspector to review with the operator on-site to address any issues. Having these documents in another location which could be several miles from the project impedes this review and possible resolution of the issues, therefore DOW does not agree to the request.

Comment 31: **Register Professional-** Requires information that by KY law must be prepared by a licensed professional, permit does not identify this fact.

Response 31: The comment asserts that some of the documentation requirements of the SWPPP were required by Kentucky Law to be completed by a registered professional yet the permit did not address that requirement. Although a specific citation was not provided by the commenter DOW is familiar with the statute. The certification requirements for the SWPPP are specified in 401 KAR 5:060, Section 9 which is not equivalent to the certification by a registered professional in accordance with KRS 322.

Comment 32: **Site Map** - The site map requires too many items for a single map

Response 32: DOW did not impose a size restriction on the map therefore the site map shall be of sufficient scale to legibly illustrate the required features.

Comment 33: **Documentation of stormwater controls** - Documentation of stormwater controls to reduce pollutants items a through c is not included in the Fact Sheet as permit requirements

Response 33: The comment asserts that items 2a through 2c of the "Documentation of Stormwater Controls to Reduce Pollutants" are not permit conditions unless specifically listed in the Fact Sheet. No projects will utilize all of the measures contained in these items. However the permittee must document all control measures, including all alternate protective practices that are used and the requirement to provide such documentation is discussed in the Fact Sheet.

Comment 34: **Straw bales** - Straw bale dikes are not acceptable BMPs

Response 34: A number of comments indicated that the construction industry viewed these devices as ineffective and no longer promoted the use. As a result DOW has removed this option from the final permit.

Comment 35: **2-yr, 24-hour design requirement** - SWPPP requires sediment control structures for High Quality and Sediment Impaired waters to be designed to contain a 2-year, 24-hour event, would it apply to construction activities such as linear projects?; The 2-year, 24-hour requirement is too stringent; The 2-year, 24-hour requirement should apply to all waters

Response 35: Comments regarding the 2-year, 24-hour event requirement questioned its applicability to linear projects; asserted that it was too

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stringent and recommended that this requirement applies to all waters. The requirement does apply to all sites eligible for coverage under KYR10. Its purpose is to ensure that whatever erosion control or stormwater management devices the applicant proposes to use, are of adequate capacity to control runoff from a significant precipitation such that the transport of sediment off-site is minimized.

Comment 36: **MS4 Correlation** - How does this permit correlate with the MS4 programs?

Response 36: The comment inquires about the correlation of the conditions of this permit with those of the MS4 program. There is no direct correlation; each has its own requirements and goals that are independent of the other.

Comment 37: **N.B.** - What is the legal expectation regarding the material addressed as N.B.?

Response 37: These sections were for information or explanation only however to eliminate any confusion about the intent these sections have been deleted from the final permit and included as information in the Fact Sheet.

Comment 38: **Appeals Process** - In maintaining an updated plan there should be an appeals process if the "operator" does not agree with the local, state, or federal official

Response 38: The comment asserts that an appeals process should be made available for "operators" who disagreed with the decision of a state or federal inspector. Any person aggrieved by the issuance of a final cabinet decision may demand a hearing pursuant to KRS 224.10-420(2) within thirty (30) days from the date of the issuance of this letter. Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470, and the regulations promulgated thereto. The request for hearing should be submitted in writing to the Natural Resources and Environmental Protection Cabinet, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

Comment 39: **Extension to update SWPPP** - Sometimes due to existing conditions an "operator" may be unable to update the SWPPP provision should be made for an extension

Response 39: The issue is not within the scope of the permit but rather a matter of compliance and enforcement procedures more properly addressed during such.

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Any person aggrieved by the issuance of a permit final decision may demand a hearing pursuant to KRS 224.10-420(2) within thirty (30) days from the date of the issuance of this letter. Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470, and the regulations promulgated thereto. The request for hearing should be submitted in writing to the Energy and Environmental Protection Cabinet, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Water, 200 Fair Oaks, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions regarding these responses, please contact Larry Sowder, KPDES Branch, at (502) 564-8158, extension 4924.

Further information on procedures and legal matters pertaining to the hearing request may be obtained by contacting the Office of Administrative Hearings at (502) 564-7312.

Sincerely,

A handwritten signature in black ink, appearing to read 'PTG', with a long horizontal flourish extending to the right.

Peter T. Goodmann, Assistant Director
Division of Water

PTG:JMB:LJS