

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

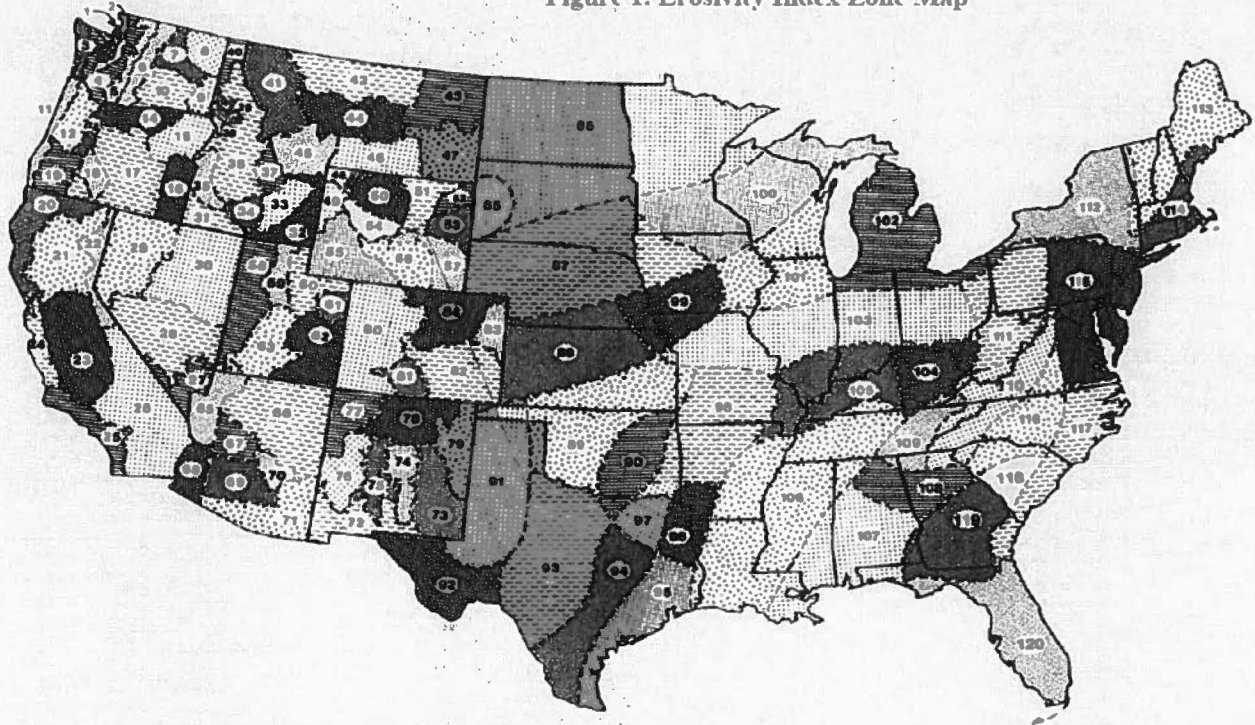
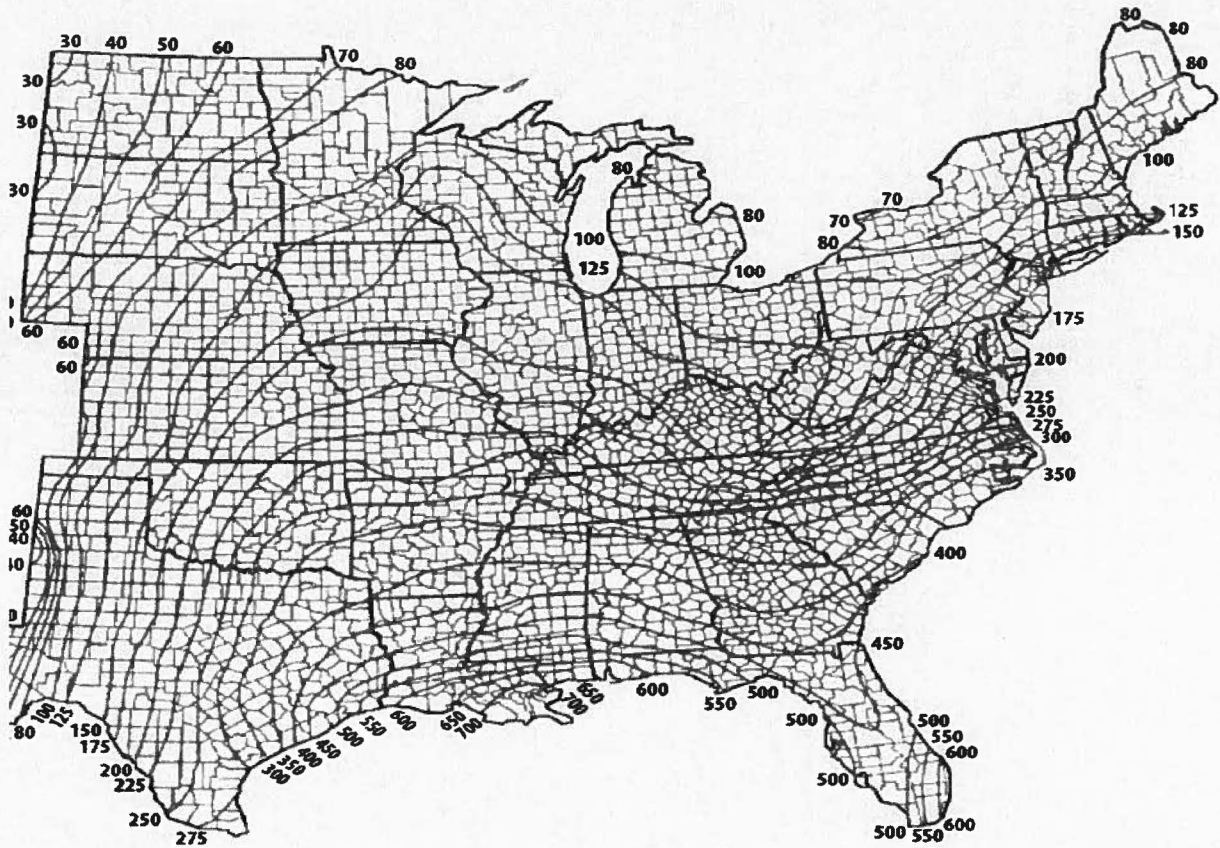


Table 1. Erosivity Index Table

EI#	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	36	47	58	68	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	85	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.





**Matthew G. Bevin**  
Governor

**COMMONWEALTH OF KENTUCKY**  
**TRANSPORTATION CABINET**  
Department of Highways, District 6 Office  
421 Buttermilk Pike  
Covington, Kentucky 41017  
(859) 341-2700  
[www.transportation.ky.gov/](http://www.transportation.ky.gov/)

**Greg Thomas**  
Secretary

March 15, 2017

Duke Energy Ohio, Inc  
John Perkins  
139 E. 4th Street, Ex 460  
Cincinnati, Ohio 45202

**Subject: Permit #: 06-2017-00424**  
**Permit Type: Utilities - Gas**  
**Approval**

**Dear Applicant:**

Attached is your permit approval and documentation for the subject permit.

Be advised that all work must be done in conformity with permit and application conditions. If you have any questions, please contact the Permits Section at this office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Bogen".

**Matthew Bogen**  
D6 Permits - Supervisor

**Attachments**



An Equal Opportunity Employer M/F/D

**NOTICE OF COMPLETION OF ENCROACHMENT PERMIT WORK**

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**PERMITEE**

Name: Duke Energy Ohio, Inc  
Contact Person: John Perkins  
Address: 139 E. 4th Street, Ex 460  
City: Cincinnati  
State: Ohio  
Zip: 45202  
Telephone:

**PROJECT IDENTIFICATION**

Permit Number: 06-2017-00424

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I wish to notify the Department of Highways that the above mentioned permit work and any necessary right-of-way restoration have been completed and are ready for final inspection.

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Applicant

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Please return this form to the address below when work is completed and ready for final inspection.

Please Return to: Permit Engineer  
Department of Highways, District 6 Office  
421 Buttermilk Pike  
Covington, Kentucky 41017  
(859) 341-2700  
[www.transportation.ky.gov/](http://www.transportation.ky.gov/)

LOCATION(S)			
Description	County - Route	Latitude	Longitude
Install 12" gas main by open cut method on KY 2951	Boone - KY 2951	38.898543	-84.651245



Kentucky Transportation Cabinet  
Department of Highways  
Permits Branch

TC 99-1 (A)  
1/2015  
Page 1 of 4

APPLICATION FOR ENCROACHMENT PERMIT

<b>Permittee Information</b>		KYTC No. <u>06-2017-00424</u>	
Name	DUKE ENERGY	<b>Permit Information</b>	
Address	139 EAST FOURTH STREET	Address	
	EX460	City	WALTON
City	CINCINNATI	State	KY Zip 41094
State	OH Zip 45202	County	BOONE
Phone#	(513) 315-8338	Route No.	<u>KY 2951</u> Mile-Point <u>0.0 - 1.704</u>
Contact	JOHN PERKINS	Longitude (X)	-84.62329
Phone	(513) 287-1276 Cell (513) 315-8338	Latitude (Y)	38.89010
Email	JOHN.PERKINS@DUKE-ENERGY.COM	<i>Information below to be filled out by KYTC</i>	
Contact	ANDREW KOWALEWSKI	<input type="checkbox"/> Air Right	<input type="checkbox"/> Entrance
Phone	(630) 967-0909 Cell (847) 712-2724	<input checked="" type="checkbox"/> Utilities	<input type="checkbox"/> Other: _____
Email	AKOWALEWSKI@ENENGINEERING.COM	<input type="checkbox"/> Left	<input type="checkbox"/> Right <input checked="" type="checkbox"/> X-ing
		Access:	<input type="checkbox"/> Full <input type="checkbox"/> Partial <input checked="" type="checkbox"/> by Permit

General Description of Work:

12" STEEL PIPELINE INSTALLED VIA OPEN CUT ALONG CHAMBERS ROAD MOSTLY WITHIN PRIVATE EASEMENTS STARTING AT RICHWOOD ROAD AND CONTINUES UNTIL 233 CHAMBERS ROAD (STA 346+00 TO 434+60 AND 437+60 TO 445+50). PIPELINE ENTERS ROW AT 500, 640, 800, & 894 CHAMBERS ROAD. GAS MAIN THROUGH I-75 TUNNEL ON CHAMBERS ROAD (STA 434+60 TO 437+60) WAS SUBMITTED SEPARARETLY AND SHOULD NOT BE INCLUDED IN THIS PERMIT APPLICATION. PIPELINE CONTRACTOR WILL ACCESS PRIVATE EASEMENTS THROUGH ROAD RIGHT OF WAY AS NEEDED. CONTRACTOR WILL RESTORE RIGHT OF WAY WITHIN 4 WEEKS (PER KYTC SPECIFICATIONS) OF COMPLETING PIPELINE WORK ON EACH PARCEL.

**APPROVED**

THE UNDERSIGNED PERMITTEE(S) (being duly authorized representative(s) or owner(s)) DO AGREE TO ALL TERMS AND CONDITIONS ON THE TC 99-1 (A).

John Perkins  
Signature

3/13/17  
Date

**MAR 15 2017**

**KYTC District 6**

This is not a permit unless and until the permittee(s) receives an approved TC 99-1(B) from KYTC. This application shall become void if not approved by the cancellation date. The cancellation date shall be one year from the date the permittee submits their application.



## APPLICATION FOR ENCROACHMENT PERMIT

### TERMS AND CONDITIONS

1. The permit, including this application and all related and accompanying documents and drawings making up the permit, remains in effect and is binding upon the Applicant/Permittee, its successors and assigns, as long as the encroachment(s) exists and also until the permittee is finally relieved by the Department of Highways from all its obligations.
2. Applicant shall meet all requirements of the Clean Water Act if the project will disturb one acre or more, the applicant shall obtain a KPDES KYR10 Permit from the Kentucky Division of Water. All disturbed areas shall meet the requirements of the Department of Highway's Standard Specifications, Sections 212 and 213, as amended.
3. **INDEMNITY:**
  - A. **PERFORMANCE BOND:** The permittee shall provide to the Department a performance bond according to the Permits Manual, Section PE-203 as a guarantee of conformance with the Department's Encroachment Permit requirements.
  - B. **PAYMENT BOND:** At the discretion of the department, a payment bond shall be required of the permittee to ensure payment of liquidated damages assessed to the permittee.
  - C. **LIABILITY INSURANCE:** Liability insurance shall be required of the permittee (in an amount approved by the department) to cover all liabilities associated with the encroachment.
  - D. It shall be the responsibility of the permittee, its successors and assigns, to maintain all indemnities in full force and effect until the permittee is authorized to release the indemnity by the Department.
4. A copy of this application and all related documents making up the approved permit shall be given to the applicant and shall be made readily available for review at the work site at all times.
5. Perpetual maintenance of the encroachment is the responsibility of the permittee, its successors and assigns, with the approval of the Department as required, unless otherwise stated.
6. Permittee, its successors and assigns, shall comply with and agree to be bound by the requirements and terms of (a) this application and all related documents making up the approved permit, (b) by the Department's Permits Manual, and (c) by the Manual on Uniform Traffic Control Devices, both manuals as revised to and in effect on the date of issuance of the permit, all of which documents are made a part thereof by this reference. Compliance by the permittee, its successors and assigns, with subsequent revisions to applicable provisions of either manual or other policy of the Department may be made a condition of allowing the encroachment to persist under the permit.
7. Permittee agrees that this and any encroachment may be ordered removed by the Department at any time, and for any reason, upon thirty days written notice to the last known address of the applicant or to the address at the location of the encroachment. The permittee agrees that the cost of removing and of restoring the associated right-of-way is the responsibility of the permittee, its successors and assigns.
8. Permittee, its successors and assigns, agree that if the Department determines that motor vehicular safety deficiencies develop as a result of the installation or use of the encroachment, the permittee, its successors and assigns, shall provide and bear the expenses to adjust, relocate, or reconstruct the facilities, add signs, auxiliary lanes, or other corrective measures reasonably deemed necessary by the Department within a reasonable time after receipt of a written notice of such deficiency. The period within which such adjustments, relocations, additions, modifications, or other corrective measures must be completed will be specified in the notice.
9. Where traffic signals are required as a condition of granting the requested permit or are thereafter required to correct motor vehicular safety deficiencies, as determined by the Department, the costs for signal equipment and



Kentucky Transportation Cabinet  
Department of Highways  
Permits Branch

**APPLICATION FOR ENCROACHMENT PERMIT**

Installation(s) shall be borne by the permittee, its successors and assigns and the Department in its reasonable discretion and only in accordance with the Department's current policy set forth in the Traffic Operations Manual and Permits Manual. Any modifications to the permittee's entrance necessary to accommodate signalization (including necessary easement(s) on private property) shall be the responsibility of the permittee, its successors and assigns, at no expense to the Department.

10. The requested encroachment shall not infringe on the frontage rights of an abutting owner without their written consent as hereinafter described. Each abutting owner shall express their consent, which shall be binding on their successors and assigns, by the submission of a notarized statement as follows, "I \_\_\_\_\_ (we),

\_\_\_\_\_ hereby consent to the granting of the permit requested by the applicant along Route \_\_\_\_\_, which permit does affect frontage rights along my (our) adjacent real property." By \_\_\_\_\_ signature(s) subscribed and sworn by \_\_\_\_\_ on this date \_\_\_\_\_.

11. The permit, if approved, is subject to the agreement that it shall not interfere with any similar rights or permit(s) previously granted to any other party, except as otherwise provided by law.

12. Permittee shall include documentation which describes the facilities to be constructed. Permittee, its successors and assigns, agree as a condition of the granting of the permit to construct and maintain any and all permitted facilities or other encroachments in strict accordance with the submitted and approved permit documentation and the policies and procedures of the Department. Permittee, its successors and assigns, shall not use facilities authorized herein in any manner contrary to that prescribed by the approved permit. Only normal usage as contemplated by the parties and by this application and routine maintenance are authorized by the permit.

13. Permittee, its successors and assigns, at all times from the date permitted work is commenced until such time as all permitted facilities or other encroachments are removed from the right-of-way and the right-of-way restored, shall defend, protect, indemnify and save harmless the Department from any and all liability claims and demands arising out of the work, encroachment, maintenance, or other undertaking by the permittee, its successors and assigns, related or undertaken pursuant to the granted permit, due to any claimed act or omission by the permittee, its servants, agents, employees, or contractors. This provision shall not inure to the benefit of any third party nor operate to enlarge any liability of the Department beyond that existing at common law or otherwise if this right to indemnity did not exist.

14. Upon a violation of any provision of the permit, or otherwise in its reasonable discretion, the Department may require additional action by the permittee, its successors and assigns, up to and including the removal of the encroachment and restoration of the right-of-way. In the event additional actions required by the Department under the permit are not undertaken as ordered and within a reasonable time, the Department may in its discretion cause those or other additional corrective actions to be undertaken and the Department shall recover the reasonable costs of those corrective actions from the permittee, its successors and assigns.

15. Permittee, its successors and assigns, shall use the encroachment premises in compliance with all requirements of federal law and regulation, including those imposed pursuant to Title VI of the Civil Right Act of 1964 (42 U.S.C. § 2000d et seq.) and the related regulations of the U.S. Department of Transportation in Title 49 C.F.R. Part 21, all as amended.

16. Permittee, its successors and assigns, agree that if the Department determines it is necessary for the facilities or other encroachment authorized by the permit to be removed, relocated or reconstructed in connection with the reconstruction, relocation or improvement of a highway, the Department may revoke permission for the



### APPLICATION FOR ENCROACHMENT PERMIT

encroachment to remain under the permit and may order its removal, relocation or reconstruction by the permittee, its successors and assigns, at the expense of the permittee, except where the Department is required by law to pay any or all of those costs.

17. Permittee agrees that the authorized permit is personal to the permittee and shall remain in effect until such time as (a) the permittee's rights to the adjoining real property to have benefitted from the requested encroachment have been relinquished, (b) until all permit obligations have been assumed by appropriate successors and assigns, and (c) unless and until a written release from permit obligations has been granted by the Department. The permit and its requirements shall also bind the real property to have benefitted from the requested encroachment to the extent permitted by law. The permit and the related encroachment become the responsibility of the successors and assigns of the permittee and the successors and assigns of each property owner benefitting from the encroachment, or the encroachment may not otherwise permissibly continue to be maintained on the right-of-way. (Does not apply to utility encroachments serving the general public.)

18. If work authorized by the permit is within a highway construction project in the construction phase, it shall be the responsibility of the permittee to make personal contact with the Department's Engineer on the project in order to coordinate all permitted work with the Department's prime contractor on the project.

19. This permit is not intended to, nor shall it, affect, alter or alleviate any requirement imposed upon the permittee, its successors and assigns, by any other agency.

20. Permittee, its successors and assigns, agree to contain and maintain all dirt, mud, and other debris emanating from the encroachment away from the surrounding right-of-way and the travel way of the highway hereafter and at all times that its obligations under the permit remain in effect.



## ENCROACHMENT PERMIT GENERAL NOTES & SPECIFICATIONS

Permit No. 06-2017-00424

### I. SAFETY

#### A. General Provisions

- All signs and control of traffic shall be in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways, latest edition, Part VI, and safety requirements shall comply with the Permits Manual.
- All work necessary in shoulder or ditch line areas of a state highway shall be scheduled to be promptly completed so that hazards adjacent to the traveled way are kept to an absolute minimum.
- No more than one (1) traveled-lane shall be blocked or obstructed during normal working hours. All signs and flaggers during lane closure shall conform to the Manual on Uniform Traffic Control Devices.
- When necessary to block one (1) traveled-lane of a state highway, the normal working hours shall be as directed by the Department. No lanes shall be blocked or obstructed during adverse weather conditions (rain, snow, fog, etc.) without specific permission from the Department. Working hours shall be between 9:00 am and 4:30 pm
- The traveled-way and shoulders shall be kept clear of mud and other construction debris at all times during construction of the permitted facility.
- No nonconstruction equipment or vehicles or office trailers shall be allowed on the right of way during working hours.
- The right of way shall be left free and clear of equipment, material, and vehicles during non-working hours.

#### B. Explosives

- No explosive devices or explosive material shall be used within state right of way without proper license and approval of the Kentucky Department of Mines and Minerals, Explosive Division.

#### C. Other Safety Requirements

### II. UTILITIES \* Applies to Fully Controlled Access Highways ONLY

- \*All work necessary within the right of way shall be performed behind a temporary fence erected prior to a boring operation.
- \*The temporary woven wire fence shall be removed immediately upon completion of work on the right of way, and the control of access immediately restored to original condition, in accordance with applicable Kentucky Department of Highways Standard Drawings.
- \*All vents, valves, manholes, etc., shall be located outside of the right-of-way.
- \*Encasement pipe shall extend from right-of-way line to right-of-way line and shall be one continuous run of pipe. The encasement pipe shall be welded at all joints.
- The boring pit and tail ditch shall extend past the existing toe of slope or bottom of ditch line and shall be a minimum of 42 inches deep.

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**II. UTILITIES (Continued)**

- Encasement pipe shall conform to current standards for highway crossings in accordance with the Permits Manual.
- Parallel lines shall be constructed between back slope of ditch line and right-of-way line and shall have a minimum of 20-inch cover above top of pipe or conduit.
- All pavement cuts shall be restored per Kentucky Transportation Cabinet form TC 99-13.
- Aerial crossing of this utility line shall have a minimum clearance of \_\_\_\_\_ feet from the high point of the roadway to the low point of the line (calculated at the coefficient for expansion of 120 degrees Fahrenheit).
- The 30-foot clear zone requirement shall be met to the extent possible in accordance with the Permits Manual.
- Special requirements:

Open cut the roadway will require a mill and overlay of the entire road.  
Removal of trees in the right of way is the Permittee responsibilities to workout with the homeowners. Department will not be responsible for tree removal.

**III. GENERAL**

**A. OSHA**

- Kentucky Occupational Safety and Health Standards for the construction industry, which has the effect of law, states in part: (Page 52, 1926.651, Specific Excavation Requirements) "Prior to opening an excavation, effort shall be made to determine whether underground installations, (sewer, telephone, water, fuel, electric lines, etc.) will be encountered, and if so, where such underground installations are located. When the excavation approaches the estimated location of such an installation, the exact location shall be determined, and when it is uncovered, proper supports shall be provided for the existing installation. Utility companies shall be contacted and advised of proposed work prior to the start of actual excavation."

**B. Archaeological**

- Whenever materials of an archaeological nature are discovered during the course of construction work or maintenance operations, contact shall be made immediately with the Division of Environmental Analysis, which maintains an archaeologist on staff, or with the Office of the State Archaeologist located at the University of Kentucky. Following this consultation, further action shall be decided on a case-by-case basis by the State Highway Engineer or the Transportation Planning Engineer or their designated representative.

**C. Utilities in the Work Areas**

- The permittee shall be responsible for any damage to existing utilities, and any utility modifications or relocations within state right of way necessary, as determined by the Department or by the owner of the utility, shall be at the expense of the permittee and subject to the approval of the Department.
- All existing manholes and valve boxes shall be adjusted to be flush with finished grade.

**D. Environmental**

- If the activity to which this permit relates disturbs one acre or more of land, you must obtain a KPDES KYR10 permit.

**Websites**

<http://www.water.ky.gov/permitting/wastewaterpermitting/KPDES/storm/>

Inspectors for KPDES KYR10 at [www.KEPSC.org](http://www.KEPSC.org)





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**VI. Paving**

- No bituminous pavement shall be installed within the right of way between November 15 and April 1, nor when the temperature is below 40 degrees Farenheit, without the express consent of the Department. No bituminous pavement shall be installed when the underlying course is wet.
- Paving within the right of way shall be as follows:
  - Base (Type) Flowable Fill (Thickness) Varies
  - Surface Base (Type) Bit. Base (Thickness) Match Existing
  - Finished Surface (Type) Bit. Surface (Thickness) 1.5" Mill & Overlay
- Existing pavement and shoulder material shall be removed to accomodate the above paving specifications.
- The finished surface of all new pavement within the right of way shall be true to the required slope and grade, uniform in density and texture, free of irregularities, and equivalent in riding qualities to the adjacent highway pavement or as determined by the Department of Highways.
- All materials and methods of construction, including base and subgrade preparation, shall be in accordance with Kentucky Department of Highways Standard Specifications for Road and Bridge Construction (latest edition).
- 24 hours notice to the Department is required prior to beginning paving operations.  
Phone: 859-341-2700 Name: Mark Brannon
- To ensure proper surface drainage, the new pavement shall be flush with the edge of existing highway pavement and shall slope away from the existing edge of the pavement as specified in drawings.
- Existing edge of pavement shall be saw-cut to provide a straight and uniform joint for new pavement. An approved joint sealer, in accordance with Kentucky Department of Highways Standard Specifications (latest edition), shall be applied between new and existing pavements.

**VII. SIDEWALKS SPECIFICATIONS \*This dimension should be equal to the width of the sidewalk.**

**A. New Sidewalks**

- Sidewalks shall be constructed of Class A concrete (3,500 p.s.i. test), shall be \* 5 feet in width, 6 inches in thickness across the bituminous entrance, and 4 inches in thickness across the remaining sections.
- Sidewalks shall have tooled joints not less than 1 inch in depth at four foot intervals\*, and 1/2 premolded expansion joints extending entirely through the sidewalk at intervals not to exceed 50 feet.
- All materials and methods of construction, including curing, shall be in accordance with the Kentucky Department of Highways Standard Specifications for Road and Bridge Construction (latest edition).

**B. Existing Sidewalks**

- (Applicable if existing sidewalks are being relocated) Use of the sidewalk shall not be blocked or obstructed, and a usable walkway shall be maintained across the construction area at all times.
- All damaged sections of the sidewalks shall be entirely replaced to match existing sections.

# KENTUCKY TRANSPORTATION CABINET

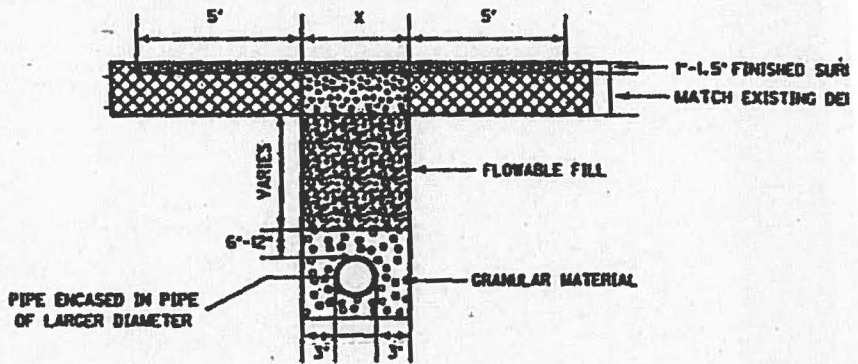
Department of Highways

Permits Branch

## SURFACE RESTORATION METHODS

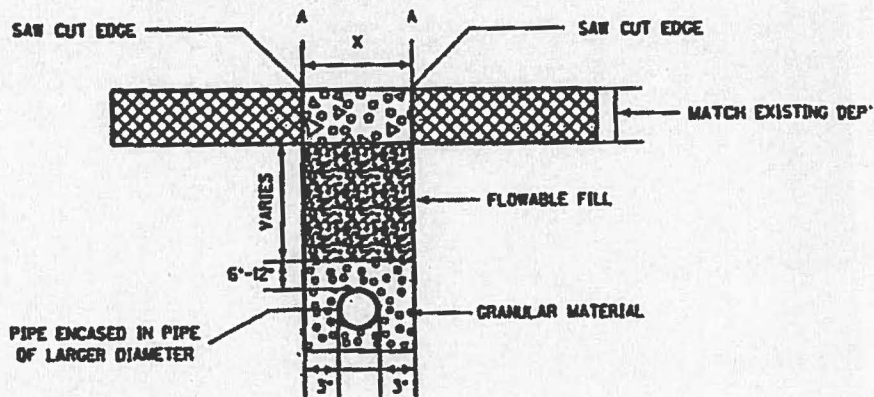
### Bituminous Surfacing

NOTES:  
• SURFACE SHALL BE MILLED AND REPLACED 5 FEET PAST EDGE OF TRENCH.  
• SURFACE EDGE SHALL BE SAW CUT ON ALL REPAIRS.  
• AN APPROVED JOINT SEALER IS TO BE APPLIED BETWEEN NEW AND EXISTING PAVEMENT.



### Concrete Pavement

NOTES:  
• ALL EDGES SHALL BE SAW CUT AND SEALED WITH APPROVED JOINT SEALER.  
• DISTANCE FROM POINTS 'A' (CONCRETE PAVEMENT) TO NEAREST JOINT OR BREAK IN PAVEMENT MUST BE SIX (6) FEET OR MORE. IF LESS THAN SIX (6) FEET, REMOVE PAVEMENT TO JOINT OR BREAK AND REPLACE ENTIRE SLAB.



## IMPORTANT NOTICE

Federal law requires that traffic control shall be implemented in accordance with MUTCD Standards and KYTC Specifications under the supervision of a Work Zone Traffic Control Supervisor.

A Work Zone Traffic Control Technician shall be available on the jobsite to ensure that the work zone is in compliance with the applicable standards.

If any questions, please contact Matt Bogen at (859) 341-2700.

## IMPORTANT NOTICE

Federal law requires that High  
Visibility Class 2 or Class 3  
retroreflective safety apparel that  
meets ANSI/ISEA 107-2004  
Standards shall be worn at all times  
by anyone working within the KYTC  
R/W limits.

Class 3 apparel is required for  
flaggers after dark.

If any questions, please contact Matt  
Bogen at (859) 341-2700.