

Low Erosivity Waiver Certification
Oklahoma Department of Agriculture, Food, and Forestry

**FORM
AEMS 148**

**Low Erosivity Waiver for Storm Water Discharges Associated with CONSTRUCTION
ACTIVITY on Sites of One to Five Acres and Sites of Five or More Acres Under the
AgPDES ODAFF 2017 Construction General Permit (CGP)**

This form provides notice to ODAFF that you, the project operator identified in Section I of this form, are certifying that construction activity at the project site identified in Section II, will take place during a period when the rainfall erosivity factor is less than five [40 CFR 122.26(b)(15)(i)(A)]. If a complete and accurate form is submitted and approved by ODAFF, the otherwise applicable AgPDES permitting requirements for stormwater discharges associated with construction activity are waived. If granted, a waiver is applicable for the period beginning on the date this Low Erosivity Waiver Form is sent to ODAFF (e.g., postmark date), or the project start date specified in Part III of this form, whichever shall occur last, and ending on the project completion date specified in Part III. Refer to the instructions at the end of this form for more details.

I. Facility Owner/Operator Information (If you are a Co-permittee check this box)

Name: _____ Phone: (____) _____
Fax: (____) _____
Address: _____ Status of Owner/Operator: _____
City: _____ State: _____ Zip Code: _____ E-mail: _____

II. Construction Project/Site Information

Name of the project _____
Address _____ City _____ County _____ ZIP Code _____
Telephone No. (____) _____ Location: Latitude _____ Longitude _____
Legal Description _____
Latitude and Longitude (use one of the following formats)
1. Degrees, minutes, seconds (e.g., 76°, 30', 45") Latitude: ____° ____' ____" N Longitude: ____° ____' ____" W
2. Degrees, minutes with 2 decimal places (e.g., 76° 30.75') Latitude: ____° ____' ____" N Longitude: ____° ____' ____" W
3. Degrees, minutes with 4 decimal places (e.g., 76.5125°) Latitude: ____° ____' ____" N Longitude: ____° ____' ____" W
Estimated area to be disturbed to the nearest quarter acre _____
Is this facility/site on Indian Country land? No Yes (if Yes See Instructions)

III. Rainfall Erosivity Factor Calculation Data

Project start date: ____/____/____ Project Completion Date: ____/____/____
Are interim non-vegetative site stabilization measures used to establish the project completion date for purposes of obtaining this waiver? Yes No
Rainfall erosivity factor (R factor): ____
Note: To qualify for this waiver, the construction activity must take place during a period when the R factor is less than five.
Rainfall erosivity factor was calculated by using: Online Calculator EPA Fact Sheet 3-1 USDA Handbook 703

IV. Certification

I certify under penalty of law that: (1) construction activity at the project or site specified in Part II shall disturb less than five acres and shall take place during a period when the rainfall erosivity factor is less than five, (2) final stabilization will be completed as defined in the Construction General Permit, and (3) this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. Further, if interim non-vegetative measures are used to establish the end of the construction period for the purposes of obtaining this waiver, I commit to periodically inspect and properly maintain the area until the criteria for final vegetative stabilization have been met.

Name (Please Print): _____ Date: _____

Signature: _____ Title _____

Instructions
Low Erosivity Waiver Certification

Who May Qualify for a Low Erosivity Waiver

Under the Agriculture Pollutant Discharge Elimination System (AgPDES) Program, operators of agricultural construction projects that result in land disturbances equal to or greater than one acre, are required to obtain coverage under an AgPDES permit for stormwater discharges associated with construction activity. ODAFF may waive the otherwise applicable permit requirements for stormwater discharges from construction activities that disturb less than five acres if the construction activity will take place during a period when the rainfall erosivity factor (R factor) is less than five. More information on the low erosivity waiver is available on the web in the Construction Rainfall Erosivity Waiver Fact Sheet at <https://www.epa.gov/npdes/construction-rainfall-erosivity-waiver-fact-sheet>. For questions related to completion of this form, you may contact ODAFF at (405) 522-5495.

Completing the Form

Type or print using uppercase letters in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response.

Section I. Operator Information

Each legal entity that meets ODAFF's definition of "operator" (see definitions in Appendix A of ODAFF's AgPDES Construction General Permit) and that meets the eligibility conditions for the low erosivity waiver must file this form to have the permit requirements waived. The operator is any party associated with a construction activity that meets either of the following two criteria: (1) the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit). It is possible that there will be more than one operator at a site and, in such cases, each entity that meets the operator definition must complete a Low Erosivity Waiver Certification. Provide the legal name of your firm, public organization, or other entity that operates the project described in this waiver certification. Usually this will be a company or organization's name but for construction activities undertaken by you as an individual, this should be your name. Enter the operator's complete mailing address and name of contact person, telephone number and email who can answer questions about the site (e.g., a project or site manager). Optional: to facilitate communication, provide a fax number for the contact person.

To determine whether ODAFF is the permitting authority for the construction project, and thus has authority to waive the otherwise applicable requirements of the Construction General Permit, it is necessary to know whether the project is located in Indian country.

Section II. Construction Project/Site Information

Enter the official or legal name and complete street address, including city, state, zip code, and county or similar government subdivision of the project or site. If the project lacks a street address, indicate the general location of the site (e.g., intersection of State Highways 61 and 34).

The applicant must also provide the latitude and longitude of the approximate center of the project/site using one of three formats given in the form. The latitude and longitude of your facility can be determined from several sources, including global positioning system (GPS) receivers, U.S. Geological Survey (USGS) topographic or quadrangle maps, and others.

Enter the area (estimated to the nearest quarter acre) to be disturbed including, but not limited to: grubbing, excavation, grading, and utilities and infrastructure installation. Note: 1 acre = 43,560 sq. ft.

Section III. Rainfall Erosivity Factor Calculation Data

The construction period begins with the initial earth disturbance and ends with final site stabilization. To qualify for this waiver, the rainfall erosivity factor for the project must be less than five during the entire construction period. Specify the construction period by entering the project start date (date of initial earth disturbance) and project completion date (date of final site stabilization). For example, a grading contractor that is operating on-site for only one week during a nine month construction project, must enter the start date and completion date of the entire nine month construction period.

ODAFF believes, where the environmental threat is low (i.e., in arid and semi-arid climates), that "final stabilization" can include techniques that employ re-vegetation combined with other stabilization measures, consisting of temporary degradable rolled erosion control products, also known as "erosion control blankets" (ECBs). With proper selection, design, and installation of the combination re-vegetation/ECB technique in arid or semi-arid areas, an operator can be considered to have achieved final stabilization upon completion of the installation process. Note that if more than three years is required to establish 70 percent of the natural vegetative cover, this technique cannot be used or cited for fulfillment of the final stabilization requirement. If your waiver is based on use of interim non-vegetative stabilization measures, such as erosion control blankets, to establish the end of the construction period, you must indicate so on this form. In doing so, you must commit and certify (as a condition of waiver eligibility) to periodically inspect and properly maintain the area until the criteria for final stabilization, as defined in the Construction General Permit, have been met.

The rainfall erosivity factor "R" is determined in accordance with the U.S. Department of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE), Chapter 2 pages 21-64, dated January 1997. EPA's Construction Rainfall Erosivity Waiver Fact Sheet (EPA 833-F-00-014), available online at <https://www.epa.gov/npdes/construction-rainfall-erosivity-waiver-fact-sheet>, defines rainfall erosivity and provides numerical examples showing how to calculate your rainfall erosivity factor. You may use the fact sheet approach or the online rainfall erosivity factor calculator available at: <https://www.epa.gov/npdes/rainfall-erosivity-factor-calculator-small-construction-sites> to calculate your rainfall erosivity factor for your project.

If the R factor is five or greater during the project's construction period, you must have or obtain coverage under an AgPDES stormwater permit. If the project was eligible for the waiver during the original construction period, but the construction activity will extend past the project completion date specified in the Low Erosivity Waiver Certification, the operator must recalculate the R factor using the original start date and a new project completion date. If the recalculated R factor is still less than five, a new waiver certification form must be submitted before the end of the original construction period. If the new R factor is five or greater, the operator must submit a Notice of Intent to be covered by the Construction General Permit before the original project completion date. Prior to December 21, 2020, the Notice of Intent (NOI) may be submitted to the Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) Agriculture Environmental Management Services (AEMS) Division using form AEMS093, which can be found at www.ag.ok.gov/aems/agpdes.htm. After December 21, 2020, The NOI must be submitted electronically using ODAFF's eNOI system at www.ag.ok.gov/aems/agpdes.htm.

Section IV. Operator Certification

All Low Erosivity Waiver Certification forms must be signed as follows:

For a corporation: By a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (i) president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy-or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

For a municipality, state, federal, or other public facility: By either a principal executive officer or ranking elected official. For purposes of this Section, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Secretary of Agriculture).

Include the name, title, and email address of the person signing the form and the signature date. An unsigned or undated Low Erosivity Waiver Certification will not be considered valid.

Where to File This Form

If submitting the Low Erosivity Waiver Form (LEW) prior to December 21, 2020, the CAFO operator must prepare and submit the LEW using ODAFF form AEMS148 available on ODAFF's website (<http://www.ag.ok.gov/aems/agpdes.htm>). If submitting the LEW on or after December 21, 2020, the operator must prepare and submit the LEW using ODAFF's electronic Notice of Intent System (eNOI) on ODAFF's website (<http://www.ag.ok.gov/aems/agpdes.htm>) unless eNOI is otherwise unavailable or the operator has obtained a waiver from the requirements to use eNOI for submission of the LEW. Operators waived from the requirement to use eNOI for LEW submission must certify on the paper LEW submitted to ODAFF that use of eNOI will incur undue burden or expense compared to using the paper LEW form and provide documentation of reasoning used for this determination. Paper LEW forms must be sent to the following address:

Oklahoma Department of Agriculture, Food, and Forestry
AEMS Division
PO Box 528804
Oklahoma City, OK 73152