

FACT SHEET
Draft GENERAL PERMIT FOR
STORMWATER RUNOFF FROM CONSTRUCTION ACTIVITIES

PROPOSED KANSAS GENERAL PERMIT NO.: S-MCST-1703-1

DATE: May 2017

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PROPOSED ACTION:

The Kansas Department of Health and Environment (KDHE) has prepared a draft combined Kansas Water Pollution Control (KWPC) general permit and National Pollutant Discharge Elimination System (NPDES) general permit for stormwater runoff from construction activities. The draft permit was prepared for review by the U.S. Environmental Protection Agency (EPA). After modification in response to EPA comments the draft permit will be published for public comment. After modification in response to public comments the draft permit will be issued as a replacement for the current Stormwater Runoff from Construction Activities general permit which expired on March 1, 2017, but is administratively extended until such time as a successor permit is issued.

Coverage under this KWPC/NPDES general permit will authorize the discharge of stormwater runoff and certain non-stormwater discharges from construction activities for sites where the discharge point is located in Kansas and the construction activities are not located on Indian lands. Coverage under the general permit will be in effect from the date of Authorization until the site is stabilized and the construction stormwater discharge Notice of Termination (NOT) is accepted by KDHE or permit coverage is revoked, terminated or administratively inactivated for cause by KDHE.

Major provisions are summarized below and include the addition to the current KDHE construction stormwater general permit of requirements of EPA's Construction and Development effluent guideline standard (40 CFR 450) in effect at the time this NPDES general permit is issued and the reporting of discharge monitoring report (DMR) data electronically as required by the EPA multi-sector final rule

RECEIVING STREAM:

The receiving streams are all surface waters of the State of Kansas where the stormwater discharge point is located in the State of Kansas except when the discharge is on Indian Country Lands or when construction activities occur within one-half stream mile from a Critical Water Quality Management Area; an Exceptional State Water; an Outstanding National Resource Water; or a Special Aquatic Life Use Water unless specifically allowed.

AUTHORIZED ACTIVITY DESCRIPTION:

Coverage under the NPDES general permit authorizes discharges of stormwater from construction activities (e.g. clearing, grubbing, excavating, grading, etc.) which disturb a cumulative total of one (1.0) acre or more or that are part of a larger common plan of development or sale which will disturb a cumulative total of one (1.0) acre or more. Construction activities do not include routine maintenance performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility that disturbs less than 5 acres; structural demolition activities, including removal of debris, which do not involve soils excavation, grading, clearing, grubbing or other soil disturbing construction activities; and 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; 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 .

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

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 issuance of this successor permit. If by 18 months after this NPDES general permit issuance all construction activities authorized by General Permit 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 accepted by KDHE, then prior to the end of this 18-month period the permittee shall amend the SWP2 Plan in conformance with all permit provisions, conditions, requirements, and limits as established in this successor general permit (Proposed Permit No. S-MCST-1703-1). The permittee shall also implement the 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 amended SWP2 Plan.

New dischargers or existing unpermitted 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 stream.

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 permit also authorizes stormwater discharges from 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.

Non-stormwater discharges from construction sites authorized under the general permit are also allowed such as flushing water hydrants and potable water lines; rinsing streets or structures without cleansers, detergents, solvents or additives; irrigation water to establish vegetation, and discharges of uncontaminated groundwater.

UNAUTHORIZED ACTIVITY DESCRIPTION:

The general NPDES permit does not authorize stormwater discharges from the following construction activities:

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;
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 directly to an Outstanding National Resource Water unless KDHE specifically grants coverage by this NPDES general permit;
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 Kansas Department of Wildlife, Parks and Tourism (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 Kansas Historical Society (KSHS) has been specifically consulted with;
8. Projects that are exempt under the Oil & Gas Exemption. 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 from trench dewatering of groundwater infiltration by employing bag filters or equivalent technology, and prevent down gradient scouring and soil erosion.
9. Agricultural construction activities are generally exempt unless construction activities are associated with a drainage structure which drains 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 road and bridge 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 and 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 the NOI and associated materials, submitted reports, site inspections conducted by KDHE or EPA, or information obtained 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 of the permit 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.

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

- Hazardous substances or oil from an on-site spill or improper handling and disposal practices;
- Wash and/or rinse waters from concrete mixing equipment including ready mix concrete trucks;
- Wastewater generated from wet air pollution control equipment for asphalt plants, or the containment of scrubber water in lined ponds;
- Contaminated groundwater;
- Wastewater from washout and clean out of stucco, paint, form release oils, curing compounds and other construction materials;
- Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- Soaps or solvents used in vehicle or equipment washing; or
- Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by appropriate controls.

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

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.

STORMWATER POLLUTION PREVENTION PLAN REQUIREMENTS AND GUIDELINES:

The NPDES general permit requires the permittee to develop a Storm Water Pollution Prevention Plan (SWP2 Plan) and specifies general requirements and the contents of the SWP2 Plan. The general requirements specified for a complete SWP2 Plan include:

- Preparation under the supervision of a Kansas licensed professional engineer, geologist, architect, or landscape architect or a Certified Professional in Erosion and Sediment Control (CPESC);
- 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. 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;
- Conditions which require a modification or amendment of the SWP2 Plan;
- The contents of the SWP2 Plan providing site description and best management practices addressing temporary and permanent structural and non-structural BMPs, sedimentation basins and permanent (post-construction) stormwater management;
- The SWP2 Plan must provide 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; and
 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 use of velocity dissipation devices, (e.g., check dams, riprap, and wattles) and installation of channel liners, (e.g., riprap, geotextiles, and erosion control blankets);
15. Provide storm drain inlet protection (such as rock bags) for inlets down gradient of sites not fully stabilized or where construction activity will soon be started.
16. Provide additional requirements to immediately initiate steep slope stabilization;
17. Initiate temporary or permanent stabilization on portions of the construction site where soil disturbing activities have or will cease for 14 days or longer and complete the stabilization within 21 days.
18. Provide additional site management BMPs as necessary to prevent contamination of stormwater runoff such as:
 - 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;
 - 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).
 - Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures;
 - 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;
 - Require portable toilets for proper disposal of sanitary sewage;
 - Require storing construction materials away from drainage courses and low areas;
 - Require containment berms and drip pans at fuel and liquid storage tanks and containers; and

- Provide procedures to eliminate or minimize the potential to discharge environmental contaminants from contaminated soil or groundwater.
- 19. Provide for periodic site inspection at least every 14 days and, with the exception of Saturdays, Sundays, established Federal Holidays and the day after Thanksgiving, within 24 hours of the end of a precipitation event which results in a cumulative precipitation total of 0.5 inches or greater during either a single or two consecutive monitoring days. Disturbed project areas that are temporarily stabilized due to ice, frozen soil conditions or consistent snow cover shall be noted on the inspection report and shall be inspected within 14 days after soil conditions thaw or the snow or ice melts.
- 20. Provide for corrective action of any identified site control deficiencies within 7 calendar days of the inspection.

GENERAL REQUIREMENTS OF THIS PERMIT

To be covered under the permit, the permittee is required to comply with the following general requirements:

Records;

Duty to comply;

Duty to provide information and access;

Signatory requirements;

Spill reporting of chemical spills, hazardous substances and oil, sewage, wastes and other miscellaneous substances;

Different permitting requirements for non-compliance or non-qualifying discharges;

Transfer or partial transfer of ownership; and

Individual lot certifications to address compliance with permit requirements during subdivision developments.

STANDARD CONDITIONS

The permit also addresses the following standard conditions:

Proper operation and maintenance;

Severability;

Permit modifications and terminations;

Change in discharge;

Discovery during construction;

Removed substances;

Civil, criminal and administrative penalties;

Property rights;

Duty to mitigate; and

Bypasses.

FORMS AND ADMINISTRATIVE PROCEDURES

Once issued, to be covered under this permit, the owner/operator is required to submit a complete request for coverage under this NPDES general permit 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;
- 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 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.

The NOI and supporting documentation needs to be submitted at least 60 days prior to start of construction activities. 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.

To maintain the Authorization to discharge stormwater runoff from construction activities, the permittee is required to achieve and maintain compliance with the current general permit requirements and pay the annual permit fee.

Other support documents include an Executive Summary, Notice of Intent Instructions, a Notice of Termination; Notice of Transfer of Owner/Operator; Rainfall Erosivity Waiver Application and guidance; Individual Lot Certification; and Definitions and Acronyms.

Additional reference material will be available to supplement the instructional material provided in the program documents on KDHE's Stormwater Website at www.kdheks.gov/stormwater.

WAIVERS

The permit offers the rainfall erosivity waiver for sites with construction activities disturbing between one and five acres with a short duration having a small potential of rainfall events causing sediment and other pollutants to be discharged. The requirements of the general NPDES permit may be waived for these construction activities if the rainfall erosivity factor (R) is less than 5 during the construction period.