

BACKGROUND TO THE KANSAS STORMWATER PROGRAM

By Richard Basore, KDHE, prepared December 2, 2008

BACKGROUND:

The Kansas Stormwater program came out of a 1987 amendment to the federal Clean Water Act (1972) and EPA is responsible for its implementation. Kansas is one of the states that has received delegation from the EPA to issue National Pollution Discharge Elimination Permits (NPDES) and has had a construction stormwater program since 1992. The Kansas Stormwater Runoff from Construction Activities general permit was updated and re-issued effective January 2, 2007 (thru December 31, 2011). Authorizations under the general permit are needed prior to the start of construction earth moving activities.

The main concern that drives the Construction Stormwater program is the need to reduce and control the amount of sediment that construction activity will contribute to streams, lakes, rivers, etc.

Sediment itself causes problems with water quality, it degrades fish and wildlife habitat, fills lakes and reservoirs with sediment reducing their water storage capacity, fills road ditches with mud, and creates safety issues on roads when it is deposited or tracked onto them.

It's also a method by which other pollutants, mainly nutrients and some chemicals are transported into our rivers, lakes and streams, as some nutrients and chemicals attach to the soil particles and thus move with the sediment.

Currently municipalities of greater than 10,000 or heavily urbanized townships are required to create a MS4 – (Municipal Separate Storm Sewer System) plan in order to control discharges that enter their storm sewer system. Among other items, the MS4 permit also requires them to create stormwater ordinances for stormwater controls including construction activity within their jurisdiction.

PERMITS:

The permitting process of obtaining coverage under the State's General Permit thru KDHE for projects of 1-acre or more is fairly simple. You need to submit a "Notice of Intent" or NOI to request coverage under the KDHE general Permit. This is a self-explanatory 3-page form that guides you through the process. As a part of it you will need to determine what watershed your project is located in, check to see if there are pristine streams, historical sites, or endangered wildlife that might be impacted.

You also need to submit with the NOI a professionally prepared, site specific, erosion and sediment control plan, or Stormwater Pollution Prevention Plan (SWPPP) prepared by either a P.E., a licensed Geologist, Landscape Architect, Architect, or a Certified Sediment and Erosion Control Professional prior to starting construction.

There is a \$60 fee for applying for the NOI.

Regardless of whether or not your project needs permit coverage, if you are doing work that is in a 'waters of the US', typically any waterway that exhibits an ordinary high water mark, you may need a 404 Dredge and Fill permit (and 401 Water Quality certification, i.e., a pollution prevention plan) from the US Army Corps of Engineers. A stream obstruction clearance may be required from the Division of Water Resources of the Kansas Department of Agriculture if the upstream drainage area equals or exceeds 240 acres.

EXCEPTIONS

The Construction Stormwater Program does not apply to agriculture. There are other programs that work with farmers and landowners to prevent farmland erosion.

The oil and gas industry also has an exemption for exploration, production, and transmission, which may be eliminated due to litigation. Note that 'transmission' does not include distribution lines within cities.

Maintenance that disturbs less than 5 acres is exempt, if the project is to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

For more information, see Basore's article entitled "Stormwater made simple" in the Fall 2008 issue of the *KUTC Newsletter*, a publication of the Kansas Local Technical Assistance Program (LTAP) at the University of Kansas. Web site: www.ksltap.org

Richard Basore is a watershed field coordinator with the Kansas Department of Health and Environment in Wichita, Kansas. You can reach him at (316) 337-6014 or by email at rbasore@kdhe.state.ks.us.