



► State of Stormwater & the Development Community

SPEAKER
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DATE
April 16, 2014

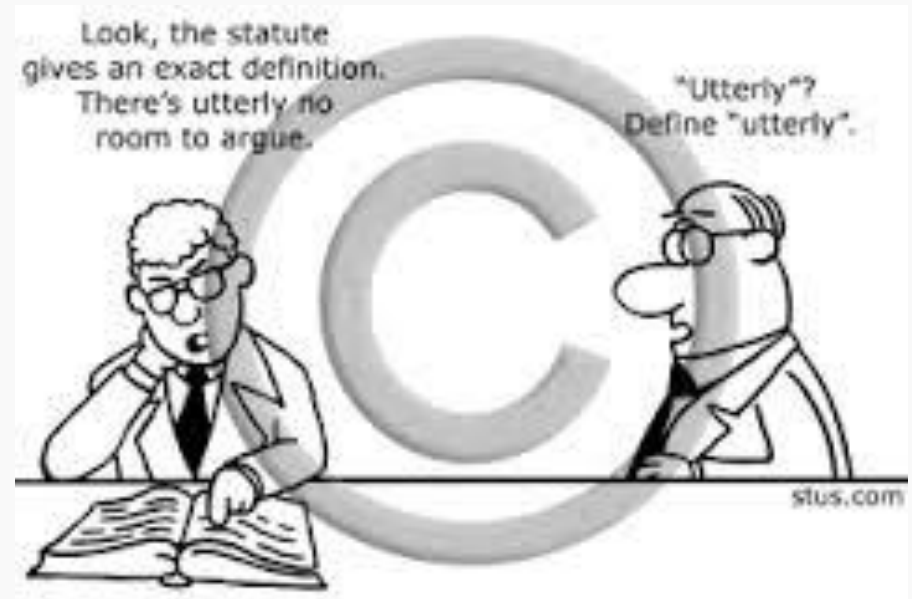




▶ PROPOSED “WATERS OF THE U.S.” DRAFT RULE

WOTUS – Why should you care?

- ▶ • The Clean Water Act applies to discharges to “navigable waters” or “Waters of the U.S.”.
- Clarification of the term “WOTUS” has been needed because of prior guidance and competing court cases.
- The proposed rule applies to ALL parts of the Clean Water Act – not just 404 permits.



WOTUS – Why should you care?

- ▶ • **More waters will be protected**
- **More permits** will be required
- **Increased permitting times** will increase project lead time
- **Project costs** will increase
- **Additional analysis** for projects will be necessary
- **Higher mitigation costs** will be incurred
- **Less developable land** will be available
- You will need to **modify stormwater management practices** (you don't want to create a WOTUS).
- There will be **more state and local requirements** to meet TMDLs, WQS, etc.

WOTUS – What does it say?

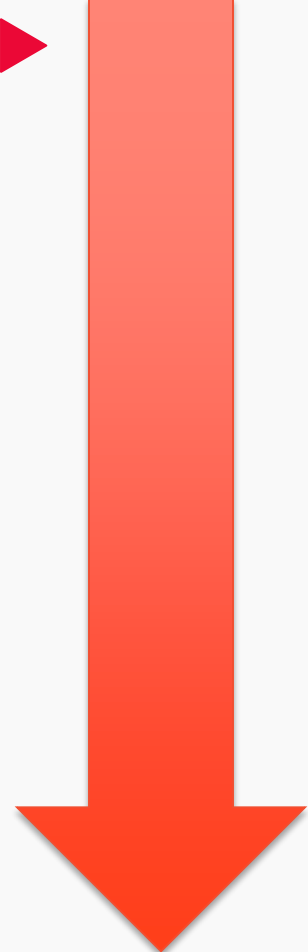
- ▶ The proposed draft rule **expands the definition of WOTUS**
 - Revises the definition of ***tributary*** to include all natural or manmade features (pipes, ditches, culverts), including wetlands that have evidence of flow (surface or subsurface) to another water
 - Expands the scope of ***adjacent***, to include riparian areas and floodplains.
 - Includes a “catch-all” provision for undefined ***other waters*** and makes them subject to a case-by-case analysis at the agencies’ discretion.

WOTUS – What does it say?

- ▶ The proposed draft rule **changes the process to determine a WOTUS**
 - **Jurisdiction by rule:** The agencies automatically take jurisdiction over
 - (1) All waters currently used, used in the past, or susceptible to use in interstate or foreign commerce
 - (2) All interstate waters, including wetlands
 - (3) Territorial seas
 - (4) Impoundments
 - (5) All tributaries of (1) – (4)
 - (6) All waters, including wetlands adjacent to (1) – (5)
 - **Case by Case Jurisdiction:** The agencies can determine jurisdiction over isolated wetlands, non-connected ephemeral streams, ditches, etc., that are not a tributary or adjacent water. BUT, the agencies will be able to issue blanket jurisdictional determinations on similarly situated waters in the same watershed.

WOTUS – When will it be effective?

Mar. 25th

- 
- A pre-publication copy of the rule was released.
 - Once published in the *Federal Register*, there will be a 90-day public comment period (probably 30-60 days longer). **This is when you need to submit comments!**
 - The agencies will review public comments and (1) terminate the rulemaking; Or, (2) continue the rulemaking but change aspects of the rule to reflect new issues; Or (3) proceed with a final rule.
 - The agencies' response will be published in the *Federal Register*.
 - Final rules are generally effective no less than 30 days after date of publication.

Final Rule



▶ THE KENTUCKY CONSTRUCTION GENERAL PERMIT

STATE OF *Kentucky*

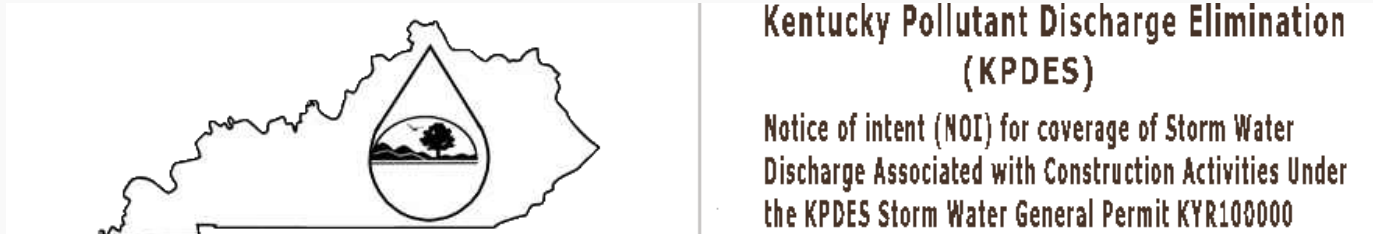
General Permit: What's going to change?

- ▶ • NOT MUCH 😊
- Current General Permit expires July 31, 2014.
- HBAK has been meeting with KDOW on permit revisions.
- We are trying to avoid:
 - Post Construction requirements
 - More stringent re-development standards



General Permit: What's going to change?

► In general:



- Remove the OSRW exclusion to avoid IPs. There will be more stringent requirements in those watersheds.
- Require eNOIs (no more paper NOIs).
- Issue automatic NOTs after a certain length of time.

General Permit: What's going to change?

► Changes in the Fact Sheet

- A. **Definitions** “Common Plan” of Development needs to be clarified.
- 4. **Small Construction Activity Wavers** – we need to maintain them.
- 5. **Authorization To Discharge**- establish a time limit for construction to begin w/o written authorization.
- 7. **Antidegradation** – DOW wants to eliminate the individual permit.

Changes in the Permit

- 5. **Maintenance of Stormwater Controls** - the permit says sediment control devices be maintained at no more than 1/3 capacity to allow sediment capture.
- 7. **Inspections-Permittee Conducted**- Is it, “once every 7 calendar days” or “once every 14 calendar days and within 24 hours after any storm event...”?



▶ THREATENED & ENDANGERED SPECIES



Before you begin, check for Endangered Species!

- ▶ If there are Endangered Species present in water, the classification changes to an OSRW. This means more stringent requirements for you.

Before you begin construction, consult KY and U.S. F&W listings:

<http://www.fws.gov/ENDANGERED/species/>

<http://www.fws.gov/frankfort/>

<http://fw.ky.gov/More/Pages/Kentucky's-Threatened-and-Endangered-Species.aspx>

If you are disturbing land in an area identified by F&W, you may need to notify U.S.F&W and/or KY F&W because a taking is a ESA violation.

You **MUST** notify the agencies if you are getting a federal permit (e.g., a Nationwide Permit).

U.S. F&W is increasing the number of endangered species. Pay attention!

Before you begin, check for Endangered Species!

- ▶ • Specifically pay attention to the Indiana Bat (http://www.fws.gov/frankfort/indiana_bat_procedures.html)
- MOAs are available but require TIME & MONEY





▶ **THANK YOU**
from Smith Management Group

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A decorative banner at the bottom of the slide. It features a red background with a white wavy pattern. On the left, the text "STATE OF" is visible in white. In the center, the word "Kentucky" is written in a white, cursive script. To the right, there are faint, stylized white icons of a bridge and a crane.

STATE OF *Kentucky*