



TRANSPORTATION CABINET

Frankfort, Kentucky 40622
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Ernie Fletcher
Governor

Bill Nighbert
Secretary

Marc Williams
Commissioner of Highways

MEMORANDUM

To: District Executive Directors; District TEBM for Maintenance
District Area Engineers; District Environmental Coordinators
All Division of Maintenance Personnel

Through: Nancy Albright, P. E., Director *Nancy*
Division of Maintenance

From: David M. Waldner, P. E., Director *D. Waldner*
Division of Environmental Analysis

Date: April 18, 2007

Subject: KPDES Permit and Earth Disturbance

The Transportation Cabinet is involved in the negotiation of penalties assessed by USEPA for noncompliances that were documented during an inspection in May of 2006. The non-compliances occurred on a highway construction project that was deemed to have insufficiently employed controls for erosion and sediment that was mobilized during storm events.

The environmental regulations pertaining to earth disturbing activities apply equally to all work regardless of how it was initiated. A Kentucky Pollution Discharge Elimination System (KPDES) permit is required for any project that will result in the disturbance of more than one acre of ground. Such a permit is secured from the Kentucky Division of Water by submitting a Notice of Intent, along with required documentation of the proposed action and measures that will be employed to minimize runoff siltation. When the work is initiated as a maintenance activity and accomplished with our own forces, the District Executive Director will be the signatory on the Notice of Intent (NOI) form. When the work is entirely accomplished by contract, the Cabinet can make complying with this permit a condition of the contract and the NOI form can be in the contractor's name.

With this memorandum, you are advised that all Maintenance activities that will result in the disturbance of one-acre or more, must fully comply with the requirements for securing and complying with a KPDES permit for storm water discharges. A permit must be secured even if the one-acre area is not necessarily contiguous. Furthermore, though the disturbance at any point in time may be less than one acre, if the total disturbance area for the project exceeds one acre, a permit is required.

The Division of Environmental Analysis will be working with the Division of Maintenance over the next 90 days to develop specific guidance regarding the implementation of this requirement (who is responsible for what, when should activities be initiated, etc.) Until then, be aware that the permit requires that areas of disturbance that are at final grade or that will not be worked for a period of 21 days or more must be stabilized with either temporary mulch or permanent seed and protection within 14 days of the end of grading activity. Districts are advised to initiate the application of measures to stabilize all soil disturbances consistent with this part of the permit.

You may contact J. W. Stephens in the Division of Maintenance to answer your immediate questions. During this interim period, if a project is identified that requires a KPDES permit, you may contact your District Environmental Coordinator or Shelby Jett in DEA for assistance.