

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 KANSAS DEPARTMENT OF )  
 TRANSPORTATION, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Civil Action No.

CONSENT DECREE

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Whereas, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant Kansas Department of Transportation violated Sections 301 and 402 of the Clean Water Act (“Act”), 33 U.S.C. §§ 1311 and 1342, regarding the discharge of stormwater in violation of Defendant’s NPDES permit. The alleged claims include Defendant violated the terms of its construction stormwater NPDES permit at the U.S. Highway 59, U.S. Highway 69, and K-18 road construction projects.

Whereas, Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

Whereas, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319 and 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties. Venue lies in this District pursuant 33 U.S.C. § 1319, and 28 U.S.C. §§ 1391 and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and

Defendant is doing business as a state agency in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

## II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. Defendant shall provide a copy of this Consent Decree to all employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

## III. DEFINITIONS

6. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act

or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Area/Metro Engineer” shall mean a KDOT Engineer who provides professional administrative management and direction of all phases of construction, maintenance, fiscal and personnel matters in a designated Geographic Area. They conduct periodic visits to active construction sites to investigate, conduct reviews and provide advice. They represent KDOT in communication with cities, counties and local citizens.

b. “BMPs” shall mean Best Management Practices used to control pollutants in stormwater runoff, as described in the Permit.

c. “Complaint” shall mean the complaint filed by the United States in this action;

d. “Clean Water Act” or “the Act” shall mean 33 U.S.C. §§ 1251-1387.

e. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto listed in Section XXII;

f. “Construction Activities” shall mean the disturbance of soils associated with clearing, grading, excavation activities or other construction-related activities.

g. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

h. “Defendant” or “KDOT” shall mean the Kansas Department of Transportation;

i. District Construction Engineer shall mean the KDOT engineer that provides district-wide oversight, technical expertise and quality assurance of district construction projects, materials inspections, and geotechnical operations. They oversee transportation planning, operations, construction, inspection, maintenance, safety, environmental, and administrative and support activities. Their responsibilities are performed under general supervision by the District Engineer.

j. District Maintenance Engineer shall mean the KDOT engineer that plans, directs and coordinates maintenance and repair operations through professional engineering and administrative direction throughout a District. They have extensive latitude for exercising professional judgment and taking appropriate action with general guidelines provided by the District Engineer.

k. District Mentor shall mean the KDOT person who provides technical and administrative support to field construction personnel responsible for construction inspection activities throughout a District. They are responsible to evaluate the adequacy of construction inspection activities on projects within a District, prepares project inspection evaluation reports, recommends solutions to address inadequacies found during project visits and participate in the development and presentation of training activities to address the inadequacies.

l. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

m. “Effective Date” shall have the definition provided in Section XIV.

n. “Headquarters/District Staff Inspection” shall mean a Project oversight inspection for stormwater pollution management activities undertaken by one or more of the following engineers or senior technicians at KDOT Headquarters or at a KDOT District Office in a District other than the District in which the Project being inspected is located: Headquarters Staff includes KDOT’s Stormwater Compliance Manager, Field Construction Engineer from the Bureau of Construction and Materials, Assistant Bureau Chief of Construction and Materials, and Engineers or Environmental Scientists from KDOT’s Environmental Services Section. District Staff includes Assistant District Engineers (District Construction Engineer, District Maintenance Engineer or a person who acts as both) and Area/Metro Engineers.

o. “Notice of Acceptance” shall mean formal notice by KDOT to a Contractor that the Contractor has completed all physical work on the Project and that the Contractor is relieved of responsibility to perform physical construction on the Project (except construction arising out of any breach of warranty, breach of guaranty, latent defects, fraud or misrepresentation discovered after acceptance), repair damages to the Project caused by Acts of God or third parties, and maintain the Project.

p. “Oversight Inspector” shall mean the KDOT employee or Third-Party Consultant who conducts Headquarters/District Staff Inspections/Third-Party Inspections pursuant to Paragraph 21 of this Decree.

q. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

r. “Parties” shall mean the United States and Defendant;



s. “Permit” or “Applicable Permit” shall mean the Kansas Water Pollution Control and National Pollution Discharge Elimination System Stormwater Runoff from Construction Activities General Permit or a project specific stormwater permit issued to KDOT.

t. “Project” shall mean any location in the State of Kansas where KDOT is required to obtain an NPDES construction stormwater permit.

u. “Responsible Contractor” shall mean the general contractor charged with the supervision or completion of construction at a Project. If there is no general contractor for a Project, the Responsible Contractor shall be each contractor retained by KDOT responsible for activities at the Project.

v. “Section” shall mean a portion of this Decree identified by a roman numeral;

w. “State” shall mean the State of Kansas.

x. “SWPPP” shall mean the project specific Stormwater Pollution Prevention Plan required by the Permit.

y. “United States” shall mean the United States of America, acting on behalf of EPA;

z. “U.S. Highway 59 Road Construction Project” shall mean the road construction project resulting in land disturbance, covered by NPDES Permit KS-R104357, south of the City of Lawrence, Kansas.

aa. “U.S. Highway 69 ‘Project 91’ Road Construction Project” shall mean the road construction project resulting in land disturbance, covered by NPDES Permit KS-R101766, north of the City of Pleasanton, Kansas.

bb. U.S. Highway 69 ‘Project 92’ Road Construction Project’ shall mean the road construction project resulting in land disturbance, covered by NPDES Permit KS-R102649, north of the City of Pleasanton, Kansas.

cc. “Kansas Highway 18 (or “K-18”) Road Construction Project: shall mean the road construction project resulting in land disturbance, covered by NPDES Permit KS-R106629, southwest of the City of Manhattan, Kansas.

#### IV. CIVIL PENALTY

7. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$477,500 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

8. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following the effective date of this Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Kansas, 500 State Avenue, Suite 360, Kansas City, Kansas 66101, (913) 551-6730. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Kansas Department of Transportation, and shall reference the civil action number and DOJ case number 90-5-1-1-10420, to the United States in accordance with Section XIII of this Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

and

Dr. Delia Garcia  
U.S. EPA Region 7  
Water, Wetlands & Pesticides Division  
11201 Renner Blvd.  
Lenexa, KS 66219

9. Payments to be Made Solely by KDOT. KDOT shall pay the civil penalty called for in the prior Paragraph, out of its own funds and shall not seek payments, reimbursement, indemnification or insurance coverage for this civil penalty from any contractor, third party or agency of the United States including, but not limited to, the Federal Highway Administration (“FHWA”). KDOT shall not seek any litigation-related costs or its attorney fees (both private and internal), in this action or in anticipation of this action from any agency of the United States including, but not limited to, the FHWA. If any such costs or fees have previously been paid by reimbursement or otherwise from the FHWA to KDOT, these costs or fees shall be refunded by KDOT to FHWA.

10. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000.00 per Day for each Day that the payment is late.

## V. COMPLIANCE REQUIREMENTS

11. Defendant shall complete the requirements of Paragraphs 12 through 25 pursuant to this Consent Decree.

12. Designation of Stormwater Compliance Manager. KDOT shall designate one individual as its KDOT Stormwater Compliance Manager not later than thirty (30) days after the effective date of this Decree. The KDOT Stormwater Compliance Manager shall have overall responsibility for the KDOT stormwater compliance program and shall:

- a. Be a KDOT employee;
- b. Have training and knowledge regarding stormwater requirements through CPESC Certification or Certification through a course that meets or exceeds the requirements set out in Appendix B and field experience with NPDES Permits and SWPPPs;
- c. Oversee the development and maintenance of the Stormwater Training Program, quarterly stormwater bulletins, list of Projects, and annual reports;
- d. Oversee stormwater compliance at all KDOT Projects to ensure compliance with applicable NPDES Permits, SWPPPs and this Decree, including, where appropriate, directing additional inspections at Projects that are experiencing problems with achieving Permit compliance;
- e. Be responsible for providing all written reports required under Section VI;
- f. Oversee the third party inspections required under Paragraph 21; and
- g. Serve as KDOT's point of contact for the State and EPA for KDOT-wide compliance matters related to stormwater requirements.

13. Designation of Area Engineer/Metro Engineer. For each Project, KDOT shall designate an Area Engineer or Metro Engineer to serve as the Project's stormwater compliance manager prior to commencement of construction or within sixty (60) days of the effective date of the Consent Decree, whichever is later. Each Project stormwater compliance manager shall:

- a. Be a KDOT employee;
- b. Complete timely stormwater training pursuant to Paragraphs 15 and 16;
- c. Be authorized by KDOT and have the responsibility to supervise all work necessary to meet stormwater requirements at the Project, including work performed by contractors, and sub-contractors;
- d. Be authorized by KDOT and have the responsibility to order employees, contractors and sub-contractors to take appropriate responsive action to comply with stormwater requirements, including requiring any such person to cease or correct a violation of stormwater requirements, and to order or recommend such other actions as necessary to meet stormwater requirements;
- e. Be familiar with the Project SWPPP and have the authority and responsibility to update the Project SWPPP;
- f. Be responsible for reviewing and signing all inspection reports within 3 days after receiving such reports; and
- g. Be the point of contact for the Project for regulatory officials, KDOT employees, contractors, sub-contractors and consultants regarding stormwater requirements.

14. Designation of Environmental Inspectors. Before commencement of Construction Activities at any Project, KDOT shall designate one or more KDOT employee(s) or consultant(s) working directly for KDOT as an Environmental Inspector for that Project. At ongoing Projects, KDOT will designate one or more KDOT employee(s) or consultant(s) working directly for KDOT as an Environmental Inspector for that Project within thirty (30) days of the effective date of this Decree. The Environmental Inspector shall report to the Project Area/Metro Engineer or the KDOT Stormwater Compliance Manager. The Environmental Inspector shall have responsibility for conducting inspections required by the Permit and by this Consent Decree and furnishing the inspection reports to the Project Area/Metro Engineer or to KDOT Stormwater Compliance Manager.

15. Stormwater Training Program. All Area/Metro Engineers, and Environmental and Oversight Inspectors employed by KDOT shall attend a training course presented by a third party or by KDOT, within one hundred twenty (120) days of the effective date of this Decree. KDOT shall submit to EPA a certification that the course meets or exceeds the requirements set out in Appendices B and C respectively for Area/Metro Engineers, and Environmental and Oversight Inspectors. EPA reserves the right to reject the certification as non-compliant with the Appendix B and C requirements as applicable. Such rejection shall be subject to the Dispute Resolution Clause of this Decree.

16. During the term of this Decree, all Area/Metro Engineers newly employed by KDOT or attaining those positions after the effective date of this Decree shall comply with the training requirements described in Paragraph 15 within sixty (60) days of assuming that position, or within the deadlines set forth in Paragraph 15, whichever is later. If a training

program is not available in that initial 60 day period, Area/Metro Engineers hired or assigned to that position after the effective date of the Decree may comply with the training requirements of Paragraph 15 through review of videotapes and materials from the initial training session or through computer-based training modules that KDOT certifies meet or exceed the requirements set out in Appendix B and C as applicable. However, any such Area/Metro Engineers shall attend the full training course within one year of assuming this new position. Within 120 days following the effective date of this Decree, all Environmental and Oversight Inspectors shall comply with the training requirements described in Paragraph 15. After the initial 120 days following the effective date of this Decree, an Inspector may not be assigned to a Project to perform stormwater related activities (i.e. operate as an Environmental or Oversight Inspector) until the Inspector has had the training required by this Paragraph or a current Certification. All Area/Metro Engineers and Environmental and Oversight Inspectors shall retrain in a stormwater management course that meets or exceeds the requirements of Appendices B and C as applicable every two years. KDOT shall retain records documenting the training status of each Area/Metro Engineer and Environmental and Oversight Inspector.

17. KDOT shall prepare and distribute to its Area/Metro Engineers, Environmental and Oversight Inspectors, Responsible Contractors and other interested personnel a quarterly stormwater bulletin that highlights new developments in the field of stormwater management, recent stormwater management problems encountered by KDOT in the field, or other similar topics that will act to inform the reader of current issues in stormwater management. The bulletin shall be at least two pages in length, and can be distributed either in paper or electronic format. A copy of each bulletin shall be provided to EPA.

18. KDOT shall require as a term of its contracts for all Projects let from March 1, 2013 on, that prior to initiating any Construction Activities at a Project the Responsible Contractor, shall designate a “Water Pollution Control Manager (“WPCM”)” who shall visit the Project on a frequent basis and in no instance less than once per week until the submittal of the Notice of Acceptance. For projects let after September 1, 2013, the contract shall also require that the WPCM shall attend, in the twelve months prior to the beginning of Construction Activities on any Project, stormwater management training, presented by KDOT or presented by a third party, that meets the minimum requirements of Appendix D and is approved by KDOT.

The WPCM shall:

a. Be authorized by the Responsible Contractor and have the authority to supervise all work performed by the Responsible Contractor and sub-contractors that involves stormwater requirements or affects stormwater compliance;

b. Be authorized by the Responsible Contractor and have the responsibility to order Responsible Contractor employees and subcontractors to take appropriate corrective action to comply with stormwater requirements, including requiring any such person to cease or correct a violation of stormwater requirements and to order or recommend such other actions or sanctions as necessary to meet stormwater requirements;

c. Be familiar with the Project SWPPP and the Contractor representative responsible for updating the SWPPP;

d. Be the point of contact for KDOT regarding stormwater compliance;



e. Be responsible for reviewing inspection reports within 3 days after receiving such reports, acknowledging awareness of any deficiencies and ensuring the correction of all deficiencies; and

f. Attend the storm water erosion control preconstruction conference.

19. Inspection Procedures. KDOT shall establish within forty-five days of the effective date of this Decree a set of inspection procedures for all Projects. KDOT shall memorialize these inspection procedures in a written guidance or similar document, and distribute the document to its field offices state wide. The procedures shall be binding on KDOT and all Responsible Contractors working for KDOT at all Projects. At a minimum, the inspection procedures shall include the following:

a. each Project shall have a storm water erosion control preconstruction conference before the start of construction activities. This preconstruction conference shall be attended by the KDOT Area/Metro Engineer, the WPCM, Environmental Inspector(s) for the Project, and any erosion control subcontractor (s). Minutes of the conference shall be kept.

b. each Project shall be inspected in accordance with the Permit by a trained Environmental Inspector;

c. a copy of the inspection report shall be provided to the Area/Metro Engineer and the WPCM within 24 hours of each stormwater inspection;

d. KDOT shall take action to ensure that all deficiencies identified during the inspection are corrected as soon as possible and no later than seven days after the inspection.

20. Inspection Forms. KDOT will use the inspection form found in Appendix A to the Decree. This form may be amended prior to the termination of the Decree without amending the Decree based on written agreement between the United States and KDOT.

21. KDOT Headquarters/District Inspections/Third-Party Inspections. For all Projects that disturb five acres or more of soil and that are located in an environmentally sensitive area, KDOT shall designate an independent Oversight Inspector who inspects for compliance with the Permit. For all Projects that disturb three hundred acres or more of soil and that are located in an environmentally sensitive area, the Oversight Inspector shall be a qualified third-party consultant retained by KDOT. For all Projects that disturb at least one hundred acres but less than three hundred acres of soil and that are located in an environmentally sensitive area, the Oversight Inspector, shall be from KDOT Headquarters Inspection Staff or a qualified third-party consultant retained by KDOT. For all Projects that disturb at least five acres but less than one hundred acres of soil and that are located in an environmentally sensitive area, the Oversight Inspector shall be from KDOT Headquarters Inspection Staff, KDOT District Inspection Staff, or a qualified third-party consultant retained by KDOT. KDOT District Staff shall not conduct oversight inspection in the same District in which they are employed. Such oversight inspections shall occur at least once every 60 days during any period where there is active construction at a Project and shall be unannounced. If material deficiencies are found, the independent Oversight Inspector will conduct a follow-up inspection within 14 days. The Oversight Inspector shall

provide to the KDOT Area/Metro Engineer and the Responsible Contractor within twenty-four (24) hours of each inspection written findings and recommendations that contain at least the information on the form described in Paragraph 20. The Oversight Inspector shall also provide any follow-up written report if changes to the SWPPP or BMPs are necessary within seven (7) days of each inspection. A copy of all such reports shall be provided to the KDOT Stormwater Compliance Manager, Area/Metro Engineer and Responsible Contractor and maintained in the file with the SWPPP located at the site, and shall be available for review by EPA during any inspection of the Project. KDOT and Responsible Contractor shall implement all recommendations by the Oversight Inspector, unless infeasible. If KDOT and Responsible Contractor reject a recommendation as infeasible, KDOT shall place in its files on the job site a written description by either the Area/Metro Engineer or the KDOT Stormwater Compliance Manager of why the recommendation(s) is infeasible. The written description shall include an explanation of why the recommendation was not necessary to protect water quality or comply with the permit, or an explanation that KDOT has developed an alternative solution that is feasible that protects water quality and complies with the Permit. If the Area/Metro Engineer makes an initial determination that a recommendation is infeasible, he/she will obtain the approval of the KDOT Stormwater Compliance Manager to not implement the recommendation. If such approval is given, the Area/Metro Engineer will place in its files on the job site the written approval of the KDOT Stormwater Compliance Manager. For purposes of this section, “environmentally sensitive area” means any area which would be directly impacted by stormwater discharges from the Project, and which is designated critical habitat for any listed threatened or endangered species, or which contains an immediate downstream water body that

is listed as impaired for sediment by the Kansas Department of Health and Environment under Section 303(d) of the CWA.

22. If KDOT believes that a third party inspection would result in no significant environmental benefits at a Project, KDOT may seek a waiver of this requirement from EPA. The grant or denial of this waiver by EPA is in the sole discretion of EPA and is not subject to the dispute resolution provisions of this Decree.

23. Within 30 days following the effective date of this Decree, KDOT shall provide Plaintiff by electronic mail to the addresses specified in Paragraph 67 (Notices) a list of all Projects. By the 15th day of every March and September, KDOT shall provide Plaintiff with notice by electronic mail at the addresses specified in Paragraph 67 (Notices) of any updates to this list of Projects. Each notice required by this Paragraph shall include the following information for each Project: (i) KDOT's Permit number and name of the Project, if available; (ii) the name of the Responsible Contractor(s) and their permit number; (iii) the location of the Project including the physical description designated by a beginning and ending point in relationship to a county or city jurisdictional boundary or route/junction designation or combination thereof that enables a person to find the Project; (iv) Area/Metro Engineer (include telephone number and/or e-mail); (v) the best estimate for the start date of Construction Activities; and (vi) the best estimate for the completion of Construction Activities.

24. KDOT and its contractors shall comply with the Permit including the BMPs and SWPPP requirements of the Permit at each Project.

25. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely

and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

#### VI. REPORTING REQUIREMENTS

26. KDOT must provide to the Chief, Water Enforcement Branch in Paragraph 67 (Notices), written reports anytime the spill or emergency reporting provisions of the Permit(s) are triggered, requiring KDOT to report an event to the Kansas Department of Health and Environment. Each written report shall include the name of the Project at which the noncompliance occurred. Certification requirements described in Paragraph 29 do not apply to endangerment reports.

27. KDOT shall submit to EPA an annual report, to be submitted by March 30th, summarizing all actions taken to comply with the terms of this Consent Decree and certifying KDOT's compliance with all requirements of this Consent Decree in the previous year. This summary certification shall address compliance with Paragraphs 12 through 25. As part of the report, KDOT shall submit to EPA a statement identifying each known violation of any of the terms of the Permit or this Consent Decree by KDOT or its contractor(s). This report shall be submitted either in hard copy or electronically on a compact disc.

28. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

29. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

30. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

31. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### VII. STIPULATED PENALTIES

32. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any schedule approved under this Decree, according to all applicable require-

ments of this Decree and within the specified time schedules established by or approved under this Decree.

33. Stipulated Penalty Amounts. If EPA determines that KDOT has failed to comply fully and timely with the requirements of this Decree, KDOT shall pay stipulated penalties in the following amounts:

a. for failure to designate or maintain a Stormwater Compliance Manager in accordance with Paragraph 12 (Stormwater Compliance Manager) - \$750 for each 14 day period;

b. for failure to designate or maintain an Area/Metro Engineer in accordance with Paragraph 13 (Area/Metro Engineer) - \$750 for each 14 day period;

c. for failure to ensure, pursuant to Paragraph 14 (Environmental Inspector), that any inspection required under the Permit performed at a Project was performed by an Environmental or Oversight Inspector trained in accordance with the requirements of Paragraphs 14 (Environmental Inspector) and Paragraph 15 (Stormwater Training Program) - \$750.00 for each such inspection;

d. for failure to timely train Area/Metro Engineers and Environmental and Oversight Inspectors in accordance with Paragraphs 15 (Stormwater Training) and 16 (Training Time Periods) - \$750.00 per person for each missed deadline. This \$750.00 per person violation shall continue to accrue for each 14 day period that the person fails to timely receive the applicable training;

- e. for failure to timely prepare and distribute a quarterly stormwater bulletin in material compliance with Paragraph 17 (Quarterly Bulletin)- a onetime stipulated penalty of \$3,000 per quarterly bulletin;
- f. for failure to ensure that each Project has a properly trained WPCM assigned to a Project in accordance with the requirements of Paragraph 18 (WPCM) by obtaining documentation of WPCM's certification- \$750.00 per day of construction;
- g. for failure to create written inspection procedures within 45 days of the effective date of the Decree in accordance with Paragraph 19 (Inspection Procedures) - \$750.00 per day;
- h. for failure to comply with the requirements of Paragraph 19 (Inspection Procedures) (a) (Preconstruction Conference), (b) (Environmental Inspector), (c) (Inspection Report to Area/Metro Engineer by 24 hours) - \$750.00 per failure;
- i. for failure to utilize the approved inspection form per Paragraph 20 (Inspection Form) - \$750.00 per failure;
- j. for failure to comply with a requirement of Paragraph 21 (Oversight Inspections) - \$2,000.00 per inspection not timely performed;
- k. for failure to provide written notices in accordance with Paragraph 23 (Project List) - \$250.00 per day;
- l. for failure to follow the requirements set forth in Paragraph 24 relating to Part 7 (Stormwater Pollution Prevention Plan Requirements and



Guidelines), Part 10 (General Requirements of this Permit) and Part 11 (Standard Conditions) of the Permit, or equivalent provisions in the event section numbers change in any future Permit, - \$1,500.00 per violation per day for days 1 - 10; \$2,500.00 per violation per day for days 11 - 20; and, \$3,500.00 per violation per day for days 21 and continuing;

m. for failure to provide a report in accordance with Paragraph 26 (Spill and Emergency Notification) - \$750.00 for the first day the report is late or deficient, and then an additional \$750.00 for every fourteen (14) day period that passes without the information being provided;

n. for failure to timely submit an Annual Report that complies with Paragraph 27 (Annual Report) - \$750.00 per day; and

o. regarding the reporting provisions of subparagraph m and n above, penalties regarding the qualitative sufficiency of the report shall accrue for sixty (60) days regardless of notice from the United States, but will then be stayed until notice of insufficiency is made to Defendant by the United States and at that time they shall continue to accrue until the report is made sufficient.

34. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

35. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

36. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

37. Stipulated penalties shall continue to accrue as provided in Paragraph 33 (Stipulated Penalty Amounts), during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

38. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 8, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

39. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in

28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

40. Nothing in this Consent Decree prevents KDOT from collecting stipulated penalties from KDOT's Contractor for the Contractor's failure to comply with its contractual obligations to KDOT. KDOT shall not seek payments, reimbursement, indemnification or insurance coverage for any stipulated penalty from any agency of the United States including, but not limited to, the Federal Highway Administration ("FHWA").

41. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of Section 301 or 402 of the Act, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### VIII. FORCE MAJEURE

42. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of

any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

43. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to Chief, Water Enforcement Branch, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

44. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are

affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

45. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

46. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 42 and 43, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### IX. DISPUTE RESOLUTION

47. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as

a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

48. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 7 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

49. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

50. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

51. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

52. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

53. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 49 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 49, Defendant shall bear the burden of

demonstrating that its position complies with this Consent Decree and better further the objectives of the Consent Decree.

54. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

#### X. INFORMATION COLLECTION AND RETENTION

55. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.



56. Until three years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to Defendant's performance of its obligations under this Consent Decree or to Defendant's Contractor's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. Defendant may collect and retain all Contractor documentation rather than requiring Defendant's Contractor to retain the documentation for the prescribed period.

57. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall retain documents pursuant to KDOT's document retention policy. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created

or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

58. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

59. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

60. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

61. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 60. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 60.

62. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendant’s violations, Defendant shall not assert, and may not maintain, any defense or claim based upon

the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 60 of this Section.

63. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1311 and 1342 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

64. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

65. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

## XII. COSTS

66. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

## XIII. NOTICES

67. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be designated by written notice to the parties):

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-10420

Chief, Water Enforcement Branch  
Water, Wetlands & Pesticides Division  
U.S. EPA, Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219

Kristen Nazar  
Assistant Regional Counsel  
U.S. EPA, Region 7  
11201 Renner Blvd.  
Lenexa, KS 66219

Susan Bruce  
U.S. EPA  
Office for Enforcement and Compliance Assurance

Water Enforcement Division  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

To Defendant:

Carmen D. Tucker Bakarich  
Staff Attorney & Manager of Contract Claims  
Kansas Department of Transportation  
Eisenhower State Office Bldg  
700 SW Harrison, 6th Floor  
Topeka, KS 66603

68. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

69. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

**XIV. EFFECTIVE DATE**

70. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

**XV. RETENTION OF JURISDICTION**

71. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

## XVI. MODIFICATION

72. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

73. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 53 (Standard of Review), the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## XVII. TERMINATION

74. No sooner than 4 years after effective date of this Decree, KDOT may request the United States' consent to termination of this Decree. In seeking such consent, KDOT shall demonstrate that:

- i. KDOT has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;
- ii. As of the date KDOT provides any notice or request to terminate this Decree, EPA has not provided KDOT with any Notice of Dispute invoking the Dispute Resolution provisions of this Decree, and there are no unresolved matters subject to dispute resolution pursuant to Section IX (Dispute Resolution);  
and
- iii. No enforcement action under this Decree is pending.

75. The United States shall notify KDOT in writing within 30 days of receiving any request to terminate by KDOT whether the United States does or does not object to the request. If the United States agrees, then the parties shall jointly file a motion to terminate with the Court. If the United States objects to such request, the parties will work together for a period of at least 30 days in an effort to informally resolve any disputes. The Decree shall remain in effect pending resolution of the dispute by the parties, or, ultimately, the Court.

76. The Court may terminate this Decree 60 days after KDOT has filed with the Court a motion to terminate the Decree and served a copy of that motion upon the United States, so long as either (1) KDOT's motion to terminate the Decree is accompanied by a true and correct copy of the United States' notice that it does not object to the termination or (2) KDOT prevails in any motion it files to terminate the decree.

77. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

78. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 49 (Formal Dispute Resolution) of Section IX, until 7 days after service of its Request for Termination.

#### XVIII. PUBLIC PARTICIPATION

79. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

#### XIX. SIGNATORIES/SERVICE

80. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

81. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### XX. INTEGRATION

82. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the



Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### XXI. FINAL JUDGMENT

83. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

#### XXII. APPENDICES

84. The following appendices are attached to and part of this Consent Decree:

“Appendix A” is the Approved Inspection Form;

“Appendix B” is the Area/Metro Engineer Training;

“Appendix C” is the Environmental Inspector Training;

“Appendix D” is the Contractor Training;

Dated and entered this \_\_ day of \_\_\_\_\_, \_\_\_\_.

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UNITED STATES DISTRICT JUDGE  
District of Kansas

FOR PLAINTIFF UNITED STATES OF AMERICA:

IGNIACIA S. MORENO  
Assistant Attorney General  
Environment & Natural Resources Division

---

DAVID L. DAIN  
Senior Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
999 18<sup>th</sup> Street  
South Terrace, Suite 370  
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(303) 844-7371

BARRY R. GRISSOM  
United States Attorney  
District of Kansas

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301 North Main Street  
Wichita, Kansas 67212  
(316) 269-6481  
Emily.Metzger@usdoj.gov  
Kansas Supreme Court Number 10750



KARL BROOKS  
Regional Administrator  
U.S. Environmental Protection Agency  
U.S. EPA, Region 7  
11201 Renner Boulevard.  
Lenexa, Kansas 66219



DAVID COZAD  
Regional Counsel  
U.S. Environmental Protection Agency  
U.S. EPA, Region 7  
11201 Renner Boulevard.  
Lenexa, Kansas 66219

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SUSAN SHINKMAN  
Director  
Office of Civil Enforcement  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

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SUSAN SHINKMAN  
Director  
Office of Civil Enforcement  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

FOR DEFENDANT KANSAS DEPARTMENT OF TRANSPORTATION:



MICHAEL S. KING  
Kansas Secretary of Transportation



CARMEN D. TUCKER BAKARICH  
Staff Attorney & Manager of Contract Claims  
Kansas Department of Transportation  
Eisenhower State Office Building  
700 SW Harrison, 6th Floor  
Topeka, KS 66603

# APPENDIX A

# Kansas Department of Transportation Storm Water Pollution Prevention Plan Inspection and Maintenance Report

Project #: \_\_\_\_\_  
 Area / Metro Engineer: \_\_\_\_\_  
 Date of last 0.5 inch rainfall  
 or greater: \_\_\_\_\_  
 Inspection Type: \_\_\_\_\_

Permit #: \_\_\_\_\_  
 Water Pollution Control  
 Manager: \_\_\_\_\_  
 Amount / date of last rainfall: \_\_\_\_\_  
 Inspection Date: \_\_\_\_\_

### CONTENTS

FORM ID #	DESCRIPTION	REQUIRED?
247A	GENERAL ISSUES	YES
247B	SITE EROSION	YES
247C	SEDIMENT CONTROLS	YES
247D	STREAM CROSSINGS	
247E	CONST. ENTRANCES	YES
247F	SEDIMENT BASINS	

FORM ID #	DESCRIPTION	REQUIRED?
247G	MAINTENANCE SUMMARY	YES
247H	CORRECTIVE ACTIONS	YES

### CERTIFICATION STATEMENT

" I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations."

TITLE	PRINT NAME	CERT ID #	SIGNATURE	DATE
KDOT INSP.				
CONT. INSP.				
AREA ENG				
WPCM*				

\*WPCM Signature acknowledges awareness of all deficiencies noted. All required maintenance and corrective actions are to be completed within 7 days of this inspection. Failure to do so will result in the assessment of liquidated damages.



**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**General Issues / Housekeeping**

	<b>BMP/Activity</b>	<b>(Yes or No)</b>	<b>Observations / Remarks</b>	<b>Maintenance or Corrective Action Required</b>
1	Are all slopes and disturbed areas not actively being worked properly stabilized?	Yes / No		
2	Are natural resource areas (e.g. streams, wetlands, mature trees) protected with barriers or other BMPs?	Yes / No		
3	Are perimeter controls and barriers adequately installed (keyed into substrate) and maintained?	Yes / No		
4	Are discharge points and receiving waters free of sediment deposits?	Yes / No		
5	Are storm drain inlets properly protected?	Yes / No		
6	Are construction exits preventing sediment from being tracked into the roadway?	Yes / No		
7	Is trash/litter from work areas collected and placed in covered dumpsters?	Yes / No		
8	Are portable toilets available for sanitary waste?	Yes / No		
9	Are washout facilities (e.g. paint, concrete) available, clearly marked, and maintained?	Yes / No		
10	Are equipment fueling, cleaning and maintenance areas free of spills, leaks or other contaminants?	Yes / No		

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**General Issues / Housekeeping**

	<b>BMP/Activity</b>	<b>(Yes or No)</b>	<b>Observations / Remarks</b>	<b>Maintenance or Corrective Action Required</b>
11	Are materials that are potential stormwater contaminants stored inside or under cover?	Yes / No		
12	Are non-stormwater discharges (e.g. wash water, dewatering) properly controlled?	Yes / No		
13	Are SWPPP Site Maps complete and up to date?	Yes / No		
14	Are there any outstanding maintenance items from previous inspections?	Yes / No		
15	Are there any outstanding corrective actions from previous inspections?	Yes / No		
16	Other remarks / observations			

**Kansas Department of Transportation  
 Storm Water Pollution Prevention Plan  
 Inspection and Maintenance Report**

INSPECTION DATE:

**Open Areas / Erosion Control**

Area	Date Area Disturbed	Date Construction Activity Ceased	Date Area Stabilized	Stabilized With	Condition of Stabilization	Observations / Remarks	Maintenance or Corrective Action Required

## Kansas Department of Transportation Storm Water Pollution Prevention Plan Inspection and Maintenance Report

INSPECTION DATE:

### **Sediment Control Devices (Ditch Checks, Slope Barriers, Inlet Barriers, etc.)**

Number the sediment control devices identified in your SWPPP on your site map and list them below (add as many as necessary). Carry a copy of the numbered site map with you during your inspections. This list will assist you to make sure your inspecting all required devices at your site.

Location	Device # (from SWPPP)	Date Installed	Perimeter Control Device? (Yes/No)	Type of Device	Condition of Device	Observations / Remarks	Maintenance or Corrective Action Required

# Kansas Department of Transportation Storm Water Pollution Prevention Plan Inspection and Maintenance Report

INSPECTION DATE:

## Sediment Control Devices (Ditch Checks, Slope Barriers, Inlet Barriers, etc.)

Number the sediment control devices identified in your SWPPP on your site map and list them below (add as many as necessary). Carry a copy of the numbered site map with you during your inspections. This list will assist you to make sure your inspecting all required devices at your site.

Location	Device # (from SWPPP)	Date Installed	Perimeter Control Device? (Yes/No)	Type of Device	Condition of Device	Observations / Remarks	Maintenance or Corrective Action Required

# Kansas Department of Transportation Storm Water Pollution Prevention Plan Inspection and Maintenance Report

INSPECTION DATE:

## Sediment Control Devices (Ditch Checks, Slope Barriers, Inlet Barriers, etc.)

Number the sediment control devices identified in your SWPPP on your site map and list them below (add as many as necessary). Carry a copy of the numbered site map with you during your inspections. This list will assist you to make sure your inspecting all required devices at your site.

Location	Device # (from SWPPP)	Date Installed	Perimeter Control Device? (Yes/No)	Type of Device	Condition of Device	Observations / Remarks	Maintenance or Corrective Action Required

# Kansas Department of Transportation Storm Water Pollution Prevention Plan Inspection and Maintenance Report

INSPECTION DATE:

## Sediment Control Devices (Ditch Checks, Slope Barriers, Inlet Barriers, etc.)

Number the sediment control devices identified in your SWPPP on your site map and list them below (add as many as necessary). Carry a copy of the numbered site map with you during your inspections. This list will assist you to make sure your inspecting all required devices at your site.

Location	Device # (from SWPPP)	Date Installed	Perimeter Control Device? (Yes/No)	Type of Device	Condition of Device	Observations / Remarks	Maintenance or Corrective Action Required

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Temporary Stream Crossing\***

Location	Date Installed	What type of Stream Crossing?	Condition of Stream Crossing	Observations / Remarks	Maintenance or Corrective Action Required	Date Removed

**\*NOTE:** If the crossing has material in or above the stream, only graded rock, quarry-run and/or clean concrete rubble will be permitted for stream crossings. When vehicular access across streams is no longer required, all temporary crossings will be removed and minor stream banks will be stabilized with the crushed stone or concrete rubble.



**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Construction Entrances**

Location	Date Installed	Does sediment get tracked onto the road?	Does traffic use the entrance to leave the site?	Condition of the entrance	Observations / Remarks	Maintenance or Corrective Action Required

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Sediment Basins**

Location	Date Installed	Size of Basin (CUYDS)	% Full	Condition of side slopes	Evidence of overtopping?	Condition of outfall?	Observations / Remarks	Maintenance or Corrective Action Required

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Maintenance Required**

Location	Maintenance Required - Description and Responsible Person	Date Maintenance Completed	Inspector

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Maintenance Required**

<b>Location</b>	<b>Maintenance Required - Description and Responsible Person</b>	<b>Date Maintenance Completed</b>	<b>Inspector</b>

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Maintenance Required**

<b>Location</b>	<b>Maintenance Required - Description and Responsible Person</b>	<b>Date Maintenance Completed</b>	<b>Inspector</b>

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Corrective Actions Required**

Description and Location of BMP Deficiency	Corrective Action Required - Description	Responsible Person	Date Action Completed	Inspector

## APPENDIX B

## Appendix B - Area/Metro Engineer Training

Minimum of 8 hours (classroom). This training module shall contain information on the following:

- History of Clean Water Act and past violations;
- Role of KDOT, KDHE, EPA, and Contractor in storm water management for projects in Kansas ;
- How construction projects can potentially negatively affect water quality;
- Basic principles of erosion, sediment control, and non-storm water/waste management control;
- KDOT Storm Water related Standard Plans and Specifications and BMP Manual;
- Selection and implementation of erosion control, sediment control, and non-storm water management/waste; management control BMPs;
- How to review and approve a SWPPP based on KDOT and EPA requirements and guidance manuals; and
- BMP inspection and maintenance program.
- Consent Decree Requirements pertaining to KDOT's Stormwater Compliance Program:
  - i. Designation of trained personnel, roles and responsibilities (KDOT Stormwater Compliance Manager, Area/Metro Engineer, Environmental Inspectors, Responsible Contractor, Water Pollution Control Manager)
  - ii. Pre-construction Conference
  - iii. Use of Proper Inspection Form and Corrective Action Log
  - iv. Role of Third Party Inspections
  - v. Inspection Procedures required by Consent Decree

Each training session shall include a written examination intended to ensure the participants knowledge of the subjects covered.

Each participant who attends the entire session and receives a passing grade on the written examination shall be issued a certification. That certification shall include the participants name, the date and location of the training and the name of the instructor(s). KDOT shall maintain copies of all such certifications.



## APPENDIX C

## Appendix C - Environmental Inspector Training

Minimum of 8 hours (classroom). This training module shall contain information on the following:

- History of Clean Water Act and past violations;
- Role of KDOT, KDHE, EPA, and Contractor in storm water management for projects in Kansas;
- How construction projects can potentially negatively affect water quality;
- Basic principles of erosion, sediment control, and non-storm water/waste management control;
- KDOT Storm Water related Standard Plans and Specifications and BMP Manual;
- Selection and implementation of erosion control, sediment control, and non-storm water management/waste; management control BMPs;
- Basic SWPPP requirements based on KDOT and EPA documents and guidance manuals;
- How to inspect a construction project to ensure BMPs are properly installed and maintained; and
- Consent Decree Requirements pertaining to KDOT's Stormwater Compliance Program:
  - i. Designation of trained personnel, roles and responsibilities (KDOT Stormwater Compliance Manager, Area/Metro Engineer, Environmental Inspectors, Responsible Contractor, Water Pollution Control Manager)
  - ii. Pre-construction Conference
  - iii. Use of Proper Inspection Form and Corrective Action Log
  - iv. Role of Third Party Inspections
  - v. Inspection Procedures required by Consent Decree

Each training session shall include a written examination intended to ensure the participants knowledge of the subjects covered.

Each participant who attends the entire session and receives a passing grade on the written examination shall be issued a certification. That certification shall include the participants name, the date and location of the training and the name of the instructor(s). KDOT shall maintain copies of all such certifications.

## APPENDIX D

## Appendix D - Contractor Training

Minimum of 16 hours of training (classroom and field). This training module shall contain information on the following:

- History of Clean Water Act and past violations;
- Role of KDOT, KDHE, EPA, and Contractor in storm water management for projects in Kansas;
- How construction projects can potentially negatively affect water quality;
- Basic principles of erosion, sediment control, and non-storm water/waste management control;
- KDOT Storm Water related Standard Plans and Specifications and BMP Manual;
- Selection and implementation of erosion control, sediment control, and non-storm water management/waste; management control BMPs;
- How to prepare a SWPPP for construction projects in Kansas;
- Inspection, maintenance, and repair program for storm water BMPs;
- Field demonstration of BMP implementation and installation (minimum of 4 hours for field portion of class); and
- Consent Decree Requirements pertaining to KDOT's Stormwater Compliance Program:
  - i. Designation of trained personnel, roles and responsibilities (KDOT Stormwater Compliance Manager, Area/Metro Engineer, Environmental Inspectors, Responsible Contractor, Water Pollution Control Manager)
  - ii. Pre-construction Conference
  - iii. Use of Proper Inspection Form and Corrective Action Log
  - iv. Role of Third Party Inspections

Each training session shall include a written examination intended to ensure the participants knowledge of the subjects covered.

Each participant who attends the entire session and receives a passing grade on the written examination shall be issued a certification. That certification shall include the participants name, the date and location of the training and the name of the instructor(s). The Responsible Contractor shall maintain copies of all such certifications.