

# Division of Water Permitting: An Introduction



*To Protect and Enhance Kentucky's Environment*

**September 26<sup>th</sup> , 2024**

# Outline

- Floodplain Permits (State & Local)
- 401 Water Quality Certifications
- KPDES & KYR10 Permits



# Floodplain Permits



# State Floodplain Requirements

- Kentucky Revised Statutes
  - KRS 151.250
    - “No person, city, county or other political subdivision of the state shall [develop in] any area located adjacent to a river or stream or in the floodway of the *stream...unless plans and specifications for such work have been submitted to and approved by the cabinet and a permit issued* as required...”
  - KRS 151.320
    - “The [CEO of each community] **shall have the concurrent duty of enforcing with the cabinet...the provisions of KRS 151.250...and [the] regulations issued thereunder.**”

[apps.legislature.ky.gov/law/statutes/](https://apps.legislature.ky.gov/law/statutes/)



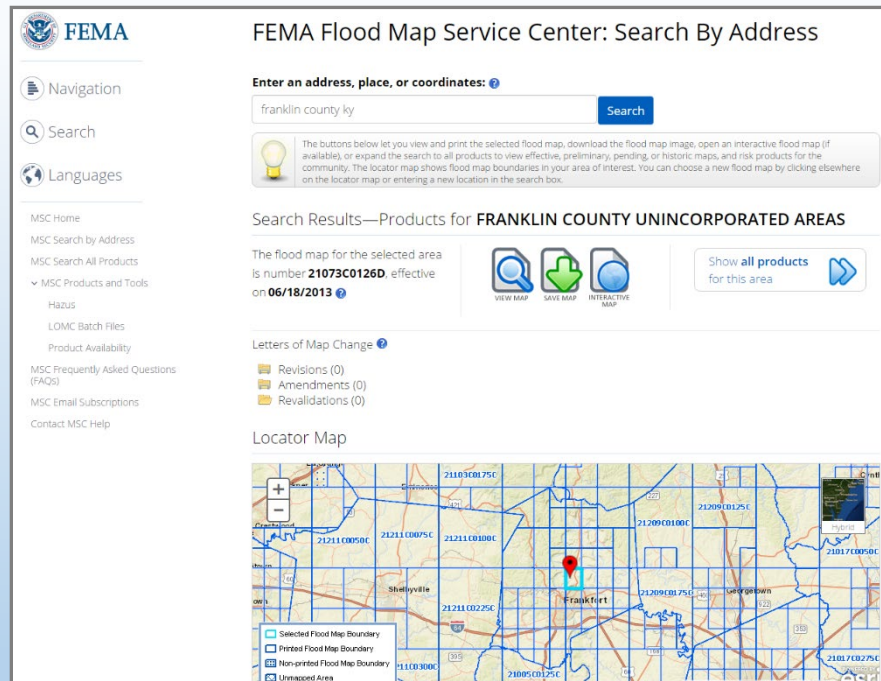
# State Floodplain Requirements Cont.

- Kentucky Administrative Regulations
  - 401 KAR 4:060
    - *Section 2*: “This administrative regulation shall apply to all construction across, along, or adjacent to a stream (i.e., the base floodplain)...for which a construction permit is required pursuant to KRS 151.250...”  
[apps.legislature.ky.gov/law/kar/TITLE401.HTM](https://apps.legislature.ky.gov/law/kar/TITLE401.HTM)
- Term used for managing floodplains is ‘Development’ meaning any man-made change to improved or unimproved real estate
  - Includes but not limited to buildings or other structures, mining, dredging, filling, new construction, substantial improvements, utilities, grading, paving, excavation or drilling operations, or storage of equipment or materials



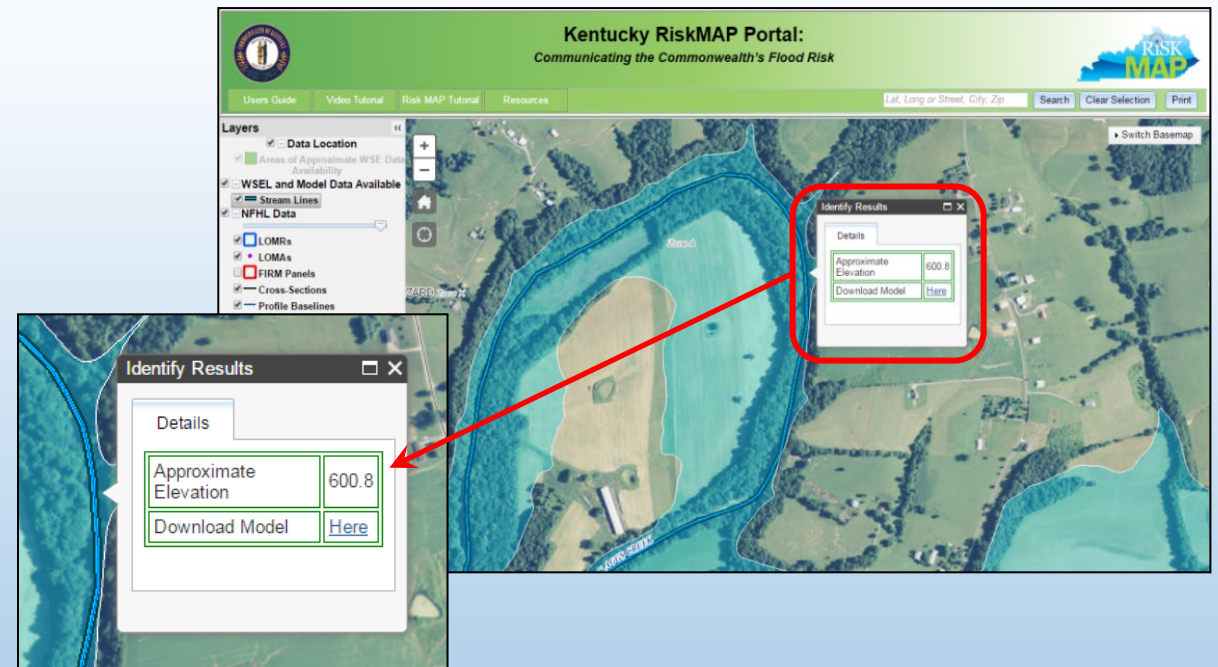
# Floodplain Maps

- FEMA Map Service Center



Link: [msc.fema.gov/portal/home](https://msc.fema.gov/portal/home)

- DOW Flood Hazard Portal



Link: [watermaps.ky.gov/RiskPortal](https://watermaps.ky.gov/RiskPortal)

- Note:* If you need assistance with the digital maps, use DOW's [Viewing and Using Digital Flood Maps](#) guide





# Two Types of State Floodplain Permits

## General Permit (GP)

- Two GPs available
- Permits specific, eligible activities in the floodplain
  - No Application or Public Notice required for the permittee
- Permits includes Exclusions, Requirements, & Conditions to use
- The pdf printout is your permit

## Individual Permit (IP)

- ANY development in a floodplain not specifically covered by the GP, requires an IP
  - Application to DOW is required
  - A Public Notice is required
- Can submit the application & any other data digitally using email or an eForm

[DOWFloodplain@ky.gov](mailto:DOWFloodplain@ky.gov)



# Two KY Floodplain General Permits

## Floodplain General Permit (Flood GP)

- Eligible Activities:
  - Open Space
  - Riparian Buffers
  - Stream obstruction removal from the top of bank or a stream crossing
  - Property maintenance (by hand)
  - Placement of utility poles
  - Below-grade utilities
  - Geotechnical investigations or archeological investigations
  - Open style fences or guardrails
  - RV/Camper parking
- Both GPs include Exclusions, Requirements, & Conditions that must be met
- Local permits are required when using either GP in an NFIP community





# Finding the Flood Permits











- Both types of floodplain permits are available online.
  - Individual (IP)
  - General (GP)
- Individual
  - Requires Application & Public Notice for all submittals
- General
  - No Application or Public Notice required



## UNDERSTAND YOUR FLOOD HAZARDS

This webpage is DOW's Floodplain Management information site. Visit this page to download a copy of the GP, apply for an IP, or to just learn more about floodplain management in KY.

Google → ["KY Understand Your Flood Hazards"](#)

Apply for a Floodplain Permit	
Submit applications via eForms	
Search Current Applications Being Reviewed	
Search Issued Water Resources Permits	
Floodplain General Permit	
for 15 activity categories that will not impact the Base Flood Elevation	
Floodplain General Permit NSUB	
for Nonsubstantial Improvement of Structures	
KY Flood Hazard Portal	
Find your Local Floodplain Coordinator	
[950 KB]	
Kentucky Flooding Fact Sheet	
DOW Complaint Notification System	



# Local Floodplain Requirements

- All communities that participate in the NFIP have a local Flood Damage Prevention Ordinance (a.k.a. Flood Ordinance)
  - About 90% of KY communities participate
- Local permits are required to ensure that development meets local ordinance requirements
  - Local ordinances may go above & beyond State minimum requirements
- A local permit must be issued in conjunction with State permit (GP or IP)
  - If not, State permit is null & void
- Local Floodplain Managers listed online
  - Shown on previous slide



# Cautions on Floodplain Permitting

- Some general situations of which you should be aware:
  - Working in a protected water, during fish spawning season (Apr. 15-Jun. 15), or when an Individual permit is required by USACE or DOW's 401 section
    - GP not applicable during these situations
  - Trenching on the banks of the stream or through the stream itself
    - Not covered by the Flood GP
    - Directional drilling under a waterway is acceptable to the GP
  - Working on and around a Dam
    - Placement of poles or laying of underground utilities on a dam itself makes the utility company a part owner of the dam per recent legal precedent
  - Not all local jurisdictions participate in the NFIP
    - No local permit if that are not part of the program, but state still required
      - Look up local community NFIP Status: [fema.gov/cis/KY.pdf](https://www.fema.gov/cis/KY.pdf)



# 401 Water Quality Certification





# 401 Water Quality Certification

- Required for activities that may result in a discharge
  - Discharge means fill material or sediment
- Activity must require a federal permit or license
  - Section 404 Permit
- Work below the ordinary high-water mark of the stream, or in a connected wetland





# Regulated Activities





# Regulated Waters: Streams and Wetlands



- Beyond the streams, activities within Wetlands are also regulated under this program
- Jurisdictional streams may not always be marked on maps





# USACE Permits & DOW Certifications

- USACE Permits
  - Nationwide Permits (NWP)
  - Individual Permits (IP)
- DOW Certifications
  - General Certifications
  - Individual Certifications
    - *NOTE:* Both USACE Permit & DOW Certification required. Not all USACE permits are certified in Kentucky


Map Viewer Link:

<https://tinyurl.com/2bu7g8ln>



# General Water Quality Certification

- Work cannot occur in waters identified as:
  - Outstanding State Resource Water
  - Impaired for Habitat Loss
  - Full Support Aquatic Life
- Cumulative impacts < 300 linear feet of stream & < 0.5 acres wetland
- Single crossings impacts < 50 linear feet of stream
- No clearing of forested wetlands

				
ANDY BESHEAR GOVERNOR	REBECCA W. GOODMAN SECRETARY			
ENERGY AND ENVIRONMENT CABINET DEPARTMENT FOR ENVIRONMENTAL PROTECTION				
ANTHONY R. HATTON COMMISSIONER				
300 SOWER BOULEVARD FRANKFORT, KENTUCKY 40601				
<b>General Certification--Nationwide Permit (NWP)</b>				
<table border="1"><tr><td>NWP 12 – Oil or Natural Gas Pipeline Activities</td></tr><tr><td>NWP 57 – Electrical Utility Line and Telecommunications Activities</td></tr><tr><td>NWP 58 – Utility Line Activities for Water and Other Substances</td></tr></table>		NWP 12 – Oil or Natural Gas Pipeline Activities	NWP 57 – Electrical Utility Line and Telecommunications Activities	NWP 58 – Utility Line Activities for Water and Other Substances
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NWP 57 – Electrical Utility Line and Telecommunications Activities				
NWP 58 – Utility Line Activities for Water and Other Substances				
<p>This General Certification is issued <b>December 18, 2020</b> in conformity with the requirements of Section 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341), as well as Kentucky Statute KRS 224.16-050.</p> <p>For this General Certification and all General Certifications of Nationwide Permits (NWP), the term 'surface water' is defined pursuant to 401 KAR Chapter 10, Section 1(72): Surface Waters means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.</p> <p>As required by 40 CFR Part 121 – State Certification of Activities Requiring a</p>				



# Individual WQC

- Application Review
  - Site Visit
  - Notice of Deficiency
- 30-day public notice
- Minimum 120-day review timeline





# KPDES Permits



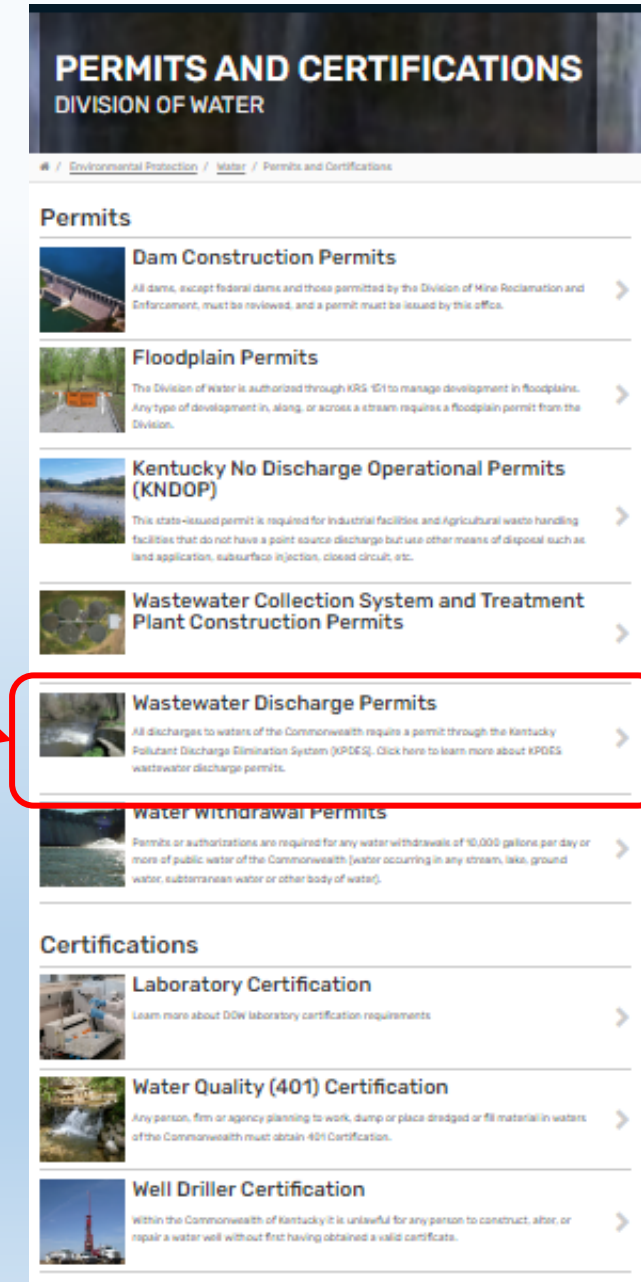
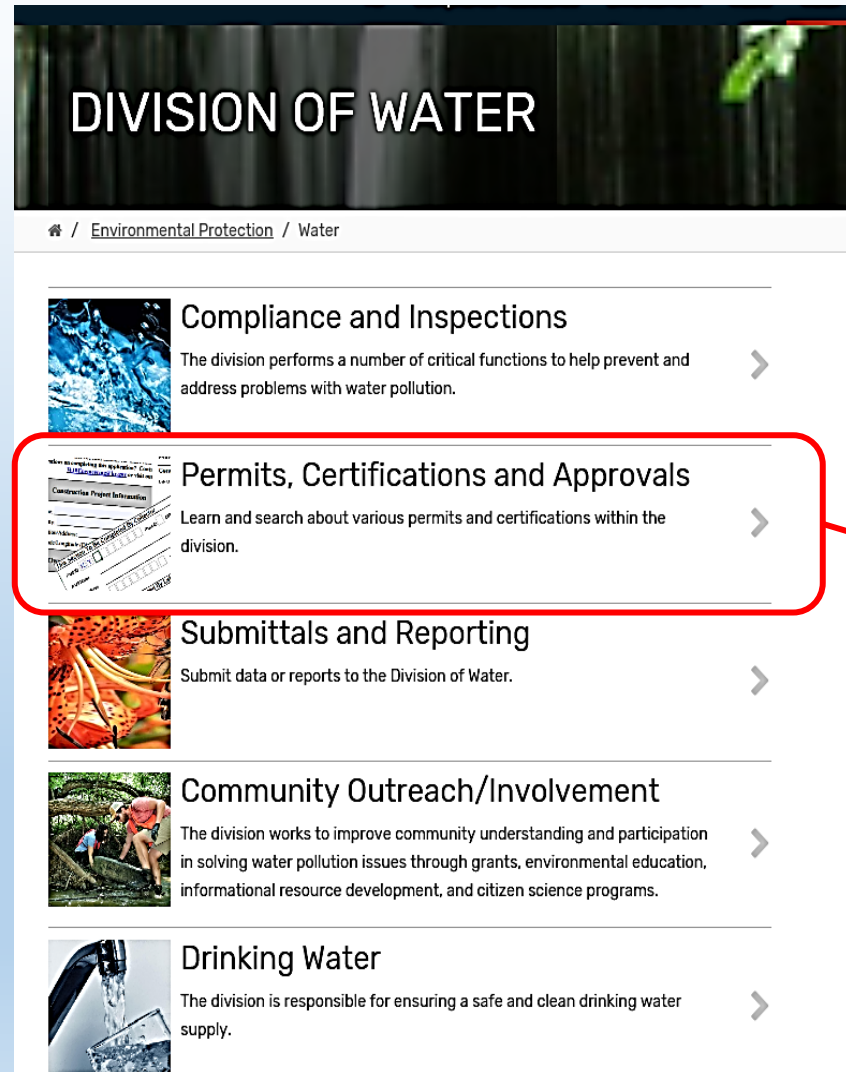
# Before Breaking Ground

- KPDES Permit is required to discharge stormwater from construction activities:
  - Earth disturbance  $\geq 1$  acre
    - Clearing, grading, and excavation
    - Storage areas, borrow areas, fueling areas
    - Truck wash out, maintenance areas
- Stormwater Construction General Permit
  - KYR10 General Permit & Fact Sheet online
  - Application for the permit is electronic
  - Agency time frame to issue the permit is 7 days
  - Current fee is \$0 (*but subject to change*)
  - Permit coverage is valid for 2 years



# Finding the Permit

- Google → Search 'Kentucky Wastewater Discharge Permit'
  - *Note: A direct link is provided on a following slide*
- Page includes:
  - Permit applications
  - Forms
  - Guidance Documents
  - Certifications



# Wastewater Discharge Permits



🏠 / [Environmental Protection](#) / [Water](#) / [Permits and Certifications](#) / Wastewater Discharge Permits

## Wastewater Discharge

All discharges to waters of the Commonwealth require a permit through the Kentucky Pollutant Discharge Elimination System (KPDES). Such permits include effluent limitations that are developed from technology-based and water quality-based criteria. The [General Procedures for Limitations Development](#) describes how the Division of Water determines what effluent limitations will be included in a KPDES permit and how those effluent limitations are developed. Water quality based limitations require a determination of whether reasonable potential to exceed a criterion exists. The DOW evaluates reasonable potential using the EPA-approved Permitting Procedures for Determining "Reasonable Potential".

[Signed - Reasonable Potential Procedures.pdf](#)  
[7.7.00 EPA Approval of KY RP.pdf](#)

AFO's and CAFO's	>
Mining	>
Oil and Gas	>
Pretreatment	>
WWTP Optimization	>

Scroll ↓

## KPDES General Permits

### KPDES General Permits

Permit	Description	Effective	Expire
<a href="#">KYG04</a>	Coal Mining Operations (Renewal 2014 - permit splits Kentucky east and west - KYGE4 and KYGW4)	10/1/2019	9/30/2024
<a href="#">KYG05</a>	Inactive Mine Lands	9/1/2016	8/31/2021
<a href="#">KYG11</a>	Construction Material Manufacturing Operations (concrete and asphalt plants) New General Permit	3/1/2020	2/28/2025
<a href="#">KYG15</a>	General Aviation Airports	9/1/2014	8/31/2019
<a href="#">KYG20</a>	KYG 20 - Phase II small MS4	5/1/2018	4/20/2023
<a href="#">KYG40</a>	On-Site Wastewater Treatment Systems Serving Individual Family Residences	9/1/2023	8/31/2028
<a href="#">KYG64</a>	Drinking Water Production	1/1/2024	12/31/2028
<a href="#">KYG76</a>	Public Swimming and Bathing Facilities - New GP	1/1/2024	12/31/2028
<a href="#">KYG84</a>	Non Coal (Mineral) Mining Operations	3/1/2020	2/28/2025
<a href="#">KYG92</a>	Pesticide Fact Sheet and Application	2/1/2018	1/31/2023
<a href="#">KYR00</a>	Stormwater Associated with Industrial Activities	8/1/2023	7/31/2028
<a href="#">KYR10</a>	Stormwater Construction <sup>1,2</sup>	12/1/2019	11/30/2024

### KYR00 – Multi-Sector General Permit Effective 8-1-2023; Expires 7-31-2028

**NOTE:** Existing permittees will be notified upon this renewal of the permit with instructions on how to renew coverage.

This general permit is available for those facilities previously covered under the General Permit for Stormwater Discharges Associated with Industrial Activity (KYR00) along with:

- The discharge of stormwater runoff and activities from the manufacture and storage of products;
- The discharge of stormwater runoff and non-contact cooling waters;
- The discharge of stormwater runoff from Highway Maintenance Garages (previously covered by the General KPDES Permit for Stormwater Point Sources from Highway Maintenance and Equipment Facilities (KYG50)); and
- A stormwater discharge not identified under Section 1.9 of the Permit, as determined by the Kentucky Division of Water (DOW), that contributes to a violation of a water quality standard or a significant contributor of pollutants to surface waters of the Commonwealth.

Operators of industrial facilities have the opportunity to certify a condition of "No Exposure" where industrial materials and operations are not exposed to stormwater.

- [Fact Sheet](#)
- [General Permit](#)

#### Guidance Documents:

- [KYR00 Notice of Intent Guidance Document](#)
- [Eligible Facilities](#)
- [KYR00 Frequently Asked Questions \(FAQs\)](#)
- [KYR00 Timber Products Category](#)
- [KYR00 Multi-Sector General Permit Presentation Power Point](#)

#### Stormwater Pollution Prevention Plan (SWPPP)/Best Management Practices (BMP):

- [SWPPP/BMP Documents](#)

#### Electronic Application links & Instructions:

- eNOI-KYR00 (Electronic Format): [eNOI \(Application\)](#)
  - If using a Submittal ID to populate the renewal eNOI, please review all dropdown selections, as the Submittal ID may not have selected the appropriate option.
- eNOI-KYR00 (Instructions-Electronic Format): [eNOI \(Application Instructions\)](#)

#### Electronic Notice of Termination:

- KPDES No Discharge Certificate (NDC) Form: [NDC link \(Word Version\)](#)

### KYR10 - Stormwater Construction Effective 12-1-19; Expires 11-30-24

This general permit authorizes the discharge of pollutants in stormwater discharges associated with both small and large construction activities. As used in this permit, "stormwater associated with construction activity" refers to the disturbance of one or more acres or is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more.

Paper notices of intent and termination are no longer accepted. Electronic NOI/NOT can be filed using the links below:

- [Fact Sheet](#)
- [General Permit](#)
- [Response to Comments](#)

#### Avoiding Administrative Notice of Deficiency:

- [Avoiding NOI Deficiency](#)
- **NOTE: Read this document before submitting eNOI**

#### Electronic eNOI Application:

- [Form eNOI-SWCA](#)
- **NOTE: This Notice of Intent (Application) form is a new form as of 08-24-15**

#### Electronic eNOT Termination (Includes Instructions):

- [KPDES Form eNOT](#)
- **NOTE: This termination form is a new form as of 08-24-15**

#### Stormwater Pollution Prevention Plan (SWPPP)/Best Management Practices (BMP):

- [Guidance Documents](#)

# Applying for a General Permit

- Submit electronic Notice of Intent (eNOI)
  - Facility owner/operator information
  - Facility & site location
  - Proposed site activities
  - Outfall locations
  - Other environmental permits held by owner/operator
  - eNOI preparer information
  - Site map

Link: [eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Pages/default.aspx](https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Pages/default.aspx)





# Electronic Notice of Intent (eNOI)

- First step – create an account
  - Kentucky Online Gateway
- Key items to remember:
  - User ID and passwords
  - Submittal number
  - Transmittal number
  - Confirmation number
  - Note: Attachments will not be saved if you time out
- Contact us for help: 502-564-3410

## **REMEMBER!**

- Submittal does not provide coverage.
- Permit coverage letter will be sent via e-mail.



# Using the KYR10 General Permit

- Check with the local municipalities for ordinances dealing with erosion and sediment control
- Write a plan for controlling sediment runoff and preventing erosion (Stormwater Pollution Prevention Plan)
- Install and maintain sediment and erosion controls
  - Apply erosion control within 24 hours
- Minimize size and duration of disturbance
- Maintain adequate buffer zone between disturbance and waterways
- Inspect controls after rain and storm events, and keep records
- Final stabilization practices shall be implemented:
  - Within 14 days of completion, and
  - When construction is suspended for more than 180 days.
- Terminate permit



# KYR10 Frequently Asked Questions

- **Do I need a permit?**

- YES, if you are disturbing an acre of ground or more. Please look at the eligibility requirements for the general permit.

- **I am not discharging water until it rains. What do I list as the discharge point?**

- The reference to discharging water is the final location when the wastewater/stormwater leaves the site. Choose a point along the property line at the nearest water body and provide that as the discharge point.

- **How long does this permit last?**

- Coverage under the General Construction Permit will expire two years after authorization to discharge is granted. The general permit will renew every five years.



# KYR10 FAQ's Cont.

- **Since I am the contractor, can I apply for the permit or does the owner of the property need to apply?**
  - The permit can be issued to the owner of the site or the contractor/developer. The permittee is the party responsible for the work on site and is often the contractor.
- **What do I do with the Stormwater Pollution Prevention Plan and Best Management Practices Plan?**
  - The SWPPP and BMPP are kept on site and must be accessible for DOW inspectors during site visits.
- **What is the cost of obtaining permits?**
  - There are no fees associated with obtaining coverage under the KYR10 nor the KYR00, but this is subject to change, and other permits do have fees.



# Contact Information

- Alex VanPelt

- Kentucky State Floodplain Manager

[alex.vanpelt@ky.gov](mailto:alex.vanpelt@ky.gov)

(502) 782-7120 (Direct Line)

- Samantha Vogeler

- 401 Water Quality Certification Section: Supervisor

[samantha.vogeler@ky.gov](mailto:samantha.vogeler@ky.gov)

(502) 782-6995 (Direct Line)

- Robin Snider

- Resource Management Specialist

[robin.snider@ky.gov](mailto:robin.snider@ky.gov)

(502) 782-7076 (Direct Line)

- Division of Water

- General DOW Contact

[water@ky.gov](mailto:water@ky.gov)

(502) 564-3410





# Questions

