KPDES

KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

FACT SHEET

General Permit For

Phase II Municipal Separate Storm Sewer Systems

KPDES No.: KYG200000

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Public Notice Information

Public Notice Start Date: July 3, 2017

Comment Due Date: August 2, 2017

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

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

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

SECTION 1

PERMIT SYNOPSIS

1. PERMIT SYNOPSIS

1.1. Synopsis

Stormwater is the surface runoff that results from rain and snow melt. Urban development alters natural infiltration capability of the land and generates a host of pollutants that are associated with the activities of urban populations, thus causing an increase in stormwater runoff volumes and pollutant loadings in stormwater discharges to receiving waterbodies. Urban development increases the amount of impervious surface in a watershed as farmland, forests, and meadowlands with natural filtration characteristics, are converted into buildings with rooftops, driveways, sidewalks, roads, and parking lots with virtually no ability to absorb stormwater.

Polluted stormwater runoff is often transported to municipal separate storm sewer systems (MS4) and ultimately discharged into local rivers and streams without treatment.

The National Pollutant Discharge Elimination System (NPDES) stormwater regulations (40 CFR § 122.26) establish permit requirements for discharges from MS4s. The USEPA's Stormwater Phase II Rule (40 CFR § 122.34) establishes an MS4 stormwater management program that is intended to improve the nation's waterways by reducing the quantity of pollutants that stormwater picks up and carries into storm sewer systems during storm events.

Common pollutants include oil and grease from roadways, pesticides from lawns, sediment from construction sites, and carelessly discarded trash, such as cigarette butts, paper wrappers, and plastic bottles. When deposited into nearby waterways through MS4 discharges, these pollutants can impair the waterways, thereby discouraging recreational use of the resource, contaminating the drinking water supplies, and interfering with the habitat for fish, other aquatic organisms, and wildlife.

In 1999, USEPA promulgated rules establishing requirements for small MS4s. The federal regulations require Kentucky to permit stormwater discharges from small MS4s in the Commonwealth. A regulated small MS4 is defined as any small MS4 located in an "urbanized area" as defined by the U.S. Bureau of Census, as well as those MS4s located outside of an urbanized area that are designated a regulated small MS4 by the NPDES permitting authority (DOW)[40 CFR § 122.32 (a)]. A regulated small MS4 included storm drain conveyance systems owned or operated by a state, city of federal entity, a town, or other public entities, such as universities, prisons, hospitals, and departments of transportation where stormwater discharges directly to waters of the United States.

Rather than numeric 'end of pipe limits', these federal regulations establish six categories of Minimum Control Measures (MCMs) that must be implemented by permittees. Best Management Practices (BMPs) are put into use in order to implement the six MCMs. These 'narrative' BMPs reduce the amount of pollutants discharged in stormwater runoff.

1.2. Coverage under This General Permit

The Kentucky Division of Water (DOW) is reissuing the general permit that authorizes the discharge of pollutants in stormwater discharges associated with Phase II Municipal Separate Storm Sewer Systems (MS4s).

1.3. Description of Applicant's Operation

The applicant operates a small municipal separate storm sewer system through such controls as legal authority, source identification, discharge characterization, management program, assessment of stormwater controls, and fiscal analysis to ensure adequate funding of the requirements.

1.4. Exclusions

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:

- Water Line flushing
- Landscape irrigation
- Diverted stream flows
- Rising ground waters
- Uncontaminated ground water infiltration
- Uncontaminated pumped ground water
- Discharged from potable sources
- Air conditioner condensate
- Irrigation water
- Springs
- Water from crawl space pumps
- Footing drains
- Lawn watering
- Individual car washing
- Natural flows from riparian habitat and wetlands
- Dechlorinated swimming pool discharges
- Street wash water
- Discharges or flows from fire fighting activities

1.5. Location

This permit covers small Municipal Separate Storm Sewer System (MS4) discharges located throughout the entire Commonwealth of Kentucky

1.6. Remand Rule for Phase II MS4s

On December 9, 2016, EPA published the MS4 Permit Remand Rule, which addresses how small MS4s obtain permit coverage, including public notice and permit requirements. The Remand Rule provides States with a choice of two options for issuance of general Permits: a Comprehensive General Permit; or a Two-Step General Permit. Kentucky has chosen to issue the Phase II MS4 Permit as a Comprehensive General Permit. In accordance with 40 CFR Part 122.34(a), the permit will contain specific requirements with which the Phase II MS4 must comply. However, as in the past, the permittee will be required to submit a Stormwater Water Quality Management Plan (SWMP). The SWQMP will contain procedural documents and other specific information describing details on how the permittee will implement the permit requirements (see 40 CFR Part 122.34(b)).

1.7. Permitting Action

Reissuance of a general KPDES permit for designated or newly designated small MS4s.

1.8 Changes to Permit from the 2010 KYG20 Permit

- Added a written list of non-stormwater sources that the MS4 is allowed to discharge (i.e. water line flushing, landscape irrigation, etc.)
- Removed definitions from the permit; however maintained them in the Fact Sheet
- Expanded the storm-sewer map from locations of all known major outfalls to a comprehensive storm sewer map which shall 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 that have been approved by the MS4.

- Required the MS4 to develop a *written* plan to address illicit discharges including illegal dumping.
- Required the MS4 to develop a *written* Operation and Maintenance plan to address Pollution Prevention and Good Housekeeping for Municipal Operations
- Required the MS4 to 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.

SECTION 2

RECEIVING WATERS

2. RECEIVING WATERS

2.1. Receiving Waters

The receiving waters for this permit are those water bodies of the Commonwealth that comprise the Mississippi and Ohio River basins and sub-basins within the political and geographic boundaries of Kentucky.

2.2. Stream Segment Use Classifications

Includes all water bodies that have been designated by KDOW singularly or in combination thereof as: Warmwater Aquatic Habitat, Coldwater Habitat, Primary Contact Recreation, Secondary Contact Recreation, Outstanding State Resource Water, and/or Domestic Water Supply.

2.3. Stream Segment Antidegradation Categorization

Included are those water bodies which have been categorized as High Quality Waters, Impaired Waters, Exceptional Waters, or Outstanding National Resource Waters.

SECTION 3

DEFINITIONS

3. DEFINITIONS

A. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control stormwater runoff.

B. "CFR" means Code of Federal Regulations, the official publication for federal regulations.

C. "Combined Sewer System" or "CSS" means systems that are designed to carry sanitary sewage (consisting of domestic, commercial, and industrial wastewater) and stormwater (surface drainage from rainfall or snowmelt) in a single pipe to a treatment facility. During dry weather, CSSs convey domestic, commercial, and industrial wastewater to a publicly owned treatment works (POTW). In periods of rainfall or snowmelt, total wastewater flows can exceed the capacity of the CSS or the treatment facilities. When this occurs, the CSS is designed to overflow directly to surface water bodies, such as lakes, rivers, estuaries, or coastal waters.

D. "Discharge" for the purpose of this permit, unless indicated otherwise, refers to discharges from the Municipal Separate Storm Sewer System (MS4), subject to Section 402 of the CWA.

E. "Green Infrastructure" is an adaptable term used to describe an array of products, technologies, and practices that use natural systems – or engineered systems that mimic natural processes – to enhance overall environmental quality and provide utility services. As a general principal, Green Infrastructure techniques use soils and vegetation to infiltrate, evapotranspirate, and/or recycle stormwater runoff. When used as components of a stormwater management system, Green Infrastructure practices such as green roofs, porous pavement, rain gardens, and vegetated swales can produce a variety of environmental benefits. In addition to effectively retaining and infiltrating rainfall, these technologies can simultaneously help filter air pollutants, reduce energy demands, mitigate urban heat islands, and sequester carbon while also providing communities with aesthetic and natural resource benefits.

F. "Illicit connection" means any connection to the municipal separate storm sewer that is not composed entirely of stormwater except discharges pursuant to a KPDES permit, other than the KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting from fire fighting activities, or other de minimis activities allowable under the MS4 regulations.

G. "Illicit discharge" means any discharge to the municipal separate storm sewer that is not composed entirely of stormwater except discharges pursuant to a KPDES permit (other than the KPDES permit for discharges from the municipal separate storm sewer and discharges resulting from fire fighting activities or other de minimis activities allowable under the MS4 regulations) and other discharges referenced in 40 CFR 122.26(d) (2) (iv) (B) (1).

H. "KAR" is an acronym for "Kentucky Administrative Regulations."

I. "KPDES" is an acronym for "Kentucky Pollutant Discharge Elimination System," the effluent permitting program in the Commonwealth of Kentucky for point source discharges.

J. "KRS" is an acronym for "Kentucky Revised Statutes."

K. "Major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than 50 acres); 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).

L. "MEP", or "Maximum Extent Practicable," is the control standard for discharges from the Municipal Separate Storm Sewer Systems established by 40 CFR 122.34 as stated in the regulation dated Dec. 9, 2016.

M. "MS4" is an acronym for "municipal separate storm sewer system".

N. "Municipal Separate Storm Sewer System" means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains): owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian Tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

i. designed or used for collecting or conveying stormwater;
ii. which is not a combined sewer; and
iii. which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

O. "NPDES" is an acronym for "National Pollutant Discharge Elimination System," the effluent permitting program for point source discharges that is administered by the United States Environmental Protection Agency.

P. "Open Conveyances" are defined as man-made or natural watercourses (e.g., swales), including natural watercourses that have been modified by channelization (e.g., ditches), that flow only in direct response to precipitation runoff in their immediate locality and whose channels are above the groundwater table and which do not support fish and aquatic life and are not suitable for drinking water supplies.

Q. "Outfall" means a "point source" at the point where a municipal separate storm sewer discharges to Waters of the United States, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other Waters of the Commonwealth and are used to convey waters of the United States.

R. "Permittee(s)" means the primary applicant for a KPDES permit.

S. "Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

T. "Small municipal separate storm sewer system" means all separate storm sewer systems that are: owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district or similar entity, or an Indian Tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States. It is not a "large" or "medium" municipal separate storm sewer systems as defined in 40 CFR 122.26 paragraphs (b) (4) and (b) (7) or 40 CFR 122.26 paragraph (a) (1) (v). This term includes systems similar to separate storm sewer systems in municipalities such as systems at military

bases, large hospitals, or prison complexes and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

U. "Storm Sewer," unless otherwise indicated, refers to a municipal separate storm sewer.

V. "Stormwater" means stormwater runoff, snowmelt runoff, surface runoff and drainage.

W. "Stormwater Quality Management Plan" or "SWQMP" is the written plan that details the "Stormwater Quality Management Program". The "Plan" is considered a single document, even though it actually consists of separate programs.

X. "Stormwater Quality Management Program" refers to a comprehensive program to manage the quality of stormwater discharged from the municipal separate storm sewer system.

Y. "TMDL" is an acronym for "Total Maximum Daily Load" a federally mandated program for the protection of streams and lakes by allocation of pollutant waste loads to significant sources of the pollutant in a watershed or stream reach.

Z. "Waters of the Commonwealth" means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction.

AA. "Waters of the United States" as defined by the Clean Water Act, applies only to surface waters, rivers, lakes, estuaries, coastal waters and wetlands. Not all surface waters are legally "Waters of the United States." Generally those waters include the following:

i. All interstate waters
ii. Intrastate waters used in interstate and/or foreign commerce
iii. Tributaries of the above
iv. Territorial seas at the cyclical high tide mark, and
v. Wetlands adjacent to all of the above.

SECTION 4

PERMIT REQUIREMENTS

4. PERMIT REQUIREMENTS

4.1. Maximum Extent Practicable (MEP)

This general permit requires the permittee to develop a stormwater quality management program that is designed to reduce the discharge of pollutants to the maximum extent practicable (MEP). The MEP standard involves applying best management practices (BMPs) that are effective in reducing the discharge of pollutants in stormwater runoff. This requires that the permittee use known, available, and reasonable methods of prevention and control of stormwater discharges.

MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the permittee's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water-quality standards.

4.2. Six Minimum Control Measures

4.2.1. Public Education and Outreach

The permittee must maintain a public education program and conduct public outreach activities in the community that focus on impacts from stormwater discharges to water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

There is a presumed greater support for the stormwater management program as the public gains a better understanding of the reasons why the SWQMP is necessary and important, an informed and knowledgeable community is crucial to the success of the a SWQMP. Public support is particularly beneficial when operators of small MS4s attempt to seek public cooperation and volunteers to help implement aspects of the program. Education can lead to greater compliance with the local programs, as the public becomes aware of the personal responsibilities expected of them and others in the community, including individual actions they can take to protect or improve the quality of local waters.

4.2.2. Public Involvement and Participation

The small MS4 general permit contains performance measures for public participation and involvement. The permittee must comply with the state and local public notice requirements when implementing the public involvement and participation program. Activities may include representation of local stormwater management work groups, public hearings, and volunteer monitoring efforts. Citizen involvement is critical to the success of a Stormwater Quality Management Program because citizens who participate in the decision making process are more likely to take an active role in its implementation of the stormwater program.

4.2.3. Illicit Discharge Detection and Elimination

Dry weather discharges into the MS4 system can contribute significant pollutants to receiving water bodies. Detecting and eliminating these illicit discharges involves complex detective work, which makes it challenging to establish a specific prescription to identify and eliminate all illicit connections.

To comply with this minimum control requirement, an MS4 operator must develop a map of the MS4 that locates all major MS4 outfalls and names of receiving waters; effectively prohibit discharges of non-stormwater to the MS4 through the use of an ordinance or other regulatory mechanism, and provide for enforcement procedures and actions; develop and implement a plan to detect and address nonstormwater discharges; and inform public employees, businesses, and the general public of the hazards associated with illegal discharges and improper disposal of waste.

4.2.4. Construction Site Stormwater Runoff Control

Stormwater runoff from construction sites often flows to MS4s and ultimately is discharged into receiving water bodies. Sediment is usually the main pollutant of concern. This control measure requires permittees to develop, implement, and enforce a program to reduce pollutants in stormwater runoff from construction

activities that result in a land disturbance of one acre or greater. The program must include control of runoff from construction activity disturbing less than one acre if the construction is part of a larger common plan of development that would disturb one acre or more.

All permittees must incorporate the following elements into their local programs:

a. An ordinance or other regulatory mechanism to require erosion and sediment controls and sanctions to ensure compliance.
b. Requirements for construction site operators to implement erosion and sediment control best management practices (BMPs).
c. 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.
d. Establishment of authority for site-plan review which incorporates 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.

4.2.5. Post-Construction Stormwater Management in New Development and Redevelopment

The Post-Construction Stormwater Management program is a key element of the MS4 permit and the Nation's and Commonwealth's strategy for achieving the goals of the Clean Water Act. An effective Post-Construction Stormwater Management program has the ability to positively impact the chemical, biological and overall health of the Commonwealth's streams, rivers and lakes by reducing the rate and volume and improving the quality of stormwater runoff from the MS4.

Small MS4s shall develop, implement, and enforce 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 program must ensure that controls are in place that would prevent or minimize water quality impacts. Newly-designated small MS4s must complete these requirements within twenty-four (24) months from permit coverage. The program must:

a. Include development and implementation of strategies that include a combination of structural and/or non-structural stormwater controls appropriate for the community;
b. Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under Kentucky and local law, and
c. Ensure adequate long-term operation and maintenance of BMPs.

4.2.6. Pollution Prevention/Good Housekeeping for Municipal Operations

This control measure requires permittees to implement an operation and maintenance program to prevent or reduce polluted runoff from activities conducted by the municipality. The permittee must develop and implement an operation and maintenance (O & M) program that includes a training component, inventory of municipal facilities, maintenance activities, maintenance schedules, and long-term inspection procedures for structural and nonstructural stormwater controls to reduce floatables and other pollutants discharged from the MS4.

4.3. Total Maximum Daily Load 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 Section 2.3.2 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 Maximum Extent Practicable (MEP). The Division of Water may require the small MS4 to obtain an individual MS4 permit.

4.4. 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.

SECTION 5

OTHER INFORMATION

5. OTHER INFORMATION

5.1. Antidegradation

In the decision rendered by the U.S. Court of Appeals for the Sixth Circuit in Kentucky Waterways Alliance, et al. v. Johnson, et al., the court remanded to EPA its approval of certain sections of Kentucky's Antidegradation Policy Implementation Methodology as codified in 401 KAR 5:030. In response to that remand, the Division of Water has worked with various parties, including parties to the Kentucky Waterways Alliance, et al. v. Johnson, et al. case, to determine an approach to satisfy antidegradation considerations under 40 CFR 131.12. From that effort the division identified four categories of discharges for which antidegradation procedures will be addressed in the permits themselves or for which antidegradation requirements are satisfied by alternative equivalent processes. These four categories of discharges include:

a. Discharges permitted under general permits;
b. Discharges occurring under the approval of a regional wastewater facility plan;
c. New or expanded discharges associated with a project identified in the Kentucky Transportation Cabinet's six-year road plan; and
d. An individual MS4 permit that incorporates provisions that the permit holder address antidegradation considerations or that the permit includes practices and procedures to prevent lowering of water quality from new or expanded discharges from the MS4.

Prior to the remand and reconsideration of 401 KAR 5:030 (newly codified as 401 KAR 10:030), no antidegradation consideration had been made of new or expanded discharges from MS4s. The options for new or expanded discharges from MS4s include: 1.) for each new or expanded discharge the MS4 must go through the antidegradation social-economic and alternatives analysis; 2.) that the MS4 permit itself incorporate provisions that the permit holder address antidegradation considerations; or 3.) the permit includes practices and procedures to prevent lowering of water quality from new or expanded discharges from the MS4. The division maintains that for new or expanded discharges from MS4 systems covered under this general permit the applicable antidegradation requirements are appropriately addressed by the requirements of this MS4 general permit, which includes mandatory procedures and controls, as well as standards of performance. In addition, the Division of Water's interpretation of what constitutes maximum extent practical (MEP), is presented in the requirements of this general permit. The division believes that discharges from small MS4s that are in compliance with this permit will protect water quality from degradation, and may improve water quality to receiving streams. The approach is consistent with the implementation procedures identified in 401 KAR 10:030 for this category of discharge and satisfies applicable antidegradation requirements that existing in-stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected (401 KAR 10:030 Section 1(3)(b)).

For background, water quality standards regulations are required to contain an antidegradation implementation policy. In addition, states are required to identify implementation methods that, at a minimum, provide a level of protection that is consistent with the federal antidegradation policy in 40 CFR 131.12. Waters designated as "High Quality" means surface waters categorized as high quality by the cabinet pursuant to 401 KAR 10:030, Section 1. The Division of Water has determined that the terms and conditions of this general permit sufficiently address the requirements of 40 CFR 131.12 and 401 KAR 10:030.

Kentucky is adopting an approach herein that requires the permittee to include in MCM #4 and MCM #5 measures and requirements specifically identified and intended to protect high quality waters from new or expanded discharges occurring from new development or re-development.

The specifics of this general permit with regard to Minimum Control Measure #4, Stormwater Construction, require that the permittee shall implement and enforce an ordinance or other regulatory

mechanism that addresses stormwater runoff from active construction sites 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. This general permit mandates that the permittee require construction site operators to implement appropriate erosion and sediment control best management practices (BMPs) that, at a minimum, are as protective as Kentucky's General Permit for Stormwater Construction sites (KYR100000). Further, the permit requires that the permittee include, by ordinance or other regulatory mechanism, a requirement that discharges from construction sites to high quality waters protect existing instream water uses and the level of water quality necessary to protect the existing uses. With regard to Minimum Control Measure #5, Post-Construction Stormwater Runoff Control, for those areas of development and re-development that result in a new or expanded discharge from the MS4 to high-quality waters this general permit requires that the permittee adopt an ordinance or other regulatory mechanism that shall include standards for runoff control sufficient to protect existing in-stream water uses, and require the permittee to implement review procedures for areas of new development and re-development to ensure that these standards for runoff control are effective. This general permit also requires that the permittee shall develop a locally derived water quality treatment standard that requires new development projects to implement controls to manage runoff through water-quality control structures. The standard shall be based on an analysis of precipitation records to determine the equivalent surface depth of runoff (e.g. 0.75 inches) produced from an 80th percentile precipitation event.

Discharges from small MS4s are also subject to maximum extent practicable (MEP) control standards. The requirements of the general permit for small MS4s reflect the division's interpretation of what constitutes MEP. In that regard this general permit reflects changes in the division's interpretation of MEP, including the addition of standards for discharges from stormwater construction sites, and new development or redevelopment on a post-construction basis, such as through ordinances implemented by permitted MS4 programs to limit peak discharges. This general permit includes new requirements that mandate the permittee: 1) incorporate into ordinance or other regulatory mechanism stormwater construction standards that, at a minimum, are as protective as Kentucky's General Permit for Stormwater Construction sites, and 2) develop a locally derived water-quality treatment standard that, at a minimum, requires new development projects to implement controls to manage through water-quality control structures the runoff produced from an 80th percentile precipitation event on the site. These new requirements of the MS4 permit reflect the Division of Water's interpretation of MEP and an improvement in control standards for runoff from small MS4s. In light of these improved MEP control standards the division believes that discharges from small MS4s that are in compliance with this permit will protect water quality from degradation, and may improve water quality to receiving streams.

The Division of Water maintains that the requirements of this general permit as they pertain to stormwater construction sites satisfy the antidegradation provisions of 401 KAR 10:030. The division recognizes that new construction activities (the initial source of most new or expanded discharges) are subject to antidegradation consideration under the stormwater construction general permit (KYR100000) or antidegradation review under an individual stormwater construction (or other applicable KPDES permits) and that compliance with these permits provides for compliance with antidegradation implementation policy.

The Division of Water gives consideration to the fact that so-called "new and expanded" (wet weather) discharges coming from an MS4 are to a large extent, existing discharges newly managed via the MS4 system. The division recognizes that the area served by the expanded MS4, under most circumstances, already discharges stormwater to the receiving stream during rain events. The so-called "new or expanded" discharges from the MS4 are in fact not "new" as a discharge, albeit perhaps "different," and may not be "expanded" as this general permit requires the permittee to develop, at a minimum, a locally derived water quality treatment standard that requires new development projects to implement controls to manage the runoff produced from an 80th percentile precipitation event on the site. Accordingly, new or

expanded discharges of stormwater from an MS4 are inherently different from a new or expanded discharge of process water under other KPDES permits.

The permittee shall periodically review procedures for areas of new development and re-development to ensure that these standards for runoff control are effective.

With the understanding of these considerations and the imposition of the aforementioned permit requirements, the division has clarified its expectation of the permitted MS4 programs to meet antidegradation requirements by complying with this permit. The goal of these requirements is to protect existing instream water uses and the level of water quality necessary to protect the existing uses.

Where the Division of Water determines through its oversight activities (e.g., SWQMP review, program audits, and inspection) that an MS4 program is not meeting its requirements under this permit, such a deficiency will constitute a violation of the permit and will require follow-up corrective action, which may include a determination that an individual MS4 permit is necessary.

The Division of Water has concluded that the requirements and controls in this general permit, in combination with other permits, are sufficient to protect existing in-stream water uses and the level of water quality necessary to protect the existing uses. In fact, the Division of Water believes that the enhanced requirements of this permit may result in the improvement of water quality of receiving streams. It is the conclusion of the Division of Water that this general permit is consistent with the implementation procedures identified in 401 KAR 10:030 for this category of discharge, and therefore satisfies applicable antidegradation requirements. The division believes the conditions of 401 KAR 10:030 have been satisfied by this permit action. The process described above for new or expanded discharges of stormwater runoff associated with this MS4 general permit are consistent with the requirements of 401 KAR 10:029, Section 1, 401 KAR 10:030, Section 1 and the ruling of the Sixth Circuit Court.

5.2. Permit and Public Notice Information

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

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

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

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

5.3. References and Cited Documents

All material and documents referenced or cited in this fact sheet are parts of the permit information as described above and are readily available at the Division of Water Central Office. Information regarding these materials may be obtained from the Division of Water's Open Records Coordinator at (502) 564-3410, or by e-mail DEP.KORA@ky.gov.