

Kansas Water Quality Certification
Section 404 Nationwide Permits
Kansas Department of Health and Environment

I. Authority

This certification is prepared pursuant to Clean Water Act (CWA) Section 401 and Kansas Administrative Regulation 28-16-28f(c)(1) by the Kansas Department of Health and Environment (KDHE).

II. Certification

All activities authorized by the U.S .Department of Army Corps of Engineers (USACE) proposed Nationwide Permits (NWP) published February 16 2011, in the Federal Register, and projected to go into effect on or before March 19, 2012, are not expected to result in violations of Kansas Water Quality Standards found at Kansas Administrative Regulations 28-16-28b through 28g, provided the person conducting the Corps of Engineers authorized activity adheres to the conditions set out by this certification. A full description of the proposed NWPs can be found at:

<http://www.nwk.usace.army.mil/Missions/RegulatoryBranch/NationwidePermits.aspx>.

Additionally, Kansas Regional Conditions for NWPs have been proposed by the USACE with concurrence from state and federal agencies. Once issued, these conditions provide a general statewide framework for requirements for permitted activities considered by the USACE to have minimal impacts on the aquatic ecosystem. This water quality certification provides conditions and guidance to address local water quality needs of the permitted activities.

III. Limitations of this Certification: All Section 404 activities within the borders of Indian owned and operated lands are not covered by this certification. Individuals proposing projects which impact those waters are responsible for contacting the appropriate individual at the following numbers:

- Prairie Band Pottawatomie Indians, Planning Department, 785/966-2946
- Kickapoo Tribe in Kansas, Environmental Office, 785/486-2601
- Iowa of Tribe of Kansas and Nebraska, 785/595-3258
- Sac and Fox Tribe of Missouri, 785/742-4707

IV. General Conditions

1. **Certification Retention:** The applicant shall retain this water quality certification on the project site through the duration of the project to accommodate inspection.
2. **Kansas Water Pollution Control General Permit for Stormwater Runoff from Construction Activities:** This certification does not relieve the applicant of the responsibility to determine if the project is subject to the requirements of a **General NPDES Permit** and to secure such permit as necessary. Questions and inquiries may be directed to:

Kansas Department of Health and Environment
Bureau of Water – Industrial Program Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367
Phone 785/296-5549; FAX:785/296-0086
www.kdheks.gov/stormwater

3. **Project Water Quality Protection Plan:** Any person wishing to use a Section 404 Nationwide General Permit shall prepare and follow a written project water quality protection plan (PWQPP.) The PWQPP shall identify components of the permitted activity (i.e. solid waste handling, fuel storage and leaks, sediment from construction etc.) which may or will result in the discharge of pollutants to waters of the state. For each component which may discharge pollutants to waters of the state, the plan shall set out the physical, structural and management measures to be implemented to prevent or minimize the discharge of pollutants to waters of the state. A PWQPP shall be prepared and posted on site through the duration of the project (see Section VIII for additional information on preparing a PWPP). Activities requiring a construction stormwater permit, as described above, also require a stormwater pollution prevention plan which will serve as the PWQPP.

The permittee is required to submit the PWQPP to KDHE only if the project impacts Outstanding National Resource, Exceptional State or Special Aquatic Life Use Waters per condition No. 4 below.

4. **Outstanding National Resource Waters, Exceptional State and Special Aquatic Life Support Use Waters:** In the event the permitted activity occurs within one half (1/2) mile of an Outstanding National Resource Water as defined pursuant to **K.A.R. 28-16-28b(pp)** and **K.A.R. 28-16-28c(a)B(3)**, an Exceptional State Water pursuant to **K.A.R. 28-16-28b(y)** and **K.A.R. 28-16-28c(a)B(2)**, or a Special Aquatic Life Support Use Water designated pursuant to **K.A.R. 28-16-28d(b)(2)(A)**, the person responsible for initiating the activity shall submit a copy of the PWQPP to:

Kansas Department of Health and Environment
Bureau of Water - Watershed Management Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367 or email: nps@kdhe.state.ks.us

The project permittee should also contact the assigned KDHE Watershed Field Coordinator once construction is started for activities disturbing less than one acre. A service area map with contact information for the three KDHE Watershed field coordinators is attached (Attachment 1).

Locations of **Outstanding National Resource Waters, Exceptional State and Special Aquatic Life Support Use Waters** can be found at:
http://www.kdheks.gov/befs/water_quality_disclaimer.htm .

The permittee should also be aware of the following Kansas water quality protection regulations associated with critical resource waters:

K.A.R. 28-16-28c(a)B(2) “Wherever state surface waters constitute exceptional state waters, discharges shall be allowed only if existing uses and existing water quality are maintained and protected.”

K.A.R. 28-16-28c(a)B(3) “Wherever state surface waters constitute an outstanding national resource water existing uses and existing water quality shall be maintained and protected. New or expanded discharges shall not be allowed into outstanding national resource waters.”

K.A.R. 28-16-28c(a)B(4) “No degradation of surface water quality by artificial sources of pollution shall be allowed if the degradation will result in harmful effects on populations of any threatened or endangered species of aquatic or semiaquatic life or terrestrial wildlife or its critical habitat as determined by the secretary of wildlife and parks pursuant to K.S.A. 32-960, and amendments thereto, and K.A.R. 115-15-3 or in the federal endangered species act, 16 U.S.C. 1532 , as amended on October 7, 1988.”

5. **Solid Waste Disposal:** All solid waste materials produced during the execution of the project shall be disposed in accordance with the provisions of Kansas Solid Waste Management Statutes and regulations and applicable local regulations. Direct inquiries to:

KDHE, Bureau of Waste Management
1000 SW Jackson Street, Suite 320
Topeka, Kansas 66612-1366
Phone: 785/296-1600; FAX: 785/296-1592
www.kdhe.state.ks.us/waste/index.html

6. **Equipment Staging Areas and Project Closure:** Upon completion of the project, disturbed areas shall be expeditiously stabilized with temporary and permanent vegetation, bio-artificial ground cover or other appropriate non-polluting material. Fertilizer application to establish and maintain vegetation shall be done in a manner that will not contribute to the current nutrient load to any of the surface waters impacted by the project. The person responsible for the permitted activity shall monitor and maintain cover materials until such time as the site is stabilized. Project

closure procedures shall be documented in the PWQPP per condition No. IV. 3.

7. **Riparian Areas:** Minimize removal or disturbance of riparian areas (areas adjacent to water bodies). KDHE encourages the use of vegetation consistent with adjoining vegetation materials to minimize impacts from improper handling of fertilizers and pesticides.
8. **Discharge of Floatable Materials:** Pursuant to K.A.R. 28-16-28b (uu)(1),(2), the person responsible for executing the permitted activity shall assure good house keeping is practiced at the site to minimize the discharge of floatable materials such as personal refuse including food containers, packing, and other materials. Appropriate measures shall be taken to capture and/or recover any floatable materials discharged to waters of the state originating with the permitted project.
9. **Fuel, Chemical and Materials Storage:** Fuel, chemical and other materials stored at the project site shall be stored in a manner that minimizes the discharge of product to waters of the state. Spill minimization and prevention measures and procedures shall be documented in the PWQPP.
10. **Spill Response and Reporting:**
 - a. **Spill response and cleanup:** In the event a spill of fuel, chemical or other water quality degrading materials stored or transported on the site occurs, the permittee shall or with the assistance of professional response personnel, expeditiously control or contain the spill and initiate clean up procedures. The applicant shall immediately contact 911. Spill response and cleanup actions shall be documented in the PWQPP. The applicant should also contact the appropriate Kansas Department of Health and Environment district office http://www.kdheks.gov/befs/dist_office.html or look in your local phone directory to confirm cleanup activities. Finally, KDHE strongly encourages the permittee to establish and post a sign that includes phone contact numbers for the appropriate local emergency response unit, KDHE district office, and the project manager/owner.
 - b. **Reporting:** The Kansas Department of Health and Environment shall be notified of all fuel spills or unauthorized discharge of pollutants immediately. Contact KDHE at 785/296-1679, anytime for spill reporting requirements. The Kansas Adjutant Generals Office should also be contacted (785/296-8013) as well as the National Spill Response Center (1-800-424-8802).
11. **Drinking Water Intakes:** The person responsible for the permitted activity shall avoid adverse impacts on public water supplies. Whenever permitted activities occur within one mile upstream of a public drinking water supply - surface water intake, the applicant shall contact the official in charge of the public drinking water supply to apprise the drinking water supply official of the permitted activity. The person responsible for the permitted activity shall consider the suggestions and recommendations of the public water supply official when preparing the PWQPP.

12. **Treated Wastewater Effluent Mixing Zones:** As a general guideline any Section 404 activity within one-half (1/2) mile upstream or one-half (1/2) mile downstream of a permitted wastewater effluent discharge may impact the effluent mixing zone. The person responsible for the permitted activity shall determine if the project will adversely impact the wastewater effluent mixing zones and take appropriate measures to avoid altering or changing the mixing zone. The permitted activities may include but are not limited to:
- a. The construction or placement of a recreation oriented facility or structure (i.e. boat ramp, walkway) which may require modification of the beneficial use designation to accommodate contact or non-contact recreation, thereby increasing the effluent limitations for the permit.
 - b. Any activity which may alter or remove the stream channel geometry or natural oxygenation abilities of the stream such as bridge construction, channelization, stream channel substrate modification etc.

The person responsible for the permitted Section 404 activity shall advise and describe to the waste water discharge permittee and KDHE any potential mixing zone impacts and the measures the person responsible for the Section 404 activity will take to minimize adverse impacts on the mixing zone. Inquiries should be directed to:

Kansas Department of Health and Environment
Bureau of Water - Municipal Programs Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367
Phone: 785/296-5527; FAX: 785/296-0086

13. **Total Maximum Daily Load:** The permittee for any Section 404 NWP project within a watershed with a Total Maximum Daily Load (TMDL) should contact the assigned KDHE Watershed Field Coordinator once construction is started for activities disturbing less than one acre. A service area map with contact information for the three KDHE Watershed Field Coordinators is attached (Attachment 1). Visit <http://www.kdheks.gov/tmdl/index.htm> for TMDL watershed locations, maps and other information.

V. **Special Conditions for Specific Nationwide Permits**

1. **Nationwide Permit #7. Outfall Structures and Maintenance (construction):** Controls shall be in place to stabilize all areas of the bed and bank around the pipe or adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively.
2. **Nationwide Permits #3-Maintenance; #12-Utility Line Activities; and #18-Minor Discharges (pipelines included):** Hydrostatic tests for pipeline activities shall be

approved prior to discharge of water used for the test. Please contact:

Kansas Department of Health and Environment
Bureau of Water - Industrial Program Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367
Phone 785/296-5513; FAX: 785/296-0086

3. **Nationwide Permits #27 (Aquatic Habitat, Restoration, Establishment and Enhancement Activities) #29 (Residential Developments), #30 (Moist Soil Management for Wildlife), #39 (Commercial and Institutional Developments), #42 (Recreational Facilities), #43 Stormwater Management Facilities). A (Wind Energy Generative Facilities, B Water Based Renewable Energy):** Measures shall be implemented to assure impounded waters, created by activities within the framework of these permits, avoid becoming public health threats, nuisances, generate complaints, and potentially discharge degraded water. The applicant shall prepare and implement an Operations and Maintenance Plan for facilities and landscapes (O&M), which at the minimum incorporate the following:
 - a. Identify individual and public property owners and their potential for being the source of nonpoint source pollution. This could include but is not limited to: commercial grounds, streets, right-of-ways, parking areas, conservation easement and **proposed** mitigation areas etc.
 - b. For each property as described in item A. above, indicate the applicable water quality protection measures for each category of artificial sources of pollution. The identified water quality protection measure for each category of artificial source of pollution shall be designed to ***reduce to the maximum extent practicable, the level of pollution resulting from identified pollutant sources***. Identified water quality protection quality protection measures shall be at least as effective as those set out by the Kansas Nonpoint Source Pollution Management Plan, 2010 Update, available at: <http://www.kdheks.gov/nps/> .
 - c. Strategies to assure implementation of the water quality protection measures identified under item IV. 3-10 which may include but are not limited to prohibition or restriction of activities, utilization of alternative technologies or products, information and education, financial assistance, technical assistance, enforcement and penalties. Additionally, an in-house reporting form used by staff to document degraded property conditions potentially impacting the property and needs to address them should be developed, if applicable.
 - d. Organizations and individuals responsible for assuring implementation of identified water quality protection measures.

VI. Enforcement and Penalties

This certification does not relieve the applicant of the responsibility for any discharge to

waters of the state or allow for any inappropriate discharge to occur. As provided for by K.S.A. 65-171(f), failure to comply with the conditions of this certification may subject the responsible party to fines of \$10,000 per violation with each day the violation occurs constituting a separate violation.

VII. Variance

If the applicant believes the conditions of this certification will result in impairment of important widespread social and economic development, the applicant is advised of the variance provisions of KAR 28-16-28b(III) and KAR 28-16-28f(e).

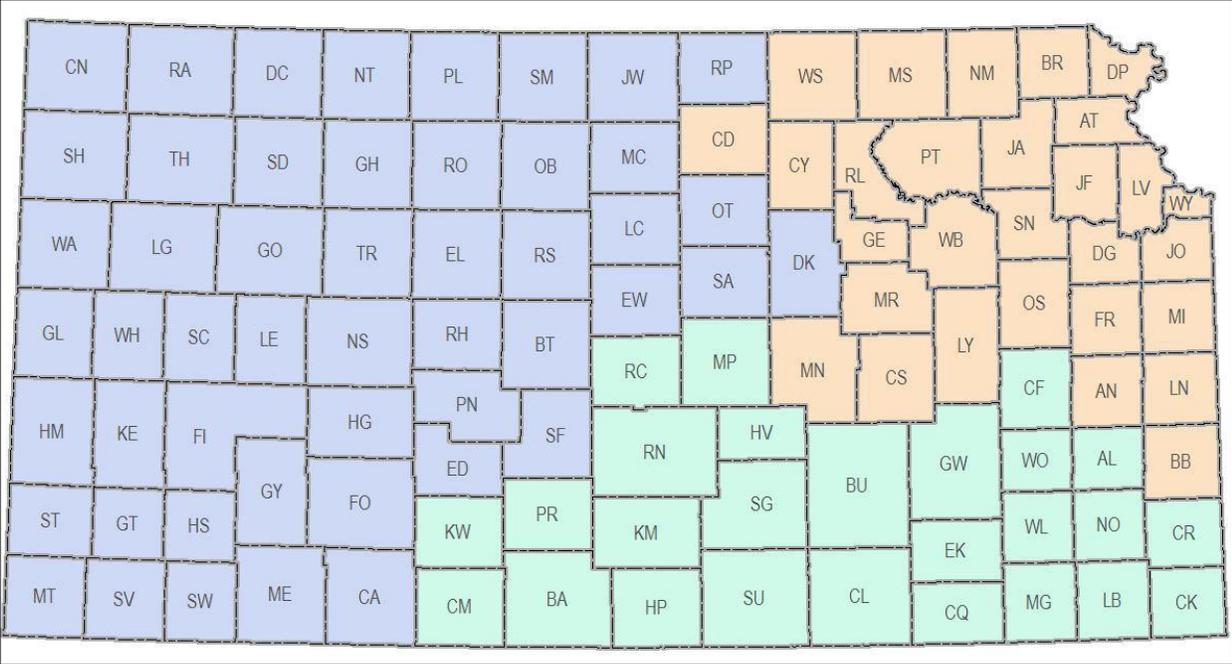
VIII. Additional Information

The KDHE website contains the following information to assist the applicant in preparing a Project Water Quality Protection Plan (PWQPP):

1. Construction practices: <http://www.dnr.mo.gov/env/wpp/wpcp-guide.htm>
2. PWQPP Form and Instructions:
<http://www.kdheks.gov/nps/resources/nwpwqppfrm.doc> or
<http://www.kdheks.gov/nps/resources/nwpwqppfrm.pdf>
3. Kansas Surface Water Register:
http://www.kdheks.gov/befs/download/Current_Kansas_Surface_Register.pdf
4. Kansas Surface Water Maps:
http://www.kdheks.gov/befs/download/2006_Surface_Water_Register_Maps.pdf
5. Surface Water Quality Standards- K.A.R. 28-16-28b through g:
http://www.kdheks.gov/water/download/kwqs_plus_supporting.pdf
6. KDHE District Offices- http://www.kdheks.gov/befs/dist_office.html
The Kansas Department of Health and Environment, Bureau of Water-Watershed Management Section at: 785/296-4195 or FAX 785/296-5509. This information can also be obtained by written communication directed to:

Kansas Department of Health and Environment
Bureau of Water - Watershed Management Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367 or email: nps@kdhe.state.ks.us

ATTACHMENT 1 – Contact Information for KDHE Watershed Field Coordinators



- Beth Rowlands** 800 West 24th St., Lawrence, KS 66046 - (785) 842-4600 - browland@kdheks.gov
- Doug Schneweis** 2301 East 13th St., Hays, KS 67601 - (785) 625-5663 - dschnewe@kdheks.gov
- Richard Basore** 130 South Market St., Wichita, KS 67202 - (316) 337-6020 - rbasore@kdheks.gov

