# PUBLIC NOTICE

**US Army Corps**
**of Engineers**
**Kansas City District**

**Permit No. GP-31K (2004-00084)**
**Issue Date: January 27, 2016**

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**STATE OF KANSAS**
**REISSUANCE OF GENERAL PERMIT GP-31K**
**KANSAS DEPARTMENT OF HEALTH & ENVIRONMENT**
**ABANDONED MINED LANDS RECLAMATION PROJECTS**

The U.S. Army Corps of Engineers, Kansas City District **HAS REISSUED** general permit GP-31K (copy enclosed) for Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section (KDHE-SMS) abandoned mined lands reclamation projects. This regional general permit would be issued under the authority of Section 404 of the Clean Water Act (33 USC 1344).

**Duration of this General Permit**: This general permit is issued and is in effect for five (5) years, from January 27, 2016 until January 27, 2021, unless revoked or specifically extended.

**Notification Procedures:** The permittee must notify the District Engineer, Kansas City District, for authorization of this general permit. The notification must include detailed drawings and sufficient information to determine if the proposed work conforms to the criteria and conditions of the general permit. Department of the Army (DA) permit application (ENG Form 4345) may be used for this purpose, and is available to download at:

www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/ObtainaPermit.aspx

The DA application form may be requested from our Kansas State Regulatory Office at 2710 NE Shady Creek Access Road, El Dorado, Kansas 67042-8644; telephone 316-322-8247, Fax: 316-322-8259.

If the Corps determines that the work meets the provisions of the general permit, and no extraordinary conditions exist that warrant evaluation as an individual permit, the proponent will be notified to proceed. If the Corps determines that the subject work does not meet the provisions of the general permit, or that extraordinary conditions exist, the applicant will be notified that an individual permit will be necessary. Additional information concerning limitations and general and special conditions of the permit can be obtained by writing to the Kansas State Regulatory Office or by calling 316-322-8247.

**APPLICANT:** KDHE-SMS

**PROJECT LOCATION:** In waters of the United States within abandoned mined lands in Bourbon, Linn, Crawford, Cherokee and Labette Counties in Southeast Kansas.

**AUTHORITY:** Section 404 of the Clean Water Act (33 USC 1344).

**ACTIVITY:** The discharge of dredged and/or fill material into waters of the United States, including wetlands, incidental to KDHE-SMS' abandoned mined land reclamation projects. Discharges authorized are limited to those which occur during the actual abandoned mined land reclamation work, and those associated with preparation and restoration of the site.

**ADDITIONAL INFORMATION:** Additional information about this application may be obtained by contacting Mr. Lucius Duerksen of the Kansas State Regulatory Office, 2710 NE Shady Creek Access Road, El Dorado, Kansas 67042, telephone: 316-322-8247 or by email at lucius.j.duerksen@usace.army.mil. All inquiries concerning this public notice should be directed to the above address.

Enclosure

# DEPARTMENT OF THE ARMY PERMIT

Permittee Kansas Department of Health and Environment

Permit No. GP-31K

Issuing Office U.S. Army Engineer District, Kansas City

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below, and with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

Project Description: Proposed Work: Abandoned Mined Land Reclamation Projects. This permit authorizes the discharge of dredged and/or fill material incidental to Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section's abandoned mined land reclamation projects as described in Appendix I. Discharges authorized are limited to those which occur during the actual abandoned mined land reclamation work and those associated with preparation and restoration of the site.

Project Location: Waters of the United States within the counties of Bourbon, Linn, Crawford, Cherokee and Labette in southeast Kansas. These areas are generally defined as altered or degraded waters located on previously mined lands and wetlands which formed under conditions resulting from past mining activities.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on January 27, 2021. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. A conditioned water quality certification has been issued for your project; you must therefore comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the State of Kansas programmatic certification is attached.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

See continuation sheets, pages 4 and 5 of this document.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

*General Permit – Signature Not Required*

(PERMITTEE) (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

**27 January 2016**

(DISTRICT ENGINEER) (DATE)
ANDREW D. SEXTON, COLONEL
BY: MARK D. FRAZIER
CHIEF, REGULATORY BRANCH
OPERATIONS DIVISION

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE) (DATE)

**Special Conditions:**

a. You must sign and return a "Compliance Certification" after you complete the authorized work and any required mitigation. Your signature will certify that you completed the work in accordance with this permit, including general and specific conditions, and that any required mitigation was completed in accordance with the permit conditions.

b. No activity is authorized under this general permit which is likely to jeopardize the continued existence of a threatened or endangered species, or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Further, this general permit does not authorize the take of a Federally listed species. See Appendix II, paragraph No. 1 for permitting requirements if these species are likely to be present or their habitat would be adversely modified.

c. If any part of the authorized work is performed by a contractor, before starting work you must discuss the terms and conditions of this permit with the contractor; and, you must give a copy of this entire permit to the contractor.

d. You must use clean, uncontaminated materials for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of deleterious and/or toxic materials into the waters of the United States by natural runoff or by leaching.

e. You must dispose of excess concrete and wash water from concrete trucks and other concrete mixing equipment in a nonwetland area above the ordinary high water mark and at a location where the concrete and wash water cannot enter the water body or an adjacent wetland area.

f. You must excavate, dredge and/or fill in the watercourse in a manner that will minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.

g. Any stream channel modification or fill within wetlands, is limited to the minimum necessary to construct or protect the reclamation project; such activities must be in the immediate vicinity of the project and avoided to the maximum extent practicable.

h. You must immediately remove and properly dispose of all debris during every phase of the project in order to prevent the accumulation of unsightly, deleterious and/or toxic materials in or near the water body.

i. You must not dispose of any construction debris or waste materials below the ordinary high water mark of any water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.

j. You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels.

k. You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work. Clearing, grading and replanting should be planned and timed so that only the smallest area necessary is in a disturbed, unstable or unvegetated condition.

**Special Conditions (cont'd):**

l. Upon completion of earthwork operations, you must seed, replant or otherwise protect from erosion all fills in the water and other areas disturbed during construction. If seeding does not successfully vegetate the disturbed areas by the end of the first growing season, you must implement alternate measures, such as additional vegetative plantings, to protect the disturbed areas from further erosion. You must contact the Kansas City District, Regulatory Branch prior to beginning work on any additional erosion control measures so that a determination can be made whether further authorization is required. For all vegetative plantings you must not plant any plant species listed at: http://www.nwk.usace.army.mil/Portals/29/docs/regulatory/nationwidepermits/2012/KSInvasivePlants.pdf nor shall any of these species be used for revegetation.

m. You must meet all mitigation conditions for project related site impacts as specified by the Corps. Also, mitigation conditions required for project related site impacts by the Office of Surface Mining, U.S. Department of the Interior, are incorporated into this permit by reference.

n. No activity which may affect Historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized by this regional permit, until the District Engineer has complied with the provisions of 33 CFR 325, Appendix C (or amended regulations). OSMRE/KDHE-SMS must notify the District Engineer if the excavation activity may affect any historic properties listed, determined to be eligible, or which the OSMRE/KDHE-SMS has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places.

## APPENDIX I

## CRITERIA FOR AUTHORIZATION BY GENERAL PERMIT NWKGP-31K

1. The District Engineer has the discretion to require an individual permit on a case-by-case basis for any activity authorized herein.

2. This general permit applies to the Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section's Abandoned Mined Lands Reclamation Projects when such activities are performed to provide hazard abatement or improve water quality.

3. Any conditions necessary to avoid and/or minimize effects to species or habitat pursuant to the Endangered Species Act (16 U.S.C.A. § 1536), become by reference, special conditions of this permit. The need for such conditions will be determined on a case-by-case basis, dependent upon project specific impacts. For activities involving formal consultation pursuant to Section 7 of the Endangered Species Act, the U.S. Department of Interior, Office of Surface Mining will serve as the lead Federal agency.

4. The cumulative impacts of this general permit may be reevaluated at the discretion of the Corps of Engineers at any time, but will be reevaluated at least every five (5) years.

## APPENDIX II

## CORPS REVIEW PROCEDURES FOR AUTHORIZATION BY GENERAL PERMIT NWK-GP-31K (for Corps use only)

**ENDANGERED SPECIES CONSULTATION**. Each proposed activity, if within the range of a Federally listed threatened or endangered species, must be coordinated with the U.S. Fish and Wildlife Service (USFWS), to allow for timely, site specific evaluation and concurrence that the activity, as conditioned under the general permit, is not likely to adversely affect listed species or their habitat.

a. Additional project specific conditions must be imposed if, through timely informal consultation between the USFWS and the Office of Surface Mining (the lead Federal agency for these activities), they are determined to be necessary to avoid the likelihood of adverse effects to listed species or their habitat.

b. In the event that the likelihood of adverse effects to listed species or designated critical habitat cannot be avoided, authorization will not be provided under the general permit until such time as: i) formal consultation between the USFWS and the Office of Surface Mining is initiated; ii) a non-jeopardy Biological Opinion is issued; and iii) the terms and conditions of any associated Incidental Take Statement are incorporated by reference in the general permit.

## APPENDIX III

## APPLICANT NOTIFICATION REQUIREMENTS

1. If you wish to perform work under the authority of this General Permit, you must provide notification to the Corps of Engineers before you initiate any reclamation activity. You must submit the following information in this notification:

a. A completed application form ENG 4345, or equivalent information.

b. A clearly marked site location map.

c. Drawings showing the details of the proposed work.

d. An operation plan which describes how you will conduct the work, details how impacts to Waters of the United States, including wetlands, will be avoided and/or minimized, and measures to restore the site following completion of the activity.

e. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands.

2. The District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, the District Engineer will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where the Office of Surface Mining or the State has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404 of the Clean Water Act.

3. You must receive written confirmation of authorization under this general permit from the Corps of Engineers before you start any reclamation or related activity affecting Waters of the United States.

## Additional Information for Applicants

The U.S. Fish and Wildlife Service (USFWS) requested that the Corps of Engineers inform applicants of their responsibilities under the Migratory Bird Treaty Act (MBTA). USFWS states: "The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. Takings could result from projects in prairies, wetlands, stream and woodland habitats, and those that occur on bridges and other structures if swallow or phoebe nests are present. While the provisions of MBTA are applicable year-round, most migratory bird nesting activity in Kansas occurs during the period of April 1 to July 15. However, some migratory birds are known to" nest earlier than this (e.g., hawks and owls) and some later (e.g., goldfinches). If the proposed project appears likely to result in the take of migratory birds, a field survey should be conducted during the nesting season of the affected habitats and structures to determine the presence of active nests. The USFWS should be contacted immediately for further guidance if a field survey identifies the existence of one or more active bird nests that you believe cannot be avoided temporally or spatially by the planned activities."

Appendix III cont.

The USFWS also expressed concerns with the inadvertent spread of exotic and invasive species; they recommended that all equipment brought on site will be thoroughly washed to remove dirt, seeds, and plant parts. Any equipment that has been in any body of water within the past 30 days will be thoroughly cleaned with hot water greater than 140° F (typically the temperature found at commercial car washes) and dried for a minimum of five days before being used at this project site. In addition, before transporting equipment from the project site all visible mud, plants and fish/animals will be removed, all water will be eliminated, and the equipment will be thoroughly cleaned. Anything that came in contact with water will be cleaned and dried following the above procedure.

# COMPLIANCE CERTIFICATION

***Special condition "a" of this permit document requires that you submit a signed certification regarding the completed work and any required mitigation. This certification page satisfies this condition if it is provided to the Kansas City District at the address shown at this bottom of this page upon completion of the project.***

**APPLICATION NUMBER:** GP-31K

**APPLICANT**: Kansas Department of Health and Environment,
Bureau of Environmental Remediation, Surface Mining Section
4033 Parkview Drive
Frontenac, Kansas 66763-4033

**PROJECT LOCATION:**

a. I certify that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions.

b. I certify that any required mitigation was completed in accordance with the permit conditions.

c. Your signature below, as permittee, indicates that you have completed the authorized project as certified in paragraphs a and b above.

_____ _____

(PERMITTEE) (DATE)

Return this certification to:

Kansas State Regulatory Office, USACE
2710 Shady Creek Access Road
El Dorado, Kansas 67042-8644

Bureau of Water
Watershed Management Section
1000 SW Jackson, Suite 420
Topeka, KS 66612-1367

Phone: 785-296-4195
Fax: 785-296-5509
nps@kdheks.gov
www.kdheks.gov/water

Kansas

Susan Mosier, MD, Secretary
Department of Health & Environment
Sam Brownback, Governor

July 28, 2015

Mr. Lucius Duerksen
Regulatory Branch
U.S. Dept. Army Corps of Engineers
KS State Regulatory Office
2710 NE Shady Creek Access Road
El Dorado, KS 67402

Section 401 Water Quality Certification

Regarding: Section 401 Water Quality Certification for Public Notice for General Permit NWK-GP-31K, Project by Kansas Department of Health and Environment, Surface Mining Section (KDHE-SMS) (commonly known as the Abandoned Mined Lands Reclamation Projects). The project generally involves placement of fill material in the waters of the U.S., including developing wetlands in the flooded mine pits, and the reconstruction of drainages across the previously mined areas. The public notice dated May 21, 2015 contains more details.

Dear Mr. Duerksen:

The Kansas Department of Health and Environment has received your request for Section 401 Water Quality Certification. We have reviewed the project and have determined the project has the following water pollutant discharge sources:

1. Construction activities including grading and filling, equipment and materials storage, equipment fueling and maintenance, etc.
2. Loss of wetlands.
3. Loss of riparian vegetation along stream channels.

Discharges from these sources if not minimized or otherwise controlled may cause violations of the provisions of Kansas Water Quality Standards found at KAR 28-16-28 et seq.; specifically projects area stream segments, and wetlands as described in the Kansas Surface Water Register [KAR 28-16-28b(eee)]. Discharges from these sources if not minimized or otherwise controlled may cause violations of the provisions of Kansas Water Quality Standards found at KAR 28-16-28 et seq. Due to the multiple sites with different designated uses, the following table has been prepared using descriptions from the Kansas Surface Water Register [KAR 28-16-28b(g)].

| Creek | Aquatic Life | Contact rec | Food procurement | Drinking water | Groundwater recharge | Industrial | Irrigation | Livestock watering |
|---|---|---|---|---|---|---|---|---|
| Cow Cr. East | Special | Secondary b | X | X | X | X | X | X |
| Little Cherry | Expected | Primary C | X | X | X | X | X | X |
| Cherry | Expected | Primary C | X | X | X | X | X | X |
| Brush | Special | Secondary b | X | X | X | X | X | X |
| Lightening | Expected | Primary C | X | X | X | X | X | X |
| Buck Run | Expected | Primary C | X | X | X | X | X | X |
| Deer | Unregistered | | | | | | | |

Cow Creek East and Brush Creek are both designated for special aquatic life use. The Special Aquatic Life Use designation is the result of the presence of either existing populations or designated critical habitat of threatened and endangered species per [KAR 28-16-28d(a)(2)(A)].

Pursuant to Section 401and KAR 28-16-28(c) the Kansas Department of Health and Environment finds that this project, including establishment of mitigation areas, will not result in a violation of Kansas Water Quality Standards herewith issues a Water Quality Certification for execution and subsequent operation of the project subject to the following conditions:

1) This certification shall be posted on site through the duration of the project.

2) Kansas Department of Health and Environment, Surface Mining Section (KDHE-SMS) shall implement good housekeeping practices to assure conditions do not cause:

    a. Any surface waters of the state within and below the project area to contain discarded solid material, including trash, garbage rubbish, offal, grass clippings, discarded building or construction materials, car bodies, tires, wire and other unwanted or discarded materials [KAR 28-16-28e(b)(3)].

3) KDHE SMS shall avoid or control the discharge of suspended solids from construction activities, removal of riparian vegetation and road surface runoff so that the project does not cause:

    a. Construction activities disturbing one acre or more are subject to the National Pollutant Discharge Elimination System (N.P.D.E.S.) storm water permit requirements of 40 C.F.R. 122.26. A construction stormwater pollution prevention plan is also required. The applicant shall direct inquiries to Mr. Larry Hook at 785/296-5549, lhook@kdheks.gov; Bureau of Water - Industrial Programs. Other information is available on their website: www.kdheks.gov/stormwater. Additionally, please email me when an NOI is submitted.

    b. Any surface waters of the state within and below the project to have floating debris, scum, foam, froth and other floating materials directly or indirectly attributable to the project [KAR 28-16-28e(b)(4)].

    c. Any surface waters of the state within or below the project to have of deposits of sludge or fine solids [KAR 28-16-28e(b)(6)].

    d. The concentration of dissolved oxygen in Brush, Little Cherry, Cherry, Lightening, Buck Run Creeks and Cow Creek East to be lower than 5.0 mg/L.

    e. Addition of suspended solids to Brush, Little Cherry, Cherry, Lightening, Buck Run Creeks and Cow Creek East to be lower than 5.0 mg/L. in amounts and concentrations that will interfere with the behavior, reproduction, physical habitat, or other factors related to the survival and propagation of aquatic or semi aquatic life or terrestrial wildlife [KAR 28-16-28e(c)(2)(B)].

    f. Alteration of the natural appearance of surface waters of the state within or below the project by the addition of color-producing or turbidity-producing substances of artificial origin [KAR 28-16-28e(b)(8].

4) KDHE-SMS shall avoid or control the discharge of toxic substances, oil and grease and other fluids from construction activities, so that the project does not cause:

   a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [KAR 28-16-28e(b)(1)].

   b. Any surface waters of the state within and below the project area to have toxic substances, radioactive isotopes, and infectious microorganisms in concentrations or in combinations that jeopardize the public health or the survival or well-being of livestock, domestic animals, terrestrial wildlife or aquatic or semi-aquatic life [KAR 28-16-28e(b)(2)].

   c. Any surface waters of the state within and below the project area to have a visible oil and grease film or sheen on the water surface or on submerged substrate or adjoining shore lines, nor have a sludge or emulsion deposit below the water surface of adjoining shorelines [KAR 28-16-28e(b)(5)].

   d. Any surface waters of the state within and below the project to contain taste and odor producing substances at concentrations which interfere with the production of potable water by conventional water treatment processes, impart an unpalatable flavor to edible aquatic or semi-aquatic life or terrestrial wildlife or that result in noticeable odors in the vicinity [KAR 28-16-28e(b)(7)].

   e. The pH in Brush, Little Cherry, Cherry, Lightening, Buck Run Creeks and Cow Creek East to be below 6.5 or above 8.5 [KAR 28-16-28e(d)].

   f. In Brush, Little Cherry, Cherry, Lightening, Buck Run Creeks and Cow Creek East listed harmful concentrations of any substance alone or in combination with other substances causing toxic, carcinogenic, teratogenic, or mutagenic effects in humans [KAR 28-16-28e(c)(3)(C)].

   g. Concentrations of substances that bio-accumulate in the tissues of edible organisms to exceed a cancer risk level of ($10^{-6}$) in persons consuming organisms taken from Brush, Little Cherry, Cherry, Lightening, Buck Run Creeks and Cow Creek East [KAR 28-16-28e(c)(4)(B)].

   h. The concentration of dissolved oxygen in Brush, Little Cherry, Cherry, Lightening, Buck Run Creeks and Cow Creek East to be lower than 5.0 mg/L.

5) KDHE-SMS shall avoid or control the discharge of *Escherichia-coli* bacteria from the daily wastewater (Porta-Potties) associated with manned construction operations so that the project does not cause the *Escherichia-coli* bacteria concentration in the registered streams to exceed the geometric mean for contact recreation criteria as shown in the table below.

| Creek | Contact rec | WQ Standard for E coli bacteria concentration of Colony Forming Units /100 mL | |
|---|---|---|---|
| Cow Cr. East | Secondary b | 2,358- November 1 - March 31 | |
| Little Cherry | Primary C | 3,843 - November 1 - March 31 | 427 – April 1- October 31 |
| Cherry | Primary C | 3,843 - November 1 - March 31 | 427 – April 1- October 31 |
| Brush | Secondary b | 2, 538 -November 1 - March 31 | |
| Lightening | Primary C | 3,843 - November 1 - March 31 | 427 – April 1- October 31 |
| Buck Run | Primary C | 3,843 - November 1 - March 31 | 427 – April 1- October 31 |
| Deer | No standard | | |

6) KDHE-SMS shall prepare a written project water quality protection plan describing the actions that will be taken to comply with Certification Conditions 2, 3, 4 and 5. This condition may be waived upon compliance with condition 3. a. and recognition that the SWPP needs to be onsite during construction.

    a. **Riparian Areas:** Minimize removal or disturbance of riparian areas (areas adjacent to water bodies). KDHE encourages the use of native vegetation or at least being consistent with adjoining vegetation materials to minimize impacts from improper handling of fertilizers and pesticides.

    b. **Erosion and Sediment Control**: Expeditiously stabilize any equipment staging areas adjacent to the work area.

    c. **Solid Waste:** All waste materials produced by the construction project shall be disposed of in accordance with the provisions of the Kansas solid waste management statutes and regulations (K.S.A. 65-3401 and K.A.R. 28-29-1 et. seq.) or applicable local rules. Good house-keeping including personal refuse such as food containers, sacks etc. shall be addressed.

    d. **Fuels, Chemicals and Maintenance Areas:** All fuels and chemicals necessary to complete the project shall be stored in such a manner that accidental spillage is minimized or can be temporarily contained before reaching the water body. Equipment maintenance areas shall also be located in this manner.

    e. **Spills:** Should a spill of fuel or discharge of pollutants occur, the local emergency staff should be contacted **first** by dialing 911. The Kansas Department of Health and Environment shall then be notified immediately: **(785)- 296-1679 (24 hours a day.)** These incidences should also be reported to the National Spill Response Center (1-800-424-8802). *Hazardous materials spills and air releases that meet federal reportable quantities must **also** be reported to Kansas Division of Emergency Management (800-275-0297)."* **These reporting numbers shall be posted in several locations around the site. A Spill Prevention and Response Plan should be prepared.**

    f. **Floating Debris:** The applicant shall take appropriate measures to capture any floating debris released to surface waters as a result of this project.

7. This certification does not relieve KDHE SMS of the responsibility for any discharge into waters of the state. The Kansas Department of Health and Environment retains the option of revoking or revising this certification any time an inappropriate discharge may occur. As provided by K.S.A. 65-171(f), failure to comply with the conditions of this certification may subject the responsible party to fines up to $10,000 per violation with each day the violation occurs constituting a separate violation.

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

Finally, the 5 year plan work area includes sites in the Middle Neosho Watershed Restoration and Protection Strategies (WRAPS) service area. The coordinator is Mr. Robert Wilson at Kansas State University who can be contacted by calling 785/532-7823 or emailing him at rmwilson@ksu.edu. We strongly suggest KDHE-SMS communicate with him or local stakeholder leadership team members for any type of coordination efforts you both may find beneficial.

Questions concerning this certification may be directed to Mr. Scott Satterthwaite, 785-296-5573 or by email at: ssattert@kdhe.state.ks.us.

Sincerely,

Scott L. Satterthwaite

Scott L. Satterthwaite, M.S.
Non-point Source Pollution Control Specialist
Bureau of Water-Watershed Management Section

EC: KDHE- Basore, Balk, Hook, O'Brien
KDA- DWR- Phillips
KSU- Wilson