

General Permit



DEVELOPMENT ALONG OR ADJACENT TO A STREAM

Development in a Floodplain General Permit

Permit Number: KY FPGP

AI No.: 35050

Pursuant to Authority established in KRS Chapter 151,

Development activities that occur in a floodplain for the base flood event and that meet the eligibility requirements of this permit,

are authorized along or adjacent to a stream in areas located within the 120 counties of the Commonwealth of Kentucky,

in accordance with the requirements of 401 KAR 4:060, and other conditions set forth in this permit.

This permit shall become effective on 7/1/2020.

This permit and the authorization shall expire 6/30/2025.

6/27/20

Date Signed

Paul Miller, PE

Paul Miller, Director

Division of Water

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SECTION 1

PERMIT COVERAGE

1. PERMIT COVERAGE

Coverage under this General Permit issued by the Kentucky Division of Water (the "Division"), allows for development activities along or adjacent to a stream, that meet the eligibility requirements established in this permit, and that do not increase the Base Flood Elevation in any community.

Development meeting the requirements of this General Permit shall have automatic coverage under this general permit without making application or submitting plans and specifications to the Division.

Proposed development with the potential to change the Base Flood Elevation shall require an application for an Individual Floodplain Development Permit to Construct Along or Across a Stream pursuant to 401 KAR 4:060.

The property owner or entity employed to develop the property (the "Permittee"), and who is authorized for coverage under this General Permit by the Division, is exempt from public notice requirements as long as the development is conducted in accordance with the requirements of this General Permit.

This General Permit is issued pursuant to KRS 151.250 and 401 KAR 4:060 regarding stream obstruction only and does not constitute certification of any other aspect of proposed development. Ongoing development shall comply with the terms and conditions of this General Permit within 90 days of its effective date, and new development shall comply with the terms and conditions of this General Permit upon beginning eligible development activities.

Work performed by or for the Permittee that does not fully conform to the limitations set forth in this General Permit is subject to partial or total removal and enforcement actions pursuant to KRS 151.280 as directed by the Kentucky Department for Environmental Protection and KRS 151.125 under the authority and powers of the Secretary.

The Permittee shall contact the Division of Water, Water Resources Branch, at (502) 564-3410 or at 401WQC@ky.gov to determine if a Water Quality Certification is required. If required, the Permittee shall obtain a Water Quality Certification from the Division before beginning development.

The Permittee shall contact the Division of Water, Surface Water Permit Branch at (502) 564-3410 or at SWPBsupport@ky.gov to determine if a Stormwater Construction Permit is required. If required, the Permittee shall obtain a Stormwater Construction Permit from the Division before beginning development.

The Permittee is liable for any damage resulting from the development, operation, or maintenance of the activities covered by this permit.

SECTION 2

EXCLUSIONS AND ELIGIBILITY

2. EXCLUSIONS AND ELIGIBILITY

2.1. Exclusions

- 1) Development not meeting the eligibility requirements listed in Section 2.2 of this General Permit shall require an application to be submitted to the Division for an Individual Floodplain Development Permit to Construct Along or Across a Stream, pursuant to 401 KAR 4:060.
- 2) Development with the potential to affect the Base Flood Elevation in a community shall require an application to be submitted to the Division for an Individual Floodplain Development Permit to Construct Along or Across a Stream, pursuant to 401 KAR 4:060.
- 3) Development in a stream or wetland that requires an Individual Water Quality Certification pursuant to 401 KAR 9:010 from the Division is not eligible for coverage under this General Permit.
- 4) Activities occurring adjacent to or in the floodplain associated with Special Use Waters, Exceptional Waters, or Outstanding State Resource Waters are not eligible for coverage under this General Permit. A map of waters of the Commonwealth may be obtained at the following internet address: watermaps.ky.gov/WaterHealthPortal.
- 5) Development of residential, non-residential, or appurtenant structures located in the base floodplain shall not be eligible for, nor granted, coverage under this General Permit.
- 6) Development of dams or other water impounding structures, or construction that does or may endanger life or cause property damage shall not be eligible for, nor granted, coverage under this General Permit.

2.2. Eligibility

The following activities are eligible for coverage under this General Permit:

- 1) Development constructed by the US Army Corps of Engineers;
- 2) Uses of open space as established in 44 CFR 80.19;
- 3) Vegetative and riparian buffers;
- 4) Stream obstruction removal, such as the removal of woody debris from a bridge or culvert after a storm event, that is completed as described in the Watershed Friendly Stream Maintenance guidance, and that does not result in materials being deposited in the floodplain for the base flood event. A copy of this guidance may be obtained at the following internet address: <https://eec.ky.gov/Environmental-Protection/Water/FloodDrought/Documents/StreamMaintenanceGuideFAQ.pdf>
- 5) Normal property maintenance activities that are done by hand such as cuttings, plantings, and temporarily placing woody debris in piles. Maintenance activities shall be completed and all materials removed from the base floodplain within 15 days;
- 6) Development of a below-grade swimming pool outside of the regulatory floodway;
- 7) Development and placement of utility poles, open-frame towers, or monopole towers with below grade foundations;
- 8) Development of below-grade utilities and subgrade drainage features (e.g. water lines, pipelines, subdrains, dropboxes, etc.);
- 9) Development and placement of an open-style guardrail along an existing roadway;
- 10) Geotechnical investigations, archeological investigations or installation of monitoring wells;

- 11) Repairs or maintenance to an existing shallow and narrow, man-made drainage-way, such as a swale or a ditch between two buildings. The man-made drainage-way cannot be mapped as having its own base floodplain. (A portion of the man-made drainage-way may empty into a larger waterbody that has a mapped base floodplain. For example, a ditch between two buildings that flows into an adjacent stream);
- 12) Development and placement of a fence that does not impede flow during a base flood event, as long as the fence is not constructed across a stream or wetland;
- 13) Locating a recreational vehicle that is fully licensed and ready for highway use in the floodplain for the base flood event for less than 180 consecutive days;
- 14) Removal of gravel or vein minerals from a stream by the Permittee for personal, noncommercial use that is completed as outlined in the Watershed Friendly Stream Maintenance guidance. Excavated materials shall not be placed along the banks of the stream or within the base floodplain. Eligibility for coverage under this General Permit shall be limited to fifty (50) tons or less excavated in twelve (12) successive calendar months in accordance with KRS 350.245. Eligibility for coverage under this General Permit shall not include removal of gravel or vein minerals that will be sold or transported on public roadways; or
- 15) Development in a watershed less than one square mile (1 mi²).

SECTION 3

REQUIREMENTS

3. PERMIT REQUIREMENTS

- 1) The Permittee shall maintain access to a copy of this General Permit at the development site.
- 2) Prior to beginning development, the Permittee shall obtain a local floodplain development permit if the county/city/community is an eligible or participating community in the National Flood Insurance Program. Upon completion of the development, the Permittee shall obtain final written approval from the local permitting agency confirming compliance with the requirements of the local floodplain ordinance.
- 3) All excess debris and material from development activities shall be removed from the base floodplain. Upon completion of development, the site shall not exceed original grade elevation.
- 4) The Permittee shall at all times minimize the size of the disturbance and the period of time that the disturbed area is exposed without stabilization practices. The following practices shall be adhered to:
 - a. Erosion prevention measures, sediment and silt control measures, and other site management practices shall be designed, installed, and maintained in an effective operating condition to prevent off site migration of sediment.
 - b. Erosion prevention measures include, but are not limited to, erosion control mats/blankets, and mulch/straw, and shall be implemented on disturbed areas within 24 hours or as soon as practical after completion of disturbance or following cessation of activities.
 - c. Standard silt control practices shall be used in such quantity to prevent siltation of waters of the Commonwealth. Practices that are acceptable include silt fences, rock check dams, and straw-bales.
 - d. Permanent vegetation shall be placed on the disturbance area within 14 days or as soon as possible upon completion of development.
- 5) The entry of mobile equipment into a stream channel shall be prohibited.
- 6) Measures shall be taken to prevent possible spills of fuels and lubricants from entering waters of the Commonwealth. Any spill or discharge to waters of the Commonwealth shall be reported to the Department for Environmental Protection immediately by calling the Cabinet's Environmental Emergency Response Line at 1-(800)-928-2380.
- 7) Violations of the requirements of this General Permit are subject to enforcement action under KRS 151.182 and penalties under KRS 151.990.

SECTION 4

OTHER CONDITIONS

4. OTHER CONDITIONS

4.1. Schedule of Compliance

The Permittee shall be in compliance with the requirements of this General Permit within 90 days of its effective date through the completion of development. This General Permit does not require a submission of an application to the Division, and therefore General Permit requirements for new development shall be met from the time an eligible activity begins through the completion of development. Should the Division determine the Permittee failed to comply with the requirements of this General Permit, the coverage may be terminated and the Permittee may be required to obtain an Individual Floodplain Development Permit to Construct Along or Across a Stream.

4.2. Other Permits

This General Permit has been issued under the provisions of KRS Chapter 151 and administrative regulations promulgated pursuant thereto. Issuance of this General Permit does not relieve the Permittee from the responsibility of obtaining any other permits or licenses required by this Division and other state, federal, and local agencies.

4.3. Continuation of Expiring Permit

In the event this General Permit expires prior to reissuance by the Division, the conditions and requirements of this General Permit shall continue in effect until the Division reissues or revokes the permit. However, new or expanded development is not eligible for coverage under this General Permit while it is expired until the General Permit is reissued.

4.4. Application for Permit

The Permittee is not required to submit an application for coverage under this General Permit. All eligible development activities shall be granted automatic coverage.

4.5. Duty to Comply

The Permittee shall comply with the conditions of this General Permit. Violations of the requirements of this General Permit are subject to enforcement action as established in KRS 151.182, and penalties under KRS 151.990, or revocation of coverage under this General Permit.

4.6. Need to Halt or Reduce Activity Not a Defense

Any work performed by the Permittee that does not fully conform to the limitations established in this General Permit is subject to partial or total removal, and to enforcement actions as established in KRS 151.280 as directed by the Division. It shall not be a defense in an enforcement action for a Permittee to claim that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this General Permit.

4.7. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge or disposal in violation of this General Permit which has a reasonable likelihood of adversely affecting human health or the environment.

4.8. Change of Scope of Work

Notifying the Division of planned changes or anticipated noncompliance does not stay any condition of this General Permit.

4.9. Property Rights

The issuance of this General Permit by the Division does not convey any property rights of any kind or any exclusive privilege.

4.10. Duty to Provide Information

The Permittee shall furnish to the Director of the Division of Water (the "Director"), within the requested time frame, any information which the Director may request to determine compliance with this General Permit.

4.11. Inspection and Entry

The Permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of credentials and other documents as may be required by law, to:

- 1) Enter upon the development area where an activity covered under this General Permit is located or conducted, or where records are kept under the conditions of this General Permit;
- 2) Have access to and copy, at reasonable times, any records that are kept under the conditions of this General Permit;
- 3) Inspect at reasonable times any facilities, equipment practices, or operations regulated or required under this General Permit; and
- 4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by KRS Chapter 151, any substances or parameters at any location.