

**KPDES**



**KENTUCKY POLLUTANT  
DISCHARGE ELIMINATION  
SYSTEM**

**PERMIT**

**PERMIT NO.:** KYG200000

**AI NO.:** 35050

**AUTHORIZATION TO DISCHARGE UNDER THE  
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**Pursuant to Authority in KRS 224,**

Small Municipal Separate Storm Sewer Systems (MS4)

**are authorized to discharge**

Stormwater runoff from small MS4s to receiving waters of the Commonwealth in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.

**to receiving waters named**

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

**in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.**

This permit shall become effective on May 1, 2018.

This permit and the authorization to discharge shall expire at midnight, April 30, 2023.

March 30, 2018

**Date Signed**

A handwritten signature in black ink, which appears to read "Sara J. Anderson", is written over a horizontal line.

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

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601**

Printed on Recycled Paper

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

<b>1. APPLICABILITY .....</b>	<b>4</b>
1.1. Authorized Discharges.....	4
1.2. Co-Permittees.....	5
1.3. Obtaining Authorizations.....	5
<b>2. PERMIT REQUIREMENTS.....</b>	<b>7</b>
2.1. Legal Authority Requirements.....	7
2.2. Stormwater Quality Management Program .....	7
2.3. SWQMP Review and Modification .....	15
2.4. Total Maximum Daily Loads and Impaired Waters .....	16
2.5. Implementation of a small MS4 Program Monitoring Plan.....	16
2.6. Qualifying Local Program .....	17
2.7. Small MS4 Training.....	17
2.8. Fiscal Requirements.....	17
<b>3. REPORTING .....</b>	<b>19</b>
3.1. Reporting Requirements .....	19
3.2. Certification .....	19
<b>4. STANDARD CONDITIONS FOR KPDES PERMITS.....</b>	<b>21</b>
<b>5. OTHER CONDITIONS .....</b>	<b>23</b>
5.1. Schedule of Compliance .....	23
5.2. Other Permits .....	23
5.3. Continuation of Expiring Permit.....	23
5.4. Reopener Clause .....	23

# **SECTION 1**

## **APPLICABILITY**

**1. Applicability****1.1. Authorized Discharges**

The permittee is authorized to discharge stormwater runoff from small MS4s to waters of the Commonwealth in accordance with narrative effluent limitations, monitoring requirements, and other conditions set forth in this Permit.

**1.1.1. Exclusions**

The following discharges are not authorized by this permit:

1. Discharges of non-stormwater into the small MS4, except where such discharges have coverage under a separate Kentucky Pollution Discharge Elimination System (KPDES) permit or where those discharges have been determined not to represent significant sources of pollution, consistent with state and federal regulations;
2. Discharges of materials resulting from a spill, except emergency discharges required to prevent imminent threat to human health or to prevent severe property damage, provided reasonable and prudent measures have been taken to minimize the impact to water quality of the discharges; and
3. Discharges of any pollutant from a small MS4 into any water for which a Total Maximum Daily Load (TMDL) for a pollutant of concern has been established prior to the issuance of this permit, unless a Stormwater Quality Management Plan (SWQMP) has been developed and is being properly implemented.

**1.1.1.1. Cross-Connection between Sanitary Sewers and Storm Sewer/MS4 Prohibited**

This permit shall not be construed to authorize the discharge of sanitary wastewater through cross connections or to authorize other illicit discharges through the small MS4, except as provided in 401 KAR 5:065.

**1.1.2. Non-Stormwater Discharges**

The MS4 is authorized to discharge the following non-stormwater sources provided that the division has not determined these sources to be substantial contributors of pollutants to the MS4:

1. Water line flushing
2. Landscape irrigation
3. Diverted stream flows
4. Rising ground waters
5. Uncontaminated ground water infiltration
6. Uncontaminated pumped ground water
7. Discharged from potable sources
8. Air conditioner condensate
9. Irrigation water
10. Springs
11. Water from crawl space pumps
12. Footing drains
13. Lawn watering
14. Individual car washing
15. Natural flows from riparian habitat and wetlands
16. Dechlorinated swimming pool discharges
17. Street wash water
18. Discharges or flows from fire fighting activities

## **1.2. Co-Permittees**

A small MS4 may obtain coverage under this general permit as a co-permittee with one or more small MS4s.

Each co-permittee is individually responsible for:

1. Permit compliance for discharges from those areas of the small MS4 where the permittee or co-permittee is the operator or owner;
2. Ensuring that the six (6) minimum control measures are implemented for those areas of the small MS4 where the permittee or co-permittee is the operator or owner; and
3. Any permit conditions that are established for specific areas of the small MS4 owned or operated by that co-permittee.

Each co-permittee is jointly responsible for compliance with annual reporting requirements, except that a co-permittee is individually responsible for any parts of the annual report that relate exclusively to those areas of the small MS4 where it is the operator.

## **1.3. Obtaining Authorizations**

1. A small MS4 may apply for and obtain an individual permit for the discharges from the small MS4. In that case, the Notice of Intent (NOI) is not a requirement of reapplication. The application will consist of the last annual report required from the previous permit, accompanied with a letter requesting that the annual report and the accompanying letter with any program updates listed serve as the application for the individual permit.
2. Newly-designated small MS4s - In order to be authorized to discharge stormwater from a small MS4, an MS4 community must submit a NOI and a copy of the SWQMP within 180 days of notice of designation. The SWQMP shall provide the details of the stormwater program and how compliance with this permit will be obtained.
3. Currently-designated small MS4s – Within thirty (30) days of the effective date of this permit, all operators of small MS4s must submit a NOI on the form provided in Appendix A of this permit.

Within 180 days of the effective date of this permit, all operators of regulated small MS4s shall submit a revised SWQMP that reflects any necessary changes to the stormwater quality management program to become compliant with this general permit, including any necessary compliance schedules.

## **SECTION 2**

### **PERMIT REQUIREMENTS**

## **2. Permit Requirements**

The permittee is required to develop, implement, enforce, and update as needed a Stormwater Quality Management Plan (SWQMP) which shall include controls intended to reduce the discharge of pollutants from its small MS4 to the Maximum Extent Practicable (MEP) consistent with 40 CFR 122.34. The SWQMP in Section 2.2 below shall provide controls that shall consist of a combination of best management practices (BMPs), control techniques and systems, design and engineering methods, public participation and education, and other appropriate provisions, designed to limit the discharge of pollutants from the small MS4 conveyances which are environmentally beneficial and technically and economically feasible. The discharges to waters of the Commonwealth shall minimize, such that receiving waters shall not be aesthetically or otherwise degraded by, floating solids, visible foam or a visible sheen on the surface of the receiving waters. The requirements of this general permit represent MEP.

### **2.1. Legal Authority Requirements**

The permittee shall establish legal authority to control discharges to and from those portions of the small MS4 over which it has jurisdiction. For newly-designated small MS4s, this legal authority must be established within 24 months of the notice of permit coverage. The legal authority may be a combination of statutes, ordinances, permits, contracts, orders, or inter-jurisdictional agreements between permittees, with adequate existing legal authority to accomplish items 1 through 5 below:

1. Control the contribution of pollutants to the small MS4 by stormwater discharges associated with construction activity and post-construction activity for new development and redevelopment projects;
2. Prohibit illicit non-stormwater discharges to the small MS4 and implement enforcement procedures and actions;
3. Prohibit the discharge of spills and the dumping or disposal of materials other than stormwater (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the small MS4;
4. Enforce compliance with ordinances, permits, contracts, or orders relating to discharge to the small MS4s; and
5. Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance with permit conditions, including the prohibition on illicit discharges to the municipal separate storm sewer.

### **2.2. Stormwater Quality Management Program**

The stormwater quality management program is an integral part of the Commonwealth's overall watershed management program, in accordance with 401 KAR 5:060 and 40 CFR 122.34 (a). Implementation of the stormwater quality management program to effectively reduce pollutants (including floatables) in discharges from municipal separate storm sewers must include program elements that address public education and outreach, public participation and involvement, illicit discharge detection and elimination, construction site runoff control, post-construction stormwater management for new development and redevelopment, and good housekeeping and pollution prevention in municipal operations. The program shall be formalized in the SWQMP. This written plan details the procedures the permittee will use to implement the required six minimum control measures, and is a dynamic document that should be modified to meet the needs of the permittee using the timeframes described in Section 2.3 of this permit.

**2.2.1. Public Education and Outreach**

1. The permittee shall implement and maintain a public education program to distribute educational materials to the community or conduct equivalent public outreach activities in the community that focus on impacts from stormwater discharges to waterbodies and the steps that the public can take to reduce pollutants in stormwater runoff. The public education program shall be designed to achieve measurable improvements in the target audiences understanding of stormwater pollution and the actions the public can take to prevent pollution. The public education and outreach activities are the sole responsibility of the permittee and any co-permittees and will be the metric to determine compliance. However, the permittee is encouraged to utilize the Inter-Local Agreements with Kentucky Transportation Cabinet (KYTC) to take advantage of the public outreach program developed by KYTC.
2. The permittee shall prioritize public education and outreach efforts to focus on pollutants impairing or threatening the local waterways.
3. The permittee shall utilize as guidance the Stormwater Education Toolkit developed by the Kentucky Transportation Cabinet with support from the Division of Water, EPA's Nonpoint Source Toolbox, found at <http://www.epa.gov/nps/toolbox/>, or substitute alternate outreach materials that provide an effective equivalent.
4. The permittee shall demonstrate that the education and outreach efforts are targeted to the appropriate audiences and balanced between policy-makers, local citizens, and other stakeholders.
5. The permittee shall measure the understanding and adoption of the targeted behaviors among the targeted audiences. The resulting measurements shall be used to direct education and outreach resources more effectively, as well as to evaluate changes in adoption of water-quality benefitting behaviors.
6. The permittee shall measure the targeted audience understanding of their impacts on water quality and the adoption of the behavior changes resulting from the permittee's public education and outreach efforts. The resulting measurements shall be used to direct education and outreach resources more effectively.
7. The permittee shall track activities relative to this program element as necessary to document compliance with permit requirements and prepare the annual system-wide report pursuant to Part III.A. of the permit.
8. The permittee should refer to the DOW's Phase II SWQMP Preparation Guidance for specific BMPs that may be used to comply with this Minimum Control Measure.

**2.2.2. Public Involvement/Participation**

1. The permittee shall implement a public involvement/participation program that complies with applicable Kentucky and local public notice requirements.
2. Activities may include representation on local stormwater management workgroups or advisory councils, public notices, and public hearings, facilitating education volunteers, storm drain marking, riparian plating, stream clean-up events, or an effective equivalent. The permittee shall provide public notice of program participation opportunities by methods designed to reach the intended audience. Newly-designated small MS4s shall implement this advertising method within 180 days of the notice of permit coverage.



3. The permittee shall track activities relative to this program element as necessary to document compliance with permit requirements and prepare the annual system-wide report pursuant to Part III.A. of the permit.
4. The permittee should refer to the DOW's Phase II SWQMP Preparation Guidance for specific BMPs that may be used to comply with this Minimum Control Measure.

### **2.2.3. Illicit Discharge Detection and Elimination**

1. Current small MS4 programs shall continue to implement and enforce an ordinance or other regulatory mechanism that prohibits illicit discharges (as defined at 40 CFR 122.26 (b) (2)) to the small MS4. Newly-designated small MS4 programs shall, within twenty-four (24) months of the notice of permit coverage, implement and enforce this required ordinance or other regulatory mechanism.
2. The permittee shall develop and maintain a storm-sewer system map showing the location of all known major outfalls, as defined herein, and the names and locations of all surface waters that receive discharges from those outfalls. The comprehensive storm sewer system map shall also include the permittee's small MS4 system (owned and/or operated by the permittee), including catch basins, pipes, ditches, flood control facilities (retention/detention ponds), post-construction water quality BMPs, and private post-construction water quality BMPs which have been approved by the MS4. If mapping is completed using Geographical Information Systems (GIS) or Computer Aided Drafting (CAD) software, the permittee shall provide to the Division of Water, at a minimum, the small MS4 boundary and the mapped infrastructure in either ESRI shape file formats (to include the .shp, .shx, and .dbf files) or geo-referenced AutoCAD drawings (.dwg file format). Permittees shall have the permit term to complete required mapping.
3. The permittee shall develop and implement a written plan to address illicit discharges including illegal dumping. Current small MS4s shall complete this plan within 90 days of the permit effective date and newly-designated small MS4s shall have this plan within twenty-four (24) months of the date of permit coverage. The Illicit Discharge Detection and Elimination Plan shall include:
  - a. Procedures for locating priority areas likely to have illicit discharges.
  - b. Procedures for field assessment activities, including dry-weather screening of representative outfalls. The recommended level of effort is twenty percent (20%) of the major outfalls per year, with all of the major outfalls being addressed this permit term. Screening shall include, at a minimum, the visual inspection of the discharge for indicators of pollutants. Indicators shall include odor, oil sheen, discoloration, and high degree of siltation or aquatic plant growth. Alternatively, the permittee shall develop an approach based on screening factors determined to be more applicable to the area than dry-weather screening of representative outfalls. This approach shall be submitted with the SWQMP to the Division of Water for review and approval before implementing. The illicit discharge detection and elimination plan may require follow-up field water-quality sampling and/or analysis or laboratory analyses to determine the pollutant source and most effective plan of action.
  - c. A mechanism and protocols in place that provide for the public reporting of spills and other discharges.

- d. Procedures to provide for the investigation of any complaints, reports, or monitoring information that indicates a potential illicit discharge, spill, or illegal dumping. The permittee shall immediately investigate problems and violations determined to be emergencies or otherwise judged urgent or severe. Where water quality impairments are deemed severe or urgent, the permittee shall promptly refer the incidents to the Department for Environmental Protection's Environmental Emergency 24-hour hotline at (502) 564-2380 or (800) 928-2380.
  - e. Timeframes for the investigation and removal of illicit discharges.
  - f. Procedure for tracing the source of an illicit discharge; including visual inspections, and when necessary, collecting and analyzing water samples, and other detailed inspection procedures.
  - g. Procedures for removing the source of the discharge; including notification of appropriate authorities, notification of property owners; follow-up inspections; and enforcement if the discharge is not eliminated.
  - h. Procedures for Illicit Discharge Program evaluation and assessment, including tracking the number and type of spills or illicit discharges identified, inspections made; and any feedback received from public education efforts.
4. The permittee shall have a mechanism and protocols in place that provide for the public reporting of spills and other discharges into the small MS4.
  5. The permittee shall provide appropriate training for municipal field staff on the identification and reporting of illicit discharges into the MS4.
  6. If, in the course of illicit discharge detection, it is demonstrated that a sanitary sewer line failure or defect is a source to the MS4, the permittee shall inform the responsible entity and the Division of Water's Regional Office. If the permittee is the responsible entity, the permittee shall proceed to remediate the discharge by following a corrective action plan or a Sanitary Sewer Overflow Plan on a schedule approved by the Division of Water.
  7. The permittee shall track activities relative to this program element as necessary to document compliance with permit requirements and prepare the annual system-wide report pursuant to Part III.A. of the permit.
  8. The permittee should refer to the DOW's Phase II SWQMP Preparation Guidance for specific BMPs that may be used to comply with this Minimum Control Measure.

#### **2.2.4. Construction Site Stormwater Runoff Control**

1. Current small MS4s shall continue to implement and enforce an ordinance or other regulatory mechanism that reduces pollutants in any stormwater runoff to the small MS4 from construction activities that disturb one acre or more, and active construction sites less than one acre in size that are part of a larger common plan of development or sale, located within the MS4 upon issuance of this permit. Newly-designated MS4 programs shall have twenty-four (24) months to develop, implement and enforce an ordinance or other regulatory mechanism to reduce pollutants in any stormwater runoff to your small MS4 from construction activities that disturb one acre or more, and active construction sites less than one acre in size that are part of a larger common plan of development or sale, located within the MS4.

The ordinance or other regulatory mechanism shall include, at a minimum:

- a. Requirements for construction site operators to implement appropriate erosion and sediment control BMPs that, at a minimum, shall be protective as Kentucky's General Permit for Stormwater Construction sites (KYR100000).
  - b. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.
  - c. Requirements for demonstration that a NOI for coverage under the stormwater construction general permit, an application for a stormwater construction individual permit, or the BMP plan of a KPDES Permit has been submitted for those sites one acre and greater, or less than one acre in size that are part of a larger common plan of development or sale.
  - d. Establishment of authority for site-plan review to affirm compliance with local ordinances, which incorporate consideration of potential water-quality impacts.
  - e. Establishment of authority for receipt and consideration of information submitted by the public.
  - f. Establishment of authority for site inspections and enforcement of control measures. Factors such as the nature of construction activity, topography, and the characteristics of soils and receiving water quality should be considered in determining the frequency of inspection.
2. The permittee shall develop, implement, and enforce a program to reduce pollutants in stormwater runoff from active construction sites. The program to be implemented shall include, at a minimum:
  - a. A permitting process with plan review to affirm compliance with local ordinances, inspection, and enforcement capability for all projects subject to this program as described above.
  - b. Procedures for periodic inspections of all known permitted construction sites during construction to verify proper installation and maintenance of required erosion and sediment controls. A recommended level of effort for periodic inspections should be all active sites monthly and all new sites within two (2) weeks after initiation of land disturbance. Enforcement shall be conducted as appropriate based on the inspection.
  - c. Development and implementation of an enforcement strategy that includes escalating enforcement remedies to respond to issues of non-compliance.
  - d. A procedure must be developed to inventory projects and prioritize sites for inspection. The inventory should track the results of inspections, enforcement procedures taken, if any. A summary of inspection and enforcement activities that have been conducted shall be included in the annual report.
  - e. A training program for MS4 staff in the fundamentals of erosion prevention and sediment control and in how to review erosion and sediment control plans or Stormwater Pollution Prevention Plans.
  - f. Procedures for providing educational and training measures for construction-site operators or, if applicable, shall adopt procedures for notifying construction-site operators of

available education and training opportunities.

3. The permittee shall track activities relative to this program element as necessary to document compliance with permit requirements and prepare the annual system-wide report pursuant to Part III.A. of the permit.
4. The permittee should refer to the DOW's Phase II SWQMP Preparation Guidance for specific BMPs that may be used to comply with this Minimum Control Measure.

#### **2.2.5. Post-Construction Stormwater Management in New Development and Redevelopment**

Unless otherwise specified, existing MS4s must continue to implement the post-construction requirement outlined in this section. Newly-designated small MS4s must complete these requirements within twenty-four (24) months from permit coverage.

1. Post-Construction Stormwater Management refers to the activities that take place after construction occurs, and includes structural and non-structural controls to obtain permanent stormwater management over the life of the property's use.

The post-construction BMPs chosen should be appropriate for the local community, shall be designed to minimize the impact of stormwater discharge on the water quality and stability of local receiving streams. The design of post-construction controls shall attempt to maintain pre-development runoff conditions (peak flow and volume) or be as equally protective.

- a. Permittees shall develop, adopt, and implement an ordinance or other regulatory mechanism that addresses post-construction stormwater runoff from new and redevelopment projects that disturb at least one acre, and projects less than one acre that are part of a larger common plan of development or sale, located within the MS4.
- b. Current MS4 programs shall review and update, if necessary, local requirements for post-construction controls for all new and redevelopment projects. The post-construction control requirements shall include an on-site stormwater runoff quality treatment standard.

The standard shall be based, at a minimum, on an analysis of precipitation records to determine the equivalent surface depth of runoff (e.g. 0.75 inches) produced from an eightieth (80<sup>th</sup>) percentile precipitation event. The standard shall specify design parameters (e.g. a design storm) for the sizing of post-construction controls that will require the annual runoff occurring in a typical year from the site is managed through water quality control practices. The proposed local standard will require, in combination or alone, management measures that are designed, built and maintained to treat, filter, flocculate, infiltrate, screen, evapo-transpire, harvest and reuse stormwater runoff, or otherwise manage the stormwater runoff quality.

Additionally, the permittee's local water-quality based standard for redevelopment projects shall reflect local community issues, including water-quality impairments.

- c. For those areas of development and re-development that result in a new or expanded discharge from the MS4 to high-quality waters, the ordinance or other regulatory mechanism shall include standards for runoff control that are considered sufficient to protect existing in-stream water uses.

For projects that cannot meet this water-quality treatment standard, the permittee may adopt two alternatives: off-site mitigation and payment-in-lieu.

- a. The off-site mitigation option entails implementing measures to enhance infiltration/evapotranspiration/reuse that may be implemented at another location in the

same sewershed/watershed as the original project, approved by the permittee(s). The permittee shall identify priority areas within the sewershed or watershed in which mitigation projects can be completed.

- b. The payment-in-lieu option allows the owner/operator of a construction site that disturbs at least one acre or a project that is less than one acre or a project that is less than one acre but is part of a larger common plan of development or sale to choose to make a payment to the permittee, in lieu of implementing post-construction BMPs. The permittee will apply these in-lieu funds to a public stormwater project.

For either of these options to be available, the permittee must ensure the proper legal authority is in place, must create an inventory of appropriate mitigation projects, and must develop appropriate institutional standards and management systems to evaluate and track transactions.

2. Within twelve (12) months of the effective date of the permit, newly-designated MS4 permittees shall review and evaluate municipal policies related to building codes, or other local regulations, with a goal of identifying regulatory and policy impediments to the installation of green infrastructure, such as green roofs, porous pavements, water harvesting devices, grassed swales instead of curb and gutter, rain barrels and cisterns, downspout disconnection, etc. Permittees shall report the findings of this evaluation of municipal policies and may use a tool such as the EPA's Water Quality Scorecard. Newly-designated permittees are those that obtained coverage under the general permit after March 31, 2015.
3. The permittee shall develop and implement project review, approval, and enforcement procedures for new development and redevelopment projects that disturb greater than one acre, and projects less than one acre that are part of a larger common plan of development or sale. Further requirements for project review and approval are as follows:
  - a. Develop written procedures for the site-plan review and approval process and a required re-approval process when changes to stormwater management measures are required.
  - b. Develop written procedures for a post-construction process to demonstrate and document that post-construction stormwater measures have been installed per design specifications, which includes enforceable procedures for bringing noncompliant projects into compliance.
4. The permittee shall require BMP owners of all new development and redevelopment projects to establish and enter into long-term maintenance practices. Alternatively, the permittee may establish other enforceable mechanisms for requiring long-term maintenance of structural and non-structural BMPs. Such authorities shall allow the MS4, or its designee, to conduct inspections of the management practices and also account for transfer of responsibility in leases and/or deed transfers. The agreement shall also allow the MS4, or its designee, to perform necessary maintenance when the owner/operator has not performed the necessary maintenance.
5. In order to verify all stormwater management practices are operating correctly and are properly maintained, the permittee shall establish and implement written procedures for inspections of a representative number of installed BMPs annually, with the goal of completing an inspection of all BMPs within the MS4 during the permit cycle. Alternatively, the permittee may develop a program for BMP owner self-inspection documentation with oversight by the permittee(s).
6. The permittee shall create a program to notify the BMP owner or operator of deficiencies during a maintenance inspection. The permittee must conduct subsequent inspections to ensure completion

of required repairs. If repairs are not made, the permittee shall enforce its correction orders and, if need be, perform the necessary work.

7. The permittee shall demonstrate compliance with the requirements for post-construction controls by summarizing the following in the annual report. A summary of the number and types of projects that the permittee reviewed for new and redevelopment considerations and the types of BMPs installed including green infrastructure and buffers.
  - a. A written summary of management practice maintenance inspections conducted by the permittee(s), including a summary of the number requiring maintenance or repair, and the number of enforcement actions taken.
  - b. A written summary of any changes to local ordinances to accommodate green infrastructure alternatives.
  - c. A written summary of any training that MS4 staff has received in the fundamentals of long-term stormwater-quality treatment management practices and in how to review such practices for long-term protection, operation and maintenance.
8. The permittee shall track activities relative to this program element as necessary to document compliance with permit requirements and prepare the annual system-wide report pursuant to Part III.A. of the permit.
9. The permittee should refer to the DOW's Phase II SWQMP Preparation Guidance for specific BMPs that may be used to comply with this Minimum Control Measure.

#### **2.2.6. Pollution Prevention/Good Housekeeping for Municipal Operations**

1. The permittee must develop and implement a written Operation and Maintenance (O & M) plan that includes a training component for municipal staff with the goal of preventing or reducing pollutant runoff from municipal operations.
2. The O & M plan must include employee training to prevent and reduce stormwater pollution resulting from activities such as parks and open space maintenance, fleet and building maintenance, new construction and land disturbances, stormwater system maintenance, and green infrastructure maintenance. The permittee is encouraged to utilize training materials that are available from the Environmental Protection Agency (EPA), the Division of Water, and other organizations.
3. The O & M plan shall include an inventory of municipal facilities owned and operated by the MS4 permittee, including, maintenance activities, maintenance schedules, and ongoing written inspection procedures for structural and non-structural BMPs. These BMPs shall be designed to reduce floatables and other pollutants discharged from the separate storm sewers; provide controls for reducing the discharge of pollutants from municipally-owned and operated streets, roads, highways, municipal parking lots, maintenance and storage yards with exposed bulk materials and/or fuel storage facilities that have the potential to discharge pollutants of concern to the storm sewer system, and fleet maintenance shops with outdoor storage areas. BMPs are needed to control runoff from salt/sand storage locations and snow disposal areas operated by the permittee(s), as well as waste transfer stations. The O & M plan must incorporate procedures for properly disposing of waste (such as dredge spoil, accumulated sediments, floatables, and other debris) removed from the separate storm sewers and areas listed above.

4. The permittee shall track activities relative to this program element as necessary to document compliance with permit requirements and prepare the annual system-wide report pursuant to Part III.A. of the permit.
5. The permittee should refer to the DOW's Phase II SWQMP Preparation Guidance for specific BMPs that may be used to comply with this Minimum Control Measure.

### **2.3. SWQMP Review and Modification**

1. The permittee shall annually evaluate the effectiveness of the SWQMP and BMPs implemented to comply with this general permit. The permittee shall modify ineffective BMPs, and modify ineffective schedules of effective BMPs.
2. The permittee may modify the SWQMP during the life of the permit in accordance with the following procedures:
  - a. Modifications that add but neither subtract nor replace, components, controls, or requirements, may be made by the permittee at any time. A description of the modification shall be included in the Annual Report;
  - b. Modifications that replace an ineffective or infeasible stormwater control, which is specifically identified in the SWQMP along with an alternate stormwater control, may be made by the permittee at any time. A description of the replacement stormwater control shall be included in the following Annual Report and the following information:
    - i. An analysis of why the former stormwater control was ineffective or infeasible (including cost-prohibitive);
    - ii. Expectations on the effectiveness of the replacement stormwater control; and
    - iii. An analysis of why the replacement stormwater control is expected to achieve the goals of the BMP which this control replaced.
  - c. Modifications to adjust the schedule for maintenance activities or the frequency of inspections identified in the SWQMP may be made annually by the permittee. The permittee must include in the Annual Report a description of the adjustment to the schedule and the following information:
    - i. An analysis of why the former schedule was ineffective or infeasible; and
    - ii. Expectations on the effectiveness of the replacement schedule;
  - d. Modifications included in the Annual Report shall be signed by the permittees affected by that modification, and shall include a certification that the permittee was given an opportunity to comment on proposed changes; and
  - e. The permittee shall implement the SWQMP for all new areas added to the small MS4 (or the areas for which the permittee(s) becomes responsible for implementation stormwater quality controls) as expeditiously as practicable. A description of the implementation schedule shall be provided in the Annual Report. Implementation of the program in any new area shall consider the plans in the SWQMP of the previous small MS4 ownership.
3. The permittee may proceed with any uncompleted programs from the previous permit cycle to provide the continuation of positive activities towards improvement of water quality. A compliance

schedule shall be submitted to the Division of Water for approval that delineates the tasks and the anticipated compliance date.

4. The content and provisions of the SWQMP are not considered permit conditions. The SWQMP is an implementation plan to be utilized as a tool by the permittee to facilitate compliance with the six program elements outlined in this permit.

#### **2.4. Total Maximum Daily Loads and Impaired Waters**

If during the permit term, there is an approved or existing TMDL for an impaired waterbody into which the permitted small MS4 discharges, and for which the small MS4 causes or contributes to water quality impairment(s), the Division of Water will review the TMDL and applicable wasteload allocation(s) to determine if the current SWQMP is adequately achieving the MEP standard. If current discharges from the small MS4 are not performing as expected, the Division of Water will notify the permittee of that finding and require that the SWQMP identified in this general permit be modified. This modification will occur in conjunction with the normal SWQMP updating process, in accordance with 2.3 of this Permit relating to Plan Implementations and Modifications. This modification will include the addition of applicable and appropriate BMPs to advance the goals of the TMDL within a reasonable timeframe. The TMDL will be implemented by the small MS4 to the MEP. The Division of Water may require the small MS4 to obtain an individual MS4 permit.

To implement an approved TMDL established for a pollutant of concern in the permittee's stormwater discharges, the permittee shall identify the impaired stream segment(s) and/or tributaries to those impaired stream segments and the location of all known MS4 major outfalls discharging a pollutant of concern under the TMDL to those segments or occurring within those segments. The permittee shall evaluate the discharge load associated with the identified MS4 major outfalls for the pollutant, including monitoring, reporting and/or otherwise, at issue. Prior to any reopening of this permit under Part III.C., the permittee shall consider and propose, to the maximum extent practicable, applicable and appropriate best management practices guided by the wasteload goal of the TMDL, and a schedule of implementation for those Best Management Practices. Applicable limitations, conditions and requirements contained in the TMDL are also to be addressed in the SWQMP. Nothing herein shall prevent the permittee from pursuing a variance or exceptions based upon a use attainability analysis or the criteria for exceptions set forth in 401 KAR 10:031.

For impaired waters that lack a TMDL, the permittee shall identify impaired waters into which the MS4 discharges, and evaluate its Best Management Practices to be included in the SWQMP, at a minimum, this information should be updated in the annual report following the finalization of the Kentucky's Section 303(d) list of impaired waters (every two years) with respect to any new or expanded MS4 discharges for pollutants of concern to ensure effectiveness of post construction control requirements to achieve the MEP standard, evaluation may be conducted on a watershed basis.

#### **2.5. Implementation of a small MS4 Program Monitoring Plan**

The permittee shall implement an appropriate monitoring program that evaluates the effectiveness of the small MS4 program and provides feedback for the permittee to change or improve the stormwater quality management program appropriately. The small MS4 program monitoring plan, as approved by the Division of Water, shall be implemented during the current permit period.

The monitoring program shall, at a minimum, contain:

1. A brief narrative of the permittee's proposed monitoring program;
2. A map of the Urbanized Area showing the outfalls including names of the receiving streams;
3. Using the information contained in the most recent 303(d) list, information on the water quality attainment status (i.e., fully supporting, partially supporting, or non-supporting) of the local small MS4 receiving streams including pollutants of concern;



4. An inspection checklist for visual monitoring of the major outfalls, including basic information such as inspection date/time, latitude/longitude, weather conditions, and presence of visual markers for pollution (i.e., foam, excessive algae growth, oil deposits, and excessive sedimentation);
5. Documentation to verify performance of the visual monitoring, including but not limited to, completed inspection checklists and photographs; and
6. Should include a glossary of terms, standard operation procedures, and any reference materials cited.

Current small MS4s shall immediately implement this plan; while newly-designated small MS4s have twenty-four (24) months to develop this plan.

## **2.6. Qualifying Local Program**

A Qualifying Local Program (QLP) is a small MS4 stormwater management program for stormwater discharges associated with construction activity that has been formally approved by the Division and EPA. If a construction site is within the jurisdiction of the small MS4 with QLP designation and has obtained a notice of coverage from a QLP, the operator of the construction activity is authorized to discharge stormwater associated with construction activity under this general permit without seeking a permit from the Division.

A qualifying local program (QLP) is a small MS4 that has:

1. Completed more than two small MS4 permit cycles;
2. Proven enforcement capability; and
3. An established record keeping and tracking system for issuing coverages, inspections, and enforcement activities.

## **2.7. Small MS4 Training**

Each permittee shall designate at least one person who is responsible for permit implementation to receive twelve (12) hours of documented training per permit year. The training must be related to furthering the goals and objectives of the small MS4 general permit requirements.

## **2.8. Fiscal Requirements**

Funding shall be established and maintained to ensure the accomplishment of the activities required by this permit.

## **SECTION 3**

### **REPORTING**

### **3. Reporting**

#### **3.1. Reporting Requirements**

The permittee shall prepare an annual system-wide report (Annual Report) to be submitted no later than April 15th of the year following the calendar year covered by the report. Permittees are encouraged to utilize KDOW's General Permit Annual Compliance Report form. The Annual Report shall include at a minimum:

1. An overall evaluation of the stormwater quality management program developments and progress including: major findings such as water-quality improvements or degradation, major accomplishments, overall program strengths/weaknesses; and future direction of the program. The permittee shall state an overall assessment of the effectiveness of the SWQMP taking into account water quality/watershed improvements;
2. The number of illicit discharges discovered; describing discharge and resolution;
3. A summary of inspections and enforcement actions for regulatory programs;
4. A summary of installed BMPs for post-construction stormwater management for new and redevelopment;
5. A summary of pollution prevention and good housekeeping BMPs performed at the municipal operations;
6. The status of implementation and proposed changes to the stormwater quality management program, including assessment of controls and specific improvements or degradation to water quality; and
7. Any improvements in water quality due to watershed activities.
8. The Annual Report shall be submitted electronically. Permittees can access the system at the following web address: <https://dep.gateway.ky.gov/eForms/default.aspx?FormId=50>

The permittee shall retain records accumulated pursuant to this general permit for no fewer than three years following the termination of this general permit.

#### **3.2. Certification**

All applications or reports submitted to the Division of Water (DOW) shall be signed and certified pursuant to 401 KAR 5:060. Each report shall contain the following completed declaration:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Executed on the day of \_\_, month, year.  
(Signature)(Title)"

## **SECTION 4**

### **STANDARD CONDITIONS**

**4. Standard Conditions for KPDES Permits**

The permittee is advised that applicable KPDES permit conditions in KPDES regulation 401 KAR 5:065, Section 1, will apply to all discharges authorized by this permit.

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

## **SECTION 5**

### **OTHER CONDITIONS**

**5. OTHER CONDITIONS****5.1. Schedule of Compliance**

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated.

**5.2. 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.

**5.3. Continuation of Expiring Permit**

In the event the permit expires prior to reissuance by DOW, the conditions and requirements of this version of KYG20 shall continue in effect until DOW reissues the permit. However, new or expanded coverages cannot be authorized until the permit is reissued.

**5.4. 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:

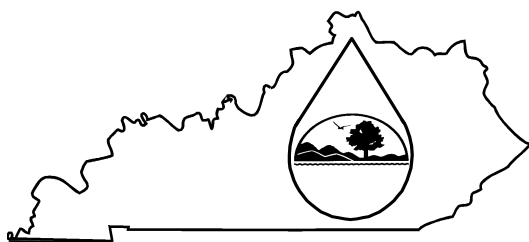
1. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
2. Controls any pollutant not limited in the permit.

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

# **APPENDIX A**

## **NOTICE OF INTENT (NOI)**





**Kentucky Pollutant Discharge Elimination System  
(KPDES)**  
Notice of Intent (NOI)  
for Stormwater Discharges from Small  
Municipal Separate Storm Sewer Systems (sMS4)  
KPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a KPDES permit issued for storm water discharges from a small municipal separate storm sewer system (sMS4). Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit.

**ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM** (See Attached Instructions)

**I. Permittee Information (attach co-permittee information to this application, if applicable)**

<b>Name:</b>		<b>Contact Person:</b>	
<b>Address:</b> (If PO Box, include street address)		<b>Phone:</b>	
<b>City, State, Zip Code:</b>			

**II. Storm Sewer Map**

Submit a storm sewer system map indicating the location of all major storm sewer outfalls and names and locations of the receiving streams, and delineation of watershed drainage areas.

**III. Minimum Controls:**

Submit a report of the best management practices already implemented or scheduled to be implemented to meet the minimum control measures, including any measurable goals to aid in the development and implementation of the controls (an MS4's existing SWQMP and/or annual report may be submitted to satisfy this requirement). Indicate by marking the appropriate box whether you or another entity is responsible for the respective control measure. If another entity, indicate the name of the responsible party next to the appropriate box.

Are you responsible for the control measure?

If no, indicate the responsible party.

<b>A. Public Education and Outreach</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>B. Public Involvement and Participation</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>C. Illicit Discharge Detection and Elimination</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>D. Construction Site Runoff Control</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>E. Post Construction Management for Development and Re-Development</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>F. Pollution Prevention and Good Housekeeping for Municipal Operations</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

**IV. Certification:** I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**Printed or Typed Name:**

**Signature:**

**Date:**

## **Kentucky Pollutant Discharge Elimination System (KPDES) Instructions**

### **Notice of Intent (NOI) for Storm Water Discharges Associated with Small Municipal Separate Storm Sewer Systems (SMS4) To Be Covered Under the KPDES General Permit**

#### **WHO MUST FILE A NOTICE OF INTENT (NOI) FORM**

The operator of a small MS4, in accordance with 40 CFR Parts 9, 122, 123, and 124 and 401 KAR 5:060, must submit a NOI to obtain coverage under the small MS4 KPDES Stormwater General Permit. Any questions regarding whether a permit is needed under the small MS4 KPDES Stormwater Program can be addressed by the **Kentucky Division of Water at (502) 564-3410**.

#### **WHERE TO FILE NOI FORM**

NOIs must be completed and submitted online. Applicants can access the system at the following web address: <https://dep.gateway.ky.gov/eportal/default.aspx>

#### **COMPLETING THE FORM**

Type or print legibly in the appropriate areas only. Any questions regarding the completion of this form should be directed to the MS4 Coordinator at (502) 564-3410 or [SWPBSupport@ky.gov](mailto:SWPBSupport@ky.gov).

#### **SECTION I - Permittee Information**

Give the legal name of the person, firm, public organization, or entity legally designated as the Permittee responsible for maintaining compliance with the approved Stormwater Phase II MS4 permit. Enter the complete address and phone number of the operator of the small MS4 system(s) and co-permittees bound by the Stormwater Phase II MS4 permit as a part of this NOI. Attach a list of co-permittees if applicable. Also, include co-permittee list and legally binding MOU's in the Stormwater Quality Management Plan (SWQMP).

#### **SECTION II – Storm Sewer Map**

Include a detailed map of the storm sewer system indicating all storm water outfalls to the waters of the Commonwealth and delineating the separate watershed drainage areas.

#### **SECTION III – Minimum Control Measures**

Include the current status of the listed control measures. If another entity is responsible for a particular control measure, indicate the entity as appropriate.

#### **SECTION IV - CERTIFICATION**

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

*For a municipality, state, Federal, or other public facility:* by either a principal executive officer or ranking elected official.



MATTHEW G. BEVIN  
GOVERNOR

CHARLES G. SNAVELY  
SECRETARY

**ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

AARON B. KEATLEY  
COMMISSIONER

300 SOWER BOULEVARD  
FRANKFORT, KENTUCKY 40601

March 30, 2018

Re: Response to Public Notice Comments  
KPDES No.: KYG200000  
AI No.: 35050

Dear Commenter:

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

**FACT SHEET**

- Comment 1:** Commenter requested including an explicit statement in the fact sheet concerning the implementation of this permit under Option 1 of the recent Phase II MS4 remand.
- Response 1:** A paragraph concerning the implementation of the permit under Option 1 of the recent Phase II MS4 remand has been added to Section 1.6 Remand Rule for Phase II MS4s of the final Fact Sheet.
- Comment 2:** Section 3. Item J. Definitions: Commenter noted that the definition for Major Outfall includes the following – “or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage of 2 acres or more)”. The commenter noted that this definition is from 40 CFR 122.26 which appears to apply only to large and medium MS4s and suggests removing from this definition as this permit is for small MS4s.
- Response 2:** 40 CFR 122.26 does not apply to only large and medium MS4s and applies more broadly to all NPDES-regulated stormwater discharges, which includes the small MS4s. Therefore, the definition for “Major Outfall” is included in the definitions in the final Fact Sheet.
- Comment 3:** Section 3, Item K Definitions: Commenter suggested to insure flexibility in the use of MEP in Kentucky, DOW should review the definition of MEP provided in the Fact Sheet. The definition of MEP refers the reader to 40 CFR 122.34. The commenter suggested the date of the promulgation of this federal regulation be included, for without a date Kentucky's regulation is amended with no opportunity to determine if a specific and local change should be made.

- Response 3:** The date of December 9, 2016, has been added to the definition of “MEP” or “Maximum Extent Practicable” in the final Fact Sheet.
- Comment 4:** Commenter stated that the federal regulations appear to be quite flexible when describing what could be considered when addressing MEP. Kentucky should take advantage of this flexibility and include the ability to consider costs when selecting a BMP. The regulation focuses on remedies to be included in the permit terms and conditions to reduce the discharge of pollutants from the MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The referenced regulation does not preclude Kentucky from considering cost in remedy selection. The commenter noted that one of EPA’s changes to their 2009 rule was the addition of “infeasible” to the MEP definition. Kentucky should make this addition to its definition found in the Fact Sheet.
- Response 4:** The term “infeasible” has not been added to the definition. Compliance with the KYG20 permit applies to MS4s, not operators of construction sites. Developers and operators should base compliance with the local MS4 community’s requirements. This permit does not preclude the local MS4 communities from choosing BMPs that will consider costs to the operators of construction sites.
- Comment 5:** Section 3. Item P Definitions: Commenter noted the definition for Outfall refers to open conveyances, and asks DOW to define open conveyances.
- Response 5:** A definition for “open conveyances” has been added to the final Fact Sheet.
- Comment 6:** Section 3. Item Y Definitions: Commenter requested the term “wet weather conveyances” be removed since it was not used in the fact sheet or the permit. Suggests replacing this definition with a definition of open conveyances.
- Response 6:** The definition for “wet weather conveyances” was removed from the final Fact Sheet.
- Comment 7:** Section 4.1. Maximum Extent Practicable (MEP): Commenter suggested that the first paragraph, last sentence is missing a phrase from the current permit and should be revised to “this requires that the permittee use known, available, and reasonable methods of prevention and control of stormwater discharge”.
- Response 7:** The final Fact Sheet has been revised to include this statement.
- Comment 8:** Section 4.2.1. Public Education and Outreach: Commenter suggested revising the second paragraph, second sentence, to “Public support is particularly beneficial when operators of small MS4s attempt to seek public cooperation and volunteers to help implement aspects of the program”.
- Response 8:** The second sentence of the second paragraph has been revised to include the commenter’s suggestion.
- Comment 9:** Section 4.3. Total Maximum Daily Load and Impaired Waters: Commenter noted that under the Total Maximum Daily Load and Impaired Waters section is displaying an error message.
- Response 9:** This error message has been corrected.

## **PERMIT**

- Comment 10:** Section 1.1.1. Exclusions: A commenter suggested that the first part of the sentence in item 3 should be revised to “Discharges of the pollutant(s) of concern from a small MS4...” stating this clarifies the focus is on the pollutant of concern and not any regulated pollutant.
- Response 10:** The suggestion has not been accepted; the Division’s intention is clearly stated as currently written.
- Comment 11:** Section 2.: Commenter suggested removing the following sentence “The discharges to waters of the Commonwealth shall not produce floating solids, visible foam or a visible sheen on the surface of the receiving water” or replace “shall not produce” with “shall minimize”. Section 2.2 of the permit uses the phrase “effectively reduce pollutants (including floatables)”, which is more appropriate for MS4 discharges than “shall not produce” and supports the MEP standard.
- Response 11:** The final permit has been revised to “...shall minimize, such that receiving waters shall not be aesthetically or otherwise degraded by...”.
- Comment 12:** Section 2.2. Stormwater Quality Management Plan: The first sentence refers to 40 CFR 122.26(d) (2); commenter questioned if this is the correct reference to use in this section. It refers to “Application requirements for large and medium MS4 discharges.”
- Response 12:** The final permit has been revised to reference the correct federal regulation (40 CFR 122.34(a)).
- Comment 13:** Section 2.2.1. Public Education and Outreach: Commenter requested returning the existing requirements that the permittee track and maintain records of public education and outreach activities and include a summary of this information in the annual report to the current permit.
- Response 13:** The final permit has been revised to include the existing requirements that the permittee shall track and maintain records of public education and outreach activities and include a summary of this information in the annual report.
- Comment 14:** Section 2.2.1. Public Education and Outreach: Commenter requested the references including Inter-local agreements with KYTC be returned to the final permit.
- Response 14:** The final permit has been revised to include the references to Inter-local agreements with KYTC.
- Comment 15:** Section 2.2.1. Item 1 Public Education and Outreach: Commenter suggested removing the last sentence, since it is repeated in Section 2.2.1. Item 2.
- Response 15:** The sentence has been removed in the final permit.
- Comment 16:** Section 2.2.2. Public Involvement/Participation: Commenter requested returning the existing requirements that the permittee track and maintain records of public involvement and participation activities and include a summary of this information in the annual report to the current permit.
- Response 16:** The final permit has been revised to include the existing requirements that the permittee shall track and maintain records of public involvement and participation activities and include a summary of this information in the annual report.

- Comment 17:** Section 2.2.3. Item 1 Illicit Discharge Detection and Elimination: Commenter questioned if the definitions referenced in 40 CFR 122.26 (b) (2) in the first sentence apply to small MS4s. If not, a commenter suggests removing or revising the reference.
- Response 17:** The definitions referenced do apply to small MS4s, and have not been removed from the final permit.
- Comment 18:** Section 2.2.3. Item 2. Illicit Discharge Detection and Elimination: Commenter suggested that during previous MS4 stakeholder meetings, the permittees requested and DOW agreed to provide a GIS layer with surface waters to be used in the mapping. Commenter requests that the permit incorporates language that would fulfill this request.
- Response 18:** This GIS layer can be found at <http://watermaps.ky.gov> and is noted in the Guidance Manual.
- Comment 19:** Section 2.2.3. Item 2. Illicit Discharge Detection and Elimination: Commenter suggested the map required by the MS4 permit, should only require post-construction water quality BMPs and private post-construction water quality BMPs approved by the MS4, and not post-construction water quality BMPs that have not been approved. Please revise appropriately.
- Response 19:** The final permit has been revised to include this suggestion.
- Comment 20:** Section 2.2.3. Item 3. Illicit Discharge Detection and Elimination: Commenter noted that in the draft permit current small MS4s have 180 days to develop and implement a written plan to address illicit discharges including illegal dumping. Commenter suggests that since the existing permit had already required such a program to be implemented and enforced, current MS4s do not need as much time to develop and implement such a plan. Commenter suggests reducing the timeframe to 60 or 90 days.
- Response 20:** The Division agrees and has revised the timeframe for developing and implementing a written plan to address illicit discharges in the final permit to 90 days.
- Comment 21:** Section 2.2.3. Item 3.e. Illicit Discharge Detection and Elimination: Commenter suggested including in the permit a minimum timeframe for investigation and removal of illicit discharges (i.e., 3 days).
- Response 21:** Due to the general nature of the permit and to provide flexibility to the MS4s, the final permit has not been revised to specify minimum timeframes for investigation and removal of illicit discharges. However, the required written Illicit Discharge Detection and Elimination plan should delineate timeframes for investigation and removal of illicit discharges.
- Comment 22:** Section 2.2.3. Item 3.g. Illicit Discharge Detection and Elimination: A commenter suggested the following sentence “technical assistance for elimination of the discharge” could result in liability issues for the MS4s and should be removed.
- Response 22:** “Technical assistance for elimination of the discharge” has been removed from the final permit.
- Comment 23:** Section 2.2.3. Item 7. Illicit Discharge Detection and Elimination: A commenter requested returning the existing requirements that the permittee track and maintain records of illicit discharge detection and elimination activities and include a summary of this information in the annual report to the current permit.

- Response 23:** The final permit has been revised to include the existing requirements that the permittee shall track and maintain records of illicit discharge detection and elimination activities and include a summary of this information in the annual report.
- Comment 24:** Section 2.2.4. Item 2.b. Construction Site Stormwater Runoff Control: Under the construction section, the draft permit gave a “recommended level of effort for periodic inspections...all active sites monthly and all new sites within two (2) weeks after initiation of land disturbance.” Rather than having this as a recommended level of effort, a commenter suggested it would be better to specify in the final permit a minimum inspection frequency.
- Response 24:** Due to the general nature of the permit and to provide flexibility to the MS4s, the final permit was not revised to specify minimum inspection frequencies. Instead, the final permit requires the MS4 to develop procedures for periodic inspections of all known permitted construction sites to verify proper installation and maintenance of required erosion and sediment controls.
- Comment 25:** Section 2.2.4. Item 3. Construction Site Stormwater Runoff Control: Commenter requested returning the existing requirements that the permittee track and maintain records of construction stormwater runoff control activities and include a summary of this information in the annual report to the current permit.
- Response 25:** The final permit has been revised to include the existing requirements that the permittee shall track and maintain records of construction site stormwater runoff control activities and include a summary of this information in the annual report.
- Comment 26:** Section 2.2.5. Item 1. Post-Construction Stormwater Management in New Development and Redevelopment: In the draft permit, this section gave existing MS4s 180 days to complete the post-construction requirements. Commenter noted that most of these requirements were already included in the existing permits, so MS4s should already be implementing them and do not need an additional 180 days. Commenter suggested DOW should consider shortening the timeframe or require the permittee to “continue” with its existing requirements.
- Response 26:** The Division agrees and the term “continue” has been added to the final permit.
- Comment 27:** Section 2.2.5. Item 1.b. Post-Construction Stormwater Management in New Development and Redevelopment: Commenter stated to be consistent with the current permit and Section 5.1. of the draft Fact Sheet, the locally-based stormwater runoff standard language should be revised as follows, “The standard should be based, at a minimum, on an analysis of precipitation records to determine the equivalent surface depth of runoff (e.g. 0.75 inches) produced from an 80<sup>th</sup> percentile precipitation event.”
- Response 27:** This language has been revised in the final permit to include the aforementioned statement.
- Comment 28:** Commenter stated that “KDOW ignores current EPA policy and a court decision by requiring post-construction control that “...shall include an on-site stormwater runoff quality treatment standard”. The commenter also stated that what should be included is language from EPA’s Preamble to their 2016 Rule that permit requirements may be expressed in narrative form as long as they are clear, specific, and measurable and numeric standards are not necessary. Commenter suggested Kentucky should abandon this concept because it is more stringent than the federal requirements and would require the development community and small local governments to bear additional costs that are not necessary.



- Response 28:** Lack of the commenter's citation directing the Division to a specific court decision notwithstanding, 40 CFR 134(b)(5)(i) states "The permit must identify the minimum elements and require the development, implementation, and enforcement of a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The permit must ensure that controls are in place that would prevent or minimize water quality impacts." The on-site stormwater runoff water quality treatment standard developed by the Division along with MS4 stakeholder input has been in the Phase II MS4 permit since 2010 and has not been removed from the final permit as it is considered the Division's interpretation of MEP for this requirement.
- Comment 29:** Section 2.2.5. Item 1.b. Post-Construction Stormwater Management in New Development and Redevelopment: Commenter noted that DOW removed some examples of and conditions of post-construction stormwater management from the existing permit, stating that Section 2.2.5. Item 1. deletes previous language that the "proposed local standard will require, in combination or alone, management measures that are designed, built and maintained to treat, filter, flocculate, infiltrate, screen, evapotranspire, harvest and reuse stormwater runoff, or otherwise manage the stormwater runoff quality." Commenter suggests reinstating these green infrastructure examples, considering what current research and studies tells us about the benefits of retention-based practices.
- Response 29:** The suggested language has been added to the final permit.
- Comment 30:** Section 2.2.5. Item 1.b. Post-Construction Stormwater Management in New Development and Redevelopment: Commenter asserted that the concepts of off-site mitigation or payment-in-lieu fees based on flow is equivalent to administrative blackmail for small cities because "there is no federal requirement or common-sense reason to include this misguided concept in the permit."
- Response 30:** As stated in the permit, off-site mitigation and payment-in-lieu fees are **options** that the community **may adopt** to allow flexibility for the developers if they cannot meet the required water quality standard. These options are not requirements of the permit, and are intended to allow flexibility to the MS4 and the developers. This language remains unchanged in the final permit.
- Comment 31:** Section 2.2.5. Item 2. Post-Construction Stormwater Management in New Development and Redevelopment: A commenter requested that the requirement for MS4 permittees to review and evaluate municipal policies related to building codes, or other regulations, with a goal of identifying regulatory and policy impediments to the installation of green infrastructure within twelve (12) months of the effective date of the permit be specified as a requirement for newly designated MS4s. This is requested due to Item 7b. in this section provides the requirement for existing MS4s to provide annual updates in the Annual Report.
- Response 31:** The requirement to review and evaluate municipal policies related to building codes, or other local regulations, with a goal of identifying regulatory and policy has been revised to be a requirement for the newly-designated MS4 permittees and not existing MS4s. Newly-designated facilities have been defined as those receiving general permit coverage after March 31, 2015.

**Comment 32:** Section 2.2.5. Item 4. Post-Construction Stormwater Management in New Development and Redevelopment: A commenter noted that the draft permit required property owners of all new development and redevelopment projects to establish and enter into long-term maintenance practices. DOW should leave the methodology to maintain BMPs to the local government and their constituents.

**Response 32:** The requirement ensures long-term operation and maintenance required by 40 CFR 122.34(b)(5)(ii)(C) is met but does not specify the contents of the maintenance agreement. The final permit was not revised.

**Comment 33:** Section 2.2.5. Item 8. Post-Construction Stormwater Management in New Development and Redevelopment: A commenter requested returning the existing requirements that the permittee track and maintain records of post-construction stormwater management in new development and redevelopment activities and include a summary of this information in the annual report to the current permit.

**Response 33:** The final permit has been revised to include the existing requirements that the permittee track and maintain records of post-construction stormwater management in new development and redevelopment activities and include a summary of this information in the annual report.

**Comment 34:** Section 2.2.6. Item 4. Pollution Prevention/Good Housekeeping for Municipal Operations: A commenter requests returning the existing requirements that the permittee track and maintain records of pollution prevention and good housekeeping activities and include a summary of this information in the annual report to the current permit.

**Response 34:** The final permit has been revised to include the existing requirements that the permittee shall track and maintain records of pollution prevention and good housekeeping activities and include a summary of this information in the annual report.

**Comment 35:** Section 2.4. Total Maximum Daily Loads and Impaired Waters: A commenter noted that the draft permit removed two components of TMDL implementation. Namely, the draft permit did not include an explicit evaluation of TMDL allocation, nor did it require monitoring of BMP performance to assess BMP effectiveness and progress made toward any applicable WLA. For stormwater discharges to waters with TMDLs, EPA has guidance which explains that permits should include requirements for adaptive management if initial implementation plans are not demonstrating adequate progress towards achieving the WLA. An evaluation or assessment component helps determine whether, or what level of, water quality improvements are being made so that an MS4 can make further refinements to implementing its TMDL WLA. As such, DOW should revisit whether to reinstate the TMDL implementation requirements in the final permit.

**Response 35:** The final permit was revised to include language concerning TMDL implementation for the MS4s.

**Comment 36:** Section 2.4. Total Maximum Daily Loads and Impaired Waters: A commenter noted the paragraph concerning impaired waterbodies that lack a TMDL where the permittee was required to evaluate its BMPs in the SWQMP with respect to any new or expanded MS4 discharges for pollutants of concern to ensure effectiveness of post-construction control requirements to achieve the MEP standard has been removed. Commenter suggested adding this requirement to the final permit.

**Response 36:** The language concerning impaired waterbodies without a TMDL have been included in the final permit.

**Comment 37:** Section 2.5. Item 4 Implementation of a small MS4 Program Monitoring Plan: Commenter suggested the permit should specify the inspection checklist for visual monitoring of the outfalls is for major outfalls.

**Response 37:** The suggested addition has been included in the final permit.

**Comment 38:** Section 2.5. Implementation of a small MS4 Program Monitoring Plan: Commenter noted the section specifies the minimum elements required of a small MS4 monitoring program. Although the permit specifies visual monitoring, many of the examples from the existing permit on an “effective MS4 program monitoring plan” were not included in the draft permit. Commenter suggested adding the examples back in to the final permit, or at least into the SWQMP Preparation Guidance.

**Response 38:** The monitoring program language suggested was added to the MS4 SWQMP Preparation Guidance.

**Comment 39:** Commenter suggested DOW consider adding a requirement for the permittee to develop Enforcement Response Procedures.

**Response 39:** A majority of the MS4s include Enforcement Response Procedures in their adopted ordinances. The final permit was not revised.

#### **GUIDANCE DOCUMENT**

**Comment 40:** A commenter noted that the document regularly uses the word “should” throughout the Guidance Document. To avoid any confusion, the commenter requests the word “may” should be substituted for “should”. The use of this term allows the document users to use their own judgement when implementing information contained in this document. In addition to this request, the commenter strongly urges KDOW to include a disclaimer within the MS4 Guidance document that the Guidance Document will not impose any new legal obligations on MS4 operators.

**Response 40:** The MS4 SWQMP Guidance Document has been revised to replace “should” with “may” where appropriate. Also, a disclaimer has been added to the SWQMP Guidance to state that this document is guidance and is not legally binding.

Any person aggrieved by the issuance of a permit final decision may demand a hearing pursuant to KRS 224.10-420(2) within thirty (30) days from the date of the issuance of this letter. Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470, and the regulations promulgated thereto. The request for hearing should be submitted in writing to the Energy and Environment Cabinet, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Energy and Environment Cabinet, Division of Water, 300 Sower Blvd, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions regarding these responses, please contact the Surface Water Permits Branch at (502) 564-3410 or [SWPBSupport@ky.gov](mailto:SWPBSupport@ky.gov).

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

Sincerely,

A handwritten signature in black ink, reading "Sara J. Anderson". The signature is written in a cursive, flowing style.

**Peter T. Goodman, Director**

Division of Water

PTG:SJA:alr