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FACT SHEET

General Permit for Stormwater Discharges Associated with Construction Activities

KPDES No.: KYR100000

AI No.: 35050

Date: November 21, 2014

Public Notice Information

Public Notice Start Date: August 1, 2014

Comment Due Date: September 1, 2014

Information concerning the public notice process may be obtained on the Division of Water's Public Notice Webpage at the following address:

http://dep.gateway.ky.gov/eSearch/Search_Pending_Approvals.aspx?Program=Wastewater&NumDaysDoc=30

SECTION 1
FACILITIES INFORMATION

1. FACILITIES INFORMATION

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. Location

Within the 120 counties of the Commonwealth of Kentucky

1.4. Treatment Provided

The treatment provided is specific to the facility and is dependent upon the volume stormwater runoff and sources of potential contamination.

1.5. 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
RECEIVING WATER INFORMATION

2. RECEIVING WATER INFORMATION

2.1. Receiving Waters

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.

2.2. Stream Segment Use Classification

Includes all water bodies that have been designated by DOW singularly or in combination as: Warm Water Aquatic Habitat, Cold Water Aquatic Habitat, Primary Contact Recreation, Secondary Contact Recreation, Domestic Water Supply, and/or Outstanding State Resource Waters.

2.3. Stream Segment Antidegradation Categorization

Included are those water bodies which have been categorized as Outstanding National Resource Waters, Exceptional Waters, High Quality Waters, and Impaired Waters listed in the most recently approved Integrated Water Quality 305(b) Report to Congress for which an approved TMDL has not been developed for pollutants of concern.

2.4. Stream Low Flow Condition

The 7-day, 10-year low flow conditions of the receiving streams can range from zero (0) cubic feet per second (cfs) to 111,000 cfs for the Mississippi River.

SECTION 3
PERMIT REQUIREMENTS

3. PERMIT REQUIREMENTS

3.1. 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 discharges for storm events up to an including a 2-year, 24-hour event. Permittees are encouraged to design the site, 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.

3.2. 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.

3.3. 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 activity cessation. 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 180^{th} 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 activity cessation.

3.4. Buffer Zone

To satisfy the antidegradation requirements and implementation procedures in 401 KAR 10:029 and 401 KAR 10:030 the operator shall implement control measures and BMPs to meet enhanced non-numeric effluent requirements. The permittee shall document in the SWPPP the selected enhanced control measures and BMPs and justification of their use. Enhanced control measures and BMPs shall be sufficient to protect waters of the Commonwealth for their designated uses. Examples of acceptable enhanced control measures and BMPs include, but are not limited to, the following:

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.

SECTION 4
JUSTIFICATION OF PERMIT REQUIREMENTS

4. JUSTIFICATION OF PERMIT REQUIREMENTS

The Division of Water has determined that it is not feasible to develop comprehensive, standardized, technology-based effluent limitations (TBELs) or water quality-based effluent limitations (WQBELs) for all potential pollutants that may be discharged by facilities eligible for coverage under KYR00. This determination is based on the extreme variability in a number of factors related to: (1) eligible facilities, (2) stormwater runoff, and (3) treatment technologies employed. Therefore, no requirements to monitor and report effluent quality are being imposed.

4.1. Technology-Based Standards/Non-Numeric Effluent Requirements

Discharges covered by this general permit are subject to the requirements of the Construction and Development Effluent Guidelines at 40 CFR 450.

Although numeric technology-based effluent requirements are not required in this permit, the Division of Water is obligated to impose technology-based standards. Pursuant to 401 KAR 5:065, Section 2(4) [40 CFR 122.44(k)], BMPs may be used to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. The responsibility to evaluate individual sites and takes steps necessary to minimize the potential for contamination of stormwater runoff and the discharge of pollutants is that of the operator. Implementation of this requirement is accomplished through the SWPPP. Use 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 construction activities covered by the KYR10. Through compliance with these non-numeric requirements, DOW expects that the discharge of pollutants will be reduced and/or eliminated. Furthermore, once installed and implemented, the permittee is obligated to maintain control measures and to correct deficiencies where regular inspection determines that deficiencies exist.

4.2. Water Quality Standards

4.2.1. Antidegradation

In accordance with the antidegradation policy implementation methodology as codified in 401 KAR 10:030, DOW has two options to satisfy antidegradation requirements. The first is to conduct an antidegradation Tier II review for each coverage granted under the general permit. The second is 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 included within the general permit additional protective requirements for new or expanded construction activities discharging to High Quality, Exceptional, and Outstanding National Resource 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:

1) 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. If utilizing a retention basin it must constructed for the control of stormwater runoff from disturbed areas designed to hold a 2-year 24-hour storm.
2) 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.

3) Maintaining a 25-foot buffer zone between any disturbance and the edge of the receiving water designated as a High Quality or Impaired Water (for non-construction related impairment). Maintaining a 50-foot buffer zone between any disturbance and the edge of the receiving water 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.

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.

Should DOW receive an NOI-SWCA that, upon review, indicates a potential for degradation or permanent lowering of water quality additional information will be requested, which may include the SWPPP. DOW will base its determination on a number of factors including, but not limited to, the amount of disturbance within the watershed, the proximity to drinking water sources or waters not categorized as High Quality or Impaired (for non-construction related impairment) Waters, 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.

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 and 401 KAR 10:030, Section 1.

SECTION 5
SCHEDULE OF COMPLIANCE
AND
OTHER CONDITIONS

5. SCHEDULE OF COMPLIANCE AND OTHER CONDITIONS

5.1. 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.

5.2. Special Conditions

5.2.1. 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.

5.2.2. 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.

5.2.3. 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.

5.2.4. Additional Requirements

If a project will discharge directly to waters for which DOW determines additional analyses, control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements under 401 KAR 10:030, the DOW may notify the applicant of the requirements or that an individual permit application is necessary.

5.3. 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 DOW. 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.

5.3.1. 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
- Site map

5.3.2. NOI Submission Requirements and Deadlines

For New Projects, those projects commencing construction activities after the effective date of this KYR10, applicants must file for coverage 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 NOI-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.

5.4. 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.

5.5. Termination of Coverage

This issuance will be the sixth issuance of KYR10. As such, the current number of active coverages exceeds 3,000. Although many of the sites covered remain active, the DOW suspects that a large number of these projects have been completed without properly filing a Notice of Termination. Consequently DOW has decided the most effective method for updating the coverage list is to terminate all existing coverages effective one (1) year after the effective date of this KYR10 unless the permittee submits a Coverage Extension form.

Termination of coverages after this date will occur either at the request of the operator or automatically.

5.5.1. Submit Notice of Termination

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.

5.5.2. Automatic Termination

For new projects that do not submit a Notice of Termination (NOT) as described in Section 5.5.1, termination of coverage will occur automatically two (2) years after authorization to discharge is granted unless the operator submits a Coverage Extension form.

5.6. 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.

5.6.1. 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 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.

5.6.2. 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.

5.6.3. 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.

SECTION 6
OTHER INFORMATION

6. OTHER INFORMATION

6.1. Permit Duration

The permit shall have duration of five (5) years from the effective date unless modified or reissued.

6.2. Permit and Public Notice Information

The draft permit, fact sheet and public notice are available on the DOW Public Notice web page and the Department of Environmental Protection's Pending Approvals Search web page at:

http://water.ky.gov/Pages/PublicNotices.aspx:

http://dep.gateway.ky.gov/eSearch/Search_Pending_Approvals.aspx?Program=Wastewater&NumDaysDoc=30

Comments may be filed electronically at the following e-mail address: DOWPublicNotice@ky.gov

6.3. References and Cited Documents

All material 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 Division of Water's Open Records Coordinator at (502) 564-3410 or by e-mail at DEP.KORA@ky.gov.

6.4. Contact

For further information contact the Surface Water Permits Branch by phone at (502) 564-3410 or by email at SWPBSupport@ky.gov.

SECTION 7

SIGNIFICANT CHANGES, DEFINITIONS, AND FAQs

7. SIGNIFICANT CHANGES, DEFINITIONS, AND FREQUENTLY ASKED QUESTIONS

7.1. Significant Changes

The most significant changes from the 2009 KYR10 include:

- This renewal of the KYR10 allows for coverage for sites discharging to waters that were previously excluded. As described in Section 3.4 of this Fact Sheet, although additional practices, like an increased 50-foot buffer, are required, projects that discharge to the following may be approved for coverage: 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.
- New coverages will automatically terminate two (2) years after coverage is granted unless a Coverage Extension form is submitted.
- Paper NOI-SWCAs will no longer be accepted by DOW. Only the electronic NOI-SWCA will be reviewed for consideration of coverage under this permit.

7.2. Definition of Terms and Acronyms

The Division of Water is providing definitions of commonly used terms in this Fact Sheet and 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 requirements of the Kentucky Revised Statute. Beside each such definition the source of the definition will be cited (in italics).

2-year, 24-hour event - 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 - The approved biennial Clean Water Act Integrated Water Quality Report to Congress, §305(b).

401 Water Quality Certification - 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 - The permit issued by the United States Army Corps of Engineers (USACE) for activities that discharge dredged or fill material into the navigable waters.

As Soon As Practical - The earliest possible time when external factors such as inclement weather would not prevent completion of the task

Bankfull Elevation - 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) - 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 - Those waters of the Commonwealth that meet the criteria of 401 KAR 10:031, Section 4(2) and have been listed in 401 KAR 10:026, Section 5.

Commencement of Construction Activities - 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 - 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 - 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 - 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 - 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 - 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 - The bankfull elevation of a water of the Commonwealth.

Eligible - Qualified for authorization to discharge stormwater under this general permit. *(EPA CGP)*

Equivalent Analysis Waiver - 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 - Those waters of the Commonwealth that have been listed in Table 2 of 401 KAR 10:030, Section 1(2).

Facility or Activity - 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 or more of the natural 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 HQ - Those waters of the Commonwealth that have been categorized by DOW as high quality pursuant to the requirements of 401 KAR 10:030, Section 1(3).

Impaired Waters or IW - 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.

Infeasible - Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices. *(40 CFR 450.11(b))*

Large Construction Activity - 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 - 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)

Natural Vegetation – Vegetation that occurs spontaneously without regular management, maintenance or species introductions, removals, and that generally has a strong component of native species.

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

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

Operator - Any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over 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 stormwater 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 - 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 - Those waters of the Commonwealth that meet the criterion of 401 KAR 10:031and are listed in 10:026.

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

Permittee - The operator who obtains authorization under this permit.

Person - 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 - 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 - 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 - 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 - A waiver, available only to small construction activities, that is based on the rainfall erosivity factor for the project.

Receiving Water - 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 - An equation used to predict soil loss in an area. *(USDA Handbook 703)*

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

Site 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 - 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 - Stormwater run-off, snow melt run-off, and surface run-off and drainage. *(EPA CGP)*

Stormwater Discharge Related Activities - Includes: 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) - 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 - A waiver, available only to small construction activities, based on an EPA established or approved TMDL.

Total Maximum Daily Load or TMDL - 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 - 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 - 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))*

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

7.3. Frequently Asked Questions

In this section, the DOW attempts to provide answers to some of the more common questions on the construction stormwater permitting program. It is intended to help potential users understand the permit. 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 stormwater 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 Stormwater 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 stormwater 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 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 stormwater associated with construction activity, or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants).

Are There Situations Where a Stormwater Permit is Not Needed?

Yes, if all of the stormwater 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. also do not require coverage under this permit. "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 stormwater 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 miles 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 miles 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, those 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. The NOI-SWCA can be found on DOW's online e-permitting web site located at the following address:

https://dep.gateway.ky.gov/eForms/default.aspx?FormID=7

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 2009 KYR10 prior to its expiration on July 31, 2014.

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

No. Upon reissuance of this KYR10 renewal, your previously authorized construction project will be automatically covered 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 SWPPP 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 Section 7.2 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 or more of the natural 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 assumes 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.

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. (Additional resources regarding post-construction runoff management are included in the Kentucky Construction Site BMP Planning and Technical Specifications Manual located at http://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 its 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 at 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 Stormwater Pollution Prevention Plan (SWPPP) and Selecting Erosion Prevention Measures, Sediment Control Measures, and Other Site Management Practices For My Site?

SWPPP requirements were designed to allow flexibility to develop erosion prevention measures, sediment control 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 stormwater 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. If the permit expires before a renewal 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 DOW, until the earliest of:

- The permit is 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 a NOT for your portion of a site providing: (1) You have achieved final stabilization of the *entire* 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.