
**Permitting, Inspection, and Enforcement Procedures for
Erosion and Sediment Control on Development Projects**

**Division of Water Quality
Compliance and Monitoring**

**Lexington-Fayette
Urban County Government**



September 2022

Permitting, Inspection, and Enforcement Procedures
for Erosion and Sediment Control on Development Projects

Division of Water Quality
Compliance and Monitoring

Date of Original Publication:

June 2014

Date of Current Publication:

September 2022



This publication was developed by the Tetra Tech / Third Rock Consultants Stormwater Program Management Team under contract to LFUCG for purposes of implementing the stormwater provisions of its Clean Water Act Consent Decree and/or its Kentucky Division of Water (KDOW) Municipal Separate Storm Sewer System (MS4) Permit.

Permitting, Inspection, and Enforcement Procedures for Erosion and Sediment Control on Development Projects Division of Water Quality, Compliance and Monitoring

ESC Plan Reviewer: DOE New Development – Vaughan Adkins (residential), Josh Dezarn (commercial), Brian Hayes and Hillard Newman (both)

Land Disturbance Permit (LDP) Issuer: DOE New Development

LFUCG ESC Compliance Inspector: DWQ Compliance and Monitoring Staff

Accela Data Entry: DWQ Compliance and Monitoring – Kevin Lyne / Staff

Permittee: Contractor, Homebuilder, or Owner

Permitting Procedures

1. Permittee shall develop a Stormwater Pollution Prevention Plan/Erosion and Sediment Control Plan (SWPPP/ESC Plan). A SWPPP/ESC Plan template and a plan checklist is on the LFUCG website at <https://www.lexingtonky.gov/new-development>.
2. On some projects, the Improvement Plans may contain a SWPPP/ESC Plan prepared by the design engineer. If the Permittee chooses to use this SWPPP/ESC Plan to obtain the required permits, the Permittee takes sole responsibility for the content of the SWPPP/ESC Plan and the implementation of the SWPPP during construction.
3. Permittee must submit an application for a Land Disturbance Permit to the LFUCG Division of Engineering before beginning project construction. The SWPPP/ESC Plan must be completed prior to applying for the LDP. The permit application is available at <https://aca3.accela.com/lexky/>.
4. For projects with a disturbed area of ≥ 1 acre, including those in a common plan of development ≥ 1 acre, the permittee must submit a Notice of Intent (NOI) to the KY Division of Water (KDOW) and obtain KYR10 Permit coverage before beginning construction of any kind on the site. The NOI can be submitted electronically at <http://dep.ky.gov/formslibrary/Documents/KYR10PermitPage.pdf>.
5. Permittee cannot start project work until they have completed the SWPPP/ESC Plan and obtained the LFUCG Land Disturbance Permit and KYR10 Permit coverage (if applicable – see above).
6. DOE reviews the SWPPP/ESC Plan for completeness and compliance with the Stormwater Manual, and confirms that the Permittee has obtained KYR10 Permit coverage.
7. After the SWPPP/ESC plan is accepted, DOE may conduct a pre-construction meeting with the Permittee and DWQ and authorizes the Permittee to install the initial BMPs.
8. Contractor then installs the initial BMPs, prior to project work (general excavation, grading, etc.).
9. DWQ inspects the installation of the initial BMPs and notifies DOE to issue the Land Disturbance Permit if BMPs are approved.

Permittee Responsibilities

Permittee shall:

1. Develop a SWPPP/ESC Plan, or review and agree to use the SWPPP/ESC Plan prepared by the design engineer, or amend it as needed.
2. Attend a pre-construction conference with LFUCG.
3. Post the LFUCG Land Disturbance Permit and KYR10 Permit on the project sign at the site, and keep a copy of the SWPPP/ESC plan on site and available for review.
4. Follow the SWPPP/ESC Plan; revise and redline it as conditions change on the site.
5. Install and maintain BMPs to prevent sediment from washing into streets, storm sewers, and streams. All runoff from disturbed areas must pass through a BMP before leaving the site.
6. Maintain a 50-foot vegetative buffer strip along perennial and intermittent streams (including impounded streams), wetlands, sinkholes, and inlets.
7. If work must be done within 50 feet of a perennial or intermittent stream, wetland, sinkhole, or inlet, complete work as soon as possible and stabilize the area within 24 hours after completing work.
8. Conduct an ESC inspection at least once every 7 calendar days, or every 14 days and within 24 hours after each rainfall of 0.5 inches or greater and each snowfall of four inches or greater.
9. Complete and sign the inspection form after each inspection. Keep the completed inspection forms on site and available for review.
10. Stabilize inactive portions of the site within 14 days of no activity, and provide permanent stabilization within 14 days of reaching final grade.
11. If the project has a KYR10 Permit, file a Notice of Termination with the KY Division of Water and forward to the LFUCG Division of Engineering and LFUCG Division of Water Quality when construction has been completed and the site is stabilized. Final stabilization is defined as follows from KYR10: "All soil disturbing activities at the site have been completed and either of the two following criteria are met – a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed."
12. Respond promptly to Verbal Warnings and Notices of Violation from LFUCG regarding correcting ESC problems.

Inspection Procedures for DWQ C&M Inspectors

Field Inspections

1. Inspect the site each month (two times a month if it is a targeted site; a targeted site is classified as land disturbance of more than five acres, or projects that require a 404 Permit from the U.S. Army Corps of Engineers (USACE) or a Water Quality Certification or Stream Construction/Floodplain Permit from the Kentucky Division of Water (KDOW)).
2. Ensure the LFUCG Land Disturbance Permit and KYR10 Permit are posted at the site
3. Ensure SWPPP/ESC Plan is available for review
4. Ensure Permittee's weekly/biweekly inspection forms are available for review
5. Walk the perimeter of the entire site
6. Note downgradient controls:
 - Inspect ditches and sheet flow areas
 - Silt fences working?
 - Ditches vegetated / stabilized?
 - Significant sediment discharges?
7. Walk around internal disturbed areas
 - Idle for more than 14 days . . . stabilized?
8. Inspect all inlets and ditches
 - Inlets protected, ditches stabilized?
9. Check out material / fuel storage areas
 - Spills? Leaks? Leaching pollutants? Litter / waste managed?
10. Inspect concrete washout(s)
11. Inspect the construction entrance / exit
12. Inspect the 50-foot vegetative buffer strip adjacent to waterways. The buffer strip must be stabilized within 24 hours of any approved construction activity in the buffer strip.
13. Communicate inspection findings to Permittee, issue warnings / NOVs if warranted
14. Complete the LFUCG inspection checklist
15. Enter the checklist into Accela

Important Items for the Inspector / Permittee / Contractor to Verify:

- Posted permits, plans, and inspection reports
- Graded / inactive areas stabilized with seed, mulch, blankets, mats, etc.
- Stabilized, non-eroding ditches
- Maintained silt fences and protected curb / drop inlets
- No mud on the street
- Trash and litter managed
- No disturbance in the 50-foot buffer zone adjacent to streams, wetlands, sinkholes, and inlets, unless approved; areas within the 50-foot buffer must be stabilized within 24 hours

Enforcement Procedures

1. When the DWQ inspector identifies ESC deficiencies, the inspector shall take action in accordance with the LFUCG DWQ *Construction Site Enforcement Response Plan*.
2. Enforcement actions are intended to escalate until compliance occurs.
3. DWQ Compliance and Monitoring inspectors will coordinate with Division of Environmental Services staff on cases elevated for citation or a higher-level response.
4. The Director of the Division of Water Quality shall review the cases referred by the inspector and refer the cases as necessary to the Division of Environmental Services for additional enforcement action.

Compliance Assistance Guidance for DWQ C&M Inspectors

Observed Condition	Verbal Warning (See Note 1)	Notice of Violation (See Note 1)	Refer for Citation
Construction Entrance to Public Road	Rock pad poorly maintained	Rock pad not installed or not installed properly	
	Small amount of sediment on road	Rock pad completely covered with soil	
		Significant amount of sediment on road	
Unstabilized Areas	Flat inactive disturbed areas not stabilized in 14 days	Ditches not stabilized immediately after construction	
		Disturbed, inactive slopes not stabilized within 14 days	Disturbed, inactive slopes above waterways, wetlands, floodplains, critical areas ² not stabilized within 24 hours
Inlet Protection	Sediment needs to be removed from around inlet protection	Curb inlet protection not in place, improperly installed, or bypassed	Discharge of concrete wash water, chemicals, other pollutants into inlets, streams, wetlands, etc.
Silt Fencing	Does not match SWPPP/ESC Plan but critical areas ² and roads are protected	Silt fence not installed per plan and critical areas and roads are not protected	
	Does not comply with Stormwater Manual but is functional	Blowouts have occurred with discharge of sediment to critical areas ²	
	Needs maintenance/repair, but is not near an inlet or surface water	Not trenched in, is not functional	
		Needs repaired in critical areas ²	
Soil Stockpiles	No perimeter controls, downstream BMPs in place	No perimeter controls, downstream BMPs not in place	
Permit Violations		Permit expired	Site not permitted
		Permit not posted or available on site	
		Contact name/phone not posted	
		No self-inspection reports; reports not on site	
		Self-inspection reports not current	
		SWPPP / ESC Plan not on site	
			Unapproved construction activities in the 50 ft buffer zone around sinkholes, streams, wetlands, etc.
			Construction has started, BMPs not installed

1. Refer NOV for citation if conditions are not corrected after the second NOV. Refer repeat or chronic offenders to the Division Director for an enforcement conference or directly for citation after the 1st NOV. It is not necessary to issue a Verbal Warning before issuing an NOV.
2. Critical areas are areas within 25 feet of a stream, wetland, sinkhole, or inlet.