

# KPDES



KENTUCKY POLLUTANT  
DISCHARGE ELIMINATION  
SYSTEM

# PERMIT

PERMIT NO.: KYR100000  
AI NO.: 35050

**AUTHORIZATION TO DISCHARGE UNDER THE  
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM (KPDES)**

**Pursuant to Authority in KRS 224,**

Stormwater Discharges Associated with Construction Activities

**is authorized to discharge from a facility located at**

Within any of the 120 counties of 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 this permit.**

This permit shall become effective on December 1, 2014.

This permit and the authorization to discharge shall expire at midnight, November 30, 2019.

November 21, 2014

**Date Signed**

A handwritten signature in black ink, appearing to read 'Peter T. Goodmann', located above the signature line.

**Peter T. Goodmann, Director  
Division of Water**

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601**

**THIS KPDES PERMIT CONSISTS OF THE FOLLOWING SECTIONS.**

<b>1. COVERAGE .....</b>	<b>5</b>
1.1. Eligibility .....	5
1.2. Exclusions .....	5
1.3. Permitting Action.....	5
<b>2. PERMIT REQUIREMENTS.....</b>	<b>7</b>
2.1. Stormwater Pollution Prevention Plan (SWPPP).....	7
2.1.1. Site Description.....	7
2.1.2. Site Map .....	8
2.1.3. Other Industrial Activities.....	8
2.1.4. Documentation of Stormwater Controls to Reduce Pollutants .....	8
2.1.5. Maintenance of Stormwater Controls .....	11
2.1.6. Non-Stormwater Discharge Management.....	11
2.1.7. Inspections – Permittee Conducted.....	12
2.1.8. Maintaining an Updated Plan.....	13
2.1.9. Signature, Plan Review, and Making Plans Available.....	14
2.2. Minimize Size and Duration of Disturbance.....	14
2.3. Stabilization Requirements .....	14
2.4. Buffer Zones .....	14
<b>3. NOTICE OF INTENT (NOI-SWCA) REQUIREMENTS.....</b>	<b>17</b>
3.1. Contents .....	17
3.2. NOI Submission Requirements and Deadlines.....	18
3.3. Small Construction Activity Waiver.....	18
3.3.1. Rainfall Erosivity Waiver .....	19
3.3.2. TMDL Waivers .....	21
3.3.3. Equivalent Analysis Waiver.....	22
3.3.4. Certification Submittal Deadlines .....	22
<b>4. OTHER REQUIREMENTS .....</b>	<b>24</b>
4.1. Authorization to Discharge .....	24
4.2. Termination of Coverage .....	24
4.3. In-Stream Treatment or Disposal Facilities .....	24
4.4. Schedule of Compliance .....	24
4.5. Reopener Clause .....	24
4.6. Retention of Records.....	25

4.7. Antidegradation.....	25
4.8. Continuation of Expiring Permit.....	25
4.9. Other Permits .....	25
<b>5. STANDARD CONDITIONS.....</b>	<b>27</b>
5.1. Duty to Comply.....	27
5.2. Duty to Reapply .....	27
5.3. Need to Halt or Reduce Activity Not a Defense .....	27
5.4. Duty to Mitigate.....	27
5.5. Proper Operation and Maintenance.....	27
5.6. Permit Actions .....	27
5.7. Property Rights .....	27
5.8. Duty to Provide Information .....	27
5.9. Inspection and Entry .....	27
5.10. Monitoring and Records .....	28
5.11. Signatory Requirement .....	28
5.12. Reporting Requirements .....	28
5.12.1. Planned Changes .....	28
5.12.2. Anticipated Noncompliance.....	29
5.12.3. Transfers.....	29
5.12.4. Monitoring Reports .....	29
5.12.5. Compliance Schedules .....	29
5.12.6. Twenty-Four Hour Reporting .....	29
5.12.7. Other Noncompliance .....	30
5.12.8. Other Information .....	30
5.13. Bypass.....	30
5.13.1. Definitions.....	30
5.13.2. Bypass Not Exceeding Limitations.....	30
5.13.3. Notice .....	30
5.13.4. Prohibition of Bypass.....	30
5.14. Upset.....	31
5.14.1. Definition .....	31
5.14.2. Effect of an Upset.....	31
5.14.3. Conditions Necessary for a Demonstration of Upset.....	31
5.14.4. Burden of Proof.....	31

**SECTION 1**  
**COVERAGE**

## **1. COVERAGE**

This permit may cover both large and small sites with stormwater discharges associated with construction activities that meet the eligibility requirements of this 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 stormwater associated with construction activity, or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants).

### **1.1. Eligibility**

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 or more 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, including 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.

### **1.2. Exclusions**

The following are excluded from coverage under this general permit:

- 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) 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.

### **1.3. Permitting Action**

This is a reissuance of a general KPDES permit to address stormwater runoff associated construction activities conducted in the Commonwealth of Kentucky.

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.

## **SECTION 2**

### **PERMIT REQUIREMENTS**

## 2. PERMIT REQUIREMENTS

This section of the permit establishes the non-numeric requirements that are applicable to exposed areas associated with construction activity for all facilities authorized to discharge by this permit. The non-numeric requirements should minimize the discharge of pollutants resulting from precipitation events.

### 2.1. 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 support their designated uses. These sediment control 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. Permittees are to minimize soil compaction and, unless infeasible, preserve topsoil except in specific site areas where the intended function dictates compaction or removal/disturbance of topsoil.

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.

#### 2.1.1. Site Description

The SWPPP shall be based on an accurate assessment of the potential for generating and discharging pollutants from the site. Hence, this 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 the site runoff. At a minimum, the SWPPP shall describe the nature of the construction activity, including:

1. 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.);
2. the intended significant activities, presented sequentially, that will disturb soil over major portions of the site (e.g., grubbing, excavation, grading);
3. 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
4. a description of the water quality classification of the receiving water(s).

### **2.1.2. Site Map**

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

1. Property boundary of the project. If subdivided, show all lots and indicate on which lots construction activities will occur;
2. Anticipated drainage patterns and slopes after major grading activities including impervious structures;
3. Areas of soil disturbance and areas that will not be disturbed including fill and borrow areas;
4. Locations and types of sediment control measures, erosion control measures, planned stabilization measures, and other site management practices;
5. Locations of surface waters, including wetlands, and riparian zones;
6. Locations of karst features such as sinkholes, springs, etc.;
7. Locations of discharge points;
8. Locations of equipment storage areas, materials storage areas including but not limited to top soil; storage, fuels, fertilizers, herbicides, etc.;
9. Location of concrete wash out areas, waste management areas, area of site egress;
10. If applicable, locations where final stabilization has been accomplished and no further construction-phase permit requirements apply; and
11. 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.

### **2.1.3. 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.

### **2.1.4. Documentation of Stormwater Controls to Reduce Pollutants**

The SWPPP shall include:

1. 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. The design installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on site.



2. It is imperative that stabilization be employed as soon as practicable, but not longer than allowed in Section 2.3 of this permit, 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.
3. The use of erosion control measures is widely recognized as 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:
  - a. The plan to minimize disturbance and the period of time the disturbed area is exposed without stabilization practices, including:
    - i. Minimizing the overall area of disturbed acreage;
    - ii. Phasing construction so that only a portion of the site is disturbed at any one time; or
    - iii. Scheduling clearing and grading events to reduce the probability that bare soils will be exposed to rainfall.
  - b. Managing stormwater flows on the site to avoid stormwater contact with disturbed areas through use of:
    - i. Diversion berms;
    - ii. Conveyance channels;
    - iii. Vegetated buffers;
    - iv. Slope drains; or
    - v. Other adequately protective alternate practices.
  - c. Using energy dissipation approaches to prevent high velocity runoff and concentrated flows that are erosive, by:
    - i. Use of vegetated filter strips; or
    - ii. Other adequately protective alternate practices.
  - d. The practices to be used to minimize exposure of bare soils by covering and stabilization, including:
    - i. Vegetative stabilization with annual grasses or other plants;
    - ii. Geotextiles;
    - iii. Straw;
    - iv. Rolled erosion control mats or other products;
    - v. Mulch; or
    - vi. Other adequately protective alternate practices.
4. 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:
  - a. Sediment Barriers
    - i. Silt fences constructed with filter fabric;
    - ii. Fiber rolls; or
    - iii. Other adequately protective alternate practices
  - b. Slope Protection
    - i. Tread tracking;
    - ii. Erosion blankets;
    - iii. Mulching; or
    - iv. Other adequately protective alternate practices
  - c. Conduit/Ditch Protection

- i. Inlet protection;
    - ii. Outlet protection;
    - iii. Other adequately protective alternate practices
  - d. Stabilizing Drainage Ditches
    - i. Check dams;
    - ii. Lining deep ditches; or
    - iii. Other protective equivalent practices
  - e. Sediment trapping devices used to settle out sediment eroded from disturbed areas, including:
    - i. Sediment traps;
    - ii. Basins (unless infeasible, discharges from basins and impoundments must utilize outlet structures that withdraw water from the surface); or
    - iii. Any performance enhancement practices that will be used, such as:
      - 1. Baffles;
      - 2. Skimmers;
      - 3. Electro coagulation;
      - 4. Filtration;
      - 5. Chemically enhanced settling (e.g. polymers); or
      - 6. Other adequately protective alternate practices; or
    - iv. Other adequately protective alternate practices.
  - f. Perimeter controls, such as:
    - i. Silt fences;
    - ii. Berms;
    - iii. Swales; or
    - iv. Other adequately protective alternate practices.
- 5. 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.
  - a. 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.
  - b. 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:
    - i. Protecting construction materials, chemicals, and lubricants from exposure to rainfall;
    - ii. Preventing litter, construction debris, and construction chemicals from entering receiving water;
    - iii. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge. Soaps or solvents used in vehicle washing are prohibited;
    - iv. Limiting exposure of freshly placed concrete to exposure to rainfall that results in runoff;
    - v. Segregating stormwaters and other wastewaters from fuels, lubricants, sanitary wastes, and other chemicals such as pesticides, herbicides, and fertilizers to prevent runoff being contaminated. Discharges of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance are prohibited.;
    - vi. Neat and orderly storage of chemicals, pesticides, herbicides, fertilizers and fuels that are being stored on the site;
    - vii. Prompt collection and management of trash and sanitary waste;

- viii. Prompt cleanup of spills of liquids and solid materials that could pose a pollutant risk and implement a chemical spill and leak prevention and response procedure;
  - ix. Regular removal of off-site accumulations of sediment to minimize the potential for discharge; and
  - x. Wastewater from washout of concrete is prohibited, unless managed by an appropriate control (i.e. develop safe concrete disposal area for removal off-site, etc.);
  - xi. Wastewater from washout and cleanout of stucco, paint, form release oils, and curing compounds are prohibited;
  - xii. Other adequately protective alternate practices.
6. 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.
  7. A description of the intended sequence of major stormwater controls and an implementation schedule in relation to the construction process.
  8. A description of interim and permanent stabilization practices (to comply with the requirements of Section 2.3 of this permit), including a schedule of their implementation.
  9. The proposed location(s) of off-site equipment storage, material storage, waste storage and borrow/fill areas.
  10. A proposed construction schedule as a means for the operator(s) and KDOW to determine applicability and implementation status of SWPPP requirements.
  11. An 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.

### **2.1.5. Maintenance of Stormwater Controls**

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 EPA *recommends* that sediment control devices be maintained at no more than 1/3 capacity to allow for sediment capture.

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.

### **2.1.6. Non-Stormwater Discharge Management**

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

1. Discharges from fire-fighting activities;
2. Fire hydrant flushing;
3. Waters used for vehicle washing where detergents are not used;
4. Water used for dust control;
5. Potable water including uncontaminated water-line flushing;
6. Routine external building wash down that does not use detergents;
7. 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;

8. Landscape irrigation;
9. Clean, non-turbid water-well discharges of groundwater; and
10. Construction dewatering (including discharges from dewatering of trenches and excavations) provided it is managed by appropriate controls and the requirements of this permit are met.

#### **2.1.7. Inspections – Permittee Conducted**

1. Permittees shall provide for regular inspections of the site. For purposes of this part, DOW defines “regularly” to mean either
  - a. At least once every seven (7) calendar days, or
  - b. 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.)
2. 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.
3. 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.
4. Inspectors shall conduct visual inspections to determine:
  - a. Whether erosion prevention measures, sediment controls measures, and other site management practices are:
    - i. properly installed;
    - ii. properly maintained;
    - iii. effective in minimizing discharges to the receiving water; and
  - b. Whether excessive pollutants are entering the drainage system.
5. Visual inspections shall comprise, at a minimum:
  - a. Erosion prevention measures;
  - b. Sediment controls measures;
  - c. Other site management practices and points of site egress;
  - d. Disturbed areas;
  - e. Areas used for storage of materials exposed to precipitation;
  - f. 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
  - g. If discharge points are inaccessible, then nearby downstream locations shall be inspected.
  - h. 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.
6. Inspection reports shall be prepared for all inspections and shall be retained with the SWPPP. Inspection reports should include:

- a. The date and time of inspection;
- b. The name and title of the inspector;
- c. 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);
- d. Weather conditions and a description of any discharges occurring at the time of the inspection;
- e. Location(s) of discharges of sediment or other pollutants from the site;
- f. Location(s) of sediment controls measures, erosion control measures, or other site management practices that require maintenance;
- g. 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;
- h. 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;
- i. Identify any actions taken in response to inspection findings; and
- j. Identify any incidents of non-compliance with the SWPPP.
- k. 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.
- l. The inspection report shall be signed in accordance with the signatory requirements in 401 KAR 5:060, Section 4.

#### **2.1.8. Maintaining an Updated Plan**

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.

### **2.1.9. Signature, Plan Review, and Making Plans Available**

1. The SWPPP shall be signed and certified in accordance with the signatory requirements in 401 KAR 5:065, Section 1(11).
2. 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).
3. A current copy of the SWPPP shall be readily available on the construction site from the date of project initiation to the date of Notice of Termination.
4. 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).
5. 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.
6. The permittee shall make the SWPPP available to DOW or its authorized representative for review and copying during on-site inspection.
7. 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.

### **2.2. 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.

### **2.3. 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 activity cessation. 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 180<sup>th</sup> 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 activity cessation.

### **2.4. Buffer Zones**

For discharges to receiving waters categorized as High Quality Waters (except OSRWs) or Impaired Waters (for 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 receiving waters designated as Coldwater Aquatic Habitat or Outstanding State Resource Water, categorized as an Outstanding National Resource Water or Exceptional Water, or has been listed in the most recently approved Integrated Water Quality 305(b) Report to Congress as an Impaired Water (sediment impaired) for which an approved TMDL has not been developed for pollutants of concern that may be discharged from the facility 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, 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.

Unless infeasible, natural buffers should be provided and maintained around receiving waters, stormwater should be directed to vegetated areas, and infiltration of stormwater should be maximized to reduce pollutant discharges.

**SECTION 3**  
**NOTICE OF INTENT (NOI-SWCA)**  
**REQUIREMENTS**



### 3. Notice of Intent (NOI-SWCA) Requirements

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

<http://dep.ky.gov/formslibrary/Pages/default.aspx>

#### 3.1. Contents

Form NOI-SWCA 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
  - c. 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
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
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 – Site Map

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

- a. Property boundary of the project including entrances;
- b. Areas to be disturbed;
- c. Location of anticipated discharge points; and
- d. Location of receiving waters.
- e. Label nearby roads

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

### 3.2. NOI Submission Requirements and Deadlines

For new projects, those projects commencing construction activities after the effective date of this KYR10, applicants must file using the 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: <https://dep.gateway.ky.gov/eForms/default.aspx?FormID=7>. When using this system the applicant shall complete and submit the eNOI-SWCA a minimum of seven (7) days before the proposed date for commencement of construction activities.

For ongoing projects, DOW will extend coverage for a period of one (1) year from the effective date of this renewal. Projects that will not achieve final stabilization by this date are required to submit a Coverage Extension form to extend coverage under this general permit. Ongoing Projects include those that obtained coverage under the KYR10 prior to July 31, 2014.

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

### 3.3. Small Construction Activity Waiver

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.

### 3.3.1. 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. The Erosivity Index Zone Map in Figure 1 may be used to determine in which zone a project located. .

#### 3.3.1.1. Calculating the "R Factor"

**Step 1:** The applicant must estimate the expected date of commencement of construction activities and the expected date that 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](http://www.epa.gov/npdes/pubs/construction_waiver_form.pdf))

Figure 1. Erosivity Index Zone Map

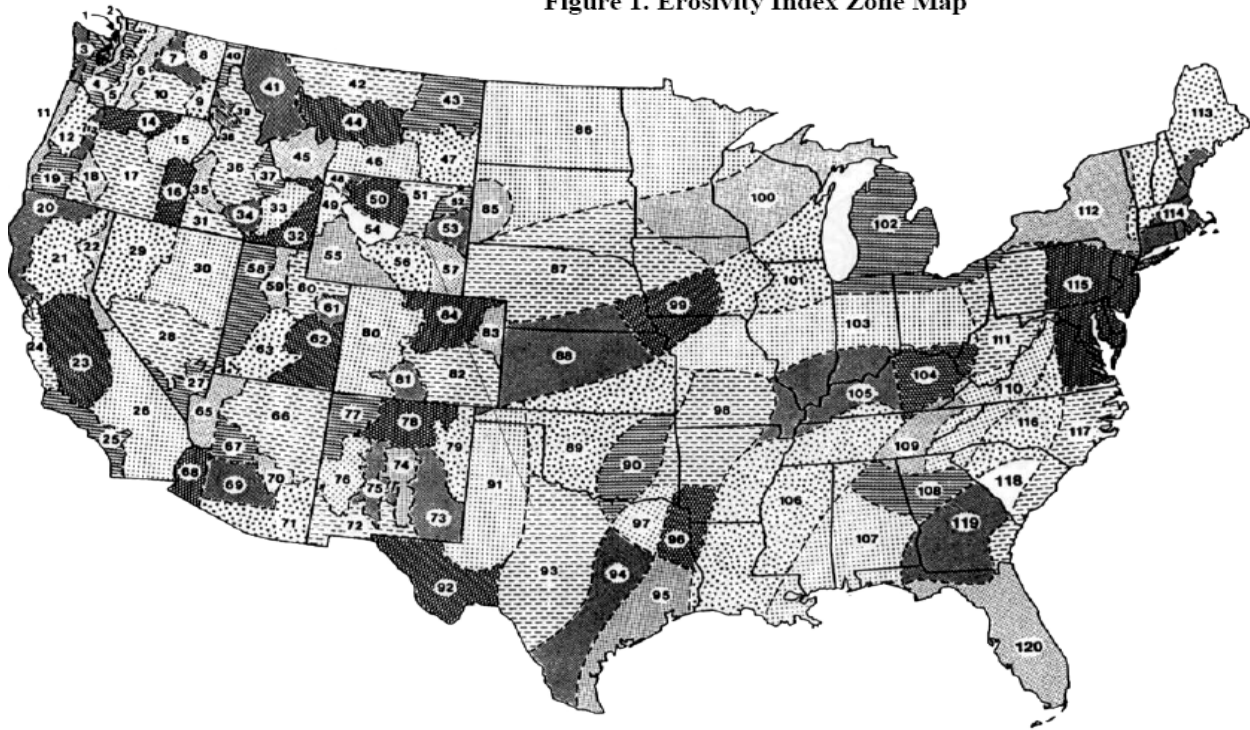
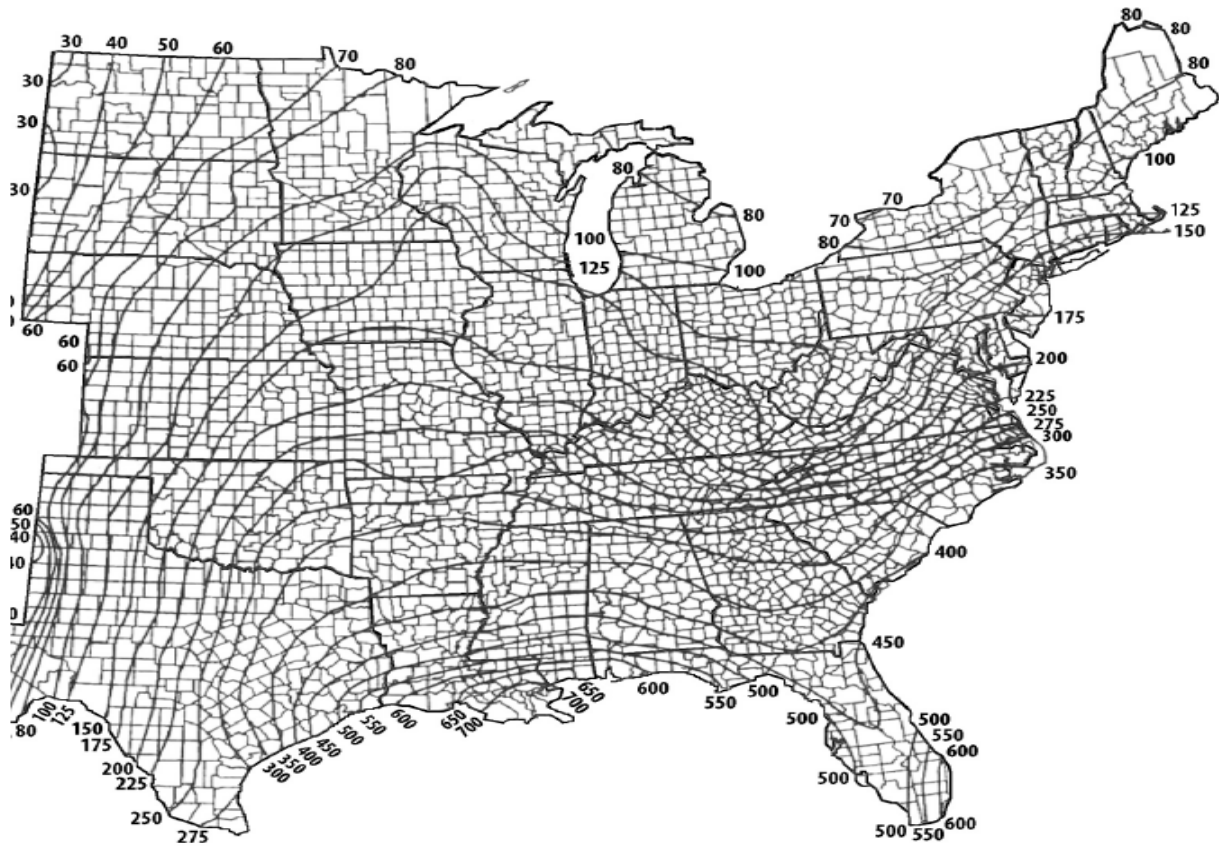


Table 1. Erosivity Index Table

El#	Jan 1-15	Jan 16-31	Feb 1-15	Feb 16-29	Mar 1-15	Mar 16-31	Apr 1-15	Apr 16-30	May 1-15	May 16-31	Jun 1-15	Jun 16-30	Jul 1-15	Jul 16-31	Aug 1-15	Aug 16-31	Sep 1-15	Sep 16-31	Oct 1-15	Oct 16-31	Nov 1-15	Nov 16-31	Dec 1-15	Dec 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	66	77	83	88	91	93	95	97	99

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

### 3.3.2. TMDL Waivers

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 the 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. The certification shall contain the following information:

1. Name, address and telephone number of the construction site operator(s);
2. Name (or other identifier), address, county and latitude/longitude of the construction project or site;
3. Estimated construction start and completion dates, and total acreage to be disturbed;
4. The name of the water body(s) that would be receiving stormwater discharges from your construction project;
5. The name and approval date of the TMDL;
6. A statement, signed and dated 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.

### **3.3.3. 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:

1. Name, address and telephone number of the construction site operator(s);
2. Name (or other identifier), address, county and latitude/longitude of the construction project or site;
3. Estimated construction start and completion dates, and total acreage to be disturbed;
4. The name of the water body(s) that would be receiving stormwater discharges from your construction project;
5. Your equivalent analysis;
6. A statement, signed and dated by an authorized representative as provided in 401 KAR 5:060, Section 4, that certifies that the construction activity will take place and that the stormwater discharges will occur, within the drainage addressed by the TMDL.

### **3.3.4. Certification Submittal Deadlines**

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

# **SECTION 4**

## **OTHER REQUIREMENTS**

#### **4. Other Requirements**

##### **4.1. 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. DOW will provide this written notification electronically to the email provided on the NOI-SWCA.

##### **4.2. Termination of Coverage**

All existing coverages shall be terminated by DOW effective one (1) year after the effective date of this KYR10 unless the permittee submits a Coverage Extension form.

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.

For new projects that do not submit a Notice of Termination (NOT) as described above, termination of coverage will occur automatically two (2) years after authorization to discharge is granted unless the operator submits a Coverage Extension form.

##### **4.3. 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.

##### **4.4. Schedule of Compliance**

For new projects the facility will comply with the requirements of this permit by the date of authorization to discharge under 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 SWPPP and/or BMPs.

##### **4.5. Reopener Clause**

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, 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 when applicable.



**4.6. Retention of Records**

The permit requires that all required records and reports be retained, including SWPPPs and information used to complete the NOI, for at least three (3) years from the termination of coverage or expiration of the permit.

**4.7. Antidegradation**

For those discharges subject to the provisions of 401 KAR 10:030, Section 1(3)(b)5, the permittee shall install, operate, and maintain wastewater treatment facilities consistent with those required by Section 2.4.

**4.8. Continuation of Expiring Permit**

In the event the permit expires prior to reissuance by DOW, the conditions and requirements of this version of KYR10 shall continue in effect until DOW reissues the permit. However, new or expanded coverages cannot be authorized until the permit is reissued.

**4.9. Other Permits**

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.

**SECTION 5**  
**STANDARD CONDITIONS**

## **5. STANDARD CONDITIONS**

### **5.1. Duty to Comply**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Any person who violates applicable statutes or who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

### **5.2. Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

### **5.3. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **5.4. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### **5.5. Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

### **5.6. Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### **5.7. Property Rights**

This permit does not convey any property rights of any sort, or any exclusive privilege.

### **5.8. Duty to Provide Information**

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

### **5.9. Inspection and Entry**

The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by KRS 224, any substances or parameters at any location.

#### **5.10. Monitoring and Records**

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065, Section 2(10), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
3. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - c. The date(s) analyses were performed;
  - d. The individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
4. Monitoring must be conducted according to test procedures approved under 401 KAR 5:065, Section 2(8) unless another method is required under 401 KAR 5:065, Section 2(9) or (10).
5. KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000), or by imprisonment for not less than one (1) year or more than five (5), or both. Each day upon which a violation occurs shall constitute a separate violation.

#### **5.11. Signatory Requirement**

1. All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4.
2. KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

#### **5.12. Reporting Requirements**

##### **5.12.1. Planned Changes**

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in KRS 224.16-050;

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under KRS 224.16-050; or
3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

#### **5.12.2. Anticipated Noncompliance**

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

#### **5.12.3. Transfers**

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224; see 401KAR 5:070, Section 5; in some cases, modification or revocation and reissuance is mandatory.

#### **5.12.4. Monitoring Reports**

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

1. Monitoring results must be reported on a DMR or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
2. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065, Section 2(8), or another method required for an industry-specific waste stream under 401 KAR 5:065, Section 2(9) or (10), the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

#### **5.12.5. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

#### **5.12.6. Twenty-Four Hour Reporting**

1. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
2. (The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph.
  - a. Any unanticipated bypass which exceeds any effluent limitation in the permit.
  - b. Any upset which exceeds any effluent limitation in the permit.
  - c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.

3. The Director may waive the written report on a case-by-case basis for reports under paragraph ii of this section if the oral report has been received within twenty-four (24) hours.

#### **5.12.7. Other Noncompliance**

The permittee shall report all instances of noncompliance not reported under Sections 5.12.4, 5.12.5, and 5.12.6 at the time monitoring reports are submitted. The reports shall contain the information listed in Section 7.12.6.

#### **5.12.8. Other Information**

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

### **5.13. Bypass**

#### **5.13.1. Definitions**

1. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
2. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

#### **5.13.2. Bypass Not Exceeding Limitations**

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Sections 5.13.3 and 5.13.4.

#### **5.13.3. Notice**

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section 5.12.6.

#### **5.13.4. Prohibition of Bypass**

1. Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
  - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - c. The permittee submitted notices as required under Section 7.13.3.
2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Section 7.13.3.

**5.14. Upset****5.14.1. Definition**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

**5.14.2. Effect of an Upset**

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section 5.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

**5.14.3. Conditions Necessary for a Demonstration of Upset**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the cause(s) of the upset;
2. The permitted facility was at the time being properly operated;
3. The permittee submitted notice of the upset as required in Section 5.12.6; and
4. The permittee complied with any remedial measures required under Section 5.4.

**5.14.4. Burden of Proof**

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.