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LEONARD K. PETERS  
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**FACT SHEET**

**KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM  
PERMIT TO DISCHARGE FROM A LARGE MUNICIPAL SEPARATE STORM SEWER SYSTEM  
INTO WATERS OF THE COMMONWEALTH**

KPDES No.: KYS000002      Permit Writer: Abigail Rains      Date: May 1, 2015  
AI No.: 74551

1. **SYNOPSIS OF APPLICATION**

a. Name and Address of Applicant

Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507

b. Description of Applicant's Operation

The applicant operates a large municipal separate storm sewer system through such controls as legal authority, source identification, discharge characterization, management program, assessment of controls, and fiscal analysis.

2. **PERMIT DURATION**

Five (5) years

3. **THE ADMINISTRATIVE RECORD**

The Administrative Record, including application, draft permit, fact sheet, public notice, comments received, and additional information is available for review at the Division of Water at 200 Fair Oaks Lane, Frankfort, Kentucky 40601.

4. **CONTACT**

Abigail Rains  
KPDES Permit Writer  
(502) 564-3410, extension 4891

5. **ANTIDEGRADATION**

The purpose of Kentucky's Water Quality Standards (401 KAR 10:026 through 401 KAR 10:031) is to safeguard the surface waters of the Commonwealth for their designated uses, to prevent the creation of new pollution of these waters, and to abate existing pollution. Kentucky's Antidegradation Policy regulation requires that "where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. With regards to point source discharges, water quality shall be maintained and protected in high quality waters according to the procedures specified in 401 KAR 10:030 Section 1(2) (b) or (3) (b)," Kentucky's Antidegradation Implementation Policy regulation.

401 KAR 10:030 Section 1(3) (b) d. states that for an individual MS4 permit issued pursuant to 401 KAR 5:050 through 5:080, two options may be exercised: 1.) if the activity permitted by the MS4 permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the MS4 permit complies with the alternatives analysis and socioeconomic demonstration requirements of the antidegradation policy implementation regulation; or 2.) if the requirements and conditions in the MS4 permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet that the MS4 permit complies with the antidegradation policy established in 401 KAR 10:029 Section 1.

The Division of Water has determined that for new or expanded discharges from the MS4 systems covered under this individual MS4 permit the antidegradation requirements of 401 KAR 10:029 Section 1 are satisfied; the Division of Water has concluded that the requirements and conditions of this MS4 permit are sufficiently protective to prevent lowering of water quality in high quality and exceptional waters that exist in Fayette County for new or expanded discharges occurring from the MS4. Because of the protections afforded by this and other related permits and controls, the division has concluded that no lowering of water quality will occur as a result from the MS4 communities covered by this permit.

The Division of Water recognizes that MS4 permits are subject to the standard of "maximum extent practicable" (MEP) which evolves for MS4 communities over time. Successive issuances of MS4 permits reflect the improvements in technologies and the communities' ability to implement the MS4 program. This permit, the requirements within which define what the Division of Water considers MEP for these MS4 communities, includes several new requirements that will result in improved quality of stormwater runoff and water quality.

6. **BMPs and TOTAL MAXIMUM DAILY LOADS (TMDLs)**

For waters with an approved or established TMDL, the permittee shall evaluate its Best Management Practices in the SWQMP with respect to MS4 discharges for pollutants of concerns to impaired waterbodies listed in the Division of Water publication entitled, "2012 Integrated Report to Congress on the Condition of Water Resources in Kentucky Volume I. 305(b) Report", and its successor publications, found at <http://water.ky.gov/waterquality/> to assess their effectiveness in achieving pollutant reductions in impaired water bodies. The evaluation of BMPs may be conducted on a watershed basis or on a point source

basis. A list of approved or established TMDLs can be found at <http://water.ky.gov/waterquality/Pages/ApprovedTMDLs.aspx>. Upon completion of the evaluation, in watersheds with approved or established TMDL(s), the SWQMP BMPs will be designed to the Maximum Extent Practicable and selected to address the Waste Load Allocation based upon the 2002 Memo from EPA which states in light of 33 U.S.C. § 1342 (p) (3) (B) (iii), EPA recommends that for NPDES-regulated municipal and small construction stormwater discharges should be expressed as BMPs or other similar requirements, rather than numeric effluent limitations. Based upon the evaluation completion, as necessary, the permittee shall modify the SWQMP, per the routine annual updates described in II.C, to improve the effectiveness of the BMPs.

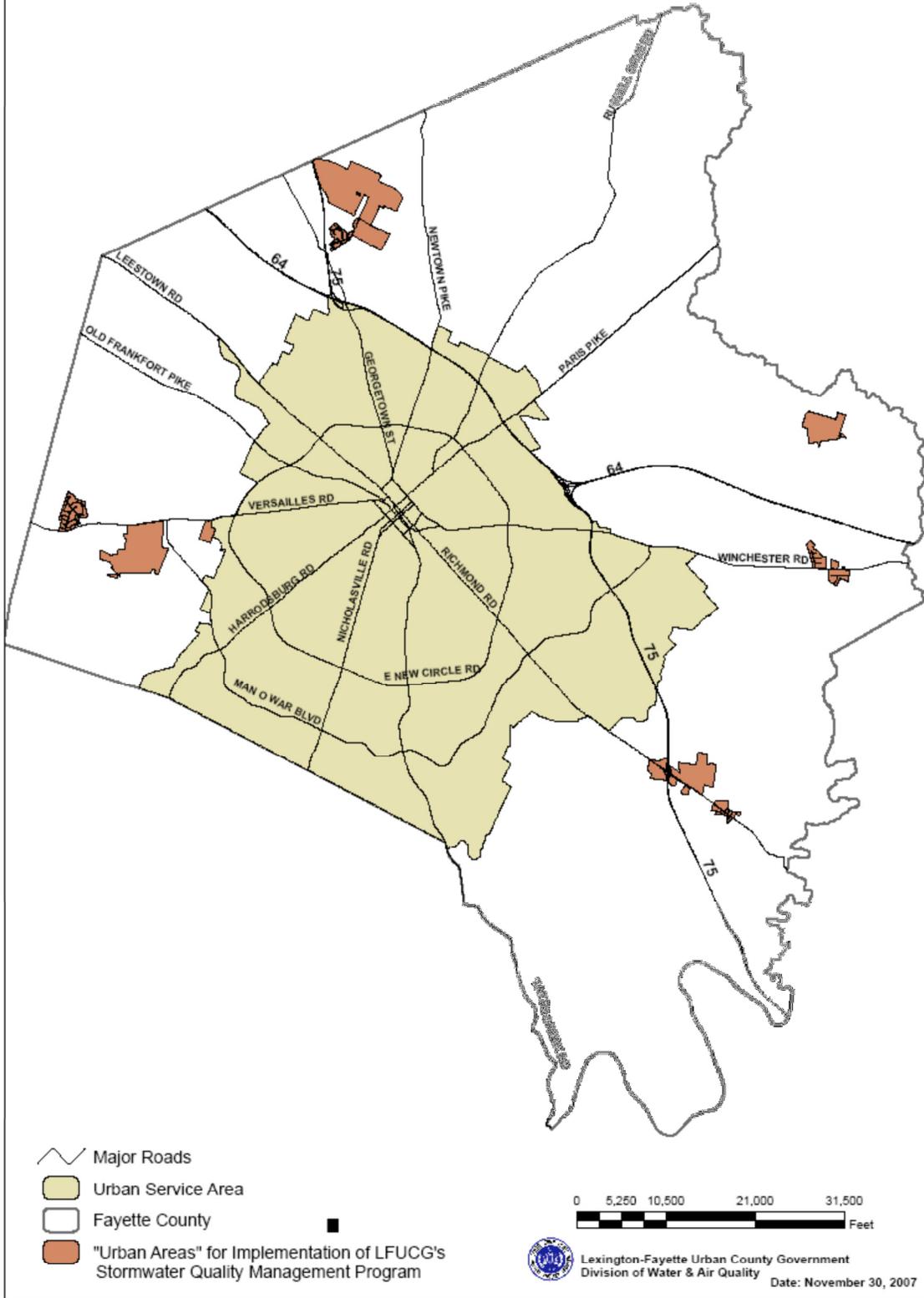
7. **PUBLIC NOTICE INFORMATION**

Please refer to the attached Public Notice for details regarding the procedures for a final permit decision, deadline for comments, and other information required by 401 KAR 5:075, Section 4 (2) (e).

8. **ATTACHMENT**

Map - Urban Areas for Implementation of LFUCG's Stormwater Quality Management Program

### "Urban Areas" for Implementation of LFUCG's Stormwater Quality Management Program



# KPDES



## KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

# PERMIT

Permit No.: KYS000002  
AI No.: 74551

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

Pursuant to Authority in KRS 224,

Lexington-Fayette Urban County Government (LFUCG)  
200 East Main Street  
Lexington, Kentucky 40507

is authorized to discharge stormwater runoff from a large municipal separate storm sewer system (MS4) to receiving waters of the Commonwealth in accordance with the monitoring requirements and other conditions set forth in PARTS I, II, III, and IV hereof. The permit consists of this cover sheet, a table of contents, and PART I 4 pages, PART II 29 pages, PART III 4 pages, PART IV 1 page.

This permit shall become effective on June 1, 2015.

This permit and the authorization to discharge shall expire at midnight, May 31, 2020.

May 1, 2015

Date Signed

A handwritten signature in cursive script, reading "Peter T. Goodmann".

Peter T. Goodmann, Director

Division of Water

DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601

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## **PART I. APPLICABILITY**

### **A. PERMIT COVERAGE AREA**

This permit applies to LFUCG's municipal separate storm sewer system (MS4) conveyances and outfalls to the waters of the Commonwealth throughout Fayette County, Kentucky due to LFUCG's status as a merged urban-county government. The following programs do not apply outside "Urban Areas," as defined in the SWQMP: Illicit Discharge Detection and Elimination (except as associated with the Industrial Facilities program), Post-Construction Stormwater Management in New Development and Redevelopment, and Pollution Prevention for Municipal Operations. LFUCG's MS4 does not include the University of KY's MS4 or the KY Transportation Cabinet's MS4. The following parties are subject to the limits and conditions of the permit.

**Permittee: Lexington-Fayette Urban County Government**

### **B. AUTHORIZED DISCHARGES**

The permittee identified in Section A of this Part is authorized to discharge stormwater runoff from its MS4 to waters of the Commonwealth in accordance with the monitoring requirements and other conditions set forth in this Section.

#### 1. Limitations

The following discharges are not authorized by this permit:

- a. Discharges of non-stormwater, except where such discharges are in compliance with a separate KPDES permit (or the discharger has applied for such a permit) or where those discharges have been determined not to represent significant sources of pollution, consistent with state and federal regulations; and
- b. 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 of the discharges.

#### 2. Cross-Connection Between Sanitary Sewers and Storm Sewer/MS4 Prohibited

- a. This permit shall not be construed to authorize the discharge of sanitary wastewater through cross connections or to authorize other illicit discharges through the Municipal Separate Storm Sewer System, except as provided in 401 KAR 5:065 Section 1(1)(b)(13).

#### 3. Effluent Limitations

There are no numeric effluent limitations associated with this permit.

**C. DEFINITIONS**

Definitions contained in the Kentucky Administrative Regulations (KAR) and Federal NPDES Rules apply where one is not specified below. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. "Active Construction Sites" means those sites within LFUCG's jurisdictional boundary (excluding Agricultural Activities) where there are construction activities that result in the disturbance of one (1) or more acres of total land and those sites that include a disturbance of less than one (1) acre of total land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more. Construction activities include clearing, grading, and excavating. A site shall be considered "active" until such time that the site is finally stabilized and temporary best management practices have been removed. Stabilized shall mean the following:

- All soil-disturbing activities at the site have been completed;
- A uniform perennial vegetative cover with a density of 70% or more has been established for unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures such as riprap, gabions, or geotextiles have been employed; and
- Ditches, channels, ponds, etc. have been stabilized,

as defined in LFUCG's Stormwater Quality Management Program, to be submitted within one year of the effective date of the permit.

2. "Agricultural Activities" are activities related to planting of crops or pasture associated with farming or the horse industry, excluding construction for buildings or structures associated with such activities as defined in LFUCG's Stormwater Quality Management Program, to be submitted within one year of the effective date of the permit.
3. "Best Management Practices" or "BMPs" means schedule of activities, prohibition 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.
4. "CFR" means Code of Federal Regulations
5. "Clean Water Act" of "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. Section 1251 et seq.) otherwise known as the Federal Water Pollution Act.
6. "Director" means the Director of the Kentucky Division of Water, or an authorized representative of that position.
7. "Discharge," unless indicated otherwise, refers to discharges from the Municipal Separate Storm Sewer System (MS4), subject to Section 402 of the CWA.
8. "ESC" is an acronym for "erosion and sediment control," a program for protection of receiving streams from Active Construction Site runoff to the waters of the Commonwealth, as defined in LFUCG's Stormwater Quality Management Program, to be submitted within one year of the effective date of the permit.

9. "Grab Sample" means an instantaneous sample collected from the flow at a sampling location, either in-stream or at an outfall.
10. "High-Risk Commercial Facilities" are commercial facilities that LFUCG determines have a reasonable potential to discharge pollutants of concern at significant levels to the MS4.
11. "Illicit connection" means any connection to LFUCG's municipal separate storm sewer that is not composed entirely of stormwater except discharges pursuant to a KPDES permit; 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).
12. "Illicit discharge" means any discharge to a 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).
13. "Industrial Facility" means any facility located within LFUCG's jurisdictional boundary from which there is a "stormwater discharge associated with industrial activity" as defined in 401 KAR 5:002 Section 1 (292), excluding Active Construction Sites. It also includes SARA Section 313 facilities referenced in 401 KAR 5:060 Section 12 (3) (b) 4. c. that have a reasonable potential to discharge pollutants of concern at significant levels to the MS4 from industrial activities, as defined in LFUCG's Stormwater Quality Management Program, to be submitted within one year of the effective date of the permit.
14. "Industrial Land Use" means land utilized in connection with manufacturing, processing, or raw materials storage at facilities, as defined in LFUCG's Stormwater Quality Management Program, to be submitted within one year of the effective date of the permit.
15. "KAR" is an acronym for "Kentucky Administrative Regulations."
16. "KPDES" is an acronym for "Kentucky Pollutant Discharge Elimination System."
17. "KRS" is an acronym for "Kentucky Revised Statutes."
18. "LFUCG" is an acronym for Lexington-Fayette Urban County Government.
19. "MEP" or "Maximum Extent Practicable" is the control standard for discharges from the Municipal Separate Storm Sewer Systems established by CWA §402(p), as defined by the tables and requirements in Part II of this permit.
20. "MS4" is an acronym for "municipal separate storm sewer system." "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 LFUCG that discharge to the Waters of the Commonwealth:

- a. Designed or used for collecting or conveying stormwater;
- b. Which is not a combined sewer; and
- c. Which is not part of a Publicly-Owned Treatment Works (POTW) as defined in KRS 224.01-010.

- 21. "Municipal Waste Facilities" are LFUCG Facilities that actively treat, store, or dispose of sewage or refuse. At the time of the permit issuance, this includes the Haley Pike Landfill, the Material Recovery Facility on Manchester Street, the Town Branch WWTP, and the West Hickman WWTP, as defined in LFUCG's Stormwater Quality Management Program, to be submitted within one year of the effective date of the permit.
- 22. "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.
- 23. "Permittee" means the primary applicant for a KPDES permit, in this case the Lexington-Fayette Urban County Government, who is only responsible for permit conditions relating to the discharges that it owns or operates.
- 24. "Outfall" means a "point source" at the point where a municipal separate storm sewer discharges to Waters of the Commonwealth, 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 Commonwealth.
- 25. "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 from which pollutants are or may be discharged. The term does not include return flows from irrigated agriculture or agricultural stormwater runoff.
- 26. "Storm Sewer," unless otherwise indicated, refers to a municipal separate storm sewer.
- 27. "Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff drainage.
- 28. "Stormwater Discharge Associated with Industrial Activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw material storage areas at an industrial plant, as defined in 401 KAR 5:002 Section 1 (292).
- 29. "Stormwater Manual" refers to the current edition of the LFUCG's Stormwater Manual that contains the stormwater quantity and quality design requirements for new infrastructure in Fayette County.
- 30. "Stormwater Quality Management Program" or "SWQMP" refers to a comprehensive program to manage the quality of stormwater discharged from the municipal separate storm sewer system. The SWQMP is considered a single document, even though it actually consists of separate programs (e.g. "chapters") and references various Appendices.

31. "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.
32. "Urban Areas" are areas within the LFUCG Urban Service Boundary and the following rural residential areas and concentrated commercial areas outside the Urban Service Boundary: Westmorland Road area, Athens Community, Eastpoint Drive area, Riviera Road area, Donelwal Drive area, Wellesley Heights Way area, Avon/Bluegrass Station Industrial Park area, Blue Sky Industrial Park area, Horse Park/Spindletop area, and Bluegrass Airport. The Urban Areas are delineated on the enclosed map. The boundary of the Urban Areas may change as more areas become urbanized, as defined in LFUCG's Stormwater Quality Management Program, to be submitted within one year of the effective date of the permit.
33. "Water" or "Water 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.
34. "Wet Weather Conveyances" are man made or natural watercourses, including natural watercourses that have been modified by channelization, 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.

## **PART II. STORMWATER QUALITY MANAGEMENT PROGRAM**

The permittee is required to develop, implement, and enforce a SWQMP which shall include controls intended to reduce the discharge of pollutants from its MS4 conveyances consistent with Section 402 (p) of the Clean Water Act. These requirements shall be met using controls which may 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 MS4 conveyances and which are environmentally beneficial and technically and economically feasible. The tables and requirements included in this part of the permit represent MEP.

### **A. LEGAL AUTHORITY**

The permittee shall ensure legal authority to control discharges to and from those portions of the MS4 over which it has jurisdiction. This legal authority may be a combination of statute, ordinance, permit, contract, order, or inter-jurisdictional agreements between permittees with adequate existing legal authority to accomplish items 1-5 below:

1. To control the contribution of pollutants to the MS4 by stormwater discharges associated with Industrial Activity and the quality of stormwater discharged from sites of Industrial Activity;
2. To prohibit illicit discharges to the MS4;
3. To control 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 MS4;
4. To require compliance with conditions in ordinances, permits, contracts, or orders; and
5. To carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

### **B. STORMWATER QUALITY MANAGEMENT PROGRAM**

The stormwater quality management program is an integral part of the overall watershed management plan, per KAR 5:065, Section 2 (1) and 40 CFR 122.26 (d) (2) (IV), which includes non-point sources and wastewater treatment point sources. A comprehensive wet weather plan utilizing an integrated approach for prioritization and implementation is necessary to adequately address the watershed needs. Implementation of a 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, industrial monitoring and control, and good housekeeping and pollution prevention for municipal operations. The permittee shall submit a revised Stormwater Quality Management Program to the Kentucky Division of Water within one year of the permit effective date.

1. Public Education and Outreach on Stormwater Impacts

Implement a public education program and conduct public outreach activities in the community that collaborate on impacts from stormwater discharges to waterbodies and the steps that the public can take to reduce pollutants in stormwater runoff, per applicable state and federal requirements.

Compliance with these terms is achieved by implementing the program elements, as shown in Table 1 (Public Education and Outreach) in Section E of this Part, except where inconsistent with other provisions of this permit.

2. Public Involvement/Participation

At a minimum, comply with state and local public notice requirements when implementing a public involvement/participation program. Activities may include representation on local stormwater management work groups, public hearings, education volunteers, assisting with program coordination and monitoring efforts, per applicable state and federal requirements.

Compliance with these terms is achieved by implementing the program elements, as shown in Table 2 (Public Involvement and Participation) in Section E of this Part, except where inconsistent with other provisions of this permit.

3. Illicit Discharge Detection and Elimination

- a. Update, as needed, implement, and enforce a program to detect and eliminate illicit discharges, per applicable state and federal requirements;
- b. Update, as needed, the storm sewer map, showing the location of known MS4 outfalls 18" inside diameter or larger (equivalent to a cross-sectional area of 1.77 square feet or larger), as defined herein, with drainage areas delineated, and the names and locations of waters of the Commonwealth that receive discharge from those outfalls;
- c. To the extent allowable under state and local law, effectively prohibit, through ordinance or other regulatory mechanism, non-stormwater discharges into the separate storm sewer system, define allowable non-stormwater discharges, and implement appropriate enforcement procedures and actions;
- d. Update, as needed, and implement a plan to detect and address non-stormwater discharges, including illegal dumping, to the MS4 systems;
- e. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste; and
- f. If in the course of implementing the SWQMP it is demonstrated that at any location sanitary sewer lines exfiltrate and such exfiltration migrates to the Municipal Separate Storm Sewer System, the permittee shall evaluate and implement a response plan to correct the sanitary sewer exfiltration problem.

Compliance with these terms is achieved by implementing the program elements, as shown in Table 3 (Illicit Discharge Detection and Elimination Requirements) in Section E of this Part, except where inconsistent with other provisions of this permit.

4. Construction Site Stormwater Runoff Control

- a. Update, implement, and enforce a program to reduce pollutants in any stormwater runoff to the MS4 from Active Construction Sites.
- b. The program must include the implementation of, at a minimum:
  - (i) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State or local law;
  - (ii) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices (BMPs);
  - (iii) Procedures for site plan review which incorporate consideration of potential water quality impacts;
  - (iv) Procedure for receipt and consideration of information submitted by the public; and
  - (v) Procedures for site inspection and enforcement.

Compliance with these terms is achieved by implementing the program elements, as shown in Table 4 (Construction Site Stormwater Runoff Control Requirements) in Section E of this Part, except where inconsistent with other provisions of this permit.

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

- a. Continue to 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, that discharge into the MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts.
- b. Update, as needed, and implement strategies, which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community;
- c. The permittee shall continue to enforce LFUCG Code of Ordinances Section 16-85 which adopts the urban county government's Stormwater Manual that contains stormwater quality management requirements for new development and redevelopment. The permittee shall require that new development manage post-construction runoff through water quality control structures from at least the 80<sup>th</sup> percentile precipitation event; and
- d. Ensure adequate long-term operation and maintenance of BMPs.

Compliance with these terms is achieved by implementing the program elements, as shown in Table 5 (Post-Construction Stormwater Management in New Development and Redevelopment) in Section E of this Part, except where inconsistent with other provisions of this permit.

6. Pollution Prevention/Good Housekeeping for Municipal Operations

Update, as needed, and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the state or other organizations, the program must include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, municipal waste landfills, and stormwater system maintenance.

Maintenance of public streets, roads, and highways, including pollutants discharged as a result of deicing application and storage practices must implement alternative measures that might benefit water quality from runoff from roadway and salt bin storage locations and will not affect public safety.

Compliance with these terms is achieved by implementing the program elements as shown in Table 6 (Pollution Prevention for Municipal Operations) in Section E of this Part, except where inconsistent with other provisions of this permit.

7. Monitor and Control Pollutants in Stormwater Discharges from Hazardous Waste Treatment Storage and Disposal Facilities (TSDF) and Industrial Facilities

Update, as needed, and implement a program to monitor and control pollutants in stormwater discharges to municipal systems from hazardous waste treatment, disposal, and recovery facilities; Industrial Facilities; and High-Risk Commercial Facilities. The program shall:

- a. Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;
- b. Describe a monitoring program for stormwater discharges associated with the industrial discharges identified above, to be implemented during the term of the permit.

Compliance with these terms is achieved by implementing the program elements, as shown in Table 7 (Industrial Facility Stormwater Pollution Prevention) in Section E of this Part, except where inconsistent with other provisions of this permit.

**C. IMPLEMENTATION PLAN REVIEW AND MODIFICATION**

1. The permittee shall perform an annual review of the current SWQMP in conjunction with preparation of the Annual Report.
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 to the approved SWQMP may be made by the permittee at any time. A description of the modification shall be included in the subsequent Annual Report.
  - b. Modifications that replace an ineffective or infeasible BMP, which is specifically identified in the SWQMP along with an alternate BMP, may be made by the permittee at any time. A description of the replacement BMP shall be included in the subsequent Annual Report along with the following information:

- (i) An analysis of why the former BMP was ineffective or infeasible (including cost-prohibitive);
  - (ii) Expectations on the effectiveness of the replacement BMP; and
  - (iii) An analysis of why the replacement BMP is expected to achieve the goals of the BMP which was replaced.
- c. Modifications to adjust the schedule for maintenance activities or the frequency of inspections or monitoring identified in the SWQMP may be made by the permittee on an annual basis. The permittee must include in the subsequent Annual Report a description of the adjustment to the schedule along with 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.
3. The permittee should proceed with any uncompleted programs from the previous permit cycle to ensure the continuation of all positive activities towards improvement of water quality.
4. The content and provisions of the SWQMP, as discussed in Part II, are not considered permit conditions. It is an implementation plan to be utilized as a tool by the permittee to ensure compliance with program elements outlined in this permit.

**D. TOTAL MAXIMUM DAILY LOADS AND IMPAIRED WATERS**

1. Total Maximum Daily Loads (TMDLs)

The requirements of this section apply only to the permittee's MS4 discharges to receiving waters with adopted or established TMDLs and associated allocations. It is the intent of this section to ensure that pollutant discharges for those parameters listed in the TMDL are reduced to the MEP through the implementation of the permittee's SWQMP. The permittee shall make progress toward achieving assigned wasteload allocations (WLAs) by demonstrating through the implementation of structural and nonstructural best management practices and other program activities that are targeted at TMDL-related pollutants within watersheds that discharge to a waterbody with an adopted TMDL. If a TMDL is approved for any impaired waterbody into which discharges from the MS4 cause or contribute to water quality impairment(s), KDOW will review the TMDL and applicable wasteload allocation(s) to determine whether the TMDL includes requirements for control of stormwater discharges. If current discharges from the MS4 are not meeting TMDL allocations, KDOW will notify the permittee of that finding and may require that the SWQMP identified in Part II be modified, in accordance with Part III.F. of this permit relating to Reopening the Permit for major modifications, to include any applicable and appropriate BMPs to implement the TMDL within a reasonable timeframe.

2. Evaluation of TMDL Allocations.

After establishment of an approved TMDL for a pollutant of concern in the permittee's stormwater discharges during this permit term, 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 paragraph D.1. above, the permittee shall consider and propose applicable and appropriate Best Management Practices for its MS4 to reach the wasteload goal of the TMDL, and a schedule of implementation for those Best Management Practices. 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. Applicable limitations, conditions and requirements contained in the TMDL are also to be addressed in the SWQMP.

### 3. Impaired Water Bodies.

For impaired waters that lack a TMDL, the permittee shall evaluate its Best Management Practices in the SWQMP with respect to any new or expanded MS4 discharges for pollutants of concern that substantially change the discharge to impaired waterbodies listed on the Clean Water Act Section 303(d) list in the Division of Water publication entitled, "2012 Integrated Report to Congress on the Condition of Water Resources in Kentucky Volume II. 303(d) List of Surface Waters" to assess their effectiveness in minimizing pollution to such impaired waterbodies. The evaluation of BMPs may be conducted on a watershed basis or on a point source basis for newly proposed or expanded discharges. For those waters designated as impaired on the 303(d) list that the MS4 discharges into, the permittee shall monitor the impaired waters for those pollutants attributed to stormwater sources for at least 3 storm events during the permit term. Based upon its evaluation, the permittee shall modify its SWQMP as necessary and appropriate to improve the effectiveness of the BMPs.

### **E. PERMIT COMPLIANCE**

Compliance with the requirements of Part II, Section B, Subsections 1-7, is as defined in Tables 1-9, respectively, of this section. The information in Tables 1-9 provides the identification of the program elements, a description of the program elements, and the frequency or timetable for completion.

### **F. FISCAL REQUIREMENTS**

Funding shall be maintained and modified as necessary to ensure the accomplishment of the activities required by this permit. The permittee shall continue to provide, in the annual report, the budget update that includes expenditures and changes, if needed, in funding planned by the permittee.

**TABLE 1. PUBLIC EDUCATION AND OUTREACH (PE)**

The objective is to increase public awareness of water quality issues associated with discharges to the municipal separate storm sewer system (MS4) and to promote stewardship of the waters of the Commonwealth within the scope of this permit.

**PE 1 General Public & Stakeholder Education Program**

<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
General	Review and update annually	The permittee shall maintain a functional website that will have sections devoted to the homeowner, businesses, the construction industry, and public institutions to educate these audiences on the methods available to prevent pollution to the MS4.
	4 press releases per year	The permittee shall develop press releases to local media about the Stormwater Quality Management Program.
	Semi-Annually	The permittee shall develop, promote, and distribute an e-newsletter to educate community members who are interested in the MS4 Program.
	Develop permit year one and report tracking permit year two	The permittee shall create a webpage on the city's website that would incorporate maps, monitoring data and watershed assessment information for a test watershed. This may be presented as a Watershed Report Card. LFUCG should track the usage of the website by the public and if it deemed a valuable tool, the LFUCG would develop a schedule for creating webpages for the remaining watersheds.
	Review and update annually	The permittee will maintain an email list for people interested in knowing more about the Stormwater Quality Management Program, and to inform the public about changes to the Stormwater Quality Management Program.
Homeowners	Evaluate Annually	The permittee shall make available educational materials, public service announcements, and/or multimedia presentations for homeowners and property owners related to point and non-point source pollution, household hazardous waste, and proper lawn care practices.
Businesses (Commercial & Industrial)	Evaluate Annually	The permittee shall make available educational materials and/or multimedia presentations for area businesses related to point and non-point source pollution and stormwater pollution prevention measures for grounds maintenance and operational procedures.
Construction Industry	Evaluate Annually	The permittee shall make available educational materials and/or multimedia presentations for the construction industry related to point and non-point source pollution and stormwater pollution prevention measures for operational procedures and erosion and sediment controls.

**TABLE 1. PUBLIC EDUCATION AND OUTREACH (PE) continued**

<b>PE 1 General Public &amp; Stakeholder Education Program cont'd</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Public Institutions: Education & Management	Evaluate Annually	The permittee shall make available educational materials and/or multimedia presentations for public institutions related to point and non-point source pollution and stormwater pollution prevention for erosion and sediment controls, grounds maintenance, capital construction projects, and institutional educational and operational programming.
<b>PE 2 Community Meetings</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Public Meetings	4 per year	The permittee shall conduct, facilitate, and/or participate in meetings of the public, boards of directors for community civic groups, governing councils, neighborhoods, public task forces, planning and zoning commissions, and/or civic groups; topics should include the MS4 permit or the Stormwater Quality Management Program.
<b>PE 3 Stormwater Pollution Prevention &amp; Watershed Management Training</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Classroom Training	As requested and scheduled	The permittee shall facilitate and participate in training activities for K-12 schools and universities; topics should include the MS4 permit or the Stormwater Quality Management Program.
Community Training Opportunities	As requested and scheduled	The permittee shall participate in community training activities to promote water resource stewardship and the reduction of stormwater pollution. Potential opportunities would include Kentucky River Watershed Watch, Friends of Wolf Run, etc.
Community Survey	Once per permit cycle	The permittee shall perform an on-line survey of the public knowledge base and attitude about stormwater and the MS4 program using the LEXserv billing program or an effective equivalent.
Employee Training	Annually	The permittee shall conduct training classes for applicable employees on the sources, impacts, and solutions of stormwater pollution.
Elected Officials & Development Communities	Annually	The permittee shall conduct a training session related to the Stormwater Quality Management Program for the Urban County Council's Environmental Quality Committee and the Planning Commission.

**TABLE 1. PUBLIC EDUCATION AND OUTREACH (PE) continued**

**PE 3 Stormwater Pollution Prevention & Watershed Management Training cont'd**

Element Task	Frequency	Activity Required
Business Community (Commercial & Industrial)	See Construction Site Stormwater Runoff Control and Industrial Facility Stormwater Pollution Prevention	The permittee shall conduct, facilitate, and participate in technical training activities for businesses and industries. Training shall provide assistance to the construction industry regarding construction site runoff control and to businesses regarding pollution prevention measures for commercial and industrial sites.

**TABLE 2. PUBLIC INVOLVEMENT AND PARTICIPATION (PI)**

The objective is to increase public involvement in the management of the stormwater pollution prevention programs of Fayette County associated with discharges to the municipal separate storm sewer system (MS4).

**PI 1 Central Reporting of Pollution or Hazards**

<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	On going	The permittee shall continue operation of LexCall, or equivalent system, (via phone and webpage) to include the following: reporting of spills, reporting of illegal dumping/activity, reporting of complaints, and signing up for volunteer activities.
	Annually	The permittee shall evaluate the LexCall, or equivalent system, records to make sure that all water quality and stormwater related calls are properly handled, including tracked and reported. The permittee will ensure that calls are being forwarded to the appropriate Divisions for follow-up and resolution; this will involve coordination between LexCall staff and Department of Environmental Quality and Public Works staff.
	Annually	The permittee will train the LexCall, or equivalent system, staff during regular staff training on the importance of water quality issues and the appropriate codes for stormwater-related issues will be stressed.
	On going	The permittee shall publish and maintain the LexCall system or an effective equivalent and a city web address on stormwater educational materials.

**PI 2 Support Civic Groups Involved in Watershed Management and Stormwater Pollution Prevention**

<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Participate or join in 2 groups per year	The permittee shall participate in local community groups and local organizations whose goals are water resource protection, watershed management, or stormwater pollution prevention.

**PI 3 Facilitate Volunteer Service Opportunities for the Public**

<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	4 per year	The permittee shall facilitate and/or promote opportunities for the public to volunteer time and resources in community activities to reduce and prevent stormwater pollution. Activities may include clean-ups, volunteer sampling and planting of native vegetation and will be promoted via press releases, local cable access Channel 3, social media and/or website.

**TABLE 2. PUBLIC INVOLVEMENT AND PARTICIPATION (PI) continued**

<b>PI 4 Storm Drain Marking Program</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Mark 100 inlet structures per year	The permittee shall continue a storm drain marking program to label storm drain inlet structures.
	During Year 1	The permittee shall review and update, if needed, the storm drain marking protocol for medallion placement and/or stenciling that can be provided to volunteers, including the process for prioritizing inlet structures to maximize pollutant reduction. The protocol shall be posted on the city's website.
	Annually update	The permittee shall maintain a map showing locations of all currently marked drains and post on the website.
<b>PI 5 Public Notification of Major Program Changes</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Review and update, if needed, during Year 1	The permittee shall maintain a process to notify the public and affected stakeholders of any proposed major program changes that will significantly impact stormwater runoff quality, negatively or positively. The public shall be given the opportunity to informally comment on proposed changes and these comments will be summarized and made available on the website.
<b>PI 6 Stakeholder Advisory Committee</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	2 Meetings Per Year	The permittee shall continue to support its Stormwater Stakeholder Advisory Committee.

**TABLE 3. ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE)**

The objective is to detect, control, prevent, reduce, and eliminate illicit connections and improper disposal of wastes into the municipal separate storm sewer system (MS4) by determining the types and sources of illicit discharges entering the system by establishing legal, technical, and educational means needed to prevent these discharges into the waters of the Commonwealth within the scope of this permit. This program applies only to the Urban Service Area and the "Urban Areas" for Implementation of LFUCG's Stormwater Quality Management Program that is notated in the map attached to the permit.

**IDDE 1 Legal Prohibition/Control Authority**

<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Illicit Discharges	On going	The permittee shall effectively prohibit, through ordinance, operational procedures, or other regulatory means, non-exempt, non-stormwater discharges into the MS4.
Improper Disposals	On going	The permittee shall control through ordinance, operational procedures, or other regulatory means the discharge to the MS4 of spills, dumping or disposal of materials other than stormwater.
	Once per permit cycle	The permittee shall review and evaluate existing ordinances and propose updates to the Urban County Council as needed.

**IDDE 2 Inventory and Inspection**

<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Infrastructure Inventory	Within three years of effective date of the permit, then update annually	The permittee shall review and update the current Major Outfall mapping and inventory, showing known major outfalls and drainage areas, and submit the map to the Division of Water with the MS4 Annual Report for Permit Year 3, and then update on an annual basis.
	On going	The permittee shall maintain procedures for adding new Major Outfalls or for updating the inventory.
	Once per permit cycle	The permittee shall review and update, if needed, the procedures for adding new Major Outfalls or for updating the inventory once per permit cycle.
Inspection	Develop approach and procedures during Year 1; Implement during Years 2 - 5	Based on the outcomes from the Visual Stream Assessments conducted in 2009-2014, the permittee shall propose a modified approach and procedures for assessing the drainage systems identified as having the highest priority during Year 1 of the permit and implement the modified approach to inspect the drainage system areas of highest concern during permit Years 2-5.

**TABLE 3. ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE) continued**

<b>IDDE 3 Monitoring</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Outfall Screening	75 per year	The permittee shall conduct dry weather screening at no less than 75 locations every year, which may include major outfalls and other screening points selected by LFUCG.
Major Outfall Screening-Dry Weather Screening	20% per year; 100% by Year 5	The permittee shall conduct dry weather screening at 20% of the identified major outfalls once per year and achieve 100% screening of known major outfalls by the end of Year 5.
Database	On going	The permittee shall continue to track IDDE program investigations in Accela (or equivalent), and shall continue to compile all sampling field data and laboratory results.
<b>IDDE 4 Investigation</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	During Year 1	The permittee shall review and update, as needed, the existing criteria to evaluate, for internal purposes, whether sampling results from screening activities, monitoring data, reported incidents, or other information indicates the potential existence of an illicit discharge. This shall include a review and update, as needed, of procedures for conducting inspections and investigations.
	On going	The permittee shall conduct an investigation when the criteria for initiating an investigation are met.
<b>IDDE 5 Evaluation</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	On going	The permittee shall implement its protocol for elimination of confirmed illicit connections.

**TABLE 3. ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE) continued**

<b>IDDE 6 Enforcement of Controls</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	On going	The permittee shall require compliance with conditions in ordinances, permits, contracts and orders that prevent illicit discharges, spills, dumping and disposal of materials other than stormwater to the MS4. The permittee shall maintain enforcement programs, procedures, and/or policies to respond to the occurrence or detection of an illicit connection or improper waste disposal in accordance with the ordinances, operational procedures, or other regulatory means that have been established for the prohibition of such incidents.
	During Year 1	The permittee shall review and update, as needed, the enforcement procedures and recommend changes where appropriate.
	Annually	The permittee shall track and report enforcement activities related to the IDDE program.
<b>IDDE 7 Response to Spills</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	During Year 1	The permittee shall review and update, as needed, procedures for spill response, containment, and reporting of spills that could potentially come in contact with the MS4.
	On going	The permittee shall implement the spill response and containment program as it pertains to spills that could potentially come in contact with the MS4.
<b>IDDE 8 Education</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	On going	The permittee shall promote, publicize, and facilitate public reporting of the presence of illicit discharges and improper disposals and the associated water quality impacts. The permittee shall provide educational materials, public service announcements, and/or multimedia presentations regarding illicit connections and improper waste disposal into the MS4.

**TABLE 3. ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE) continued**

<b>IDDE 9 Training</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Conduct one training session per year	The permittee shall conduct, facilitate, and participate in training activities to be conducted annually for applicable LFUCG employees.
	Conduct concurrently with annual training	The permittee shall conduct audience surveys to measure attendance and evaluate the extent to which the target audience is being reached and ways to expand the training topics.
<b>IDDE 10 Controls for Sanitary Sewer</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	On going	The permittee shall maintain programs, procedures, and/or policies to detect, investigate and eliminate discharges of sanitary sewage from the municipal sanitary sewer system into the MS4.

**TABLE 4. CONSTRUCTION SITE STORMWATER RUNOFF CONTROL (CS)**

The objective is to develop, implement, and enforce programs to minimize pollutants in stormwater runoff from construction sites to the municipal separate storm sewer system (MS4).

**CS 1 Legal Prohibition/Control Authority**

Element Task	Frequency	Activity Required
	On going	The permittee shall effectively establish by ordinance, regulation, permit or series of contracts the authority to control pollutants in discharges of stormwater runoff from construction sites addressed in 40 CFR 122.26(d)(2)(A) to the MS4. [Furthermore, refer to Table 3. Illicit Discharge Detection and Elimination for the control authority and prohibition of non-exempt, non-stormwater discharges; spills; dumping; or disposal of materials other than stormwater into the MS4.]
	Once per permit cycle	The permittee shall review and evaluate existing ordinances and propose updates to the Urban County Council as needed.

**CS 2 Water Quality Considerations in Site Planning**

Element Task	Frequency	Activity Required
Review Procedures	Once per permit cycle	The permittee shall review and update, as needed, the procedures for summary review of construction site erosion and sediment control plans to assess whether plans reasonably include measures that address potential water quality impacts from construction prior to authorization of land disturbance.
Implement Procedures	On going	The permittee shall continue implementation of the procedures for summary review of construction site erosion and sediment control plans.

**CS 3 Non-structural & Structural BMPs**

Element Task	Frequency	Activity Required
Non-structural and Structural Controls	Once per permit cycle	Conduct review of design criteria for erosion and sediment controls in the Stormwater Manual at least once within the permit cycle.
	Once per permit cycle	The permittee shall review and update, as needed, the example BMP plans and checklists for use by construction site permit holders.

**CS 4 Site Inspections and Enforcement of Controls**

Element Task	Frequency	Activity Required
Site Inspections	Once per permit cycle	The permittee shall review and update, as needed, construction site inspection and enforcement procedures and the current inspection checklist.

**TABLE 4. CONSTRUCTION SITE STORMWATER RUNOFF CONTROL (CS) continued**

<b>CS 4 Site Inspections and Enforcement of Controls cont'd</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	On going	The permittee shall conduct monthly inspections of at least seventy (70%) percent of active construction sites with reasonable potential to discharge pollutants to the MS4 by following the construction site inspection and enforcement procedures and the current inspection checklist.
Targeted Inspections	Once per permit cycle	The permittee shall review and update, as needed, protocols for targeting active construction sites for additional inspections based on, but not limited to, nature of construction site, complaints, proximity to water bodies, the uses of the receiving water body, topography, characteristics of soils on site, types of chemicals and processes being used during construction.
	On going	The permittee shall conduct twice monthly inspections of at least seventy (70%) percent of the targeted active construction sites.
	As needed	The permittee shall conduct inspections until site has stabilized.
Data Tracking	On going	The permittee shall continue to track active construction sites and inspections in Accela (or equivalent), and shall continue to track and document enforcement actions.
<b>CS 5 Education</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	On going	The permittee shall provide educational materials, public service announcements, and/or multimedia presentations regarding stormwater pollution prevention for construction sites through the effective use of best management practices.
	Review and update, as needed, annually	The permittee shall maintain a functional stormwater website that includes information about and links to educational materials and multimedia presentations about construction site runoff control and best management practices.
<b>CS 6 Training</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Construction Community Training	Conduct one training session per year	The permittee shall conduct training sessions for the construction community, including site developers, engineers, designers, and contractors' inspectors in land management and construction practices that impact water quality.

**TABLE 4. CONSTRUCTION SITE STORMWATER RUNOFF CONTROL (CS) continued**

<b>CS 6 Training cont'd</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
LFUCG Employee Training	Conduct one training session per year	The permittee shall conduct or provide opportunities to attend outside training sessions for employees who carry out LFUCG's construction site runoff control program and who are involved with construction site inspections and enforcement.
Evaluation	Conduct concurrently with annual training	The permittee shall conduct audience surveys to measure attendance and evaluate the extent to which the target audience is being reached.

**TABLE 5. POST-CONSTRUCTION STORMWATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT (PC)**

The objective is to develop, implement, and enforce programs and procedures to minimize pollutants from stormwater runoff to the municipal separate storm sewer system (MS4). This program applies only to the Urban Service Area and the "Urban Areas" for Implementation of LFUCG's Stormwater Quality Management Program that is notated in the map attached to the permit.

**PC 1 Legal Prohibition/Control Authority**

Element Task	Frequency	Activity Required
	On going	The permittee shall continue to enforce LFUCG Code of Ordinances Section 16-85 which adopts LFUCG's Stormwater Manual that contains stormwater quality management requirements for new development and redevelopment.
	Once per permit cycle	The permittee shall review and evaluate existing ordinances and propose updates to the Urban County Council as needed.

**PC 2 Pollution Prevention Planning for New Development & Redevelopment**

Element Task	Frequency	Activity Required
LFUCG Engineering Design Standards	To be reviewed and updated, as needed, within 18 months of effective date of the permit and every 3 years thereafter	The permittee shall maintain a comprehensive engineering design standards process that is compatible with the prevention and reduction of pollutants from the MS4. The design standards shall be a part of the planning process to prevent or reduce pollutants from the MS4. The designs standards shall maintain procedures for site planning which incorporate considerations of potential water quality and habitat impacts.
Low Impact Development Guidelines	Incorporate within three years of effective date of the permit	The permittee shall incorporate its low impact development guidelines for new development and redevelopment into the Stormwater Manual.

**PC 3 Maintaining Stormwater Structures**

Element Task	Frequency	Activity Required
Structural Controls	On going	The permittee shall continue implementation of its policies pertaining to repair, maintenance, and ownership of stormwater control devices on private property, including retention ponds, detention basins, and other stormwater control devices.

**TABLE 5. POST-CONSTRUCTION STORMWATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT (PC)**

<b>PC 4 Inventory, Monitoring &amp; Inspection</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Inventory and Mapping	Annually update the inventory and mapping	The permittee shall annually update the inventory and mapping of post-construction stormwater controls in the Urban Service Area and Urban Areas, including detention basins, retention ponds, and other stormwater control devices.
	Annually update the inventory and mapping	The permittee shall maintain and update its inventory and mapping of publicly-owned storm sewer pipes 18" and larger.
Stream Restoration Projects	Create inventory in Year 1; update annually	The permittee shall create an inventory list of completed known stream restoration projects within the county and update the inventory list annually.
Inspection of Stormwater Controls	To be reviewed and updated, as needed, once per permit cycle	The permittee shall maintain procedures and checklists to facilitate inspections of post-construction stormwater controls.
Detention Basin Inspections	At least 2 times per year	The permittee shall ensure the inspection of at least fifty (50%) percent of the publicly- and privately-owned stormwater detention basins with reasonable potential to discharge pollutants to the MS4.
Retention Pond Inspections	At least 2 times per year	The permittee shall ensure the inspection of at least fifty (50%) percent of the publicly- and privately-owned retention ponds with reasonable potential to discharge pollutants to the MS4.
Critical Culverts and Structure Inspections	At least once per month and within three working days of a rainfall of 1 inch or more in a calendar day	The permittee shall conduct inspections of at least fifty (50%) percent of critical culverts and structures identified in the SWQMP for clogging and excessive sediment buildup.
Post-Inspection Activities	On going	The permittee shall continue implementing necessary repairs, cleaning, and maintenance for those structures for which LFUCG is responsible, based upon results of the inspection.

<b>TABLE 5. POST-CONSTRUCTION STORMWATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT (PC)</b>		
<b>PC 5 Pollution Prevention Enforcement</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	On going	The permittee shall continue implementation of a program to require private owners of stormwater controls to conduct or arrange for necessary maintenance, cleaning and repairs of the controls. The program shall address privately-owned retention ponds, detention basins, and other stormwater control devices. The permittee shall implement enforcement procedures to require responsible parties to perform necessary repair, cleaning, and maintenance for those structures for which LFUCG is not responsible, based upon results of the inspection.
	Within 12 months of effective date of the permit	The permittee shall refine the Enforcement Response Plan for Post-Construction Stormwater Management.
<b>PC 6 Evaluation</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Within 2 years of effective date of the permit	The permittee shall update and begin implementation of a revised program to prioritize and monitor select post-construction stormwater quality controls.
	Evaluate controls once per permit cycle	The permittee shall evaluate the effectiveness of structural and source controls in the LFUCG Stormwater Manual.
<b>PC 7 Education</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Public Reporting	On going	The permittee shall promote, publicize, and facilitate public reporting of the proper implementation of structural and source controls to reduce pollutants (including floatables) from stormwater runoff from the MS4.
	To be reviewed and updated, as needed, once per permit cycle	The permittee shall maintain operations and maintenance guidelines for post-construction stormwater quality controls for use by private property owners that addresses structural and non-structural stormwater runoff control areas on private property.
Hard Copies	As needed	The permittee shall have hard copies of the structure and source control materials and the Operations and Maintenance Manual available to the public.
<b>PC 8 Training</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Training for the Public	As requested and scheduled	The permittee shall provide one-on-one training and guidance for property owners with stormwater control devices as requested. The permittee shall track these trainings as they occur.

<b>TABLE 5. POST-CONSTRUCTION STORMWATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT (PC)</b>		
<b>PC 8 Training cont'd</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Produce and post one video segment in Year 1, Year 3, and Year 5	The permittee shall produce video segments on stormwater control device maintenance activities for web posting (e.g., YouTube).
	Track annually; evaluate in Year 5	The permittee shall track the number of video views and review posted comments. Near the end of Year 5, the permittee shall evaluate the usefulness of the video segments for the public audience.

**TABLE 6. POLLUTION PREVENTION FOR MUNICIPAL OPERATIONS (PPMO)**

The objective is to develop and implement programs and procedures to minimize pollutants from stormwater runoff from municipal operations to the municipal separate storm sewer system (MS4). This program applies only to the Urban Service Area and the "Urban Areas" for Implementation of LFUCG's Stormwater Quality Management Program that is notated in the map attached to the permit.

**PPMO 1 Municipal Construction Projects**

Element Task	Frequency	Activity Required
Capital Projects	Once per permit cycle	The permittee shall review and update, as needed, the general conditions section of the specifications for construction projects to educate contractors of their obligations under local, state, and federal permits and stormwater pollution prevention requirements.

**PPMO 2 Maintaining Stormwater Structures**

Element Task	Frequency	Activity Required
LFUCG Property	On going	The permittee shall continue implementation of a program to maintain stormwater quality controls on LFUCG property, including, but not limited to maintenance, cleaning, and repairs based on inspection findings. The program shall address publicly-owned or operated retention ponds, detention ponds, and other stormwater control devices.

**PPMO 3 Municipal Practices**

Element Task	Frequency	Activity Required
Greenworks Guides	Annually review and update, as needed	The permittee shall review and update, as needed, its Greenworks Guides for municipal practices. The permittee shall create a similar guidance document for municipal practices if it terminates the use of the Greenworks Guides. The permittee shall create additional guides if new municipal practices are implemented that have the reasonable potential to discharge pollutants to the MS4.
	On going	The permittee shall continue promoting the use of the Greenworks Guides to its employees at applicable municipal facilities.
Application of Turf Management Chemicals	Track amounts and report in the annual report	The permittee shall track amounts of chemicals used for turf management and propose ways to reduce their usage.

**TABLE 6. POLLUTION PREVENTION FOR MUNICIPAL OPERATIONS (PPMO) continued**

<b>PPMO 4 Inventory, Monitoring, and Inspection</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Inventory	Annually update	The permittee shall maintain an inventory and map of stormwater quality controls at municipal facilities, including LFUCG-owned properties and right of ways that discharge to the MS4.
Inspections	Annually	The permittee shall inspect at least fifty (50%) percent of the known stormwater quality controls at LFUCG facilities annually.
Inspection Checklist	Once per permit cycle	The permittee shall review and update, as needed, the procedures and checklists to facilitate inspections of known stormwater quality controls at LFUCG facilities.
Municipal Waste Facilities	Annually update	The permittee shall maintain an inventory of municipal waste facilities.
	Annually review and update, as needed	The permittee shall review and update, as needed, the SWPPPs of municipal waste facilities.
	Annually	The permittee shall inspect its municipal waste facilities.
	Annually	The permittee shall conduct wet weather outfall monitoring at relevant outfalls of municipal waste facilities.
Addressing Deficiencies	Within two years of effective date of the permit	The permittee shall refine its policies for the internal review, inspection, and correction of deficiencies at its facilities.
<b>PPMO 5 Training</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Training for Applicable Employees	Conduct one training session per year	The permittee shall develop and conduct training for LFUCG employees involved in municipal practices that have a reasonable potential to discharge pollutants to the MS4.

**TABLE 7. INDUSTRIAL FACILITY STORMWATER POLLUTION PREVENTION (IN)**

The objective is to develop, implement, and enforce programs and procedures to minimize pollutants from stormwater runoff from industrial sites to the municipal separate storm sewer system (MS4).

**IN 1 Legal Prohibition/Control Authority**

Element Task	Frequency	Activity Required
	On going	The permittee shall control through ordinance, regulations, permit, operational procedures, or other regulatory means, the contribution of pollutants to the MS4 by stormwater discharges associated with industrial activity (as defined in 40 CFR 122.26(b)) and the quality of stormwater discharged from sites of industrial activity. [Furthermore, refer to Table 3., Illicit Discharge Detection and Elimination for the control authority and prohibition of non-exempt, non-stormwater discharges; spills; dumping; or disposal of materials other than stormwater into the MS4.]
	Once per permit cycle	The permittee shall review and evaluate existing ordinances and propose updates to the Urban County Council as needed.

**IN 2 Industrial Inventory**

Element Task	Frequency	Activity Required
	Annually	The permittee shall update the inventory of Industrial Facilities with reasonable potential to discharge pollutants to the MS4 on an annual basis.
	Annually	The permittee shall update the inventory of High-Risk Commercial Facilities.
	Annually	The permittee shall maintain a database to track relevant information including enforcement and corrective action, regarding Industrial Facilities and High-Risk Commercial Facilities.

**IN 3 Evaluation**

Element Task	Frequency	Activity Required
	On going	The permittee shall maintain programs, procedures, and/or policies to review and evaluate the stormwater pollution plans, programs, and procedures of the industries it determines present significant sources of stormwater pollutants to the MS4.

**TABLE 7. INDUSTRIAL FACILITY STORMWATER POLLUTION PREVENTION (IN) continued**

<b>IN 4 Pollution Prevention Programs</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Once per permit cycle	The permittee shall review and update, as needed, its example SWPPP for Industrial Facilities and High-Risk Commercial Facilities. The example SWPPPs will include general BMPs that can be used by the industrial facilities.
	Annually update	The permittee shall maintain a list of industries, businesses, and institutions that should have Stormwater Pollution Prevention Plans (SWPPPs).
<b>IN 5 Inspection</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Once per permit cycle	The permittee shall review and update, as needed, procedures for conducting inspections of Industrial Facilities to ensure compliance with local ordinances and requirements regarding pollution prevention. Procedures will also address education and enforcement mechanisms to address any deficiencies or violations found at the facilities.
	Commencing in Year 1	The permittee shall inspect at least ninety (90%) percent of the locally identified High-Risk Commercial Facilities each permit cycle.
	Commencing in Year 1	The permittee shall inspect at least seventy (70%) percent of the Industrial Facilities at least once every two years.
	Once per permit cycle	The permittee shall inspect no-exposure industrial facilities to verify their categorization
<b>IN 6 Monitoring</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Facility Monitoring	Once per permit cycle	The permittee shall conduct dry weather screening at the outfalls of selected industrial and high-risk commercial facilities using the IDDE program's dry weather screening protocols.
<b>IN 7 Enforcement of Controls</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Once per permit cycle	The permittee shall review and update, as needed, the Enforcement Response Plan for Industrial Facilities.

**TABLE 7. INDUSTRIAL FACILITY STORMWATER POLLUTION PREVENTION (IN) continued**

<b>IN 8 Education</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Annually update	The permittee shall maintain a webpage that provides educational materials appropriate for industrial and high-risk commercial facilities, including the example SWPPP.
<b>IN 9 Training</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
Training for Industry	At least once every three years	The permittee shall provide training for industry groups and high-risk commercial businesses. SWPPPs should be one of the items covered during the training.
Training for Employees	Annually	The permittee shall provide training for employees. This training may be done in conjunction with the employee training for the IDDE program.

**TABLE 8. WATER QUALITY MONITORING (MON)**

The objective is to develop and implement water monitoring programs to identify pollutants from stormwater runoff to the municipal separate storm sewer system (MS4) from the coverage area specified by the permit.

**MON 1 Pollution Prevention Program Assessment Data Collection**

Element Task	Frequency	Activity Required
Dry Weather Monitoring for Major Watersheds	Quarterly	The permittee shall conduct a dry weather monitoring program for bacteriologicals, conventional parameters, and nutrients at one location in each of the seven major urbanized watersheds: Town Branch, Wolf Run, South Elkhorn Creek, North Elkhorn Creek, Cane Run, West Hickman, and East Hickman.
Wet Weather Monitoring for Major Watersheds	Quarterly	The permittee shall conduct a wet weather monitoring program for bacteriologicals, conventional parameters, and nutrients at one location in each of the seven major urbanized watersheds: Town Branch, Wolf Run, South Elkhorn Creek, North Elkhorn Creek, Cane Run, West Hickman, and East Hickman.
Macroinvertebrate Sampling for Major Watersheds	Annually	The permittee shall conduct a macroinvertebrate sampling program at one location in each of the seven major urbanized watersheds: Town Branch, Wolf Run, South Elkhorn Creek, North Elkhorn Creek, Cane Run, West Hickman, and East Hickman.
Habitat Assessments for Major Watersheds	Annually	The permittee shall conduct a habitat assessment program at one location in each of the seven major urbanized watersheds: Town Branch, Wolf Run, South Elkhorn Creek, North Elkhorn Creek, Cane Run, West Hickman, and East Hickman.
Fish Sampling for Major Watersheds	Every other year beginning in Year 2	The permittee shall conduct a fish sampling program at one location in each of the seven major urbanized watersheds: Town Branch, Wolf Run, South Elkhorn Creek, North Elkhorn Creek, Cane Run, West Hickman, and East Hickman.
Monitoring Plan	Six months after permit effective date	The permittee shall submit a monitoring plan that incorporates, revised as needed; the sampling methods and procedures contained in the document entitled <u>LFUCG Stormwater Quality Management Program SWQMP Appendix V Water Quality and Biological Sampling Plan</u> dated February 11, 2011.
Continuous Monitoring Network	Annually	The permittee shall maintain its program of continuous monitoring at one location per year on a rotating basis.
Database	Annually update	The permittee shall compile all sampling field data and laboratory results in a database, putting results on website and in the Annual Report.

**TABLE 8. WATER QUALITY MONITORING (MON) continued**

<b>MON 1 Pollution Prevention Program Assessment Data Collection cont'd</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Once per permit cycle	The permittee shall conduct one dry weather and one wet weather monitoring for the following metals: Total Recoverable Lead, Total Recoverable Copper, Total Recoverable Cadmium, Total Recoverable Zinc at one location in each of the seven major urbanized watersheds: Town Branch, Wolf Run, South Elkhorn Creek, North Elkhorn Creek, Cane Run, West Hickman, and East Hickman.
Watershed-Focused Monitoring Expansion	Beginning in Permit Year Two	The permittee shall begin to refocus its monitoring program to a watershed-focused monitoring program. In order to facilitate this process, monitoring should be conducted on a watershed basis with additional monitoring stations sampled for water chemistry, macroinvertebrates, microbial source tracking, hydro-geomorphic characterization, and habitat assessment. Details about this monitoring program, with schedule and monitoring locations, shall be submitted to the Division of Water within one year from the permit date. Implementation shall commence by January 31 <sup>st</sup> of the following year.
<b>MON 2 Public Education and Public Outreach</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Annually update	The permittee shall maintain a program to make monitoring results available to the public.
<b>MON 3 Education and Training</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Annually	The permittee shall conduct training for employees involved in the monitoring components of this permit.
	Conduct concurrently with annual training	The permittee shall conduct audience surveys to measure attendance and evaluate the extent to which the target audience is being reached and ways to expand the training topics.
	Conduct one training every 3 years	The permittee shall conduct training for volunteers involved in the monitoring components of this program element.
<b>MON 4 Evaluation</b>		
<b>Element Task</b>	<b>Frequency</b>	<b>Activity Required</b>
	Annually	The permittee shall provide a report of the monitoring results for each permit year in conjunction with the MS4 Annual Report.

**TABLE 8. WATER QUALITY MONITORING (MON) continued**

**MON 5 Trend Analysis Report**

Element Task	Frequency	Activity Required
Trend Analysis Report	Year 5	The permittee shall conduct a comprehensive assessment and perform a trend analysis of changes in each watershed over the permit cycle in Year 5 of the permit to support long-term assessments of local waterways and program performance. Report analysis through the "Trend Analysis Report" at least once every permit cycle.

**TABLE 9. REPORTING AND RECORDKEEPING (RR)**

The objective is to document all the reporting and recordkeeping requirements of the permit. The permittee is required to document and report the requirements of the permit and report annually to the permitting authority (KDOW). The Annual Report is required under 40 CFR 122.42 (c).

**RR 1 Reporting and Recordkeeping**

Element Task	Frequency	Activity Required
Reporting	Due July 15 for the previous calendar year	The permittee shall prepare an annual report and submit in accordance with the schedule in Part III D of the permit.
Recordkeeping	On going	The permittee shall maintain records for a period of five years.

### PART III. MONITORING AND REPORTING

#### A. MONITORING PROGRAM REQUIREMENTS

1. The quality of the streams receiving MS4 discharges in Fayette County shall continue to be monitored to assess the water quality of the streams and to identify potential water quality impairments. This shall be accomplished by implementing the program elements in Table 8, of Part II, which include characterization data collection for watershed management programs assessment.
2. LFUCG will continue or maintain several facets of its current sampling program:
  - a. Dry weather monitoring shall continue at in-stream locations. There will be one site chosen in each of the major urban watersheds. The frequency shall remain quarterly. The list of parameters is included below.
  - b. Wet weather monitoring shall continue on a quarterly basis at the seven watershed sites. The list of parameters shall be the same as for the dry weather sampling. The list of parameters is included below.
  - c. Annual macroinvertebrate sampling shall continue at one location in each of the seven watersheds.
  - d. Fish sampling shall occur every other year beginning in Year 2 of the permit at one location in each of the seven watersheds.
  - e. Habitat assessment will continue on an annual basis at the seven sites selected for macroinvertebrate, fish, dry weather, and wet weather collections.
  - f. The list of parameters for the aforementioned dry weather/wet weather monitoring is as follows:
    - Flow
    - pH
    - Total Suspended Solids
    - E. coli
    - Total Phosphorus
    - Dissolved Phosphorus
    - Ammonia
    - Total Kjeldahl Nitrogen
    - Nitrate plus Nitrite
3. LFUCG shall monitor the following metals: Total Recoverable Lead, Total Recoverable Copper, Total Recoverable Cadmium, and Total Recoverable Zinc once per permit cycle at the seven watershed sites.
4. LFUCG shall maintain the continuous monitoring network at one location per year on a rotating basis. Monitoring shall be for the following parameters - flow, pH, dissolved oxygen, temperature, and conductivity.
5. LFUCG shall begin to change its monitoring program to a watershed-focused monitoring program. In order to facilitate this process, monitoring should be conducted on a watershed basis with additional monitoring stations sampled for water chemistry, macroinvertebrates, microbial source tracking, hydrogeomorphic

characterization, and habitat assessment. This monitoring program shall be submitted to the Division of Water within one year of the permit effective date.

Compliance with these terms is achieved by implementing the program elements, as shown in Table 8 (Water Quality Monitoring) in Section E of Part II, except where inconsistent with other provisions of this permit.

**B. REPORTING REQUIREMENTS FOR THE MONITORING PROGRAM**

1. The permittee shall submit a stormwater monitoring report annually on the same schedule as the annual report under Part III, Paragraph D of this permit. This report shall include:
  - a. Map(s) showing monitoring station locations and narrative site descriptions, including watershed size;
  - b. Raw data, results, methods of evaluating data, graphical summaries of the data, and an explanation/discussion of the data for each component of the monitoring program;
  - c. An analysis of the results of each monitoring program component;
  - d. All monitoring reports shall be submitted electronically.
2. In Year 5 of the permit, the Annual Report shall also include a comprehensive monitoring program assessment. This assessment shall include the following:
  - a. A trend analysis that shall evaluate the changes that have taken place in each of the watersheds during the permit cycle (Years 1 through 5); and
  - b. An evaluation of the monitoring program, which shall be used to help formulate tasks and objectives for the next permit cycle.
3. Sampling methodology shall be according to the EPA stormwater application regulations at 40 CFR 122.26, (incorporated by reference, in Kentucky Regulations at 401 KAR 5:060, Section 8).
4. Analysis of parameters shall be conducted according to test procedures approved under 40 CFR 136 (incorporated by reference, in Kentucky Regulations at 401 KAR 5:060, Section 8), unless other test procedures have been specified.

Compliance with these terms is achieved by implementing the program elements in Tables 8 and 9 (Water Quality Monitoring and Reporting and Recordkeeping) in Section E of Part II, except where inconsistent with other provisions of this permit.

**C. OUTFALL MAPPING**

Per CFR 122.26 (d) (2) (iii) (C), (incorporated by reference in Kentucky Regulations at 401 KAR 5:060, Section 8), the permittee shall provide the location of all known major outfalls. The outfalls shall be identified in the annual report for Year 3 of the permit; with updates describing any additionally identified major outfall in each subsequent annual report. For the purpose of this permit a "major outfall" is defined as follows:

1. A pipe (or closed conveyance) system with a cross-sectional area equal to or greater than 7.07 square feet (e.g., a single circular pipe system, with an inside diameter of 36 inches or greater); if applicable.
2. A single conveyance other than a pipe, such as an open channel ditch, which is associated with a drainage area of more than 50 acres; if applicable.
3. A pipe (or closed conveyance) system draining "industrial-zoned land use," with a cross-sectional area equal to or greater than 0.79 square feet (e.g., a single circular pipe system, an inside diameter of 12 inches or greater); or if applicable.
4. A single conveyance other than a pipe, such as an open channel ditch, which is associated with an "industrial-zoned land use" drainage area of more than 2 acres; if applicable.

The permittee shall also delineate the drainage areas of the separate storm sewer system and submit a map to the Division of Water in the Annual Report for Permit Year 3.

#### **D. ANNUAL REPORTING REQUIREMENTS**

The permittee shall prepare an annual system-wide report to be submitted no later than July 15<sup>th</sup> of the year following the period covered by the report. The annual report shall cover the period beginning on January 1 through December 31, 2015, and annually thereafter. The annual report shall include but not be limited to:

1. A summary of monitoring data accumulated during the report year (40 CFR 122.41, incorporated by reference, in Kentucky Regulations 401 KAR 5:065, Section 2).
2. An overall evaluation of the SWQMP 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 make an overall determination of the effectiveness of the SWQMP taking into account water quality/watershed improvements.
3. Brief discussion of the program elements listed in Tables 1-9 following applicable SWQMP elements.
4. Status of the implementation and proposed changes to the SWQMP to include assessment of controls and specific improvements or degradation to water quality.
5. Summary of inspections and enforcement actions for regulatory programs.
6. Status of the public education program, including success stories.
7. Status of expenditures and budget for the present year and the next permit year.
8. The permittee shall submit the original annual report to:

Kentucky Division of Water  
Surface Water Permits Branch  
200 Fair Oaks Lane, 4<sup>th</sup> Floor  
Frankfort, Kentucky 40601

**E. CERTIFICATION**

All applications, reports, or information submitted to the Division of Water (DOW) shall be signed and certified pursuant to Federal Regulation 40 CFR 122.22 (incorporated to Kentucky Regulations at 401 KAR 5:060 Section 4). 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 fines and imprisonment for knowing violations.

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

**F. REOPENER CLAUSE**

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under 401 KAR 5:050 through 5:085, 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.

**PART IV. STANDARD CONDITIONS FOR KPDES PERMIT**

The permittee is also advised that applicable KPDES permit conditions in KPDES Regulation 401 KAR 5:065, Section 2, 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.



STEVEN L. BESHEAR  
GOVERNOR

**ENERGY AND ENVIRONMENT CABINET**  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
DIVISION OF WATER  
200 FAIR OAKS LANE  
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LEONARD K. PETERS  
SECRETARY

May 1, 2015

Re: Lexington-Fayette Urban County Government  
MS4 Permit  
KPDES No.: KYS000002  
AI No.: 74551  
Fayette County, Kentucky

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. Several commenters submitted questions and comments that should be addressed by Lexington-Fayette Urban County Government (LFUCG). The comments have been briefly described below and our responses to those comments follow:

**COMMENT 1:** Several commenters requested that the annual monitoring workshops for LFUCG staff and volunteers not be eliminated from the list of permit requirements for Lexington's stormwater monitoring programs.

**RESPONSE 1:** The permit now includes a requirement to have one training every 3 years.

**COMMENT 2:** The draft permit proposes to review only the Stormwater Pollution Prevention Plans (SWPPPs) of facilities as they are added and conduct a review of 5% of SWPPPs each year. The commenter suggests this should be at least 20% of SWPPPs reviewed each year, to get through all facilities in one permit cycle.

**RESPONSE 2:** The permit requirement is the minimum level of activity to be undertaken. LFUCG needs to retain the ability and flexibility to target SWPPP reviews and facility inspections at those facilities that exhibit the highest risk, based on their activities and their compliance histories, and avoid SWPPP reviews and inspections governed by non risk-based schedules.

**RESPONSE TO COMMENTS**

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This issue can best be addressed during SWQMP development. A commitment to review 5% of SWPPPs each year is an aggressive commitment for a city the size of Lexington. Moreover, the 5% figure is a minimum and portions of SWPPPs may be reviewed as part of routine inspections that may not count toward the formal review of the 5% per year.

**COMMENT 3:** The commenter suggests that on the whole, there needs to be more requirements and focus on low-impact development (LID) and green infrastructure (GI) practices and capturing greater storm events (90<sup>th</sup> percentile). The draft permit includes, under Table 5. Post-Construction Stormwater Management in New Development and Redevelopment, a proposal to incorporate LID guidelines into the Stormwater Manual within three years of permit issuance. The commenter requests this change be made within one year of permit issuance.

**RESPONSE 3:** The level of effort to incorporate the LID Guidelines into the Stormwater Manual correctly (in an achievable, meaningful, and comprehensive way) will take three years from permit issuance. Incorporating the guidelines will include stakeholder involvement and buy in, along with Planning Commission and Urban County Council approval. Coordinating with all these entities in one year is not achievable given their defined meeting structures. As an aside, LFUCG already supports Green Infrastructure and Low Impact Development practices and grant programs and is continually making progress toward strengthening this program component.

**COMMENT 4:** The draft permit proposes capturing the 80<sup>th</sup> percentile storm, which does not amount to a significant event. The commenter suggests the permit require capture of the 90<sup>th</sup> percentile storm event or greater.

**RESPONSE 4:** The permittee is being held to the same standard as other MS4s in Kentucky. The 80<sup>th</sup> percentile storm is the accepted standard used for encouraging and implementing green infrastructure practices and controls.

**COMMENT 5:** The strength of current programs is primarily due to the strength and commitment of current administrative and program leadership. If those individuals were to leave LFUCG and be replaced by individuals with less drive, expertise and commitment, then not clearly identifying elements and activities within the permit would put LFUCG's stormwater program in jeopardy of backsliding. The technical staff and program managers also need the support of permit requirements to

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provide the justification to implement critical components of their plans to prevent and control pollutants from entering the MS4 and Waters of the Commonwealth. Ignoring those additions proposed or reducing performance values will result in backsliding, or result in failure to control pollution to the Maximum Extent Practicable by LFUCG staff and the community as a whole.

**RESPONSE 5:** The level of detail in the permit is believed to be sufficient to ensure that current water quality protection and restoration activities are maintained and strengthened appropriately. KDOW maintains the ability to ensure that LFUCG pursues its permit compliance activities to the MEP through compliance monitoring, inspections, and enforcement.

**COMMENT 6:** In LFUCG's permit application letter item 3, LFUCG had proposed to create a pilot web-based system for presentation of monitoring data and "watershed report card". This proposal was endorsed by the Stormwater Stakeholders Advisory Committee (SSAC) as an important outreach component. This item was not listed as an activity in the PE Section of the draft permit. I would request that it be included as a deliverable activity. Not doing so will reduce the justification for carrying out the program and reduce public understanding of the issues they must be engaged to address.

**RESPONSE 6:** The item referenced in LFUCG's permit application letter has been incorporated into the permit

**COMMENT 7:** Under Public Involvement and Participation, PI 6 Stakeholder Advisory Committee - the Stormwater Stakeholder Advisory Committee (SSAC) created during the 2009 permit cycle meets quarterly, the current draft permit only calls for the group to meet twice per year. Considering the depth and breadth of topics covered by that group, twice a year would be insufficient time to cover that material in a timely fashion, and provide opportunity for meaningful input by Council members. I request that the frequency be set to quarterly as currently established by the Council.

**RESPONSE 7:** Permittees may exceed the minimum control measures mandated by a permit. Historically, Lexington's SSAC meetings have been scheduled quarterly, but in at least two of the years since inception, one of the four quarterly meetings has been cancelled. With a requirement to conduct two meetings per year, it gives the permittee flexibility to cancel a quarterly meeting due to low projected attendance, weather, lack of topics, or other unexpected circumstances. Conversely, there have been years when Lexington has

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held more than four meetings per year when there have been special topics of interest, such as a permit primer, an ESC Forum, and a special meeting to discuss the draft permit.

**COMMENT 8:**

Under Illicit Discharge and Elimination, IDDE 3 Monitoring LFUCG's efforts in this area are the most improved in regards to on-the ground performance by their staff, but the draft permit actually reduces performance requirements in a number of areas. Fewer inspections with reduced frequency will result in additional discharges going undetected. I would support the over all reduction in outfall screening frequency from 125 per year to 75 per year, but would hope that dry weather screening would continue at current levels and not be reduced. This is of course, unless LFUCG's proposal to increase the frequency of screening of outfalls with known pollution issues as found in their permit application letter item 6 is quantified and clearly delineated as an activity in the permit table under IDDE. Any reduction of outfall inspections without clearly identified follow up would result in a reduction in reaction time should illicit discharges occur and consequently result in additional pollutants entering the MS4 and Waters of the Commonwealth.

**RESPONSE 8:**

The permittee is being held to the same standard as other MS4s in Kentucky.

KDOW has determined that the draft permit contains appropriate MEP requirements for LFUCG. LFUCG's permit application letter identified certain current permit requirements that were not yielding meaningful information; thus, they were not included in the draft permit. Many of the programs and activities implemented over the past five years will continue under the new permit; i.e., the permittee will be maintaining past efforts as well as adding new activities required by the new permit to refocus the city's efforts.

**COMMENT 9:**

Several commenters noted that the definition of MEP - preventing and controlling to the Maximum Extent Practicable does not define the term, but outlines a process that allows the permittee to define their own terms and requirements that may circumvent the overall goal of the permit and the Clean Water Act. The presence of the consent decree with it's noted past deficiencies in Lexington's Program indicates that, if left to their own resorts given budgetary and political pressures, Lexington will define "Maximum Extent Practicable" (MEP) as "The Minimum We Can Get Away With" (MGAW) and often MGAW equals Zero for critical program elements. Therefore, the risk is that if Lexington is allowed to define MEP as what it

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says it is, then MEP = Zero and having no controls will result in pollutants being discharged without use of readily available controls. If the process of submission and review of the Stormwater Quality Management Program is going to the basis for MEP as required under Section 402 (p) (3) (B) of the Clean Water Act then that process for review, approval and enforcement of the Stormwater Quality Management Program needs to have specific steps, criteria, and measurements spelled out in the permit document and not be included in definitions only in general terms.

**RESPONSE 9:** The permit as written states that the requirements in the permit tables represent MEP. Based on the two MS4 inspections conducted by KDOW in 2010 and 2012, LFUCG has developed and implemented the necessary programs and procedures to meet MEP as defined in the permit.

**COMMENT 10:** LFUCG has excellent capacity for a competent monitoring program with sufficient staffing, community support, technical expertise and analytical resources to conduct a robust and statistically valid monitoring and assessment program for waters within the MS4. However, the frequency, scope and distribution of other requirements spelled out within the draft permit document are insufficient to provide the benefits of LFUCG's resources in identifying pollutant sources, catching infrequent or intermittent pollutant sources or providing sufficient data for scientifically sound analysis.

**RESPONSE 10:** The permit requires LFUCG to conduct a wide range of monitoring activities, including dry weather and wet weather in-stream monitoring for major watersheds (quarterly), fish sampling for major watersheds (every other year), macroinvertebrate sampling for major watersheds (annually), habitat assessments for major watersheds (annually), annual continuous monitoring, watershed-focused monitoring, and dry weather screening of Major Outfalls. These minimum requirements, supplemented by LFUCG compliant-driven and focused monitoring activities, are sufficient to address water quality protection and restoration objectives. Lexington's robust monitoring program is deemed adequate for assessment.

**COMMENT 11:** The following change in permit requirements is less stringent than what has been proposed or previously delivered by LFUCG and should be changed. The 2009 Permit called for a "proof of concept" test of the technology for continuous monitoring, which is complete. Based on the results of that test and the adoption of continuous monitoring networks within the Louisville Metropolitan Sewer District and the MS4 served by the Northern Kentucky Sanitation District

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#1 the technology has been proven and is best available technology (BAT) for monitoring parameters that are not suited for laboratory analysis and that have significant daily, seasonal and flow related variations in value. However, the continuous monitoring station located in the Wolf Run Watershed will be allowed to be discontinued as of July 1, 2015, if the permit conditions called for in the new Continuous Monitoring activity are not changed. Removing this monitoring station will reduce the frequency of monitoring in our watershed resulting in the inability to properly assess trends in key parameters (Dissolved Oxygen, pH, Conductivity and Temperature). Conductivity is a parameter of concern for the Wolf Run Watershed. Wolf Run is listed as impaired for Specific Conductance in the Division of Water's "2012 Integrated 305b/303d Report". The benchmark specific conductance values of 500 uhmo's are regularly exceeded, and values in excess of 800 uhmo's occur at variable intervals and durations. Knowing the extent, frequency and duration of these values is critical to understanding and responding to these conditions. Draft permit language will cause the MS4 to discontinue this important monitoring, resorting to monthly or quarterly field samples for this critical parameter. Commenter states that sampling frequency called for in the draft permit for specific conductance is insufficient to measure true conditions in the stream. Secondly, loss of the monitoring frequency over a period of several years will limit our ability to measure true trends given the sampling confidence intervals required to analyze conditions with this known variability. Lack of assessment data for specific conductance will reduce our ability to address this pollution issue. Allowing its removal will be counter to anti-backsliding provisions of the Clean Water Act as found in Section 402 as related to technology based standards, therefore, the Commenter calls upon the Kentucky Division of Water to make maintaining continuous monitoring for this parameter a permit condition for Wolf Run. The technology is tested. The technology is now in place (available).

**RESPONSE 11:**

The change in permit requirements to "maintain its program of continuous monitoring at one location per year on a rotating basis" is not less stringent than what has been proposed or previously delivered by LFUCG. It is consistent with the plan developed at the conclusion of LFUCG's pilot study of continuous vs. discrete water quality monitoring and continues the implementation of that plan. Anti-backsliding applies to controls, not to surface water monitoring programs.

The MS4 regulations do not require more comprehensive

**RESPONSE TO COMMENTS**

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sampling. Accordingly, the monitoring will remain as drafted. Monitoring is costly, and without additional regulatory basis, the Division elects not to impose more monitoring costs on communities.

**COMMENT 12:** The reduction of metals analysis from once per quarter to once per every five years cannot be scientifically defended as adequate to assess these parameters. Heavy metals from sources such as Copper from stormwater pond algae control measures, Zinc from heating and cooling systems, Cadmium from automobile by-products are known to exist within the MS4. Reducing screening rates will hamper the ability of water resources managers to spot any negative trends and respond with pollution control measures in a timely manner.

**RESPONSE 12:** The KPDES permit applies to all Waters of the Commonwealth within Fayette County. A rule of reason must be applied in determining the scope of any wet weather and MS4 discharge monitoring program. The permit provides for and identifies a comprehensive monitoring program. The Division has determined the monitoring program is adequate.

Additionally, LFUCG's monitoring has shown that metals were not commonly detected in the quarterly monitoring conducted over the past five years. Of the 405 samples collected over this time period, cadmium was never detected, copper in only four samples, lead in nine, and zinc in 20 (<5% of the samples). Since monitoring is costly and monitoring results do not support a historic link between metals and impairment, the reduction is justified.

**COMMENT 13:** On February 26, 2009, a Commenter submitted comments on behalf of KRWW to US EPA urging finalization of the Effluent Limitations, Guidelines and Standards for the Construction and Development Industries. I have attached those comments in support of these comments.

**RESPONSE 13:** The Division is not obligated to respond to such comments as they are not relevant to the KPDES permit terms.

**COMMENT 14:** In 2012, the Watershed Watch in Kentucky published THE KENTUCKY GREEN INFRASTRUCTURE ACTION PLAN FOR STORMWATER & WET WEATHER SEWAGE MANAGEMENT (KYGIAP). The plan is available on the WWKY website at [www.wwky.org](http://www.wwky.org). The KYGIAP discusses federal and state regulations applicable to stormwater management, including KPDES MS4 permits. WWKY noted that national environmental organizations such as NRDC interpret the "maximum extent practical" standard (the MEP standard) for MS4 permits to require permittees to

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use green infrastructure. WWKY agreed with this interpretation.

**RESPONSE 14:** The draft permit contains a provision for LFUCG to incorporate its LID Guidelines into the Stormwater Manual within three years of permit effective date. Also, requiring Lexington to manage the 80<sup>th</sup> percentile storm is a green infrastructure requirement.

**COMMENT 15:** The KYGIAP discusses "self-regulation" where the state issues an MS4 permit that allows the permittee to determine what will be the MEP standard without permitting authority or citizen review. The KYGIAP noted that the Louisville MS4 permit allows Louisville to employ self-regulation, but that Federal Courts in the 2<sup>nd</sup> and 9<sup>th</sup> Circuits have determined that self-regulation is illegal. This draft permit allows the permittee to determine the MEP standard by self-regulation. This permit provision is therefore an illegal delegation in violation of the Clean Water Act and Kentucky law.

**RESPONSE 15:** The permit defines MEP; not the permittee.

**COMMENT 16:** The proposed MS4 permit fails to set adequate on-site retention standards for redevelopment. Lexington is currently experiencing water quality problems that are attributable to the currently inadequate stormwater on-site retention standard. The proposed MS4 permit must remedy this failure.

**RESPONSE 16:** The permittee is being held to the same standard as other MS4s in Kentucky. The permit requires the permittee to "incorporate its low impact development guidelines for new development and redevelopment into the Stormwater Manual," and to "update and begin implementation of a revised program to prioritize and monitor select post-construction stormwater quality controls." In addition, the permit requires LFUCG to "evaluate the effectiveness of structural and source controls in the LFUCG Stormwater Manual." Additionally, the retention standard has been deemed to represent MEP for soil and rainfall characteristics in Kentucky and is applied on a statewide basis.

**COMMENT 17:** Several commenters noted that the Draft Permit Page II-3, Section 5.C. states that "The permittee shall require that new development manage post-construction runoff through water quality control structures from at least the 80<sup>th</sup> percentile precipitation event". We would request modification of this sentence and an additional language to provide post-construction pollution control guidance for redevelopment. The MS4 currently maintains a control standard for a 90<sup>th</sup>

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percentile storm event for new development as found in their hydrology standards in the Stormwater Design Manuals (2009). We would request that permit requirements match at least the current value to prevent backsliding of control standards to the lower value. No specific control standards are expressed for redevelopment in this paragraph. The Wolf Run Watershed is 83% developed and listed as an impaired waterway for stormwater runoff. This permit language will not be protective for this and other impaired streams within the MS4 since most redevelopment projects will not be required to meet a specific design standard if not specifically addressed in the discharge permit.

**RESPONSE 17:** The permittee is being held to the same standards for new development and redevelopment as other MS4s in Kentucky. A permittee may exceed the minimum control measures mandated by a permit.

**COMMENT 18:** Several commenters stated that the permit will need to contain language that provides specific standards for the permittee to meet otherwise pollution from redevelopment sites will continue to reach the MS4 and impaired receiving waters. We are not asking the permit to contain specific management practices for redevelopment projects, but to contain design goals as similarly expressed for new development in the paragraph referenced or adoption of a Maximum Extent Technically Feasible (METF) analysis for redevelopment stormwater controls. Technical guidance on design standards and criteria for redevelopment projects "to prevent and control pollution from entering the MS4 to the Maximum Extent Technically Feasible" can be found in US EPA's Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act (2009)

**RESPONSE 18:** The goals of new development and redevelopment are inherently different and stormwater management design standards should take the varied goals of these two types of development into account. As stated previously, the permittee is being held to the same standards for new development and redevelopment as other MS4s in Kentucky.

**COMMENT 19:** Commenter stated that the Draft KYS000002 permit asserts that there are no numeric effluent limitations associated with this permit, but fails to expressly identify the narrative effluent limitations that are required to be part of this permit. The draft permit should include numeric effluent limits.

**RESPONSE 19:** Section 402(p) of the Clean Water Act requires that KPDES permits for MS4s control pollutants and

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stormwater runoff to the maximum extent practicable (MEP). The MEP standard may be met through Best Management Practices (BMPs), and numeric effluent limitations are not required for KPDES permits for MS4s. See *Environmental Defense Center, Inc. v. EPA*, No. 00-70014 (9th Cir. 2003); *Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999). The permit meets MEP control requirements consistent with state and federal regulations and the Clean Water Act. MS4 requirements listed in Tables 1-9 with specific deadlines and timetables represent Maximum Extent Practicable control and constitute the effluent limits.

**COMMENT 20:**

KPDES Permit KYS000002, Part I, Applicability, Section B. addresses Authorized Discharges. Under Section 3, Effluent Limits, the permit states: "There are no numeric limitations associated with this permit." This is illegal. The US EPA was sued for failure to promulgate numeric effluent limits for stormwater. As a result of that suit, on November 28, 2008, EPA issued Proposed Effluent Limitations Guidelines and Standards for the Construction and Development Industry, See: 73 Fed. Reg. 72562: [www.epa.gov/waterscience/guide/construction/](http://www.epa.gov/waterscience/guide/construction/). These effluent limit guidelines or "ELGs" will set technology-based performance requirements for active construction sites covered by NPDES permits, including this permit. The EPA proposed ELGs include: minimum erosion controls for sites one acre or larger; sediment basin design standards for sites 10 acres or larger; and a numeric effluent limitation of 13 NTU (measure of turbidity) for sites that are larger than 30 acres with erodible soils. Kentucky DOW is well aware of this process and has discussed the need for numeric stormwater limits as part of the recent discussion of anti-degradation as it applies to the draft permit for construction. The KYS000002 permit should be withdrawn and reissued with appropriate numeric and narrative effluent limits.

**RESPONSE 20:**

The EPA's proposed November 28, 2008, effluent limitation guidelines apply to the construction industry. They do not apply to MS4s, unless the MS4 is a qualifying local program. Section 402(p) of the Clean Water Act requires that KPDES permits for MS4s control pollutants and stormwater runoff to the maximum extent practicable (MEP). The MEP standard may be met through Best Management Practices (BMPs), and numeric effluent limitations are not required for KPDES permits for MS4s. See *Environmental Defense Center, Inc. v. EPA*, No. 00-70014 (9th Cir. 2003); *Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999). The permit meets MEP control requirements consistent with state and federal regulations and the Clean Water Act. MS4

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requirements listed in Tables 1-9 with specific deadlines and timetables represent Maximum Extent Practicable control and constitute the effluent limits.

**COMMENT 21:**

Commenter states the draft KPDES permit improperly excludes the SWQMP from the permit, in clear violation of the Waterkeeper opinion; the SWQMP must be defined as an effluent limit. The SWQMP are narrative effluent limitations that are binding on LFUCG because they contain the essential requirements of the management practices intended to reduce the discharge of stormwater pollutants into, and from MS4s to the maximum extent practicable. Consequently, the SWQMP are "effluent limitation" that contain the restrictions on "quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources..." 33 U.S.C. Section 1362(11). The SWQMP embodies the Minimum Control Measures required by EPA stormwater regulations. See 40 C.F.R. 122.34(b). In Waterkeeper Alliance v. EPA, 399 F. 3d 486 (2d Cir, 2005), EPA argued that the comprehensive nutrient management plans ("CNMP") required for concentrated animal feeding operations ("CAFOs") were not part of the NPDES for the CAFO. The Second Circuit rejected that argument, noting that such argument "is to allow semantics to torture logic" Id at 502. The same logic applied by the Second Circuit to CNMP applies to Lexington SWQMP. As part of the permit, the SWQMP must be subject to public participation and comment and must receive meaningful and careful review by the Division of Water. The DOW must withdraw this permit and require the applicant submit the SWQMP to the DOW as part of the permit application and the SWQMP must be included in the public notice and opportunity to comment as a narrative effluent limit and permit requirement.

**RESPONSE 21:**

The SWQMP is a dynamic document that must be updated to address failed BMPs and other necessary changes (i.e., responsible parties or frequencies) and is a plan to implement the requirements of the permit and not subject to permit requirements. The Waterkeeper Alliance, Inc. v. EPA decision does not require the Storm Water Quality Management Plan (SWQMP) to be incorporated into the permit as an effluent limitation. The technology-based MEP requirements are delineated in the permit. See Tables 1 through 9. The SWQMP, like Storm Water Pollution Prevention Plans under U.S. EPA's multi-sector general permit for stormwater discharges associated with industrial activity, is a tool to assist both the permittee and inspectors in ensuring and documenting that effluent limitations established in the permit are met. The SWQMP is not independently enforceable as an effluent

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limitation. See also 401 KAR 5:060 § 12(3) (b) 4, which provides proposed management, programs "shall be considered by the Cabinet when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable." Like the SWPPP under the multi-sector general permit for stormwater discharges associated with industrial activity, the SWQMP documents specific control measures the discharger will utilize in its implementation plan to meet the MEP requirements of the permit. Accordingly, it is not necessary for there to be a public notice and an opportunity to comment on the SWQMP as MEP is defined and delineated within the permit.

**COMMENT 22:**

Commenter states that the draft KPDES Permit No. KYS000002 fails to comply with the Clean Water Act and Kentucky antidegradation requirements at 401 KAR 5:029 *et seq.* It appears that this CWA requirement was completely ignored. Recently, the DOW gave public notice of the draft KPDES General Permit for Stormwater Discharges Associated with Small Construction Activities (KYR10). That draft general permit contains an extensive discussion of the CWA antidegradation requirements, including the impact of the recent decisions of the Sixth Circuit. The proposed LFUCG permit must be withdrawn and re-noticed after it has permit conditions that protect waters where the water quality exceeds that needed to support the designated uses of aquatic habitat and recreation.

**RESPONSE 22:**

The Division has determined that KPDES permit terms and conditions are sufficiently stringent to prevent any significant lowering of water quality in high quality and exceptional waters that may exist in Fayette County for any new or expanded discharges from the MS4. The basis of this determination follows: 1) new construction activity (the source of most new or expanded discharges) will already be subject to antidegradation review under new general or individual KPDES permits; (2) any new or expanded discharges of stormwater from an MS4 are not truly "new" discharges because the area served by the expanded MS4 already discharges stormwater to the receiving stream during rain events; (3) MS4 discharges are subject to maximum extent practicable control standards, including such standards for discharges from new development or redevelopment on a post-construction basis, such as through ordinances implemented by LFUCG to limit peak discharges. Accordingly, new or expanded discharges of stormwater from an MS4 are inherently different from a discharge of process water under a KPDES permit. Thus, the KPDES permit is considered sufficiently stringent to prevent any significant lowering of water quality with respect to new or expanded discharges from the

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MS4 during wet weather events. In addition, the Division has determined that orderly growth of municipalities in the form of new development is critical to accommodate important social and economic interests. To the extent that lowering water quality during wet weather events would occur despite the application of the MEP standard set forth in the KPDES permit, this lowering is necessary to accommodate important social and economic interests in the area.

**COMMENT 23:**

Commenter states the proposed permit for LFUCG contains an inadequate discussion of how the permit will prevent further pollution of Impaired Streams. Fayette County currently has a long list of Impaired Stream Segments, and currently has only four TMDLs, but with many more TMDLs pending. At page II- 5, the DOW has the option ("may require") to reopen the permit after a TMDL is approved. However, the next paragraph appears to invite the LFUCG to seek a variance or seek a use attainability analysis rather than reduce the pollutant loading as needed to cause the stream segment to come into compliance. An earlier version of this permit, as proposed on August 13, 2008, contained a requirement that the LFUCG would make adjustments to comply with the TMDL waste load allocations within six months and if inadequate progress was being made over a two year period, the DOW could take action to reopen the permit. We would have complained that this two and a half year for the LFUCG to comply with TMDL waste load allocation requirements was too long. Now there are no time limits. All three paragraphs on TMDLs and Impaired Waters require (or "may require") that the SWQMP be modified to address these matters. This remedy makes it all the more essential that the SWQMP be part of the KPDES permit.

**RESPONSE 23:**

The permit expressly provides that upon promulgation of a total maximum daily load, to the extent the TMDL applies to MS4 discharges, KDOW may require that the SWQMP be modified to address any applicable and appropriate BMPs to implement the TMDL within a reasonable timeframe. Accordingly, the KPDES permit includes provisions to include TMDLs in a manner consistent with the Clean Water Act, which is to reopen the KPDES permit as appropriate. Moreover, the permit provides for the permittee to also evaluate a newly established TMDL and to propose any new applicable or appropriate BMPs to reach the wasteload goal of the TMDL. It is wholly appropriate to provide the permittee with a reasonable period of time to implement any requirements established by a TMDL. Accordingly, the Division does not agree with this comment.

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The permit also appropriately addresses impaired waterbodies that lack a TMDL. Prior to the development of a TMDL, the permittee is required to evaluate its BMPs with respect to any new or expanded MS4 discharges for pollutants that discharge to an impaired waterbody. Because new or expanded MS4 discharges are added throughout the permit term, specific program requirements cannot be evaluated at the time of permit issuance. Accordingly, the permit appropriately provides for that analysis prior to the new or expanded discharge in the future. It should also be noted that TMDLs will be required for impaired streams, which will control after their development.

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, 200 Fair Oaks Lane, 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 Abigail Rains, SWP Branch, at (502) 564-3410, extension 4891.

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,



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

PTG:SJB:ALR