

Kansas Water Pollution Control General Permit  
and Authorization to Discharge

STORMWATER RUNOFF FROM CONSTRUCTION ACTIVITIES

Under the National Pollutant Discharge Elimination System

Pursuant to the Provisions of Kansas Statutes Annotated 65-164 and 65-165; the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.; the "Clean Water Act"); and the Kansas Surface Water Quality Standards (K.A.R. 28-16-28 et seq.); this NPDES general permit provides the requirements and conditions under which the permittee is authorized to discharge stormwater runoff from construction activities.

Coverage is provided and construction Stormwater discharge is authorized when the Kansas Department of Health and Environment (KDHE) issues an Authorization to discharge stormwater runoff from construction activities until the Authorization is revoked/terminated. A signed and dated copy of the Authorization will be provided to the permittee.

Upon Authorization, the Permittee is allowed to discharge stormwater runoff from construction activities described in the Notice of Intent for Stormwater Runoff from Construction Activities and supporting documents in accordance with the requirements and conditions of this NPDES General Permit and the Stormwater Pollution Prevention Plan developed for the identified construction activities.

This NPDES general permit is effective August 1, 2017 through July 31, 2022 .

(signed by Secretary Susan Mosier, MD)  
Secretary, Kansas Department of Health and Environment

July 14, 2017  
Date

## **AUTHORIZED ACTIVITY DESCRIPTION:**

### **Construction Activities**

**Construction activities consist of any activity (e.g. clearing, grubbing, excavating, and grading) which disturb a cumulative total of one (1.0) or more acres or when the site is a part of a larger common plan of development or sale which will disturb a cumulative total of one or more acres.**

**Owners or operators of construction activities which disturb less than one acre (<1.0 acre), and which are not part of larger common plan of development or sale, must have authorization to discharge stormwater runoff from construction activities under this NPDES general permit when KDHE notifies the owner or operator that the water quality impact from discharge of stormwater runoff from construction activity warrants consideration because the proposed construction activities constitute a significant pollution potential.**

**Permit coverage is not required for routine maintenance (see endnote 7, page 21), for certain demolition and linear projects and for certain project support activities as specified in Part 1.1 of this permit.**

Upon issuance of this NPDES General Permit, owners or operators who intend to engage in construction activities as indicated above shall obtain authorization to discharge stormwater runoff under this NPDES general permit prior to commencing construction activities at the project site. To obtain authorization to discharge stormwater runoff, the owner or operator of a construction site needs to submit a Notice of Intent (NOI) for the discharge of stormwater runoff from construction activities at least 60 days prior to removing vegetation or disturbing soil at the site to avoid any unplanned delays in the start of construction. The NOI form is a request for coverage under the requirements and conditions of this NPDES general permit. To obtain authorization, the NOI form and supporting documents shall be submitted in accordance with Part 4 of this NPDES general NPDES permit. Upon acceptance of the NOI and supporting documents, KDHE will indicate the authorization for coverage under the NPDES general permit on the first page of the NOI form, assign permit numbers, and indicate the KDHE issuance of the Authorization with the Department Secretary's signature. The owner or operator is then authorized to discharge stormwater runoff from construction activities under the provisions of this NPDES general permit and may commence construction activities at the site described in the NOI and supporting documents in accordance with the terms and conditions expressed in this NPDES general permit and in conformance with the stormwater pollution prevention plan developed for the site.

Owners or operators who received authorization to discharge under the previous Stormwater Runoff from Construction Activities General Permit S-MCST-0312-1, may continue to operate under those permit provisions, conditions, requirements, limits, site specific authorized Best Management Practices (BMPs), and site specific authorized Stormwater Pollution Prevention Plan (SWP2 Plan) until 18 months after permit issuance as provided for in Part 6.1 of this permit.

Rather than submitting an NOI, owners or operators who intend to engage in construction activity that will disturb between one (1) and five (5) acres may request a rainfall erosivity waiver. To receive a waiver, the owner or operator of a construction site shall submit a rainfall erosivity waiver application form at least 60 days prior to removing vegetation or disturbing soil at the site. To be authorized, the small construction activity must have a low predicted rainfall potential that corresponds to a rainfall erosivity factor of less than 5 as calculated by the Revised Universal Soil Loss Equation [RUSLE]. The rainfall erosivity waiver application form is available on the [Kansas Stormwater Website](#) (see endnote 1, page 20). Copies can also be obtained by writing or e-mailing KDHE at the addresses in Part 10.2. Prior to commencing construction, the owner or operator must receive a copy of the authorized rainfall erosivity waiver from KDHE prior to initiation of construction activities at the site.

Any owner or operator who is subject to NPDES permit requirements for stormwater runoff from construction activities and who discharges stormwater runoff from construction activities prior to receiving authorization from KDHE is in violation of both State and Federal laws.

## PREFACE

The purpose of this NPDES general permit is to implement the Federal Water Pollution Control statutes and regulations; permit discharges of stormwater runoff from construction sites subject to National Pollutant Discharge Elimination System (NPDES) permit requirements; and to protect waters of the State from sediment and other contaminants.

The issuance of an authorization to discharge under this NPDES general permit allows a project owner or operator, after implementation of the project site stormwater pollution prevention plan, to commence construction site soil disturbing activities that can produce or potentially produce a discharge of contaminated stormwater runoff to surface waters of the State of Kansas. In the absence of information demonstrating otherwise, KDHE expects that compliance with provisions and conditions in this permit will result in the discharge of stormwater being controlled as necessary to meet applicable Kansas surface water quality standards.

This NPDES general permit does not authorize the placement of fill materials in a flood plain, the obstruction of stream flow, directing stormwater runoff across private property, increasing stormwater runoff flow, changing the channel of a defined drainage course, etc. This NPDES general permit is intended to address only the quality of the stormwater runoff and to minimize off-site migration of sediments or other pollutants.

KDHE administers a number of regulatory programs that may preclude the initiation of construction activities until such time as a specific permit is issued or authorization is granted. This NPDES general permit authorization solely addresses NPDES stormwater discharge requirements for construction activities. It is the obligation of the permittee to ensure compliance with all other KDHE, State, Federal and local statutory and regulatory requirements.

Owners or operators seeking coverage under this NPDES general permit which have the potential to impact threatened or endangered species or historical sites can obtain information regarding regulatory requirements or special conditions which may be applicable to the activities covered by this permit from the Kansas Department of Wildlife, Parks, and Tourism (KDWP&T) or the Kansas Historical Society (KSHS) respectively (See NOI instructions for contact information).

Other appropriate agencies should be contacted to determine the need for additional permits, authorizations, or requirements, if any. In particular the applicant should contact the local municipal separate storm sewer system

(MS4) agency (see endnote 2, page 20). Other agencies the applicant should contact include the United States Army Corps of Engineers; Kansas Department of Agriculture, Division of Water Resources; and any other local governments or agencies that are not listed herein that may have jurisdiction.

Authorization to Discharge under this NPDES general permit does not constitute approval of the project under the provisions of the Kansas Water Projects Environmental Coordination Act, and does not relieve the permittee of the responsibility to comply with the requirements of other Agencies prior to commencement of construction activities.

## Part 1. WHO MUST OBTAIN AUTHORIZATION TO DISCHARGE

Owners or operators of construction activities which may disturb one (1.0) or more acres of soil or are part of a larger common plan of development or sale which may disturb a cumulative total of one (1.0) or more acres of soil must obtain authorization to discharge stormwater runoff from construction activities.

Owners or operators of construction activities which disturb less than one acre (<1.0 acre) of soil, and are not part of larger common plan of development or sale, must have authorization to discharge stormwater runoff from construction activities under this NPDES general permit when KDHE believes the water quality impact warrants consideration or KDHE determines the construction activities constitute a significant pollution potential (i.e., sites that will disturb contaminated soils, contaminated groundwater, or sites adjacent to sensitive waters).

Soil disturbing activities where contaminated soils or contaminated groundwater may be present on the site are reviewed by KDHE on a case-by-case basis and may require coverage under this NPDES general permit or an individual permit even if less than one acre (< 1.0 acre) of soil is disturbed. For sites where contaminated soil or groundwater is present, contact KDHE Bureau of Water - Industrial Programs Section at (785) 296-5549 for a determination on the need for coverage under this NPDES general permit.

Platted subdivision projects must obtain coverage for all areas of the subdivision site. Subdivision projects that have roads and/or utilities constructed under separate contract (e.g., city assessment district) may need to have two concurrent discharge authorization requests (NOIs) for coverage under the NPDES general permit submitted. The owner (developer) of the subdivision project must maintain coverage for the individual lot construction sites. Owners that have control over the construction activities

of the entire subdivision site, including roads and utilities, need only submit one discharge authorization request (NOI) for coverage under the NPDES general permit.

Soil disturbing activities in response to a public emergency (e.g., tornado, earth quake, flood, ice storm, rail or highway incidents) where the related work requires immediate soil disturbance to avoid imminent endangerment to the public health or the environment is allowed without formal submittal and authorization by KDHE if the owner or operator implements soil erosion and sediment control as soon as possible after the emergency conditions have been resolved and a Notice of Intent application form for coverage under this permit is submitted within 30 days after the start of emergency soil disturbing activities showing the areas disturbed and the soil and erosion controls provided.

**1.1 Activities that Do Not Require Permit Coverage –**  
Construction activities do not include the following types of projects:

- a. routine maintenance that disturbs less than 5 acres (see endnote 7, page 21);
- b. structural demolition activities, including filling of basements, removal of debris and removal and replacement of pavement (even when exposing erodible soils or subsoils), which do not involve soil excavation, grading, clearing, grubbing or other soil disturbing construction activities;
- c. the linear opening of soil in a single line of two (2) feet or less in width utilizing soil plow trenching equipment that immediately closes the opening as part of the plow equipment's normal operation by filling the opening with removed soil or by the closure of the sidewalls to their original configuration after passage of the plow; however, areas disturbed by soil plow operations that open a width of more than one (1) foot must immediately be seeded with an appropriate variety of vegetative cover or stabilized with mulch or a similarly effective soil stabilizing BMP after passage of the plow equipment.

Soil disturbing activities associated with construction support activities, such as concrete batch plants, asphalt plants, soil disposal sites and borrow sites at or immediately adjacent to the supported project site are considered part of the common plan of development for the project and will need coverage under this permit through separate authorization if the support activity is not included in the supported project's stormwater pollution prevention plan. Asphalt and concrete batch plants might also need to obtain a separate water pollution control permit for wastewater generated by these facilities.

Support activities such as concrete batch plants, asphalt plants and areas of offsite soil borrow and soil disposal/fill activities may be treated as stand-alone construction projects which are not considered part of the supported project's common plan of development if runoff from the support activity site is not anticipated to significantly impact the same surface waters and stream segments that receive runoff from the supported project site.

**Part 2. WHAT THIS PERMIT COVERS**

Coverage under this NPDES general permit authorizes the discharge of stormwater runoff from construction activities for sites where the discharge point is located in Kansas and for discharges and construction activities that are conducted in accordance with the provisions and requirements of this permit and in accordance with the site specific stormwater pollution prevention plan from the date of Authorization until the site conditions meet the closure requirements specified in Part 9 of this permit and a Notice of Termination (NOT) is received by KDHE or the permit is revoked/terminated or placed on inactive status for cause by KDHE.

Proposed new or existing unpermitted construction stormwater dischargers, in regard to antidegradation, are eligible for authorization under this general permit to discharge to a Tier 1, 2, or 2½ Water only if the discharge will not lower the water quality of the applicable water. In the absence of information demonstrating otherwise, KDHE expects that development, installation, operation, appropriate maintenance of site specific BMPs and the SWP2 Plan as well as compliance with the provisions, conditions, requirements, and limits of this general permit will result in discharges that will not lower the water quality of the receiving surface water.

Proposed new or existing unpermitted construction stormwater dischargers that will discharge directly into Tier 3 waters (Outstanding National Resource Waters) are, in regard to antidegradation, considered temporary discharges and eligible for authorization under this general permit to discharge stormwater from construction activities but only if the discharge will not lower the water quality of the receiving water, all enhanced (significantly better and more reliable) levels of controls and best management practices are evaluated and implemented to minimize off-site migration of sediments or other pollutants. In the absence of information demonstrating otherwise, KDHE expects that development, installation, operation, appropriate maintenance of enhanced site specific BMPs and the SWP2 Plan as well as compliance with the provisions, conditions, requirements, and limits of this general permit will result in discharges that will not

lower the water quality of the receiving surface water and provide the highest protection reasonably available.

This NPDES general permit also authorizes the following non-stormwater discharges from construction sites during the life of the project:

1. Flushing water hydrants and potable water lines provided appropriate sediment and erosion controls are implemented,
2. Water used for rinsing streets or structures that does not contain cleansers, detergents, solvents or additives;
3. Irrigation to establish vegetation;
4. Discharges of uncontaminated non-turbid groundwater provided that appropriate sediment and erosion controls are implemented;
5. Discharges from emergency fire-fighting activities;
6. Water used to control dust;
7. Uncontaminated air conditioning or compressor condensate;
8. Foundation or footing drains where flows are not contaminated with process materials such as solvents or contaminated groundwater;
9. Uncontaminated construction dewatering wastewaters that have been treated by an appropriate control such as bag filters or equivalent technology. Wastewaters that have been treated by an appropriate control but still contain trace amounts of sediment are not considered contaminated; and
10. Discharges of stormwater listed above, or authorized non-stormwater commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

### **Part 3. WHAT THIS PERMIT OR THE RAINFALL EROSION WAIVER DOES NOT COVER**

This NPDES general permit does **not** authorize or address:

1. A discharge of stormwater runoff from construction activities which violates the provisions of this NPDES general permit;

2. Construction activities on sites within Kansas which are located on Indian Country lands, (see endnote 3, page 20);
3. Construction activities which may discharge stormwater runoff one-half stream mile or less from a Critical Water Quality Management Area; an Exceptional State Water; a Special Aquatic Life Use Water; or to an Outstanding National Resource Water unless KDHE specifically grants coverage by this NPDES general permit (see endnote 4, page 20).
4. Construction activities that result in the discharge of stormwater runoff which violates the Kansas Surface Water Quality Standards;
5. Construction activities that result in the discharge of stormwater runoff which violates the applicable requirements of a Municipal Separate Storm Sewer program or local stormwater pollution prevention program;
6. Construction activities that may adversely affect threatened or endangered species as listed in K.A.R. 115-15-1 et seq. unless the KDWP&T has been specifically consulted with;
7. Construction activities that may affect any identified archeological sites or historic sites listed or eligible for listing on the National Register of Historic Places unless the KSHS has been specifically consulted with;
8. Projects that are exempt under the Oil & Gas Exemption (see definition). However, if coverage under the NPDES general permit is requested, an Authorization will be issued and permit requirements will be enforced. However, dewatering discharges (e.g., well point or groundwater dewatering wells) and trench dewatering from groundwater infiltration are not exempt activities under the Oil and Gas Exemption and require KDHE approval, permitting, or authorization under the NPDES general permit. KDHE will review discharges based on management by appropriate controls, discharge quality and quantity, and proposed location of the discharge to determine the need for approval or permitting requirements on a case-by-case basis. Acceptable discharges of uncontaminated groundwater dewatering shall meet Kansas Surface Water Quality Standards, control sediment by employing bag filters or equivalent technology, and prevent down gradient scouring and soil erosion.

9. Agricultural construction activities are generally exempt unless construction of a drainage structure will drain an area that exceeds the definition of a stream as defined by the Kansas Department of Agriculture under K.A.R. 5-45-1(t), or the construction is for a livestock pen or feature related to concentrated animal feeding operations or a structure such as a garage, barn, shed, stall, storage building, residence or office;
10. The discharge of stormwater from sites where construction activities resulting in the disturbance of one or more acres or are a part of a common plan of development or sale which may disturb a cumulative total of one or more acres where a discharge is directed to an "impaired water" where the impairment is for total suspended solids, nitrogen, or phosphorous or a waterbody for which KDHE has developed, and EPA has approved, a Total Maximum Daily Load (TMDL) for total suspended solids, nitrogen, or phosphorous. Authorization for coverage under this general permit will only be granted if the stormwater discharge will not cause or contribute to a violation of surface water quality standards and the permittee implements, operates, and maintains appropriate BMPs, erosion and sediment control measures, and complies with all provisions of this NPDES general permit. In the absence of information demonstrating otherwise, KDHE expects that compliance with the provisions, conditions, and limits in this general permit will result in stormwater discharges being controlled, as necessary, to meet applicable water quality standards and satisfy current provisions in Kansas developed and EPA approved TMDLs directed at total suspended solids and indirectly address releases associated with nitrogen and phosphorus. Per the Kansas TMDLs addressing total suspended solids, KDHE reviews of erosion and sediment control Plans, BMPs, and the SWP2 Plans will concentrate on trying to protect and maintain buffers and vegetative filter strips along and immediately adjacent to streams and lakes and to minimize construction impacts on streams. In accordance with the provisions of the TMDLs, KDHE will also concentrate on trying to identify projects operating without an NPDES permit or projects which do not employ effective erosion and sediment control techniques. KDHE may impose additional water-quality based limitations on a site-specific basis or require coverage under an NPDES individual permit if information in the NOI and associated materials, required reports, site inspections conducted by KDHE or EPA, or from other sources indicate that stormwater discharges from the site are not controlled as necessary to meet applicable water quality

standards or the provisions of a specific TMDL for the waterbody receiving the discharge.

11. Discharges of water mixed with non-stormwater discharges, unless they are listed as allowable non-stormwater discharges in Part 2 above or are determined by KDHE as not requiring authorization;
12. Discharges of fill or dredged materials regulated by part 401 or 404 of the Clean Water Act unless permits under 401 or 404 so stipulate;
13. Stormwater discharges associated with construction activities that have been covered under an individual permit or a different NPDES general permit, unless authorized by KDHE Bureau of Water;
14. Stormwater and/or allowable non-stormwater discharges associated with construction activities that are discharged to a combined sewer system; and
15. The modification of stormwater drainage (the routing of flows or the change in quantity of flow) onto or across private property.

This NPDES general permit does not relieve the permit holder of the obligation to obtain other approvals, permits, licenses, or documents of sanction that may be required by other federal, state, or local government agencies.

This NPDES general permit also does not authorize any other discharge of sewage, pollutants or wastewater to waters of the State including for example:

- a. Hazardous substances or oil from an on-site spill or improper handling and disposal practices;
- b. Wash and/or rinse waters from concrete mixing equipment including ready mix concrete trucks;
- c. Wastewater generated from wet air pollution control equipment including asphalt plants, or the containment of asphalt plant scrubber water in lined ponds;
- d. Contaminated groundwater (see definitions);
- e. Wastewater from washout and clean out of stucco, paint, form release oils, curing compounds and other construction materials;
- f. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- g. Soaps or solvents used in vehicle or equipment washing; or

- h. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by appropriate controls.

KDHE reserves the right to deny coverage under this NPDES general permit to applicants for stormwater runoff from construction or earth disturbing activities at sites which have contaminated soils which will be disturbed by the construction activity or have contaminated groundwater which could be discharged by the construction activity.

### 3.1 Individual Permits Required Due to Denial or Non-Compliance -

If the NOI for coverage under this NPDES general permit is denied by KDHE, then the applicant is not eligible for coverage under this NPDES general permit and shall apply for an individual NPDES permit.

The permittee shall apply for an individual NPDES permit at least 180 days prior to commencing construction activities. Construction activities as defined in this permit shall not commence until the individual NPDES permit is issued.

## Part 4. HOW TO APPLY

The owner or operator of a construction site needing to discharge stormwater runoff from construction activities shall submit a complete request for coverage under this NPDES general permit to obtain authorization and receive Authorization under this NPDES general permit from KDHE prior to removing vegetation or disturbing soil at the site.

A complete request for Authorization to discharge stormwater runoff from construction activities under this NPDES general permit must be submitted or the request will not be processed. A complete request for Authorization includes:

- An NOI form (construction stormwater) with all information provided and an original authorized signature;
- A check for the first year of the annual permit fee made payable to "KDHE". Per K.A.R. 28-16-56 et seq., as amended, the current annual permit fee for this NPDES general permit is \$60;
- An area map delineating the boundary of the construction site and the general topographic features of the area at least one mile beyond the construction site boundary and indicating the location

of all streams and other surface water bodies within one mile of the site boundary that receive runoff from the construction site;

- A summary of the sequence of major soil disturbing activities including installation of the corresponding stormwater management and pollution control features;
- A detailed site plan covering the entire scope of the project construction activities showing the existing contours, proposed contours, erosion and sediment control features, and locations where stormwater runoff leaves the construction site;
- A narrative summary of the erosion and sediment control(s) and other best management practices that will be utilized to eliminate or minimize contamination of stormwater runoff from the construction activities;
- Design calculations for any proposed sedimentation basin, if applicable; and
- Copies of letters or e-mails documenting coordination with appropriate local, state or federal agencies.

KDHE recommends the NOI and supporting documentation be submitted at least 60 days prior to start of construction activities to avoid unplanned delays in the start of construction. Submittal of a Notice of Intent (NOI) to discharge Stormwater Runoff from Construction Activities and all supporting documentation indicated above, even 60 days after submittal, does not provide automatic coverage under the NPDES general permit. Coverage under this NPDES general permit begins when KDHE authorizes the discharge of stormwater runoff from construction activities identified in the NOI and supporting documentation.

An NOI form can be downloaded from the [KDHE Stormwater Website](#) (see endnote 1, page 20) or obtained from KDHE at the address given in Part 10.2 of this NPDES general permit.

If the construction activities will be conducted within the boundaries of a Municipal Separate Storm Sewer System (MS4), the permittee shall submit a copy of the KDHE Authorization and all supporting documentation to the operator of the local MS4 and obtain any permits or approvals that may be required under the local Stormwater Management Program. A list of NPDES permitted MS4 operators which are required to develop a Stormwater Management Program is available on the [KDHE Stormwater Website](#) (endnote 2, page 20) or upon written request to KDHE Bureau of Water - Municipal Programs Section.

Upon KDHE's Authorization to discharge stormwater runoff from construction activities for the site indicated on the NOI and supporting documents, the owner or operator and, if appropriate, the company, corporation, partnership, or government entity they represent becomes the permittee under this NPDES general permit.

#### **Part 5. STARTING CONSTRUCTION ACTIVITY**

The owner or operator who has applied for coverage under this NPDES general permit shall not initiate construction activities and discharge or have the potential to discharge stormwater runoff from construction activities described in the NOI until receiving Authorization from KDHE for the discharge.

When the owner or operator receives KDHE's Authorization to discharge stormwater from construction activities, the owner or operator may commence construction activities at the site described in the NOI and supporting documentation under the provisions of this NPDES general permit and in accordance with the construction site stormwater pollution prevention Plan (SWP2 Plan).

A copy of the KDHE Authorized NOI and the project specific SWP2 Plan including the erosion and sediment control plan for the specific project shall be readily available at the construction site.

#### **Part 6. CONTINUING COVERAGE - ANNUAL PERMIT FEE AND RENEWAL REQUIREMENTS**

The permit holder shall pay an annual permit fee as specified in K.A.R. 28-16-56 et seq. as amended as long as stormwater discharges from the facility continue to meet the definition of stormwater discharges from construction activities. Make the check payable to "KDHE".

An annual invoice for the annual fee will be sent to the designated billing contact listed in the NOI. Payment of the annual permit fee is required to maintain continued coverage under this NPDES general permit until such time as a request for a transfer of ownership is received and accepted by KDHE or until the site is stabilized and a Notice of Termination (NOT) is received by KDHE or the permit is revoked/terminated.

KDHE reserves the right to revoke/terminate coverage under this NPDES general permit to applicants for stormwater runoff from construction or soil disturbing activities where annual payment for continuing coverage has not been received or reasonable application of best management practices or pollution controls have not been

implemented or maintained following notification by KDHE staff.

Authorization under this general permit will be placed on inactive status by KDHE without further notice for any of the following reasons:

- a) Failure to pay the annual permit fee after the mailing of the annual invoice and with no payment received for 3 months after the date of the invoice;
- b) Failure to provide KDHE with a valid current mailing address which results in an invoice or other KDHE correspondence being returned by the post office without a forwarding address.

Projects that have been inactivated will no longer have permit coverage under this general permit.

Projects for which a Notice of Intent has been submitted but not Authorized and for which a response to a KDHE request for additional documentation has not been received within one year of NOI submittal will be administratively closed.

Owners or operators of projects that have been placed on Inactive Status, administratively closed or denied Authorization and who want to obtain coverage under this general permit must submit a complete new request for Authorization in accordance with Part 4 of this permit.

#### **6.1 Continuing Coverage Authorization under Previous Permit –**

The permittee is not required to submit a new NOI for continuing coverage under the successor NPDES general permit unless modifications, changes or discoveries are made which may affect coverage under the successor NPDES general permit or the information in the current NOI is inaccurate, needs to be updated, or KDHE requests the submission of a new NOI.

Owners or operators of constructions activities that received KDHE authorization for coverage under the previous Kansas Water Pollution Control and National Pollutant Discharge Elimination System General Permit (General Permit No. S-MCST-0312-1) prior to the effective date of this permit may continue to operate under those permit provisions, conditions, requirements, limits, site specific authorized Best Management Practices (BMPs), and site specific authorized Stormwater Pollution Prevention Plan (SWP2 Plan) for a period of 18 months after issuance of this permit. If by 18 months after the effective date of this permit all construction activities authorized by General Permit No. S-MCST-0312-1 have not been completed, the construction site stabilized, a

Notice of Termination (NOT) completed and submitted in conformance with the permit requirements and the Notice of Termination received by KDHE, then prior to the end of this 18-month period the permittee shall modify or amend the current SWP2 Plan in conformance with all permit provisions, conditions, requirements, and limits as established in this permit. The permittee shall also implement the modified or amended SWP2 Plan prior to the end of this 18-month period and shall install, modify and continue maintaining all BMPs as specified in the modified or amended SWP2 Plan. The intent of this 18-month transition period is to enable permittees that received authorization for construction activities under the previous general permit (S-MCST-0312-1) time to either complete construction activities and terminate permit coverage or retain the services of a licensed professional engineer, geologist, architect, landscape architect, or a Certified Professional in Erosion and Sediment Control (per Part 7.1 of this permit) to modify the SWP2 Plan and implement revised BMPs in conformance with all provisions, conditions, requirements, and limits of this permit, which includes EPA's Construction and Development Effluent Guideline Standards (40 CFR 450) in effect at the time this permit was issued.

#### **6.2 Request for an Individual NPDES Permit –**

On and after the effective date of this NPDES general permit, the permit holder must comply with the terms and conditions of this permit and continue paying the annual permit fee; or request an individual NPDES permit within 90 days after the publication of this permit. The facility will continue coverage under the previous NPDES general stormwater permit (General Permit No. S-MCST-0312-1) and comply with the provisions of the previous NPDES general permit until the individual NPDES permit is issued. If coverage under an individual permit is denied the owner or operator may continue to operate under General Permit S-MCST-0312-1 for 18 months after denial of the application for an individual permit and shall modify or amend the SWP2 Plan, implement the modified or amended SWP2 Plan and install appropriate BMPs in conformance with this permit within 18 months after said denial.

#### **6.3 Continuing Coverage Authorization after Permit Expiration –**

This NPDES general permit will expire five (5) years from issuance. Should KDHE fail to issue a new NPDES general permit with an effective date on or before the expiration date of this permit, the conditions of this NPDES general permit continue in force until the effective date of a new NPDES general permit.

If the permittee wishes to continue construction activities regulated by this NPDES general permit after the expiration date of this permit, the permittee must continue

to pay the annual fee, and continue to comply with the terms and conditions of this NPDES general permit until the effective date of the successor NPDES general permit.

A permittee who has a valid authorization to discharge stormwater runoff from construction activities under the conditions of this NPDES general permit will continue to be covered until the effective date of the new NPDES general permit and shall comply with the conditions of this NPDES general permit until the effective date of the successor NPDES general permit. Upon the effective date of the successor NPDES general permit, the permittee shall continue to comply with the terms and conditions of the successor NPDES general permit or obtain coverage for construction stormwater discharges under alternative provisions of this permit.

### **Part 7. STORMWATER POLLUTION PREVENTION PLAN REQUIREMENTS AND GUIDELINES**

Before initiating construction activities the permittee shall develop a Stormwater Pollution Prevention Plan (SWP2 Plan) which is specific to the construction activities which are to be employed at the site authorized by this NPDES general permit to discharge stormwater runoff. The permittee shall fully implement the provisions of the SWP2 Plan required under this part as a condition of this NPDES general permit throughout the term of the construction project.

The purpose of the SWP2 Plan is to ensure the design, implementation, management, and maintenance of "Best Management Practices" (BMPs) in order to eliminate or minimize erosion, sediment; and other pollutants in stormwater runoff from construction activities; comply with the Kansas Surface Water Quality Standards; and ensure compliance with the terms and conditions of this NPDES general permit.

The permittee shall select, install, utilize, operate, and maintain effective BMPs in accordance with best professional judgment, generally accepted and scientifically defensible guidance, and the concepts and methods described in Environmental Protection Agency (EPA) document number EPA 832-R-92-005, entitled *Stormwater Management for Construction Activities - Developing Pollution Prevention Plans and Best Management Practices*, published in September, 1992 and EPA document number EPA 833-R-06-004 entitled *Developing your Stormwater Pollution Prevention Plan, A Guide for Construction Sites* published in May, 2007 (see endnote 5, page 20). The permittee is not limited to the BMPs provided in the EPA guidance manuals. Other pollution or erosion controls must utilize practices with similar effectiveness, and the permittee should develop

BMPs with the goal of site specific effectiveness in mind.

### **7.1 General SWP2 Plan Requirements -**

Stormwater Pollution Prevention (SWP2) Plans shall be developed and prepared under the supervision of a licensed Kansas professional engineer, geologist, architect, or landscape architect or a Certified Professional in Erosion and Sediment Control (see endnote 6, page 20). Please note: It is unlawful for a person to perform any assignment involving a specific technical profession unless licensed or specifically exempted by the Kansas Board of Technical Professions, and is qualified by education and expertise in that profession to perform such work.

The permittee shall ensure the BMPs and/or pollution controls are properly installed and maintained at the locations and relative timeframes specified in the SWP2 Plan. Margin or border BMPs, such as a buffer area or vegetation strips, to control stormwater runoff where it leaves the site boundary, shall be installed or marked for preservation before general site clearing is started. Stormwater runoff from disturbed areas which leave the site shall pass through an appropriate sediment control, such as a sedimentation basin, sediment trap, or silt fence prior to leaving the construction site.

### **7.2 Contents of SWP2 Plan**

#### **7.2.1 Site Description –**

The permittee's SWP2 Plan shall include all of the information provided in the NOI. The SWP2 Plan shall expand upon the NOI information in order to make the SWP2 Plan a working document which contractors and site construction workers can use to guide the installation and maintenance of BMPs and pollution controls.

**7.2.2 Description of Best Management Practices -** The permittee's SWP2 Plan shall include a description of the BMPs and/or pollution controls they will use at the site. The SWP2 Plan shall provide the following general information for each BMP and/or pollution control which will be used one or more times at the site:

- a physical description of the BMP and/or pollution control;
- the site and physical conditions which must be met for effective use of the BMP and/or pollution control;
- the BMP and/or pollution control installation/construction procedures, including typical drawings; and
- operation and maintenance procedures for the BMP and/or pollution control.

The SWP2 Plan shall provide the following information for each specific instance where a BMP and/or pollution control is to be installed:

- where, in relation to other site features, the BMP and/or pollution control is to be located;
- when, in relation to each phase of construction, the BMP and/or pollution control will be installed; and
- what site conditions must be met before removal of the BMP and/or pollution control, if it is not permanent.

#### **7.2.3 Detailed SWP2 Plan Requirements -**

The SWP2 Plan must provide BMPs and/or pollution controls that, at a minimum, are designed, installed, and maintained to:

- (1) Control stormwater volume and velocity within the site to minimize soil erosion in order to minimize pollutant discharges.
- (2) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
- (3) Minimize the amount of soil exposed during construction activity;
- (4) Minimize the disturbance of steep slopes (slopes of forty (40) percent or greater, see definitions);
- (5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
- (6) Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;
- (7) Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted;
- (8) Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed;

(9) Minimize discharges from stream crossings by immediately stabilizing the areas from bank to bank and providing appropriate controls to minimize any stream scour and providing down gradient sediment control from bore pit stockpiles;

(10) Control discharges from sediment or soil stockpiles;

(11) Minimize the generation of dust through the application of water or other dust suppression techniques;

(12) Minimize off-site tracking of soils by utilizing wheel washing facilities or an appropriately designed construction entrance and exit. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge. Off-site track out shall be cleaned up at the end of each work day. Sites with contaminated soils must provide wheel washing and tanks for holding of the wash water, if feasible, or other equivalent practices if the vehicles can track the contaminated soil from the site;

(13) Provide structures to divert significant flows of stormwater from off-site drainage, if feasible;

(14) Reduce erosion of concentrated flows of stormwater in channelized drainage through the use of velocity dissipation devices, (e.g., check dams, riprap, and wattles), installation of channel liners (e.g., riprap, geotextiles, and erosion control blankets), or the combined use of both methods of erosion control; and

(15) Provide storm drain inlet protection (such as rock bags) for inlets down gradient of disturbed project areas that are not fully stabilized or where construction activity will soon be started.

#### **7.2.4 Steep Slope Stabilization Requirements -**

When construction activities on steep slopes (slopes of forty (40) percent or greater, see definitions) cannot be avoided, the SWPP Plan must require the contractor to immediately initiate placement of appropriate erosion control BMPs in any exposed steep slope areas where construction activities have permanently or temporarily ceased, and will not resume for a period exceeding 7 calendar days. For vegetative cover areas, in addition to seeding, watering, mulching, and any other required activities related to the planting and establishment of vegetation, other appropriate erosion control practices such as geotextiles or erosion control mats shall be utilized. Diversion of concentrated or channelized stormwater flows around steep slopes or slope drains shall be utilized where feasible.

#### **7.2.5 Temporary and Permanent Non-Structural BMPs**

Examples of non-structural BMPs which the permittee should consider specifying in the SWP2 Plan include: temporary seeding, final seeding, mulching, geotextiles, sod stabilization, protection of existing vegetation for use as buffer strips (especially along drainage courses), protection of trees, preserving existing stream channels as overflow areas when channel shortening is allowed, soil stabilizing emulsions and tackifiers, mulch tackifiers, preservation of mature vegetation, stabilized site entrances/exits, wheel brushing or washing, clean-up of soils on roadways, dust control and other appropriate BMPs.

The permittee's SWP2 Plan shall require existing vegetation to be preserved where practical, and the time period for soil areas to be without vegetative cover is to be minimized to the extent practical.

Clearing and grubbing within 50 feet of a defined drainage course shall be avoided, if feasible.

Where changes to defined drainage courses are to occur as part of the project, clearing and grubbing within 50 feet of the defined drainage course shall be delayed until all materials and equipment necessary to complete the drainage change are on site.

Changes to defined drainage courses shall be completed as quickly as possible once the work has been initiated. The area impacted by the construction of the drainage course change is to be re-vegetated or stabilized to minimize the length of time the area is exposed.

Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other soil disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. The disturbed areas shall be protected from erosion by stabilizing the area with mulch or other similarly effective soil stabilizing BMPs. Initial stabilization activities must be completed within 14 days after soil disturbing activities cease.

Stabilization of disturbed areas is not required if the intended function of a specific area of the site necessitates that it remain disturbed. Such areas include stockpiles of soil materials (such as structural soils and clays, but not stockpiles of topsoil) that are intended for a use that prohibits introduction of vegetation, mulch or other foreign materials into the soil, areas reserved for landscaping, including areas prepared for final sod application, that prohibits the introduction of vegetation, mulch or other foreign materials prior to placement of final landscaping features, dirt tracks, courts and other amenities designed or otherwise intended to remain unstabilized, and disturbed floors and banks below the

anticipated pool elevation of ponds and basins. Appropriate sediment control measures shall be provided below all such areas where the intended function necessitates that the area remain disturbed.

Disturbed areas that exhibit ice, frozen soil conditions, or have a consistent snow cover extending across 70 percent or more of the area are considered to be temporarily stabilized until thawing occurs across the affected area. Stabilization of such iced, frozen or snow covered areas must be completed within 14 days following the first subsequent inspection required under Part 7.2.10 of this permit that finds the affected area thawed and no longer stabilized due to ice, frozen soil conditions or snow cover.

#### **7.2.6 Temporary and Permanent Structural BMPs -**

Examples of structural BMPs which the permittee should consider specifying in the SWP2 Plan include: diverting flows from undisturbed areas away from disturbed areas, silt (filter fabric or straw bale) fences, earthen diversion dikes, drainage swales, sediment traps, rock check dams, subsurface drains (to gather or transport water for surface discharge elsewhere), pipe slope drains (to carry concentrated flow down a slope face), level spreaders (to distribute concentrated flow into sheet flow), storm drain inlet protection and outlet protection, reinforced soil retaining systems, gabions, temporary or permanent sediment basins, and other appropriate BMPs.

#### **7.2.7 Sedimentation Basins -**

The permittee's SWP2 Plan shall require a sedimentation basin, where feasible, for each drainage area with 10 or more acres disturbed at one time.

The sediment basin needs to be designed and maintained to provide at least 3,600 cubic feet of storage per acre drained. Where use of a sediment basin of this size is impractical, the SWP2 Plan shall evaluate and specify other similarly effective BMPs to be employed to minimize erosion and control sediment. Where large areas of undisturbed or stabilized areas can drain into the sediment basin or in certain areas of Western Kansas, alternative design detention volumes can be used. See the definition of Sediment Basin Design Criteria for additional clarification and alternatives for sizing and volume requirements.

Outlet structures must be designed and constructed to withdraw water from the surface, unless infeasible. If infeasible, the reason it is infeasible shall be provided as a part of the NOI and SWPP Plan submittal to KDHE.

The permittee's SWP2 Plan shall require that the sediment basin be cleaned to ensure adequate detention is available. No more than 20 percent of the required

sediment basin capacity shall be taken up with sediment. The basin shall be maintained until less than 10 acres of area needing final stabilization within the drainage basin remains. If a sedimentation basin is removed, other appropriate and effective BMP's and/or pollution controls shall be provided, as needed.

The 3,600 cubic feet of storage area per acre drained criteria does not apply to flows from areas where such flows are diverted around both the disturbed area and the sediment basin.

The permittee's SWP2 Plan shall require both temporary and permanent sedimentation basins to have a stabilized emergency spillway to minimize the potential for erosion of the emergency spillway or sediment basin embankment.

#### **7.2.8 Permanent Stormwater Controls -**

If applicable, the permittee's SWP2 Plan shall include a description of the measures that will be installed during construction to control pollutants in stormwater runoff that will occur after construction activities have been completed. These would include drainage channels or systems; outlet control devices, detention basins, oil water separators, catch basins, etc. This NPDES general permit does not require the permittee or his contractors to operate or maintain these measures beyond the date of the Notice of Termination unless otherwise notified by KDHE.

#### **7.2.9 Additional Site Management BMPs -**

The permittee's SWP2 Plan shall address other BMPs, as required by site activities, to minimize or eliminate contamination of stormwater runoff. At a minimum, such measures must be designed, installed, implemented and maintained to:

- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be free of detergents, soaps, or solvents and must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
- (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater except where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use);

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures;

(4) Require the contractor to provide solid and hazardous waste management including: providing trash containers and regular site clean-up for proper disposal of solid waste such as scrap building material, product/material shipping waste, food containers, and cups; and providing containers and proper disposal for waste paints, solvents, and cleaning compounds;

(5) Require portable toilets for proper disposal of sanitary sewage;

(6) Require storing construction materials away from drainage courses and low areas;

(7) Require containment berms and drip pans at fuel and liquid storage tanks and containers;

(8) Provide procedures to eliminate or minimize the potential to discharge environmental contaminants from contaminated soil or groundwater; and

(9) Provide procedures and practices to eliminate the potential to discharge wash and/or rinse waters from concrete mixing equipment including ready mix concrete trucks.

#### **7.2.10 Site Inspections by Permittee –**

The permittee shall ensure the entire construction site including but not limited to disturbed areas, BMPs, waste and construction storage areas, drainage areas, locations where stormwater can flow from the construction site, and temporarily stabilized areas is inspected on a regular schedule and, with the exception of Saturdays, Sundays, established Federal Holidays and the day after Thanksgiving, by the end of the next day following a rain event which results in a rainfall total of 0.5 inches or greater.

Rainfall totals used to establish when a construction site inspection is required shall be determined from local weather station reports of daily rainfall totals such as the 1200 GMT end-of-day totals available through the National Weather Service and their cooperative observers or from regularly scheduled on-site rain gauge monitoring performed and recorded each work day by project personnel. A site inspection is required whenever a rainfall total of 0.5 inches or greater is observed based on a single monitoring event; or based on the cumulative total of two consecutive monitoring events when the rainfall total of the first monitoring event is less than 0.5 inches.

The permittee shall, upon initiation of construction activities, determine an initial routine inspection monitoring period based on the start date of construction activities and a routine monitoring frequency of either 14 days or a different monitoring frequency established in the SWP2 Plan that does not exceed 14 days. Subsequent routine inspection monitoring periods shall be established based on the chosen routine monitoring frequency and the initial inspection monitoring period determined at the start of construction, without regard to the dates of routine or rain event inspections that are conducted. At a minimum, a single routine or rain event site inspection shall be conducted within each routine inspection monitoring period.

For disturbed areas that have not been finally stabilized all installed BMPs and other pollution control measures shall be inspected for proper installation, operation and maintenance. Locations where stormwater runoff leaves the site shall be inspected for evidence of erosion or sediment deposition. Once a portion of the project area meets the final stabilization criteria specified in Part 9 of this permit, then no further inspection of that final stabilized portion is required provided that the area is identified in the SWP2 Plan as having obtained final stabilization; however, the permittee shall remain responsible to correct any conditions within such areas that are identified as contributing to the discharge of sediment or other pollutants from the project site.

A report of each regularly scheduled inspection and required rain event inspection shall be documented. The inspection report is to include the following minimum information: inspector's name, date of inspection, observations relative to the effectiveness of the BMPs, actions taken or necessary to correct deficiencies, listing of areas where construction operations have permanently or temporarily stopped, and observations of stormwater discharge locations with respect to the effectiveness of the upgradient BMPs. The inspection report shall be completed within 24 hours of the inspection excluding Saturdays, Sundays and previously specified holidays and shall be signed by the person performing the inspection.

Any deficiencies in the operation or maintenance, effectiveness, adequacy or coverage extent of all installed BMPs, temporary stabilization measures and other pollution control measures identified during the inspection shall be noted in the inspection report and corrected within seven calendar days of the inspection unless infeasible. The permittee shall promptly notify the site contractors responsible for operation and maintenance of BMPs of deficiencies. When correction of any noted deficiency within seven calendar days is infeasible, the inspection report shall document the reason why such

correction is infeasible and provide a specific timeframe for completing all needed maintenance and repairs of installed control measures and installation or modification of all control measures and management practices identified as missing, ineffective or inadequate as soon as feasible.

If weather or site conditions render access to any portion of the site to be unsafe or infeasible for inspection activities, the inspection report shall document the reason why access is unsafe or infeasible. Weather and site conditions shall then be monitored and recorded daily excluding Saturdays, Sundays and referenced holidays until access for inspection activities is determined to be safe and feasible. Inspection of the affected area shall then be performed by the end of the next day after determining that access is safe and feasible, again excluding Saturdays, Sundays and referenced holidays.

Disturbed project areas that are temporarily stabilized due to ice, frozen soil conditions or consistent snow cover extending across 70 percent or more of the area shall be noted on the inspection report. For such areas, the observation of disturbed soils, sediment and erosion control BMPs, drainage areas and locations where stormwater can flow from the construction site is not required during site inspections while one or more of the listed conditions are present. The thawing of these areas shall be noted during the first subsequent inspection when iced, frozen or snow covered conditions are no longer present.

For inactive project sites where soil disturbing construction activities have permanently ceased and final stabilization activities have been completed and documented as such in the SWP2 Plan but vegetative density does not meet the final stabilization criteria specified in Part 9 of this permit, inspections in response to rain events are not required; however, at a minimum, a single routine inspection shall still be conducted at the inactive project site within each established routine inspection monitoring period.

The permittee shall maintain the site inspection reports on-site or at the records storage location identified in the NOI. The permittee shall provide a copy of the site inspection reports to KDHE or EPA upon request.

### **7.3 Modifications and Amendments to SWP2 Plan -**

The permittee shall modify or amend the SWP2 Plan as appropriate during the term of the construction activity until the site is stabilized. The permittee, an authorized representative, and/or the contractor(s) responsible for installation, operation, and maintenance of the BMPs shall keep a current copy of the SWP2 Plan on the project site.

### **7.3.1 Modification of Control Measures and Management Practices –**

Modifications to the SWP2 Plan shall be made to better control the site erosion and sediment discharges based on field conditions or site phasing that was not considered during SWP2 Plan development. The permittee shall indicate the changes on the erosion and sediment control plan sheets, maintain a log showing dates of all SWP2 Plan modifications, a brief description of the SWP2 Plan modifications, and the name and title of the person authorizing the modification. Changes to the SWP2 Plan that are not an amendment (see below) are considered modifications and do not need to be submitted to KDHE. Modification of site erosion and sediment controls based on field conditions or site phasing do not require preparation or approval by a professional; however, modifications that involve the relocation or reconfiguration of any sedimentation basin or corresponding outlet structure required under Part 7.2.7 of this permit shall be prepared under the supervision of a licensed or certified professional as specified in Part 7.1 of this permit.

### **7.3.2 Amendment of the SWP2 Plan –**

The SWP2 Plan shall be amended:

- when a change in the project scope increases the amount of soil disturbed by more than 1.0 acre;
- when stormwater will discharge into a surface water not originally receiving stormwater from the permitted site construction activities; and
- when determined as significant by KDHE upon notification of any discovery of contaminated soil or groundwater, potential historic or archeological sites, or threatened or endangered species during the construction that was not identified and addressed in the SWP2 Plan.

For projects requiring an amendment the permittee will need to submit a letter explaining the changes, a modified erosion and sediment control plan, and a new NOI form indicating the new acreage with the originally issued State and Federal permit numbers. Soil disturbing activities shall not occur on the added or discovered areas until Authorization from KDHE is provided. Amendments need to be submitted at least 60 days prior to implementing the proposed changes at the site. Authorization for the revised project will be indicated in similar fashion as the initially authorized NOI and a copy of the newly authorized NOI will be provided to the permittee. Amendments to SWP2 Plans shall be prepared under the supervision of a Licensed Kansas professional engineer, geologist, architect, or landscape architect or a Certified Professional in Erosion and Sediment Control.

The permittee shall modify or amend the SWP2 Plan, at a minimum, whenever:

- there is a change in design, operation, or maintenance of BMPs, pollution controls, or pollution prevention measures;
- there is a change in the design or scope of the construction project which could significantly affect the quality of the stormwater runoff or the use of designated BMPs or pollution controls;
- the construction site inspections indicate deficiencies in the SWP2 Plan or any BMP;
- KDHE or EPA notifies the permittee of deficiencies in the SWP2 Plan, BMP's, and/or pollution controls;
- the SWP2 Plan is determined to be ineffective in significantly minimizing or controlling erosion and sedimentation (e.g. there is evidence, such as excessive site erosion, excessive sediment leaving the site, or excessive sediment deposits in drainage channels, streams, or lakes);
- KDHE determines violations of Surface Water Quality Standards may occur or have occurred; or
- KDHE determines the activities at the site constitute a significant pollution potential which the current SWP2 Plan does not adequately address.

The permittee shall provide a copy of the most current SWP2 Plan to KDHE or EPA upon request.

#### **7.4 Contractor Notification -**

The permittee shall notify each contractor or entity (including utility crews, and city employees or their agents) that will perform work at the site of the existence of the SWP2 Plan and what action or precautions shall be taken while on-site to minimize the potential for erosion and the potential for damaging any BMP or pollution control. However, the permittee is ultimately responsible for ensuring compliance with this permit.

The permittee shall provide contractors who are responsible for installation, operation, or maintenance of any BMP a copy of or access to the SWP2 Plan.

### **Part 8. TRANSFER OF OWNERSHIP**

#### **8.1 Transfer of Entire Permitted Area -**

Coverage under and the requirements of this NPDES general permit are transferable but transfer is not automatic and must be accepted by KDHE. The permit

may be transferred only to a party that meets the definition of "Owner", "Owner or operator", or "owner/operator" for the entire authorized project scope. The current permittee and the new permittee shall complete a Notice of Transfer of Owner/Operator (NOTO) form, bearing original signatures, and submit to KDHE at the address given in Part 10.2 of this NPDES general permit. If the original permittee is unavailable or unwilling to sign the NOTO (normally due to bankruptcy) the NOTO shall be filled out as much as possible and a cover letter explaining the situation submitted with the NOTO by the new owner.

Transfers shall be requested at least two weeks in advance of transfer of ownership or operational control to ensure KDHE has accepted the transfer and/or provisions that needed to be addressed by the two parties covering continued responsibility by the original permittee until such time as KDHE formally accepts the permit transfer.

#### **8.2 Partial Permitted Area Transfer of One (1.0) or More Acres -**

If ownership or operational control of a contiguous area, one (1.0) or more acres in size, within the overall project or subdivision area is sold or otherwise transferred by the permittee to a new owner, then a new complete request for Authorization for the area being sold or otherwise transferred shall be submitted in accordance with Part 4 of this NPDES general permit. This procedure is required for all projects including residential, commercial and industrial subdivisions. Lots for construction of residential homes of greater than one (1.0) acre can utilize procedures under this section or under Part 8.3. Previous clearances issued for the original permitted project area (e.g., Kansas Historical Society, Kansas Department of Wildlife, Parks and Tourism, United States Army Corps of Engineers) may be referenced.

#### **8.3 Partial Permitted Area Transfer of Less than One (1.0) Acre or a Residential Home Lot -**

Both the permittee and the new owner or operator including a contractor, who obtains ownership of a lot or contiguous portion of an overall permitted area that is less than one (1.0) acre in size shall jointly complete an Individual Lot Certification (ILC) form for each lot, lots or portions sold or otherwise transferred, or shall incorporate requirements into the contract for sale that are equivalent to those specified on the ILC form. The ILC or equivalent statements in the contract for sale do not constitute a transfer of the Authorization to discharge. The agreement is between the new owner or operator of the lot or portion and the permittee to implement the SWP2 Plan and the conditions of the general NPDES permit cooperatively, however, the original permittee maintains responsibility for discharges from the project site.

The permittee shall maintain the ILC form or a copy of the

contract for sale covering the same requirements either on-site or at the Records Address location identified in Section I of the NOI. The permittee shall provide ILC forms or copies of contracts for sale to KDHE, EPA, or any other government agency upon request.

## Part 9. PROJECT COMPLETION

The permittee shall notify KDHE of the project completion by submitting a Notice of Termination (NOT). The permittee shall sign the NOT and mail it to KDHE at the address given in Part 10.2 of this NPDES general permit.

When the soil disturbing activities are complete and final stabilization of all disturbed areas has been achieved, the permittee can terminate coverage under this NPDES general permit by submitting the NOT. The project is considered to be stabilized when perennial vegetation, pavement, buildings, or structures using man-made materials cover all areas which have been disturbed. Vegetation must have a density of at least 70 percent of the density of undisturbed areas at or near the site.

For projects disturbing agricultural land, disturbed areas that are restored to their preconstruction agricultural use are not subject to the above stabilization criteria. Areas that are not being returned to preconstruction agricultural use, must meet the conditions for final stabilization in this Part.

For subdivision development projects, termination of coverage may be requested after three years, provided the entire subdivision is stabilized and the rate of home construction disturbs less than one (1.0) acre per year (approximately 5 lots) or less than one (1.0) acre of land remains to be developed (approximately 5 lots).

The permittee may also terminate coverage under this NPDES general permit prior to completion of the project construction activities provided that duplicate authorization for coverage under this general permit or KDHE authorized successor permits has been issued and is in effect for all remaining construction activities including all areas disturbed by previous construction activities that have not obtained final stabilization.

## Part 10. GENERAL REQUIREMENTS OF THIS PERMIT

### 10.1 Records -

The permittee shall maintain all records required by this NPDES general permit for a period of three (3) years following the date on the NOT. All records shall be kept on-site or in a readily available location identified in the NOI until final stabilization has been completed. Electronic versions of the required records are acceptable but must show or otherwise document all relevant

signatures and be readily available for copying and contractor access as per Part 7.4 and agency review as per Part 10.4 of this general permit. After final stabilization has been completed, records may be maintained at the permittee's main office.

Records shall be readily available during normal business hours.

Records which shall be maintained by the permittee include, but are not limited to:

- the NOI indicating the Authorization by KDHE to discharge stormwater runoff from the construction activities and supporting documentation used to apply for authorization under this NPDES general permit;
- the SWP2 Plan for the construction site named in the Authorization to discharge stormwater runoff, and any amendments to the SWP2 Plan;
- all site inspection records;
- any clearance letters, from KDWP&T, KSHS, COE, or any other agency providing clearance;
- Individual Lot Certification (ILC) forms or portions of the contract for land sale with equivalent wording; and
- a copy of the Notice of Termination submitted to KDHE.

Except for data determined to be confidential *under 33 USC Section 1318*, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. Effluent data shall not be considered confidential. Knowingly making any false statement on any such report or tampering with equipment to falsify data may result in the imposition of criminal penalties as provided for in 33 USC Section 1319 and KSA 65-170c.

### 10.2 Contact Address -

All notifications, forms, reports, or other correspondence which must be submitted to KDHE as required by this NPDES general permit shall be sent to:

Kansas Department of Health and Environment  
Bureau of Water, Industrial Programs Section  
1000 SW Jackson, Suite 420  
Topeka, KS 66612 – 1367

Applicants can download copies of all forms, references, or the NPDES general permit from the [KDHE Stormwater](#)

Website at:

<http://www.kdheks.gov/stormwater/index.html>

or can be requested by e-mail to KDHE at:

[kdhe.stormwater@ks.gov](mailto:kdhe.stormwater@ks.gov)

### 10.3 Duty to Comply -

The permittee shall comply with all conditions of this NPDES general permit. Any noncompliance with this NPDES general permit constitutes a violation of the CWA, K.S.A. 65-164 and 65-165, and/or K.A.R. 28-16-28 et seq. Noncompliance may result in enforcement action; revocation/termination of this authorization; or amendment of this authorization.

It shall not be a defense for a permittee in an enforcement action to contend that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of the NPDES general permit.

After implementation of the stormwater pollution prevention plan, if stormwater discharges adversely affect water quality, or cause violations of any other provision of this NPDES general permit, the permittee shall modify and implement the stormwater pollution prevention plan to address the non-compliance.

Failure to comply with the requirements of the NPDES general permit may subject the permittee to enforcement actions including revocation/termination of the authorization to discharge under this NPDES general permit, a requirement to discontinue the permitted activity, fines and/or possible imprisonment.

Projects which have received authorization under this Permit that are placed on Inactive Status will no longer have permit coverage under this Permit. KDHE will place previously permitted facilities on Inactive Status for failure to pay the annual permit fee without further notice if payment is not received within 3 months of the date of the invoice (see Part 6).

### 10.4 Duty to Provide Information and Site Access -

The permittee shall furnish to KDHE; the EPA; or any local agency having jurisdiction for any aspect of the project, any information which is requested to determine compliance with this NPDES general permit.

When the permittee becomes aware they failed to submit any relevant facts or submitted incorrect information to KDHE, they shall promptly submit such facts or information to KDHE at the address given in Part 10.2.

The permittee shall allow the Director or an authorized representative of KDHE, the EPA, or, local agency having jurisdiction over the project, upon the presentation of proper credentials and other documents as may be required by law, to:

- enter upon the site where a regulated construction project or activity is located or conducted or where records must be kept under the conditions of this NPDES general permit;
- obtain samples of any discharge to waters of the State;
- have access to and copy at reasonable times, any records which must be kept under the conditions of this NPDES general permit; and
- inspect the construction site and any facilities or equipment (including monitoring equipment, stormwater controls, and BMPs).

### 10.5 Signatory Requirements -

The Notice of Intent (NOI), the Notice of Termination (NOT), and the Notice of Transfer of Owner/Operator (NOTO) shall be signed by the owner, operator, or designee. All forms, reports, or other correspondence which must be submitted to KDHE as required by this NPDES general permit shall be signed by the permittee or a duly authorized representative.

### 10.6 Chemical and Sewage Spills -

In case of a spill emergency call:

U.S. EPA National Response Center:

(24 hours a day) (800) 424-8802

Kansas Division of Emergency Management: (KDEM)

(24 hours a day) (785) 291-3333

Website: [www.ksready.gov](http://www.ksready.gov)

KDHE Spill Report Hotline:

(24 hours a day) (785) 296-1679

### 10.7 Hazardous Substance and Oil Spill Reporting -

The permittee or authorized representative is required to notify the U.S. EPA National Response Center (800-424-8802) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as the discharge of any hazardous substance or oil in excess of the reportable quantity has been discovered. A reportable quantity of oil is the quantity which causes a "film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited

beneath the surface of the water or upon adjoining shorelines." Reportable quantities for hazardous substances are listed in the cited CFRs.

The permittee is also required to notify the Local Emergency Planning Agency and the [Kansas Division of Emergency Management](#) (KDEM) at the phone numbers and/or website listed above in permit paragraph 10.6.

Nothing in this permit shall be construed to preclude the initiation of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject to under 33 USC Section 1321 or KSA 65-164 et seq.

### **10.8 Sewage, Wastes, Materials, and Substances Spill Reporting -**

Any discharge or escape of sewage, substances, materials, or wastes, as set forth in K.S.A. 65-171d, which are, or threaten to contaminate or alter any of the properties of the waters of the State or pollute soil in a detrimental, harmful, or injurious manner or create a nuisance, shall immediately be reported to the Kansas Department of Health and Environment at (785) 296-1679. The report shall be made by the permittee, or the owner of the spilled materials, or their respective authorized representative.

In the case of discharges under conditions other than those allowed in a valid NPDES permit, the report shall be made by the permittee or an authorized representative. The report shall be made by telephone to [KDHE](#) at 785-296-1679 in accordance with K.A.R. 28-48-1 et seq.

Nothing in this NPDES general permit shall be construed to preclude KDHE's institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under the CWA (33 U.S.C. Section 1321); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); K.S.A. 65-161 et seq.; or under state or federal statutes or regulations governing oil or hazardous substances or wastes.

### **10.9 Requiring a Different NPDES Permit -**

The Director may require the permittee to apply for and obtain an individual permit or different general permit if:

- the permittee is not in compliance with the conditions of this NPDES general permit;
- the discharge no longer qualifies for this NPDES general permit due to changed site conditions or regulations; or
- information becomes available which indicates water

quality standards have been, or may be violated.

The permittee will be notified in writing of the need to apply for an individual permit or a different NPDES general permit. When an individual permit or different general permit is issued to the authorized permittee, this NPDES general permit is automatically revoked/terminated upon the effective date of the individual or different general permit, whichever the case may be.

### **10.10 Electronic Data Monitoring Report -**

EPA has promulgated a final rule requiring regulated entities to report discharge monitoring report (DMR) data electronically by December 21, 2016. Also, K.A.R. 28-16-63 requires permittees to report NPDES data in a form required by KDHE. KDHE has developed electronic reporting tools to assist permittees in complying with the EPA electronic reporting rule and K.A.R. 28-16-63. Unless a waiver has been approved by KDHE, permittees are required to submit reports electronically when these tools are made available to them by KDHE. By December 21, 2020, the permittee must submit electronically compliance data, reports, and permit applications by a KDHE approved electronic reporting tool.

## **Part 11. STANDARD CONDITIONS**

In addition to the conditions specified in this NPDES general permit, the permittee shall comply with the following Standard Conditions.

### **11.1 Proper Operation and Maintenance -**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the requirements of this NPDES general permit, Kansas law, and Federal law. Proper operation and maintenance also includes adequate laboratory controls, if applicable, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the requirements of this permit. Pollution control systems, erosion control measures or best management practices which require maintenance shall be maintained, repaired or replaced in a timely manner to avoid discharging stormwater runoff laden with pollutants or sediment which adversely impacts water quality.

The permittee shall take all necessary steps to minimize or prevent any adverse impact to human health or the environment resulting from noncompliance with any requirements specified in this permit, including any monitoring as necessary to determine the nature and

impact of the stormwater discharge. When necessary to maintain compliance with the permit requirements, the permittee shall halt or reduce those activities under its control.

When necessary to achieve compliance with the terms and conditions of this NPDES general permit, the permittee shall install, operate and maintain backup systems or auxiliary facilities to supplement the erosion control measures and best management practices proposed in the NOI.

### **11.2 Severability -**

The provisions of this NPDES general permit are severable. If any provision of this NPDES general permit or any circumstance is held invalid, the application of such provision to other circumstances and the remainder of the NPDES general permit shall not be affected thereby.

### **11.3 Permit Modifications and Terminations -**

As provided by KAR 28-16-62, after notice and opportunity for a hearing, this permit may be modified, suspended or revoked or terminated in whole or in part during its term for cause as provided, but not limited to those set forth in KAR 28-16-62 and KAR 28-16-28b through g.

The permittee shall furnish to the Director, within a reasonable amount of time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish upon request, copies of all records required to be kept by this permit. The filing of a request by the permittee for a permit modification or revocation and reissuance, or a notification of termination, planned changes or anticipated noncompliance does not stay any permit condition.

### **11.4 Change in Discharge -**

All discharges authorized herein shall be consistent with the requirements and conditions of this NPDES general permit.

The SWP2 Plan shall be amended or modified to reflect significant changes to the project and/or the stormwater discharges in accordance with the applicable requirements of Part 7.3 of this NPDES general permit.

### **11.5 Discovery During Construction -**

In the event contaminated soil, groundwater contamination, or contamination from hazardous substances are discovered at the site during construction activities, the permittee shall report the discovery to KDHE verbally within 24 hours to (785) 296-5549, and within 5 business days in writing at the stated address in

Part 10.2 of this NPDES general permit. Until site evaluations have been completed and instruction has been provided by KDHE, construction activities in the contaminated area shall cease and additional provisions shall be provided to immediately mitigate discharges from the contaminated area.

Any discovery during construction activities of threatened or endangered species on the site or in the downstream receiving waters, or of a historical or archeological site, that were not previously identified or addressed in the SWP2 Plan needs to be reported to the KDWP&T or KSHS and KDHE - Bureau of Water. Until site evaluations have been completed and instruction has been provided by the appropriate agencies, construction activities in the affected area shall cease.

If soil contamination, hazardous substances, threatened or endangered species, or historical or archeological sites are discovered during construction activities, the SWP2 Plan shall be modified or amended to reflect this new information in accordance with the requirements and conditions of Part 7.3 of this NPDES general permit.

### **11.6 Removed Substances -**

Solids, sludge, sediment, filter backwash, or other pollutants removed in the course of treatment or control of stormwater runoff shall be properly managed, utilized, and/or disposed of in accordance with applicable statutes and regulations to prevent pollution of surface water, groundwater, or soil.

### **11.7 Civil, Criminal, and Administrative Liability -**

Kansas law provides for civil and criminal punishment including fines and imprisonment for violations of this NPDES general permit. The permittee shall comply with all requirements of this NPDES general permit. Except as authorized in paragraph 11.10 below, nothing in this permit shall be construed to relieve the permittee from administrative, civil or criminal penalties for noncompliance as provided for in KSA 65-161 et seq., and 33 USC Section 1319.

### **11.8 Property Rights -**

The issuance of this NPDES general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property, nor any invasion of personal rights, nor any infringement or violation of Federal, State or local laws or regulations. This NPDES general permit in no way reduces or eliminates the permittee's responsibilities to landowners whose property may be traversed by stormwater runoff from the project site either before, during, or after construction of the planned project. It is the permittee's responsibility to obtain any necessary approvals from any affected property owner.

### 11.9 Duty to Mitigate –

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this NPDES general permit which has a reasonable likelihood of adversely affecting human health or the environment.

### 11.10 Bypass –

Any diversion or bypass of facilities necessary to maintain compliance with this NPDES general permit is prohibited except where necessary to prevent loss of human life, personal injury, or severe property damage, and where no feasible alternative to the bypass exists.

Any bypass which occurs during construction activities which may affect a threatened or endangered species, or a historical or archeological site, on site or in the receiving water body, shall be reported to KDHE verbally within 24 hours to (785) 296-5549, and within 5 business days in writing at the stated address in Part 10.2 of this NPDES general permit.

If a bypass occurs during construction activities, the SWP2 Plan shall be modified or amended to prevent future occurrences in accordance with the requirements and conditions of this NPDES general permit.

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## ENDNOTES

1. The NPDES general permit, application forms, guidance material, the rainfall erosivity waiver application, and reference material is available on the KDHE Stormwater Website at [www.kdheks.gov/stormwater](http://www.kdheks.gov/stormwater). The website also provides links to EPA guidance documents and the instructions for the rainfall erosivity calculation, Fact Sheet 3.1 - Storm Water Phase II Final Rule Construction Rainfall Erosivity Waiver

Material available on the KDHE Stormwater Website [www.kdheks.gov/stormwater](http://www.kdheks.gov/stormwater) includes the NPDES general Permit, Notice of Intent, Notice of Termination, Notice of Transfer of Owner/Operator, Individual Lot Certification, and the Definitions and Acronyms in Adobe Acrobat Reader format (pdf).

Reference material available on the KDHE Stormwater Website at [www.kdheks.gov/stormwater](http://www.kdheks.gov/stormwater) includes the Fact Sheet, Rainfall Erosivity Waiver Application, a list of Exceptional State Waters, Special Aquatic Life Use Waters and Outstanding National Resource Waters, and a link to the current Kansas Surface Water Register and maps.

2. The owner or operator must determine whether discharging stormwater runoff from construction activities on the site is subject to any local applicable requirements. To determine the local requirements applicable to each construction project, the owner or operator must contact the local Municipal Separate Storm Sewer System (MS4) operator. A list of MS4 operators who have or may be required to have a local stormwater pollution prevention program is available on the KDHE Stormwater Website at [www.kdheks.gov](http://www.kdheks.gov). This list is provided and maintained for information only and will not necessarily include all MS4 operators with a local program.

3. If the applicant is uncertain if the project is located on Indian Country land, please contact the Bureau of Indian Affairs Southern Plains Regional Office - Natural Resources Department at (405) 247-6673 and the EPA Region VII Tribal Program at (913) 551-7969 or (913) 551-7374. EPA is the permitting authority on Indian Country land. To request authorization to discharge stormwater runoff from construction activities conducted on Indian Country land the applicant must contact EPA.

4. To determine if your project is located near one of these areas find the stream segment(s) or lake(s) which receive(s) the stormwater runoff on the Kansas Surface Water Register Maps, then check the designated uses of the stream segment(s) or lake(s) in the Kansas Surface Water Register. Applicants can download a copy of the Surface Water Register from the KDHE Stormwater Website at [www.kdheks.gov/stormwater](http://www.kdheks.gov/stormwater). At the time of this general NPDES permit issuance there were no Critical Water Quality Management Areas established. The stormwater website at: [www.kdheks.gov/stormwater](http://www.kdheks.gov/stormwater) includes the most current list should an area be established.

5. The referenced guidance documents are available on-line at: <http://nepis.epa.gov/>. Links to the referenced guidance are also available at the KDHE website: <http://kdheks.gov/stormwater>.

6. Certification as a professional in erosion and sediment control is available through CPESC, Inc. CPESC information can be obtained through the internet at [www.cpesc.org](http://www.cpesc.org), or by calling (828) 655-1600. For other additional educational opportunities and information, contact the International Erosion Control Association at [www.ieca.org](http://www.ieca.org) or by calling (800) 455-4322.

7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility that disturbs less than 5 acres is not considered to be construction activity, and therefore is not subject to construction stormwater permitting requirements.