

Legal Permitting and Regulatory Process

What you need to know for road construction projects

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Legal Permitting and Regulatory Process

AGENDA

- 8:30 Registration
- 9:00 Welcome & Introduction (Justin Mader)
- 9:15 Permits for Road & Bridge Projects (Justin Mader)
- 9:45 KS Department of Ag, Division of Water Resources (Terry Medley)
- 10:30 KS State Historical Society (Lauren Jones & Tim Weston)
- 11:00 KS Department of Wildlife, Parks, and Tourism (Samantha Pounds)
- 11:45 Lunch provided
- 12:30 US Army Corps of Engineers (Matt Mikulecky)
- 1:15 KS Department of Health & Environment (Larry Hook)
- 2:00 Preparing Permit Documents (Justin Mader)
- 2:30 Questions & Evaluations (Justin Mader & Kristin Kelly)
- 2:45 Workshop Concludes

Permits for Road and Bridge Construction

Justin Mader, McPherson County Project Engineer

- I am not an expert on regulatory permitting.
- I may not be able to answer all questions.
- I am a facilitator for this class.
- I worked as a consultant for 7.5 years and County engineer for 7.5 years
- I have brought the experts to answer all questions.

Permits to check

- KS Dept. of Ag - Division of Water Resources (DWR)
- KS Dept. of Wildlife, Parks and Tourism
- KS State Historical Society
- U.S. Army Corps of Engineers (USACE)
- KS Dept. of Health and Environment (KDHE)

Division of Water Resources (DWR)

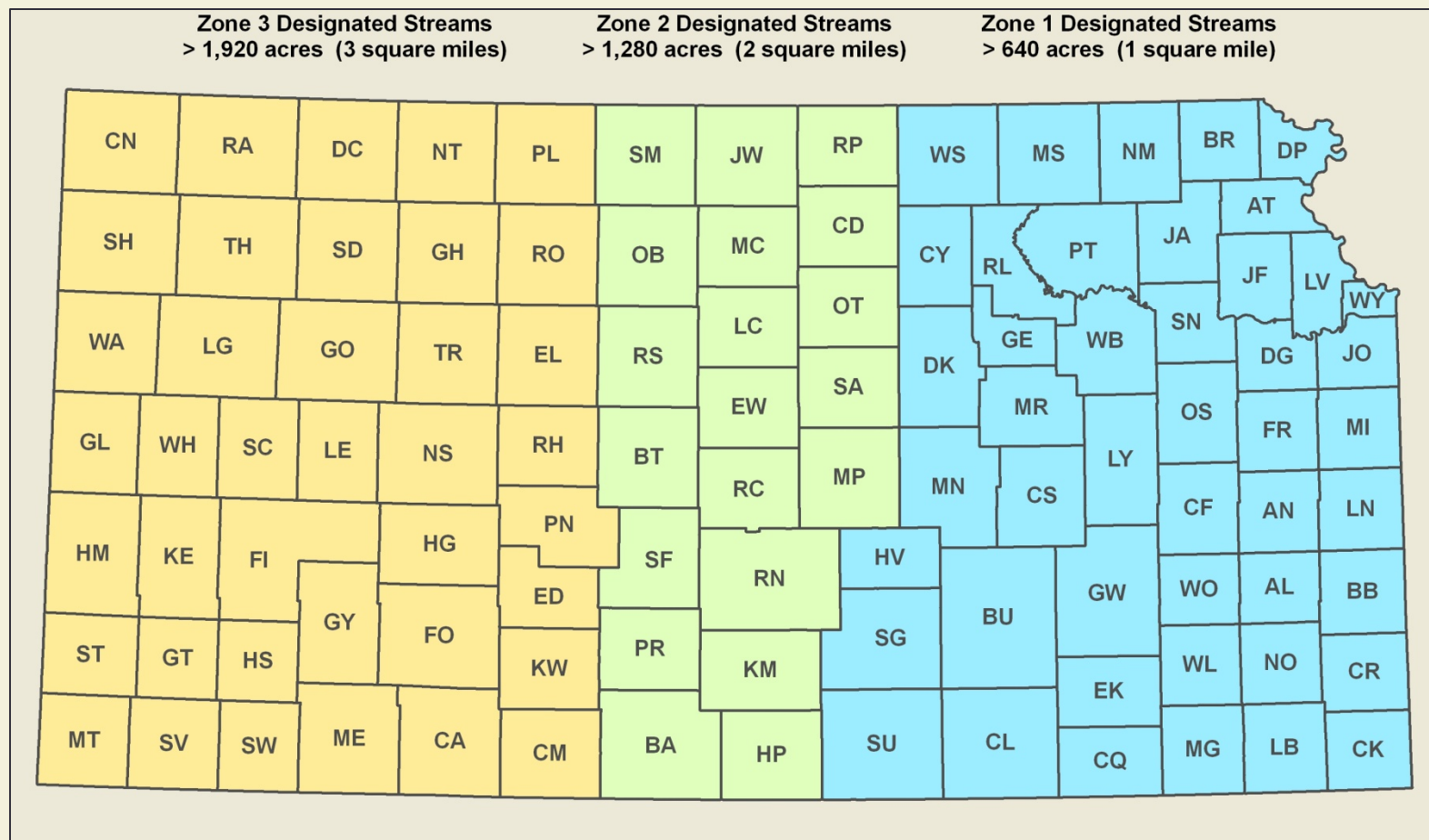
DWR Permits are required if:

- Construction, modification or repair of a stream obstruction in a regulated stream such as a bridge, culvert, LWC, boat ramp, pipeline crossing, non-jurisdictional dam, or other obstruction except for stream obstruction projects (other than dams) that are more than 300 feet from other property lines, not located in incorporated area, and on a stream with less than 5 square miles of drainage area.
- Construction or repair of a channel change in a regulated stream.
- Excavation or dredging within the bank lines of a regulated stream.
- Construction, modification or repair of a regulated levee within the floodplain of a regulated stream or FEMA-designated floodplain.
- Placement of a regulated floodplain fill within the floodplain of a regulated stream.
- Construction, modification or repair of a dam that is 25' or more in height, or 6' or more in height with the ability to store 50 acre-ft or more of water at the auxiliary spillway crest.

Division of Water Resources (DWR)

Regulated/Designated Steam

- Any watercourse that has or has had a well-defined bed and well-defined banks and that has a watershed exceeding the allowable acreage indicated on the map



Division of Water Resources (DWR)

Road and Bridge Projects

- Must fill out 2 forms
- DWR 2-190 & 2-196 – General Permit Worksheet
- DWR 2-200 – Application for Permit

Environmental Review

The Water Projects Environmental Coordination Act, K.S.A. 82a-325 to 327

- *KS Department of Wildlife, Parks and Tourism*
- *KS Biological Survey*
- *KS Corporation Commission*
- *KS State Historical Society*
- *KS Department of Health and Environment*
- *Division of Conservation (former State Conservation Commission)*
- *KS Forest Service*

Kansas Department of Wildlife, Parks and Tourism

The Kansas Nongame and Endangered Species Conservation Act places the responsibility for identifying and undertaking appropriate conservation measures for threatened and endangered wildlife species directly upon the Department of Wildlife, Parks and Tourism.

Permits are required:

- When construction activities are in area with threatened or endangered species an Action Permit must be submitted.
- Contact KS Dept. of Wildlife, Parks and Tourism for a preliminary review of the project area.
 - Ecological Services Section 620-672-0720
- Review the T&E species list by county on their website
 - <http://www.kdwpt.state.ks.us/news/Services/Threatened-and-Endangered-Wildlife/Counties>



Kansas Department of Wildlife, Parks and Tourism

Reviewing agency for the DWR permit. However, a cursory determination in the planning phase will speed up the process and minimize unnecessary costs, delays, and extra paperwork.

Frequently, early coordination can develop alternatives that may eliminate a need to a permit entirely.

Project modifications that may minimize impact

1. Change structure from a RCB to a span type structure.
2. On multiple pipes, consider setting on pipe lower for aquatic passage.
3. Lower the flowlines of drainage structures 1' below the flowline of the stream.
4. Elimination of riprap below the Ordinary High Water (OHW) elevation.
5. Elimination of soil savers on RCB's.
6. Restriction of construction activities in channel during spawning period (March 1 to Aug 31).
7. Elimination of channel changes or improvements.

Kansas Department of Wildlife, Parks and Tourism



Kansas State Historical Society

In order to obtain a USACE and DWR permit, you have to have clearance from Kansas State Historical Society.



National Register

Truss Bridges – 44

Arch Bridges – 36

Marsh Arch – 11

Concrete – 2

Timber – 0

Kansas State Historical Society



Two Key Types will cause some issues.

- Stone Arch
- Metal Truss

U.S. Army Corps of Engineers



USACE administers Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act in the State of Kansas.

Activities requiring a discharge of dredged or fill material in Waters of the U.S. or affecting federally designated navigable waterways require prior authorization through the Department of Army Regulatory Program.

U.S. Army Corps of Engineers

Waters of the United States

It includes all waters:

- rivers, streams (tributaries), lakes
- wetlands
- sloughs
- prairie potholes
- man made ditches that flow year round or most of the year.

Does NOT include:

- swales or gullies converted to crop land (no defined bed and banks)
- most road ditches

Permits may be required if:

- Construction involves work in the waters of the United States.



U.S. Army Corps of Engineers

Regulatory Office Boundary Map



1—Kansas City Regulatory Office
601 East 12th Street
Kansas City, MO 64106
Tel: 816-389-3990
FAX: 816-389-2032

2—Missouri State Regulatory Office
515 East High Street, #202
Jefferson City, MO 65101
Tel: 573-634-2248
FAX: 573-634-7960

3—Truman Regulatory Satellite Office
15837 Truman Road
Warsaw, MO 65355
Tel: 660-438-6697
FAX: 660-438-6909

4—Kansas State Regulatory Office
2710 NE Shady Creek Access Road
El Dorado, KS 67042
Tel: 316-322-8247
FAX: 316-322-8259

5—Kanopolis Regulatory Satellite Office
107 Riverside Drive
Marquette, KS 67464
Tel: 785-546-2130
FAX: 785-546-2050



**REGULATORY PROGRAM
SERVICE AREAS
January 2016**

U.S. Army Corps of Engineers

Nationwide Permits (NWP)

Nationwide Permits (NWP) are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment.

Nationwide Permit 3 – Maintenance

- Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills. Pre-Construction Notification (PCN) is not required unless triggered by General or Regional Conditions.
- Discharge of sediment and debris removal in the vicinity of existing structures is placed in waters of the US. No more than 200' from the structure. PCN is required for all activities.
- Temporary structures and fills for maintenance activities. Pre-Construction Notification (PCN) is not required unless triggered by General or Regional Conditions.

Nationwide Permit 14 – Linear Transportation Projects

- No more than ½ acre of fill in non-tidal waters of the US
- PCN is not required if less than 1/10 acre of fill is placed in waters of the US
- PCN is required if fill is placed in special aquatic sites (e.g. wetlands) or if triggered by General or Regional Conditions.
- Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations.

Kansas Department of Health and Environment

National Pollutant Discharge Elimination System (NPDES) - Stormwater Runoff from Construction Activities General Permit

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

Permits are required:

- 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.
- Routine maintenance that is performed to maintain the *original line and grade, hydraulic capacity, or original purpose of the facility* that disturbs **more than 5 acres** is considered to be construction activity, and therefore is subject to construction storm water permitting requirements.
 - Example – County is cleaning ditches. Ditch disturbance is 25' wide on each side of the road. County can only clean 0.82 roadway miles before hitting 5 acre limit.

Kansas Department of Health and Environment

For Authorization to Discharge Stormwater Runoff from Construction Activities under NPDES General Permit

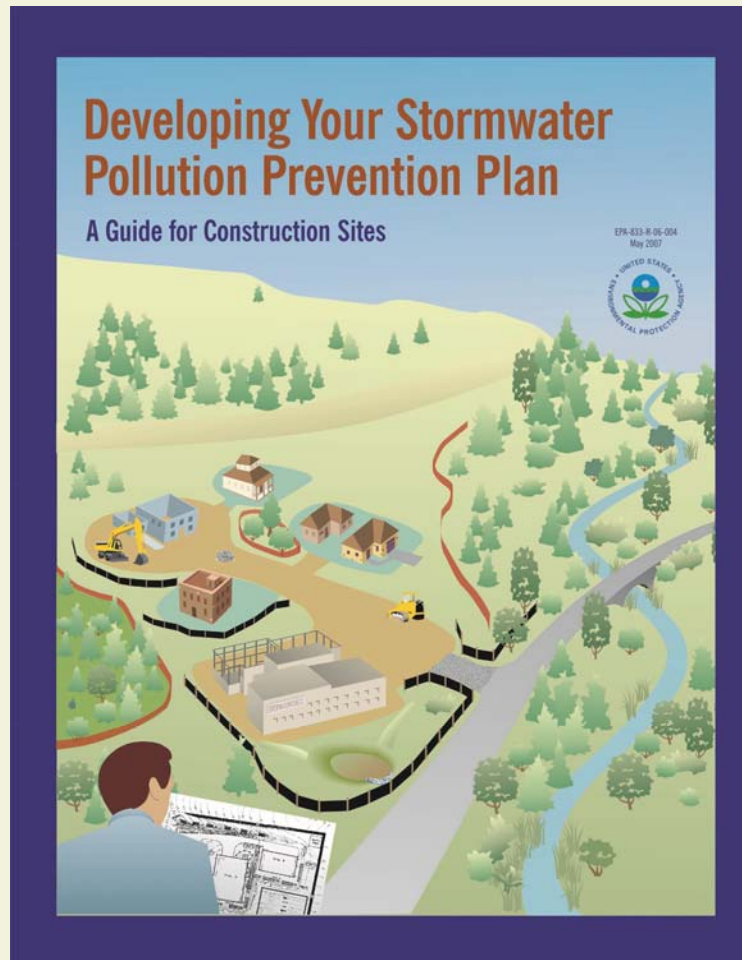
- Notice of Intent (NOI)
- \$60 annual permit fee
- Stormwater Pollution Prevention (SWP2) Plan

For Projects administered through the KDOT Bureau of Local Projects

1. Owner or Consultant submits the NOI and project plans (without SWP2) to KDHE
2. KDHE conditionally authorizes the project
3. Contractor develops SWP2 and submits it to Area Engineer for approval
4. After KDOT approval, KDHE reviews and accepts NOI

Kansas Department of Health and Environment

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



KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

BUREAU OF WATER



KANSAS WATER POLLUTION CONTROL

AND

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STORMWATER RUNOFF FROM CONSTRUCTION ACTIVITIES

GENERAL PERMIT PACKET

3/2/2012	0.0
DATE	REVISION

Kansas Department of Health and Environment
Bureau of Water, Industrial Programs Section
1000 SW Jackson, Suite 420
Topeka, KS 66612-1367
(785) 296-5545
Email address: stormwater@kdheks.gov

Road and Bridge Projects by Consultants

Agreement between Local Authority and Consultants

- www.kansascountyhighway.org/documentcenter
 - Engineering Templates / DesignEngineeringDiscussionItemsMay2016
- Scope of Services discussion items
 - The Consultant will advise the County on which environmental permits are required and shall provide to the County the necessary information for the County to prepare and submit the permit applications.
- Have consultants include Erosion Control sheet in plans if NOI is required
- Pay contractor (via additional bid item) to create Erosion Control plans

Road and Bridge Projects by Consultants

McPherson County Of | Kansas County Highw | SELECTservices | Welc | OpenRoads Video Cli | Pictometry | IT Servi

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KCHA

KANSAS COUNTY HIGHWAY ASSOCIATION

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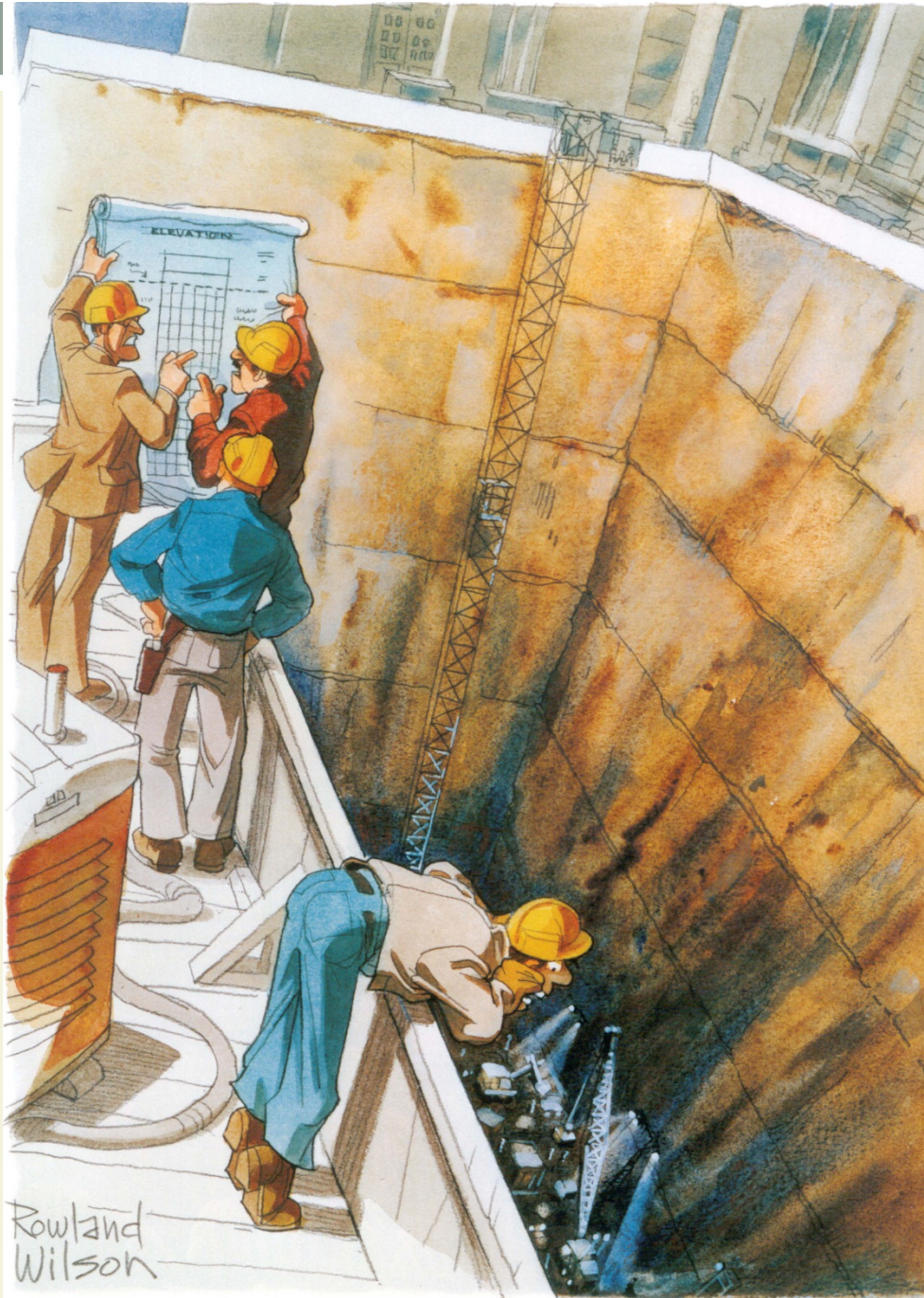
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Display Name	Size (KB)
DesignEngineerDiscussionItemsMay2016	40
Intersection Drawing2010	14
Intersection Drawing2010	61
Uncontrolled Int Signing Template 2010	281

Applications and Registr
Bridge Inspection
Bridge Workshop May 6
C & D Landfills
County Road Laws
Engineering Templates
Environmental-Corps Pe
Historic Bridges
KCHA Spring Conferenc
KDOT
LVR Handbook 2005
Mink Conf in St. Joseph
Railroads
Resolution Templates
Right-of-Way
Road and Bridge Tasks
Signing
SPCC Template
Surveying
Township Info
Utilities

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CONSTRUCTION PERMITS

QUESTIONS

"Stop digging! The plans were upside down!"