



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 Renner Boulevard  
Lenexa, Kansas 66219

DEC 21 2018

Mr. Leo Henning  
Director, Division of Environment  
Kansas Department of Health and Environment  
1000 S.W. Jackson Street, Suite 540  
Topeka, Kansas 66612-1368

Dear Mr. Henning:

The U.S. Environmental Protection Agency received on September 24, 2018, the submittal of Economic Eligibility Determinations and the highest attainable condition (HAC) alternate ammonia criteria limitations for 16 remaining cities listed in the October 31, 2017 version of the *Kansas Surface Water Quality Standards Variance Register, Section Two: Multiple-discharger Wastewater Lagoon Ammonia Variance Register Discharger List*; this information was received under a cover letter dated September 17, 2018, from the Kansas Department of Health and Environment. This submission comprises the second group of facilities to be covered under Kansas' multiple-discharger variance (MDV) Register, varying from the EPA's 2013 ammonia criteria update that was adopted by Kansas on January 26, 2018; both the newly adopted acute and chronic ammonia criteria and 22 facilities covered by the MDV were approved by the EPA on May 7, 2018. However, the EPA reserved action on the remaining 26 facilities in the MDV Register Section 2, pending receipt of further information from the KDHE as was provided in the KDHE's letter and enclosed CD.

As noted in the EPA's May 7, 2018, approval, the new and revised WQS were formally adopted by the KDHE on January 26, 2018, were published in the Kansas Register on February 8, 2018, and became effective under state law on February 23, 2018. The March 9, 2018, WQS submittal package to the EPA included a certification letter from the Office of the State Attorney General dated January 12, 2018. The EPA found that Kansas' public participation process is consistent with, and satisfies, the procedural requirements of 40 C.F.R. § 131.20, and submission of certification by the Office of the State Attorney General meets the minimum requirement of 40 C.F.R. § 131.6(e).

Also, as noted above, the EPA's May 7, 2018 letter and enclosure reserved action on 26 municipal dischargers identified in the Kansas Surface Water Quality Standards Variance Register at that time. As stated in the EPA's May 7, 2018, action:

"The KDHE intends to update its Kansas Water Quality Standards Variance Register as variance(s) are adopted consistent with its variance authorizing provisions. Specifically, to employ a variance, each discharger must demonstrate not only its eligibility consistent with Section 4 of the Kansas Implementation Procedures, but also that it has met one of the factors set forth in K.A.R. 28-16-28f(d)(1)(A). It is the EPA's understanding that the KDHE intends to *determine*





eligibility of the following 26 facilities listed in Table 2 below, using the financial data collected and analyzed by the applicable portions of the "Kansas Eligibility Determination for Wastewater Lagoon Variances" dated July 2016.<sup>1</sup>"

The footnote in the previous paragraph cites the clarification letter we received from the KDHE during our review of the March 9, 2018 WQS submission. For purposes of informing all interested parties, we would like to note the following statement provided in the KDHE's letter with respect to how eligible facilities "have optimized their current operation."

"KDHE would also like to clarify how eligible systems "have optimized their current operation", as stated in our submission packet. KDHE considers lagoon systems that conform to the Kansas design standards, which are more stringent than the accepted "10-State Standards", meet this expectation. Lagoon facilities that are deemed eligible are expected to be performing adequately based on these standards, where they are providing the greatest reduction achievable for all pollutants with the existing technology. This is further assessed through routine on-site inspections and detailed reviews of their discharge data. Eligible facilities demonstrate that there are no issues meeting secondary treatment limits and will have no compliance or enforcement issues. As facilities employ the MDV, the requirements of the PMP expand upon our expectations and provide assurances that their current performance will be maintained or enhanced. Therefore, eligible and approved lagoon facilities within the MDV must meet requirements within their PMP, which may include, but are not limited, to the following:

1. Effluent ammonia monitoring shows compliance with the HAC
2. Retain a certified operator as required by regulations
3. Provide reasonable and adequate maintenance per KDHE inspection reports
4. Maintain operation and performance of the existing lagoon system to comply with secondary treatment limitations
5. Prohibit industrial strength wastewater containing high concentrations of nitrogen to enter the existing lagoon system through the collection system or otherwise
6. Monitor the depth of accumulated sludge in each lagoon cell
7. No significant population growth occurs that would increase pollutant loading or alter the economic profile of the community
8. Sufficient capacity within the lagoon system to accommodate modest increases in population and associated pollutant loadings."

After the EPA's approval of the first group of 22 facilities on May 7, 2018, the KDHE review of the remaining facilities on the MDV Variance Register found that the City of Hillsboro was found not to qualify for the variance early on, leaving 25 dischargers. Through the KDHE's implementation process of the variance regulation, nine more dischargers were found to either no longer need the variance or the KDHE will require additional data to determine their need for the variance. The KDHE submission letter requests the EPA approval of the remaining 16 facilities (identified in Attachment A).

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<sup>1</sup> The KDHE's letter from Thomas C. Stiles, Assistant Director, to Jeff Robichaud, Acting Director, EPA R7 WWP, dated April 10, 2018, and provided with the May 7, 2018 Enclosure as "Attachment B" provided for the EPA to act on the first 22 dischargers identified in the Kansas Water Quality Standards Variance Register."

Table 1 identifies the provisions for which the EPA reserved action in its' May 7, 2018, action.

Table 1. Items on which the EPA reserved action in May 2018.

A.	Kansas Surface Water Quality Standards Variance Register: <b>Table 2</b>
B.	Kansas Surface Water Quality Standards Variance Register: <b>Section Two, Rule-Referenced, "Kansas Eligibility Determination for Wastewater Lagoon Variances," dated July 11, 2016</b>
C.	Kansas Implementation Procedures: Surface Water Quality Standards: <b>Section 4 Appendix A, Procedure to Calculate the Highest Attainable Effluent Condition Under the Kansas Ammonia Multiple Discharger Variance-Alternative Ammonia Limits</b>

The EPA has reviewed the Economic Eligibility Determinations and the highest attainable condition (HAC) alternate ammonia criteria limitations for the 16 facilities identified in the Variance Register (Attachment A) and finds that the documentation satisfies the requirements of 40 CFR 131.14 and follows the intent of the EPA approved variance implementation procedures and process in Kansas. The inclusion of these 16 cities in the *Kansas Surface Water Quality Standards Variance Register, Section Two: Multiple-discharger Wastewater Lagoon Ammonia Variance Register Discharger List* is hereby approved.

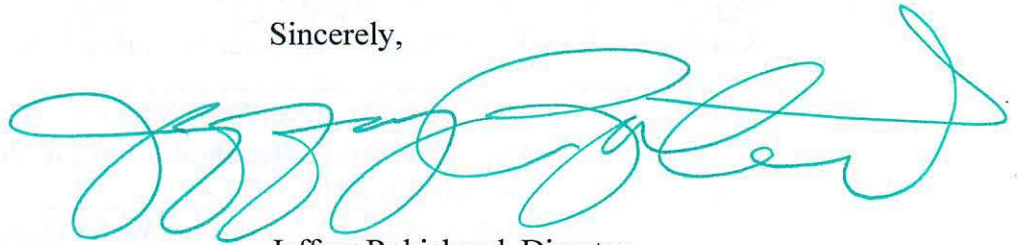
Although not discussed previously, it would be best if the dollar units for cost of treatment and MHI are expressed in same reference year for the primary screener calculation. In addition, the KDHE would generally use all data estimates from the same year – population, MHI, and any other data reported by cities for the secondary screener. We realize that the latest data from the secondary screener would likely set the year for all calculations since much of the data associated with the secondary screener coincides with the data reported to the Kansas Secretary of State on a prescribed schedule. It would also be appropriate for future reevaluations that the KDHE inflate the cost curve by an amount equivalent to a standard inflationary indicator.

The EPA initiated consultation with the U.S. Fish and Wildlife Service under Section 7(a)(2) of the Endangered Species Act on October 5, 2017, for items EPA is approving. Section 7(a)(2) requires that federal agencies, in consultation with the USFWS, ensure that their actions are not likely to jeopardize the existence of federally listed species or result in the adverse modification of designated critical habitat of such species; this consultation was completed with the USFWS October 17, 2018, letter concurring with the EPA’s determination of a not likely to adversely affect federally listed threatened or endangered species or their critical habitat.

The EPA commends the state's commitment to protecting its waters by establishing WQS and adopting numeric criteria that significantly increase environmental protection to aquatic life for waters of the U.S. located in Kansas.

We look forward to continuing to work with the KDHE to update its WQS through the triennial review process. If you have any questions regarding this matter, please contact me at (913) 551-7146, or Ann Lavaty, of my staff, at (913) 551-7370.

Sincerely,



Jeffery Robichaud, Director  
Water, Wetlands and Pesticides Division

Cc: Trevor Flynn, KDHE  
Julia Young, KDHE  
John Miesner, USFWS  
Corey Buffo, EPA HQ

**Attachment A**

Discharger	NPDES Permit Number	KS Permit Number	Receiving Water Body		Pollutant / Criterion	Highest Attainable Interim Criteria Limit – Unit mg/L (may be seasonal)	Permit Effective Date	Reevaluation Date	Economic Eligibility Assessment Score - Preliminary Screener	Economic Eligibility Assessment Score - Secondary Screener
			HUC8	Segment or Lake Project Name Code						
Hillsdale, City of (Improvement District)	KS0081396	M-MC60-0001	10290102	25	Ammonia	13.2	Jun-19	TBD	3.47	2.20
Melvern, City of	KS0046027	M-MC23-0001	10290101	42	Ammonia	3.6	Jun-19	TBD	4.97	NA
Moran, City of	KS0047490	M-MC25-0001	10290104	12	Ammonia	6.3	Jun-19	TBD	4.23	NA
Mound City, City of	KS0047503	M-MC26-0001	10290102	33	Ammonia	12.3	Jun-19	TBD	3.70	1.80
Natoma, City of	KS0031160	M-SA10-0001	10260009	7	Ammonia	13.7	Jun-19	TBD	4.62	NA
Pleasanton, City of	KS0116653	M-MC35-0001	10290102	46	Ammonia	15.4	Jun-19	TBD	3.57	1.20
Princeton, City of	KS0093891	M-MC38-0001	10290101	50	Ammonia	27.8	Jun-19	TBD	4.15	NA
Scranton, City of	KS0031283	M-MC44-0001	10290101	27	Ammonia	15.8	Jun-19	TBD	2.91	2.00
Eskridge, City of	KS0046400	M-MC09-0001	10290101	27	Ammonia	7.8	Sep-19	TBD	4.48	NA
Osage City, City of	KS0022675	M-MC29-0001	10290101	29	Ammonia	14.5	Sep-19	TBD	2.05	1.80
Osborne, City of	KS0092398	M-SO29-0002	10260014	3	Ammonia	8.7	Sep-19	TBD	2.94	2.20
Williamsburg, City of	KS0093203	M-MC50-0002	10290101	1589	Ammonia	21.6	Oct-19	TBD	4.51	NA
Oberlin, City of	KS0098655	M-UR17-0002	10250011	4	Ammonia	8.2	Dec-19	TBD	2.63	1.60
Overbrook, City of	KS0046451	M-MC32-0001	10290101	LM028001	Ammonia	12.6	Dec-19	TBD	2.57	1.80
Smith Center, City of	KS0098221	M-SO38-0002	10260012	10	Ammonia	10.7	Dec-19	TBD	2.85	1.60
WaKeeny, City of	KS0099309	M-SH38-0002	10260007	7	Ammonia	15.4	Dec-19	TBD	1.91	1.80