L E X I N G T O N - F A Y E T T E  U R B A N  C O U N T Y  G O V E R N M E N T

# Construction Site Stormwater Program

# Enforcement Response Plan (Revised 12/12/16)

## Contents

# I Introduction and Overview

The Lexington-Fayette Urban County Government (LFUCG) is responsible for complying with 1) US Environmental Protection Agency (USEPA) stormwater regulations under the federal Clean Water Act; 2) regulations established by the Kentucky Division of Water (KDOW) under its Kentucky Pollutant Discharge Elimination System (KPDES) Municipal Separate Storm Sewer System (MS4) stormwater permit program; and 3) a US Department of Justice District Court Consent Decree issued to compel compliance with the state and federal regulations cited above.

## LFUCG Construction Site Stormwater Program Requirements

Under these regulations and court mandates, which include a Storm Water Quality Management Program developed to ensure compliance with the Consent Decree and the MS4 Permit, LFUCG must:

- Regulate and control polluted runoff from construction site stormwater to meet the permit standard of reducing pollution to "the maximum extent practicable;"
- Implement construction site inspection and enforcement procedures to provide for escalating enforcement remedies;
- Maintain a database to track active construction sites, inspections, and enforcement actions;
- Conduct monthly inspections of at least ninety (90%) percent of active construction sites with reasonable potential to discharge pollutants to the storm sewer system;
- Implement protocols for targeting construction sites based on the nature of the site, complaints, proximity to water bodies, uses of the receiving water body, topography, characteristics of soils on site, types of chemicals and processes being used during construction, and other factors;
- Conduct twice monthly inspections of at least seventy (70%) percent of the targeted active construction sites;
- Maintain authority to issue Stop Work Orders compelling the cessation of construction activity at sites in violation of any stormwater ordinance;
- Develop and implement other enforcement, training, and plan review measures designed to reduce pollutant runoff from construction sites; and
- Enforce its stormwater regulations to deter noncompliance with those regulations.

## Purpose of the Enforcement Response Plan

This Enforcement Response Plan provides information on how LFUCG intends to address the requirements listed above, by providing details on types of construction site stormwater violations, staff roles and duties, and enforcement actions and processes. The approach described in this document is based on a tiered system of enforcement, whereby violations are met with a response that matches their severity; i.e., violations that pose a significant threat to water quality or demonstrate a flagrant or repeated disregard of city ordinances are met with escalated levels of enforcement action – including Stop Work Orders and Permit Blocks, in some cases.

# II Types of Enforcement Actions

Enforcement actions are undertaken to assure compliance with applicable local, state, and federal rules promulgated by the Lexington-Fayette Urban County Government (LFUCG), the Kentucky Division of Water (KDOW) under the Kentucky Pollutant Discharge Elimination System (KPDES) permit program, and the US Army Corps of Engineers (USACE) Clean Water Act (CWA) programs. These include:

- Provisions of the LFUCG Code of Ordinances, particularly Chapter 16.
- LFUCG Stormwater Quality Management Program policies and procedures
- Standards detailed in the LFUCG Stormwater Manual
- KDOW KPDES construction site stormwater permit regulations (for sites $\geq$ one acre)
- USACE rules for CWA Section 404 "dredge and fill" activities in streams and wetlands

Enforcement actions are intended to be commensurate with the threats posed to public health, safety, and the environment. Low level threats are typically handled through Informal Notices. Higher level threats are addressed – in order of increasing severity – by issuance of a Notice of Violation, Citation, Administrative Order, Stop Work Order, and/or Permit Block. These actions, which are always accompanied by deadlines and documentation in the ACCELA system, are described below (Table 1).

## Informal Notice

Informal Notices are issued for minor violations of permits or ordinances. Informal Notices include statements made during sampling and/or inspection visits, telephone calls to the violator, informal meetings, warnings or reminder letters or emails. Informal Notices 1) point out non-compliant conditions to construction site personnel, 2) contain information on the action(s) needed to bring the situation into compliance, and 3) specify a deadline for completing compliance activities. Documentation of the Informal Notice, delivery, and how it was addressed is entered into the ACCELA system.

## Notice of Violation

More serious violations – including disregard of a Informal Notice, or failing to act upon it within the specified compliance period – are subject to a written Notice of Violation (NOV). NOVs are formal written notices to permittees found to be violating LFUCG ordinances or permit requirements. An NOV is required prior to the issuance of a Citation, Administrative Order, Stop Work Order, or Permit Block.

NOVs include the name and address of the permittee or responsible party, the observed violation, the date and time of the violation, the location, compliance action(s) required, the number of days (deadline) required for compliance, and the inspector's signature. Additional information that provide important context for the violation – such as the proximity of waterbodies, slope conditions, and so on – should be included in the documentation. NOVs are entered into the ACCELA reporting system, along with documentation of site conditions, photographs, plans, maps, and/or other items as appropriate (i.e., the NOV is appealed, or escalates). A copy of the NOV is provided to the responsible party, through hand delivery, mail, email, or other means.

## Citation

Violations representing a serious and significant threat or risk to public health, safety, or the environment are subject to issuance of a Citation by a Citation Officer of the Division of Environmental Services and assessment of financial penalties. Citations are generally issued to violators when NOVs do not produce the desired level of compliance. Citations should be issued in all cases of persistent non-compliance and in cases of significant risk of harm to public health, safety or the environment. In order to be effectively resolved, Citations should be accompanied by a relevant NOV, detailed documentation on the compliance history of the issue, photographs, email/text exchanges, and other information that provides context regarding the violation and violator.

Citations must include the date and time of issuance, the name and address of the person to whom the Citation is issued; the date and time the offense was committed; the facts constituting the offense; the section of the code of ordinances, regulations, or other requirements violated; the name of the Citation Officer issuing the Citation; the maximum fine that can be imposed for each violation for each day that the violation continues ($15,000); the specific civil fine of less than the maximum that will be imposed if the person does not contest the Citation; the procedure for payment of the fine or contesting the Citation; and a statement that if the person fails to contest the Citation within the time allowed, the person is be deemed to have waived their right to a hearing before the Infrastructure Hearing Board to contest the Citation and that the determination of the Citation Officer that a violation was committed will be final.

## Administrative Order

Chronic or persistent violators and those who disregard NOVs and Citations may be ordered to appear before the Director of Environmental Services or Water Quality to discuss corrective or remedial measures to be taken. The Director of Environmental Services or Water Quality is empowered to undertake appropriate enforcement action to remedy the violations, and an Administrative Order may be issued to the violator outlining the corrective or preventive measures to be taken and a schedule for the violator to come into compliance with permit and/or ordinance provisions. The Director may also issue consent orders or other agreements to attain compliance.

## Stop Work Order

A Stop Work Order (SWO) may be issued by the Director of Environmental Services or Director of Water Quality when a person violates the terms of a permit or Chapter 16 in a manner that poses a materially detrimental or injurious threat to public health, safety, and welfare – including the environment. In these cases, the Director will order work at the site to stop, and instruct the violator to immediately cease and desist all violations and take appropriate remedial or preventive action as may be needed to address the violation.

SWOs may be requested by Inspectors, Citation Officers or others when conditions warrant, i.e., where serious, significant, and imminent threats or risk exist to public health, safety, or water quality. Permits may be suspended or revoked in conjunction with a SWO. SWOs may be appealed by the violator to Fayette District Court within thirty (30) days of the date the order is issued, in accordance with the usual rules of civil procedure.

## Permit Block

Permit Blocks shall be issued if non-compliance continues or for non-payment of issued penalties. No person who has been found to be in violation of any provision of LFUCG Ordinance Chapter 16 may be granted a building permit or other permit authorized by Section 5-29 through 5-32, or any permit authorized by Chapter 16, unless the violator has paid their fines and has fully complied with all corrective measures related to the violation as described in any NOVs, Citations, and Administrative Orders.

## Criminal Prosecution

LFUCG ordinances stipulate that any person that knowingly or wantonly violates or continues to violate any provision of Chapter 16 is subject to criminal prosecution, and will be subject upon conviction to a criminal penalty of up to $15,000 per violation per day and/or imprisonment for up to one year. In addition, LFUCG may recover all attorneys' fees, court costs, and other expenses associated with successful enforcement, including sampling and monitoring expenses.

**Table 1. Summary of Construction Stormwater Enforcement Actions and General Applications.**

| Enforcement Action | General Application |
|---|---|
| Informal Notice | Minor non-compliance with local or state requirements; minor deviations between the site plan(s) and actual field conditions, relatively minor BMP maintenance deficiencies, etc. |
| Notice of Violation | Non-compliance with local or state requirements, deviations between site plan(s) and actual field conditions, BMP maintenance deficiencies, etc. |
| Citation | Violations representing a serious and significant threat or risk to public health, safety, public welfare, or the environment; recurring violations |
| Administrative Order | Resolution of violations documented by NOVs and/or Citations through execution of a compliance agreement or other approach |
| Stop Work Order | Site conditions that are materially detrimental or injurious threats to public health, safety, welfare, and/or the environment |
| Permit Block | Persistent, chronic, violations of LFUCG ordinances or permit provisions; non-compliance with enforcement requirements; non-payment of fines |
| Criminal Prosecution | Knowing, wanton, and serious violation of LFUCG ordinances |

## Notification of Violators

Informal Notices are communicated in writing to the responsible party in person, or by fax, email, or regular mail. The resolution or disposition of Informal Notices must be documented by the inspector via the ACCELA reporting system “comments” section, and include dates, locations, names of persons warned, conditions observed, and other details.

All NOVs, Administrative Orders, and Citations may be served upon the responsible party by personal service or by regular mail. If the responsible party is not the property owner, a copy must also be provided to the property owner (or, where appropriate, a designee), by personal service or by fax, email, or regular mail to the last known address of the owner of the property as it appears on the current tax assessment roll or to the designee's address.

# III Enforcement Personnel and Duties

Inspectors, program managers, and other LFUCG personnel all play key roles in implementing the Enforcement Response Plan. The enforcement process is illustrated by Figure 1 in the next section. The subsections below provide details on the duties of those involved in assuring compliance with city ordinances, state regulations, and the Consent Decree.

## Inspectors

The inspectors involved in the LFUCG construction stormwater compliance assurance program generally fall into three categories: internal capital project inspectors, external capital project inspectors employed by engineering firms, and internal new development inspectors.

Internal capital projector inspectors in the Division of Water Quality (DWQ) and Division of Engineering carry out the day-to-day inspection of capital roadway projects, stormwater projects, and sanitary sewer projects. External capital project inspectors employed by engineering firms carry out the day-to-day inspection of the DWQ Sanitary Sewer Remedial Measures Program associated with the Consent Decree. To obtain compliance from the contractor regarding erosion and sediment control, the inspectors primarily use the provisions of the legal contract with the contractor. This includes withholding payment, stop work orders, and calling the erosion and sediment control bond if necessary.

**General Procedure for LFUCG Site Inspections**

- Check in with the site supervisor, introduce yourself
- Ask how the project is going – any problems?
- Note that the permit is posted at the site as required
- Review permit(s), ESC/SWPPP documents
- Examine the self-inspection reports on file
- Conduct the field inspection
  - o Perimeter: upland (run-on) and downgradient (runoff) controls
  - o Drainage system: inlet protection, ditch stabilization, trap/pond stabilization, and function
  - o Bare areas: stabilization, slope protection
  - o Housekeeping: stabilized exit, materials storage, concrete washout, fueling areas
- Note that BMPs on plan are present in the field
- Document your findings (write-up, photos)
- Review results, discuss compliance issues clearly

Inspectors from the DWQ Compliance and Monitoring section provide the foundation for the construction stormwater compliance assurance program in new development projects. Inspectors issue Informal Notices, NOVs, and recommend cases for Citations and SWOs. They must be:

- Trained in erosion and sediment control practices, site housekeeping measures, and requirements for complying with local, state, and federal regulations;
- Able to read and understand site plans and drawings, and know how to compare these plans and drawings to actual conditions encountered in the field;
- Capable of evaluating erosion, sediment, and stormwater control field practices, and determining whether or not they are effective in preventing impacts to water quality;
- Proficient in scheduling, time management, documentation (descriptions, photographs), interaction with contractors and LFUCG staff, and exercising professional judgment.

DWQ inspectors visit a wide variety of residential, commercial, and institutional projects. The purpose of their inspections is twofold: 1) to confirm that site erosion control and stormwater plans are being followed, and 2) to ensure that the plans and practices at the site comply with legal requirements and prevent water quality impacts to the maximum extent practicable.

All inspections and enforcement actions must be documented in ACCELA and supplemented by written descriptions of site conditions, photographs, and other relevant materials. Inspectors are expected to initiate an enforcement response action with deadlines when non-compliance is observed. These actions should be generally proportional to the level of severity or significance of the offense (see Section III). Informal Notices usually accompany minor non-compliance, with Notices of Violation (NOVs) and requests for a Citation or Stop Work Order issued when non-compliance indicates more serious or significant conditions – such as a threat to water quality or flagrant disregard of regulatory requirements.

### Commissioner of Environmental Quality and Public Works

The Commissioner of Environmental Quality and Public Works is responsible for supervising five divisions, including the Division of Water Quality and Division of Environmental Services, and consulting on appropriate civil penalties and other enforcement and/or remedial measures. The Commissioner may also be involved in working with the Infrastructure and/or Environmental Hearing Boards to negotiate compliance orders with respect to remedial measures and civil penalties, and in directing LFUCG action regarding abatement of ongoing violations where the violations present a serious threat to the public health, safety, welfare, and/or environmental resources. The Commissioner is also responsible for ensuring consistency among construction site inspection staff through the development and implementation of training, inspection review, and staff interaction programs.

### Directors of the Divisions of Water Quality and Environmental Services

The Directors of these divisions have responsibility for overseeing inspections conducted to implement the Stormwater Quality Management Program (SWQMP) and programs designed to enforce LFUCG's requirements for control and discharge of stormwater to the MS4. The Directors may also be involved in negotiating compliance orders with respect to remedial measures and civil penalties. The Directors of Water Quality and Environmental Services may also issue SWOs and request Civil Citations that impose civil fines on persons found to be violating LFUCG's ordinances relating to the control and discharge of stormwater, as authorized under the Code of Ordinances.

### Citation Officers

Citation Officers in the Division of Environmental Services are responsible for implementing LFUCG's stormwater enforcement programs as defined in Chapter 16 of the Code of Ordinances. These Citation Officers investigate cases referred by other divisions, verify NOVs prior to issuing Citations, issue Citations where appropriate, calculate civil penalties, and negotiate appropriate corrective actions with violators.

Citation Officers are responsible for recommending additional enforcement actions to the Directors of Environmental Services and/or Water Quality, and maintain records related to enforcement. Citation officers provide administrative support to the Infrastructure Hearing Board.

After issuing a Citation to an alleged violator, the officer must notify the Infrastructure Hearing Board by delivering the Citation to the administrative official designated by ordinance or by the board. When a citation is issued, the person to whom the citation is issued has seven (7) days to appeal the citation and/or penalty.

If the person fails to respond to the Citation within seven (7) days, they waive the right to a hearing to contest the Citation and the determination that a violation was committed is considered final. In this event, the board will enter a final order determining that the violation was committed and imposing the civil fine set forth in the Citation.

### Environmental and Infrastructure Hearing Boards

These boards, established by Code of Ordinance Chapter 16, Article IX (Sec. 16-76 – 16-78) and governed by the stipulations in Chapter 2B, conduct hearings to determine whether there has been a violation of a local government ordinance. The boards hear matters regarding enforcement of ordinances by the divisions of engineering, water quality, waste management, planning, traffic engineering, streets, and roads, as specified in applicable code sections, and those portions of the zoning ordinance and subdivision regulations subject to enforcement through Civil Citations.

The boards are empowered to subpoena alleged violators, witnesses, and evidence to its hearings; to take testimony under oath; to make findings and issue orders that are necessary to remedy any violation of an ordinance; and to impose civil fines as authorized by ordinance on any person found to have violated any ordinance that the board has jurisdiction to enforce. Staff members from DWQ and DES provide assistance in these efforts.

# IV Enforcement Process

The enforcement process is fairly straightforward, and based on field inspections and records review (Figure 1). Field inspectors typically observe non-compliant conditions related to recordkeeping or field conditions, and have the following options:

- Discuss the observations with the site operator and specify compliance requirements
  - Used for minor non-compliance situations, when information is needed
- Issue an Informal Notice and document the observed conditions and compliance deadline
  - Appropriate for documenting minor violations, when compliance action is needed
- Issue an NOV, with compliance requirements, deadline, and appropriate documentation
  - Issued for moderate to serious violations to compel compliance
- Refer the case to the Division of Environmental Services
  - Used for serious, wanton, or repeated violations, when immediate action is needed

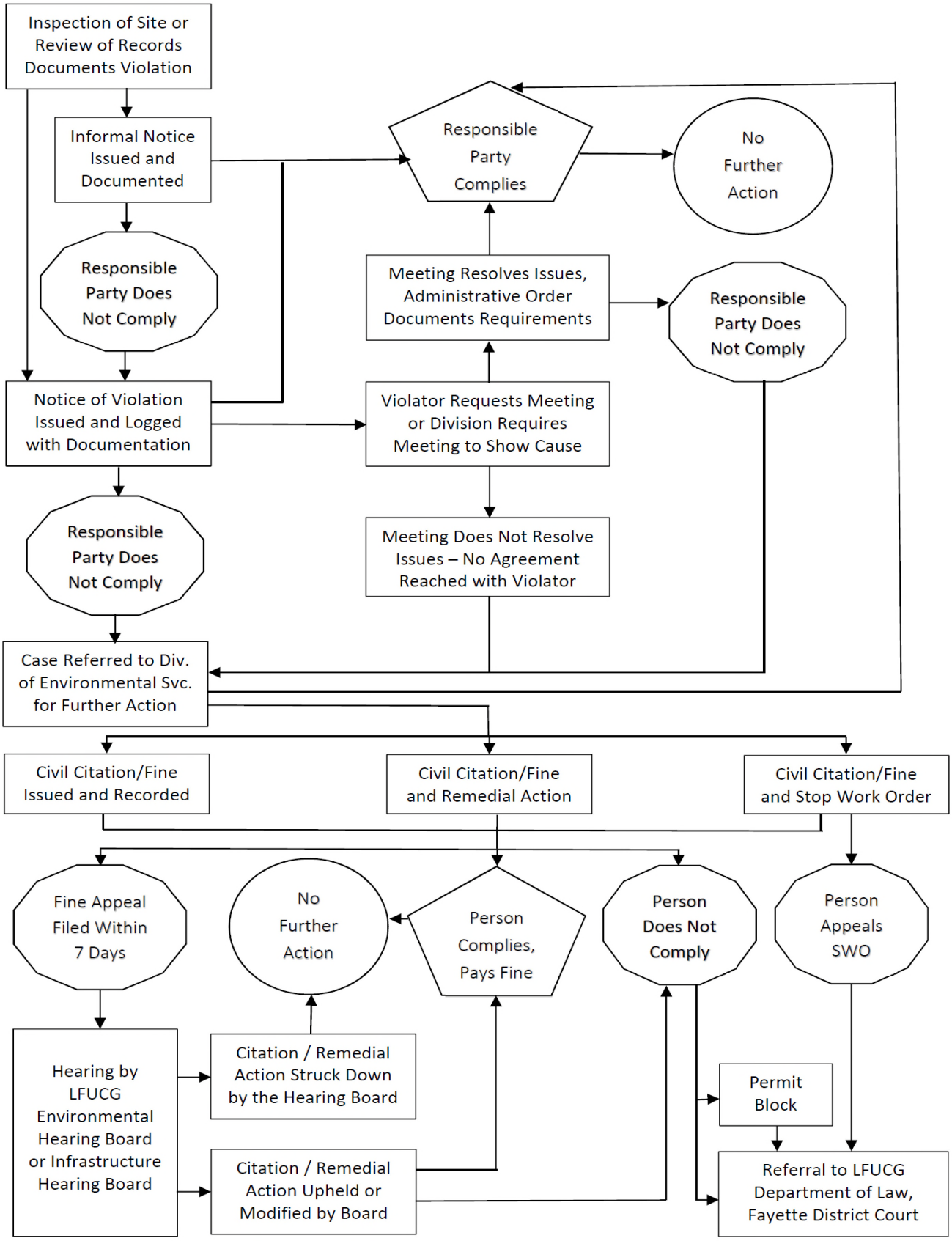
Most observed instances of non-compliance or violations are handled via the first three options noted above. In some cases, the permittee will request a meeting with senior staff from the Department of Environmental Quality to discuss an NOV and the remedial measures recommended by the inspector (Figure 1). Such meetings may result in the issuance of an Administrative Order which provides information on the required compliance actions, or a determination that the NOV is warranted and must be addressed.

Cases involving serious, wanton, or repeated violations can be referred to the Division of Environmental Services for possible issuance of a Citation and fine, remedial action plan, or Stop Work Order (Figure 1). Violators have the option of appealing fines or Stop Work Orders to the Infrastructure Hearing Board or Fayette District Court, respectively.

As noted in Section III, the boards hear matters regarding enforcement of ordinances by the divisions of engineering, water quality, waste management, planning, traffic engineering, and streets, roads and forestry, as specified in applicable code sections. The boards are empowered to subpoena alleged violators, witnesses, and evidence to its hearings; to take testimony under oath; to make findings and issue orders that are necessary to remedy any violation of an ordinance; and to impose civil fines as authorized by ordinance.

Board actions are based on the evidence presented – information contained in past Informal Notices and NOVs, email and/or text message exchanges between inspectors and permittees, photographs of site conditions (failed silt fences, washed out BMPs, sediment deposits offsite, poorly installed or managed erosion controls, etc.). Because of the importance of such documentation, inspectors must be conscientious during their inspections and subsequent reporting. Documenting inspection results and communication with outside parties helps to ensure that cases which escalate beyond the NOV stage are successfully resolved.

**Figure 1. LFUCG DWQ Construction Site Stormwater Enforcement Process*.**




**Note: Flow chart illustrates typical enforcement escalation. For repeat, flagrant, or egregious offenses, portions of the flow chart may be circumvented to achieve compliance expeditiously.*

# V Factors Influencing Enforcement Actions

Actions to ensure compliance with construction site erosion, sediment, and stormwater management regulations are based on:

- Requirements stipulated by local ordinances, state rules, and the Consent Decree;
- Risks to public health, safety, and the environment posed by violations; and
- The compliance history of those operating sites governed by LFUCG-issued permits.

Regulatory requirements are documented in 1) city ordinances; 2) the LFUCG Stormwater Manual, 3) the federal Consent Decree, 4) the Stormwater Quality Management Program, and other applicable requirements (e.g., a compliance schedule or LFUCG-approved erosion control or Stormwater Pollution Prevention Plan). Risks to public health, safety, and the environment encompass threats posed by flooding, mud and rock on streets, dust, sedimentation of waterways, and runoff of construction related pollutants (e.g., concrete wash water, paint, fuel, oil, lime, fertilizer, sealants, etc.) that may threaten public health or harm wildlife. Compliance histories include overall regulatory conformance, responsiveness to Informal Notices and NOVs, and cooperativeness with LFUCG staff charged with protecting public health, public safety, and the water resources of the Commonwealth of Kentucky.

## Site Conditions Subject to Enforcement Action

Typical construction site ordinance violations are related to poor project phasing and sequencing, unstabilized construction entrances and parking areas, failure to quickly stabilize ditches and bare areas, lack of slope protection (mulch/straw, vegetation, silt fencing, etc.), unauthorized activities near intermittent and perennial streams and wetlands, poor selection of drainage system controls, poorly planned trenching operations, lack of inlet and outlet protection, non-functional sediment basins and traps, airborne dust, inappropriate housekeeping practices, and inadequate documentation and recordkeeping. Note that LFUCG ordinances incorporate many Kentucky Division of Water KPDES construction stormwater permit requirements for sites one acre or larger (or smaller sites within a “common plan of development” that is one acre or larger) by reference, making them local requirements as well.

## Factors Influencing Violations

In general, LFUCG personnel will evaluate violations of ordinances and other requirements relative to the level of risk posed to public health, public safety, or water quality. Responses to violations will be commensurate with the risk posed, with relatively low-level threats handled via Informal Notices and more significant threats subject to Notices of Violation, Citations, Administrative Orders, Stop Work Orders, Permit Blocks, or Criminal Prosecution.

The following table provides examples of how inspectors and other LFUCG staff might judge the level of risk (i.e., threats to health, safety, and water resources) related to typical conditions and violations observed at construction sites. Note that the table is for guidance purposes only; it is intended to generally inform and improve the professional judgment of enforcement personnel.

**Table 2. Construction Site Stormwater Management Risk Categories, Compliance Areas, and Indicators.**

| Risk Category | Compliance Area | Lower Risk Indicators | Higher Risk Indicators |
|---|---|---|---|
| Site Conditions | Risk Management | • Slopes at the site are less than 5:1<br>• Streams, wetlands are more than 75 ft away<br>• Vegetated buffer ≥ 50 ft between site and water | • Slopes steeper than 3:1 are present<br>• Streams, wetlands are on or adjacent to the site<br>• Buffer is narrower, or is not vegetated |
| Site Operator | Compliance History | • Operator is usually in compliance with rules<br>• Operator responds to notices within time frame<br>• Operator is cooperative and not argumentative | • Operator typically has multiple violations<br>• Operator frequently misses compliance deadline<br>• Operator is uncooperative, argumentative |
| Administrative Requirements | Permit/Plan Postings | • Permit(s) and plan(s) are posted as required<br>• All permit/plan information is present onsite | • Permit/plan not posted, not available onsite<br>• Required permit/plan information missing |
| | Inspection Reports | • Reports are available for review onsite<br>• Few – if any – reports are missing<br>• Reports are complete, and signed | • Reports are not available for review onsite<br>• More than 10% of reports are missing<br>• Reports are incomplete, some are not signed |
| BMP Installation | Plan BMP Installation | • All BMPs on the plans are installed<br>• BMPs are installed correctly | • Some plan-listed BMPs are missing in the field<br>• Some BMPs are installed incorrectly or poorly |
| | Plan BMP Adequacy | • BMPs are functioning properly<br>• BMPs are adequately controlling stormwater<br>• Erosion and sedimentation is minimal<br>• Additional BMPs are not required | • BMPs are functioning poorly<br>• BMPs are not controlling stormwater<br>• Excessive erosion of ditches, other areas<br>• Additional BMPs are needed to manage the site |
| BMP Maintenance | BMP Maintenance | • BMPs are maintained according to SW Manual<br>• Sediment buildup at BMPs is not excessive<br>• Erosion prevention BMPs fully functional | • BMPs require substantial maintenance<br>• Excessive sediment at BMPs noted<br>• Poor erosion prevention in ditches, bare areas |
| Housekeeping | Materials Management | • Materials that may leach pollutants are covered<br>• Materials stored away from drainage system | • Materials leaching pollutants not covered<br>• Materials stored near inlets, drainage system |
| | Waste Management | • Solid waste collected and stored properly<br>• Concrete, other washwater managed/controlled | • Poorly managed solid waste, litter present<br>• Washwater on ground or discharged illegally |
| | Spill Prevention | • Spill prevention practices and materials present | • Fuel, oil, or other spills observed |
| Offsite Discharges | Sediment in Waterway | • No sediment discharges to streams, wetlands | • Sediment discharges to waterways observed |
| | Sediment on Ground | • No sediment discharges to offsite areas | • Mud, rock on roads; large discharges offsite |
| | Airborne Dust | • No observable dust leaving the site | • Dust discharges to areas with homes, schools |
| Project Completion | Site Closeout | • All bare areas stabilized with vegetation, etc.<br>• Vegetation is at least 70% density<br>• All temporary BMPs (silt fence, etc.) removed | • Bare areas and ditches observed at the site<br>• Vegetation is less than 70% density<br>• Silt fence, rock check dams, etc. still present |

# VI How Compliance Factors Influence Enforcement Penalties

Permittees who fail to respond appropriately to Notices of Violation are subject to civil penalties. Civil penalties – fines associated with Civil Citations – are directly associated with the type of factors summarized in the previous section. Specifically, a civil penalty is calculated by determining a base penalty related to the severity and duration of the violation, and adjusting the base amount for certain adjustment factors. The base penalty evaluates the relationship between the potential harm to human health or the environment and the extent of deviation from applicable regulatory requirements. For example, LFUCG enforcement staff will consider the following factors, associated with the penalty points as indicated. Note that each penalty point equates to an additional $200 in financial penalties – i.e., multiply the total points by $200 to calculate the penalty amount (5 points = $1,000, 20 points = $4,000, etc.).

- Working without a permit, but with erosion and sediment controls in place: (1-3 Points)
- Working with a permit, but without erosion and sediment controls in place: (4-6 Points)
- Small sediment volume reasonably likely to move or wash into a roadside gutter, stormwater inlet, or waterway (1-3 Points)
- Small sediment volume that has moved or washed into a roadside gutter, stormwater inlet, or waterway (2-4 Points)
- Large sediment volume that is reasonably likely to move or wash into a roadside gutter, stormwater inlet, or waterway (2-5 Points)
- Large sediment volume that has moved or washed into a roadside gutter, stormwater inlet, or waterway (3-6 Points)
- Land disturbance of violation is >5 acres (1 Point)
- Land disturbance of violation is >10 acres (2 Points)
- Land disturbance of violation is >20 acres (3 Points)
- Evidence of environmental damage (2-6 Points)
- Encroachment on aquatic buffer (1-6 Points)

The base penalty amount is calculated using the factors above, and can range from $200 to $15,000 per violation *for each day the violation exists*. Chronic violators are subject to a $200 increase in the penalty amount. Paying the penalty without appealing or contesting it, and paying it within 30 days can result in a 33% reduction in the amount. Because of the importance of contextual information on violations, inspectors are expected to provide Citation officers with supporting information and documentation, such as:

- Extent to which violator's actions resulted in, or were likely to result it, harm to human health or the environment, considering impacts to bodies of water or environmentally sensitive areas and the extent and duration of the environmental impact;
- The number, type and seriousness of previous violations, including the time period over which violations occurred, any similarity to previous violations, the violator's response to previous enforcement actions; and
- Information on whether or not the violator willingly or knowingly disregarded requirements, the violator's culpability in committing the violation(s), the degree of control exercised by the responsible party, and whether the events could have been prevented had the violator taken precautions to prevent the occurrence.

# VII Construction Site Inspection and Enforcement Focus Areas

LFUCG staff have identified a number of common deficiencies regarding ESC Plans, SWPPPs, and field practices. The following plan shortcomings are subject to enhanced enforcement focus:

- Failure to identify and label perennial and intermittent streams and wetlands
- No physical site address (i.e., address of the construction entrance/exit) on plan/permit
- Lack of a contact name and phone number on the ESC or SWPPP
- Absence of a construction sequence / schedule, and schedule for stabilizing site areas
- Lack of standard notes indicating that ditches and ponds must be stabilized immediately
- Failure to show soil and material stockpiles being located away from inlets and ditches

In addition to the ESC Plan and SWPPP deficiencies noted above, a number of poor erosion, sediment, and stormwater control field practices have been identified. These include:

- Permits and contact names/numbers not posted
- Self-inspection reports not available for review
- ESC Plan or SWPPP is not onsite or available
- Slopes at temporary/final grade not stabilized
- Poor silt fence installation and/or maintenance
- Lack of ditch stabilization after construction
- No controls for trash, litter, or debris
- Poor maintenance or bypassing of inlet protection devices
- Portable toilets are located on the pavement, near storm drain inlets
- Pavement is washed down with water, instead of dry sweeping
- Failure to remove temporary BMPs (silt fences, rock checks, etc.) upon closeout

LFUCG has identified a number of other inspection focus areas as high priority elements of the construction site stormwater compliance program. Specifically, LFUCG procedures, inspectors may refer the following cases to DES for Citation after the compliance deadline has passed for any of the following violations:

- Failure to obtain a Land Disturbance Permit before initiating land disturbance activities
- Failure to install BMPs before beginning land disturbance activities
- Failure to renew the Land Disturbance Permit upon expiration
- Failure to conduct inspections of BMPs and complete inspection reports

Special focus will be on chronic violators, i.e., individuals, businesses, organizations, or related entities who have received three or more NOVs of the above violations within the previous twelve (12) months, regardless of the site location. Additional guidance has been provided to LFUCG inspectors (Table 3) regarding key focus areas for site inspections, and which violations should result in Informal Notices and which should be subject to Notices of Violation.

**Table 3. Compliance Assistance for LFUCG Inspectors.**

| Compliance Area[1] | Informal Notice | Notice of Violation[2, 3] | NOV and Refer to DES for Citation |
|---|---|---|---|
| Construction Entrance to Public Road | Rock pad poorly installed/maintained | Rock pad not installed | |
| | 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 not stabilized within 24 hours |
| Inlet Protection | Sediment needs to be removed around inlet protection | Curb inlet protection not in place or improperly installed | Discharge of concrete wash water, chemicals, other pollutants into inlets, streams, wetlands, etc. |
| Silt Fencing | Does not match ESC Plan but critical areas[4] and roads are protected | Silt fence not installed per plan | |
| | Does not comply with Stormwater Manual but is functional | Blowouts have occurred with discharge of sediment to critical areas[4] | |
| | Needs maintenance / repair, but is not near an inlet or surface water | Not trenched in, is not functional | |
| | | Needs repair in critical areas[4] | |
| 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 | |
| | | Inspection reports not current | |
| | | ESC Plan / SWPPP not on site | |
| | | Minor construction activities in the 50 ft buffer zone around streams, sinkholes, and wetlands | Major or unapproved construction activities in the 50 ft buffer around streams, sinkholes, and wetlands |
| | | Construction has started, BMPs not installed | |

1. *Document site conditions, photograph relevant areas when issuing notices*
2. *Refer NOVs for citation if conditions are not corrected*
3. *Refer for citation NOVs committed by repeat offenders*
4. *Critical areas are streams, wetlands, sinkholes, and stormwater inlets*

# Appendix

## Regulatory Basis for LFUCG Construction Site Stormwater Compliance Program

The following list of construction site requirements was derived from regulatory and guidance documents governing stormwater management on active construction sites in Fayette County, Kentucky. The following key indicates the regulatory basis for each inspection focus parameter. Note that LFUCG ordinances at Chapter 16, Article X, Division 5 incorporate KY Division of Water construction site stormwater KDPES permit requirements by reference.

- ESCO = *Erosion and Sediment Control Ordinance,* Chapter 16, Article X, Division 5
- SM = LFUCG *Stormwater Manual*
- CIM = LFUCG Capital Projects *Construction Inspection Manual*
- KYR10 = KY Division of Water *KPDES General Permit* for Construction Stormwater

### Permit Coverage Requirements

Sites 5,000 sq ft to one acre and linear construction projects that are less than one acre must be covered by a Land Disturbance Permit and an Erosion and Sediment Control Plan. (ESCO: Sec. 16-101, Sec. 16-102)

Sites with a disturbed area of one acre or more, and those of less than one acre within a common plan of development of more than one acre, must be covered by an LFUCG Land Disturbance Permit, an individual or general (i.e., KYR10) KY Division of Water Construction Site Stormwater Permit, and a Stormwater Pollution Prevention Plan. (ESCO: Sec. 16-101, Sec. 16-102. KYR10: Sec. 1.1)

Construction site requirements established by the KY Division of Water, US Army Corps of Engineers, and US EPA are also required by LFUCG. (ESCO: Sec. 16-104. SM: Sec. 1.4.2, Sec. 2.5, Sec. 11.2.4, Sec. 11.5.7)

### Inspections of the Site and Permittee Records

Site inspections are required once every 7 days, or once every 14 days and within 24 hours of any storm event of 0.5 inches or greater. Inspectors must be knowledgeable and skilled in assessing site conditions and effectiveness of management practices. The report shall list a description of each area inspected, the type of erosion control facility inspected, the required maintenance, and the date of repairs. (KYR10: Sec. 2.1.7. SM: Sec. 11.2.1. CIM: Sec. 3.2.14)

Onsite files for “common plan of development” sites and sites $\geq$ 1 acre must contain a KPDES Stormwater Pollution Prevention Plan, weekly/bi-weekly/storm event inspection forms, an LFUCG Land Disturbance Permit, and Daily Reports (if future public infrastructure is on site). (KYR10: Sec. 2.1.9. ESCO: Sec. 16-104. SM: Sec. 11.2.1)

KYR10 permit approval notices must be posted at the work site in a conspicuous locations. Stormwater Pollution Prevention Plans, if required, must be signed and made readily available to city, state, and federal agencies if not kept on site. (KYR10: Sec. 2.1, ESCO: Sec. 16-104)

If any activities are occurring within a regulated drainage channel or wetland, files must contain a KY DOW 401 Water Quality Certification and a US ACE 404 permit. (SM: Sec. 1.4.2, Sec. 2.5, Sec. 11.2.4, Sec. 11.5.7)

### Project Phasing and Sequencing

At all times, permittees must minimize the size of the land disturbance and the period of time the disturbed area is exposed without stabilization practices. (ESCO: Sec. 16-101, Sec. 16-102. SM: Sec. 11.3.3; Sec. 11.4.7. CIM: Sec. 13.3. KYR10: Sec. 2.1.4)

No more than 25 acres can be disturbed at any time without soil stabilization. (SM: Sec. 11.2.2)

Erosion, sediment, and construction stormwater controls must be designed and installed and maintain to effectively minimize discharges from storm events up to and including a 2-year, 24-hour event. (KYR10: Sec. 2.1)

All erosion and sediment control measures – construction entrances, sediment traps/basins, silt fences, diversions, etc. – must be installed and stabilized (seeded, mulched, rip-rapped, etc.) before any clearing, grubbing, cut, fill, or other land disturbance work begins. (SM: Sec. 11.4)

### Construction Entrance/Exit and Onsite Parking Areas

No work can be done at the site and no construction traffic can enter or leave the site until a stabilized construction entrance/exit is installed. (SM: Sec. 11.2.3)

Stormwater and wash water runoff from a stabilized construction entrance shall drain to a sediment trap or sediment pond. (SM: Sec. 11.4.6)

Construction entrances/exits must be at least 20 ft wide and 50-100 ft long, and have at least 6 inches of No. 2 rock, and have KYTC Type III geotextile under the rock. (SM: Sec 11.4.6)

Any sediment spilled, dropped, washed, or tracked onto public streets or into storm drains must be removed immediately. (ESCO: Sec. 16-106. SM: Sec. 11.4.6. CIM: Sec. 14.2)

Subdivision roads, parking areas, and other onsite vehicle routes must be stabilized with No. 2 stone immediately after grading. Geotextile underliners are recommended but not required for onsite roads and parking areas. (SM: Sec. 11.4.5)

### Stabilizing Bare Areas

Permanent or temporary stabilization (i.e., seed with mulch, mulch with tackifier or netting, rock, blankets, matting, or other cover) is required for all disturbed portions of construction sites that are not active for 14 days. Proof of activity must be documented in the weekly inspection reports or daily logs. (ESCO Sec. 16-101. SM: Sec. 11.2.3. KYR10: Sec. 2.3. CIM: 13.3)

All seeded areas must be mulched or covered with ECBs or TRMs and must have at least 70 percent vegetative density. (SM: Sec. 11.4.3)

Straw mulch must be applied at 2 tons per acre or 90 lb per 1,000 sq ft; application of seed and straw mulch applications must be recorded in the weekly inspection reports. (SM: Sec. 11.4.1)

Mulched areas must be inspected weekly. When mulch material is found to be loosened or removed, the mulch cover shall be replaced within 48 hours. (SM: Sec. 11.4.1)

Seeded areas that wash out or fail to achieve the 70 percent density requirement must be reseeded within 14 days. New seed shall have adequate water for growth, through either natural means or irrigation, until plants are firmly established. (SM: Sec. 11.4.3)

Slopes shall not be steeper than 3H:1V (33 percent, or 18 degrees). Slopes of 4H:1V or steeper with slope lengths of greater than 100 ft must have diversion ditches at the top of the slope and every 100 ft horizontally down the slope. (SM: Sec. 11.2.2)

Mulch netting, erosion control matting, or turf reinforcement matting shall be used on sloping areas. (SM: Sec. 11.2.3)

Only rye grain or annual rye grass seed shall be used for temporary seeding. (SM: Sec. 11.2.3)

Final stabilization is required within 14 days for areas where activities have permanently ceased, and for areas where activities have been suspended for 180 days or more. Areas with permanent seeding must have mulch, mulch with tackifier, mulch with netting, blankets, or mats as specified by Figure 11-1 in the LFUCG Stormwater Manual. (KYR10: Sec. 2.3. SM: Sec. 11.2.3)

### Slope Protection With Silt Fences and Other Sediment Barriers

Silt fences and filter barriers shall be inspected immediately after each rainfall and at least daily during prolonged rainfall. Any required repairs shall be made immediately. Knocked down fences shall be repaired at the end of each day. All inspections and repairs must be recorded in the contractor's inspection reports. (SM: Sec. 11.5.4. CIM: Sec. 13.3)

Silt fence shall be used around all soil stockpiles. (SM: Sec, 11.5.4)

Wire reinforced silt fence must be used adjacent to greenways, floodplains, tree protection areas, retention ponds, and streams. (SM: Sec. 11.5.4)

### Trenching

Damage to existing trees shall be avoided whenever possible. Surface water shall be diverted away from open trenches. Excavation, pipe installation, and backfill operations shall follow in sequence as closely as possible. (CIM: Sec. 6.2)

Surplus excavated material shall be removed from the site as soon as it is excavated in order to prevent excessive erosion and siltation problems. (CIM: Sec. 6.3.3)

### Drainage System Controls

Ditches must be designed to convey the 10-year, 24-hour storm event (4.3”). (SM: Sec. 11.4.10)

Temporary or permanent seeding and mulch must be applied to berms or ditches immediately after construction. (SM: Sec. 11.4.10)

Ditches that will convey flows before vegetation will be established must be lined with grass sod or seed with erosion control blankets or turf reinforcement mats immediately after construction. (SM: Sec. 11.2.3, Sec.11.4.10)

Vegetated channels shall have side slopes of 3:1 or flatter. (SM: Sec. 8.2.1)

All dikes, dams, and diversions must be stabilized (rip-rapped, paved, or seeded and mulched) within 14 days after construction. (SM: Sec. 11.2.2. CIM: Sec.. 5.3, Sec. 13.1)

Seeding rates for ditches must be tripled, or at least 100 lb of seed per acre. (SM: Sec. 11.4.10)

Permanent ditches must have 25 ft vegetated buffer strips on each side. Temporary ditches must have a 15 ft buffer. (SM: Sec. 11.4.10, Sec. 11.5.6.)

Pipe slope drains are required whenever it is necessary to convey water down a steep slope which is not stabilized or which is prone to erosion, unless paved ditch (flume) is installed. (SM: Sec. 11.4.12)

Channels shall be inspected regularly to check for points of scour or bank failure. Channels shall be repaired at the time damage is detected. Channels shall be reseeded as needed to establish vegetative cover. Inspections and repairs must be documented. (SM: Sec. 11.4.10. CIM: Sec. 13.3)

### Inlets and Outlets

A 25-ft undisturbed vegetated buffer is required between land disturbance activities and storm drain inlets, unless alternate measures are employed. Inlet protection is required when the upslope areas draining to the inlets are unstabilized. Curb inlet protection is not required if other soil stabilization and sediment control measures prevent sediment from entering the street. (ESCO: Sec. 16-101)

Sod shall be used to provide immediate vegetative cover for the area surrounding a drop inlet in a grassed waterway. (SM: Sec 11.2.3)

Any sediment spilled, dropped, or washed into storm drains must be removed immediately. (ESCO: Sec. 16-106. SM: Sec. 11.4.6)

Silt fence and sod shall be installed immediately at drop inlets. (SM: Sec. 11.2.3, Sec. 11.4.4)

Gabion mattresses shall be used at the outlets of all culverts, storm drains, and paved ditches that discharge to unpaved ditches or channels and have an exit velocity greater than 5 feet per second when flowing full. Gabion mattresses shall also be used at the outlet of impact stilling basins. (SM: Sec. 11.4.9)

### Sediment Basins and Traps

Sediment traps must be designed, installed, and maintained to effectively minimize discharges for storm events up to and including the 2-year, 24-hour event (3”). Sediment must be removed when the trap is one-third full. (KYR10: Sec. 2.1.5. SM: Sec. 11.5.2)

Sediment traps shall be installed below all disturbed areas of less than 5 acres that do not drain to a sediment pond.(SM: Sec. 11.2.4)

Sediment basins (ponds) must be designed to remove 80% of the total suspended solids for the 10-year, 24-hour storm (4.3”), with a detention time of 24 to 48 hours. (SM: Sec. 11.5.3)

Check dams shall be installed in newly-constructed, vegetated, open channels, which drain 10 acres or less. Maintenance is required when sediment reaches 1/3 of capacity. (SM: Sec. 11.2.4. KYR10: Sec. 2.1.5)

Turf reinforcement mats must be used at the water line in all wet ponds. (SM: Sec. 11.2.3)

### Activities Near Intermittent and Perennial Streams and Wetlands

Buffer strips are required adjacent to all streams, sinkholes, and wetlands in Fayette County. The buffer strip width shall be 50 feet from the top of each bank and from the edge of a wetland. No grading or land clearing is allowed within the buffer zone, and native vegetation must be preserved. The 50-feet criterion for the width of the buffer zone may be established on an average width basis at a project, as long as the minimum width of the buffer zone is 25 feet or more at any measured location. The buffer shall be measured from the top of each bank for perennial streams, and 50 feet from each side of the centerline of intermittent streams. If temporary activities are necessary in the buffer zone (e.g., utility crossing, etc.), stabilization shall occur within 24 hours and the permittee shall minimize disturbances in buffer zone areas. (SM: Sec. 1.1., Sec. 1.4.2, Sec. 1.5.4, Sec 11.5.6; KYR10 Sec. 2.2)

Silt fence adjacent to greenways, floodplains, tree protection areas, retention ponds, and streams shall be wire reinforced silt fence (SM: Sec. 11.2.4)

If construction runoff discharges to a stream or other water body impaired for sediment, and no Total Maximum Daily Load has been approved to address construction-related sediment controls, a 50-ft buffer is required between the disturbed area and the top of the bank. (KYR10: Sec. 2.4)

Stream crossings are required when crossing intermittent or perennial streams, and must be authorized by a KY DOW 401 Water Quality Certification and a US ACE 404 permit. Clearing and excavation of the streambed and banks shall be kept to a minimum. The permittee shall minimize disturbances in the buffer zones by using hand held or other low-impact equipment. The structure shall be removed as soon as it is no longer necessary for project construction. Upon removal of the structure, the stream shall immediately be reshaped to its original cross section and properly stabilized. The approaches to the structure shall consist of stone pads with a minimum thickness of 6 inches, a minimum width equal to the width of the structure, and a minimum approach length of 25 feet on each side. (KYR10: Sec. 2.4. SM: Sec. 11.2.4, Sec. 11.5.7)

A pump-around flow diversion authorized by KY DOW and the US ACE shall be used to divert flow around construction activities occurring in a stream. (SM: Sec. 11.5.8)

Sediment-laden water must be pumped to a dewatering structure before it is discharged offsite. (SM: Sec. 11.5.8)

### Dust Control

Dust control measures shall be implemented on all sites. Construction roads shall be watered as needed to minimize dust. (SM: Sec. 11.2.3, Sec. 11.4.7)

### Good Housekeeping

Illicit discharges of pollutants are prohibited. (ESCO: Sec. 16-93)

Property must be kept and maintained to prevent pollution or contamination of waterways. (ESCO: Sec. 16-97)

Erosion and Sediment Control Plans and Stormwater Pollution Prevention Plans must contain information on inspecting, maintaining, and repairing BMPs. (SM: Sec. 11.2.1)

Cleanup of the project site should be provided on a daily basis, with all construction debris, garbage, mud, dirt, etc. properly transported and disposed of at an approved off-site location. (CIM: Sec. 14.2)

### Requirements for Home Builders

Section 11.6 of the Stormwater Manual requires home builders to install:

- Trenched-in and properly erected silt fencing on the downslope perimeter of the lot.
- A construction entrance at the driveway location, with at least 6 inches of No. 2 stone.
- Mulch or mulch with seed within 14 days of clearing, excavating, or grading the site.
- Seed and mulch for areas inactive for more than 21 days.
- Sod immediately in all drainage ditches and channels.
- Seed with mulch or sod within 14 days of final grading.
- Rock bags, silt fencing, or other devices to keep sediment from washing into curb inlets.

In addition, home builders shall:

- Dispose of all scrap materials, trash, and litter daily.
- Inspect, repair, and maintain sediment controls daily.
- Remove sediment from streets daily.
- Keep vehicles off the lot along the street frontage.
- Not regrade the lot or move a swale, channel, or stream, or fill in a floodplain, detention/retention pond, swale, channel, or stream.