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Janet Stanek, Secretary

Laura Kelly, Governor

April 28, 2022

Mr. Ernie Longoria, P.E.  
City of Shawnee, Kansas  
11110 Johnson Drive  
Shawnee, Kansas

**DRAFT Clean Water Act Section 401 Water Quality Certification**

RE: **Project No. NWK-2021-00785.** Construction of a storm drainage improvement project.

Mr. Longoria:

On April 18, 2022, the Kansas Department of Health and Environment (KDHE) received from Renaissance Infrastructure Consulting (RIC), on behalf of the City of Shawnee, a request pursuant to 40 CFR 121 et. seq, for Section 401 Water Quality Certification for the proposed Section 404 project as described below. Additionally, KDHE informed you all items required to prepare a conditional Section 401 water quality certification were included in this request made following the April 14<sup>th</sup> 401 certification pre-filing meeting between KDHE, yourself and Mr. Curt Talcott, RIC.

**Description from the U.S. Army Corps of Engineers, Kansas City District Public Notice dated February 10, 2021:** “The U.S. Army Corps of Engineers, Kansas City District (Corps) has received an application for a Department of Army permit/license which has been assigned Project No. NWK-2021-00785. The application is being reviewed for a USACE individual permit. The project proponent provided the Corps a copy of their request to KDHE for water quality certification April 18, 2022.”

**Project Description:** “The applicant proposes to place fill material within waters of the United States for construction of a storm drainage improvement project. The project includes replacement of two culvert road crossings, the realignment of the stream at the 67th Street culvert, the construction of five sections of vertical retention walls on one or both banks, the installation of a grade control structure west of Cottonwood Drive, and the remainder of the area subject to grading and the installation of riprap rock protection along the toe of each bank. The purpose of the project, as stated by the applicant, is to reduce flooding and erosion concerns in the channel such that it can contain the flow from a 100-year storm event. Construction of the storm drainage improvement project would result in permanent fill along approximately 1,200 linear feet (lf) of stream, and the loss of approximately 50 lf of stream length.”

**PROJECT LOCATION:** The project site is located in a tributary to Little Mill Creek. The site runs from just north of the Augsburg Lutheran Church, south under 67th Street, west between some residential lots, under Cottonwood Drive, and southwest to the sanitary sewer crossing. The project location is within the City of Shawnee in Section 16, Township 12 South, Range 24 East, northern Johnson County, Kansas.  
USGS QUAD: Shawnee. Latitude: 39.007564 – Longitude: -94.746673

**WETLANDS/AQUATIC HABITAT:** Waters identified within the project area include approximately 1,200 lf of a tributary to Little Mill Creek. The tributary is a perennial stream.

**APPLICANT'S STATEMENT OF AVOIDANCE, MINIMIZATION, AND COMPENSATORY MITIGATION FOR UNAVOIDABLE IMPACTS TO AQUATIC RESOURCES:** In the permit application, the applicant states – “Erosion and sediment control will be established at the upstream and downstream ends of the [replaced] culverts to protect the stream during the construction of the in-stream structures. Filtrexx Siltroxx will be used throughout the project site areas to protect the stream during bank grading. The existing channel is an urban channel with little or no aquatic or terrestrial habitat. The improvements to the channel, while designed to resolve flooding problems, will also prevent future erosion and discharge to any downstream aquatic and terrestrial habitat; therefore, additional stream mitigation is not anticipated.”

The KDHE also reviewed the project application material and determined the project has the following water pollutant discharge sources:

1. Construction activities including grading and filling, equipment storage, fueling and maintenance,
2. Significant riparian disturbance.

Discharges from these sources if not minimized or otherwise controlled may cause violations of the provisions of the Kansas Surface Water Quality Standards (KSWQS) found at K.A.R. 28-16-28 et seq. As referenced on page 1 the project will impact **a tributary to Little Mill Creek not described** in the Kansas Surface Water Register (KSWR). However, water quality protection measures shall be implemented to avoid violation of the Kansas water quality standards here within.

Please note the Kansas Surface Water Quality Standard citations and locations within this document are subject to change without notice. For the most recent version, please see: <https://www.kdhe.ks.gov/1379/Planning-Standards-Unit>.

The KDHE has determined the project will avoid KSWQS violations and thus conditionally certifies it as the applicant adheres to the following:

- 1) **This certification shall be posted on site through the duration of the project.**
- 2) **KDHE Notification:** Permit recipients shall email KDHE at [KDHE.NPS@ks.gov](mailto:KDHE.NPS@ks.gov) when construction starts.

- 3) Pursuant to Kansas Statute Annotated (K.S.A.) 65-164 and K.S.A. 65-165, has prepared a written project water quality protection plan (PWQPP) describing the actions that will be taken to comply with certification conditions 4-7 below. This condition may be waived depending on the content of the “stormwater pollution prevention plan” prepared pursuant to Condition No. 5 below. Additionally, KDHE strongly suggests that the stormwater pollution prevention plan’s description of best management practices (BMPs), include measures in the “bold, small roman numerals”, after each “alphabet item” under pollutant cause, to further protect the unregistered tributary to Little Mill Creek.
- 4) Pursuant to K.S.A. 65-164 and K.S.A. 65-165, the City of Shawnee shall avoid or control the discharge of suspended solids from the proposed activities so that the **project does not cause**:
  - a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [K.A.R. 28-16-28e(b)(1)].
  - b. Any surface waters of the state within and below the project area to contain discarded solid material, including trash, garbage rubbish, offal, grass clippings, discarded building or construction materials, car bodies, tires, wire and other unwanted or discarded materials [K.A.R. 28-16-28e(b)(3)].
- 5) Construction activities for this project, not requiring a Section 404 permit, are subject to the provisions of K.S.A. 65-164 and K.S.A. 65-165 for water pollution control: Authorization to Discharge Under Construction Stormwater Runoff Kansas Water Pollution Control General Permit. For more information the City of Shawnee shall contact Mr. Larry Hook, P.E., at 785-296-5549, [larry.hook@ks.gov](mailto:larry.hook@ks.gov); Bureau of Water - Industrial Programs (BOW IP) with any questions or visit KDHE’s website: <https://www.kdhe.ks.gov/756/Industrial-Programs-Section-Stormwater-P>. A Stormwater Pollution Prevention Plan (SWP2) is required for the issuance of the above described permit and a copy shall be posted on site for inspection and be available for submittal as requested by KDHE BOW IP.
- 6) Pursuant to K.S.A. 65-164 and K.S.A. 65-165, the City of Shawnee shall avoid or control the discharge of floatable materials, toxic substances, oil and grease and other fluids from improper storage of chemicals, heavy equipment staging and use leaks or spills so **that the project does not cause**:
  - a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [K.A.R. 28-16-28e(b)(1)].
  - b. Any surface waters of the state within and below the project area to have a visible oil and grease film or sheen on the water surface or on submerged substrate or adjoining shore lines, nor have a sludge or emulsion deposit below the water surface of adjoining shorelines [K.A.R. 28-16-28e(b)(5)].
  - c. Any surface waters of the state within and below the project to contain taste and odor producing substances at concentrations which interfere with the production of potable water by conventional water treatment processes, impart an unpalatable flavor to edible aquatic or semi-aquatic life or terrestrial wildlife or that result in noticeable odors in the vicinity [K.A.R. 28-16-28e(b)(7)].

Discharge of concrete wash water to be disposed into the waters of the state [K.A.R. 28-16-28e(b)(1), (5), and (7)].

Spills: Should a spill of fuel or discharge of pollutants occur the local emergency staff should be contacted first by dialing 911. The Kansas Department of Health and Environment shall then be notified immediately: 785-291-3333 (24 hours a day.) These incidences should also be reported to the National Spill Response Center (800-424-8802). Hazardous materials spills and air releases that meet federal reportable quantities must also be reported to Kansas Division of Emergency Management (800-275-0297). A Spill Prevention and Response Plan should be prepared including having containment or absorbent materials on-site. ~~This should include reportable quantity limits (see [www.kansas.gov/kdem](http://www.kansas.gov/kdem))~~ [K.A.R. 28-16-28e(b)(1), (5), and (7)].

Fuels, Chemicals and Maintenance Areas: All fuels and chemicals necessary to complete the project shall be stored in such a manner that accidental spillage is minimized or can be temporarily contained before reaching the water body. Equipment maintenance areas shall also be located in this manner. [K.A.R. 28-16-28e(b)(1), (5), and (7)].

- 7) Pursuant to K.S.A. 65: 164 and K.S.A. 65: 165, the City of Shawnee shall avoid or control the discharge of plant nutrients from fertilizer application or restorative vegetative treatment **so that the project does not cause:**
- a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [K.A.R. 28-16-28e(b)(1)].
  - b. Any surface waters of the state within and below the project area to have toxic substances, radioactive isotopes, and infectious microorganisms in concentrations or in combinations that jeopardize the public health or the survival or well-being of livestock, domestic animals, terrestrial wildlife or aquatic or semi-aquatic life [K.A.R. 28-16-28e(b)(2)].
  - c. Any surface waters of the state within and below the project to contain taste and odor producing substances at concentrations which interfere with the production of potable water by conventional water treatment processes, impart an unpalatable flavor to edible aquatic or semi-aquatic life or terrestrial wildlife or that result in noticeable odors in the vicinity [K.A.R. 28-16-28e(b)(7)].
- i. Equipment Staging Areas and Project Closure: Upon completion of the project, disturbed areas shall be expeditiously stabilized with temporary and permanent vegetation, bio-artificial ground cover or other appropriate non-polluting material. If applicable fertilizer application to establish and maintain vegetation shall be done in a manner that will not contribute to the current nutrient load to any of the surface waters impacted. ~~by the project per.~~** K.A.R. 28-16-28e(b)(1)(3)(7).

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### **Other Considerations (Not 401 Conditions) for Maintaining and Restoring Water Quality in KS.**

1. This certification does not relieve the City of Shawnee of its responsibility for any discharge into waters of the state. The Kansas Department of Health and Environment retains the option of revoking or revising this certification any time an inappropriate discharge may occur. As provided by K.S.A. 65-171(f), failure to comply with the conditions of this certification may subject the responsible party to fines up to \$10,000 per violation with each day the violation occurs constituting a separate violation.
2. If the City of Shawnee believes complying with the conditions of this water quality certification will be economically unfeasible, they can seek a variance. Entities or persons seeking a variance from any of the requirements indicated above shall submit to the KDHE secretary, in writing, a request for the variance and shall provide information and data relevant to the variance request for KDHE's review and consideration for approval while adhering to KSWQS (K.A.R. 28-16-28b to 28-16-28h).

Finally, questions concerning this certification may be directed to Mr. Scott Satterthwaite, 785-296-5573 or by email to: [Scott.Satterthwaite@ks.gov](mailto:Scott.Satterthwaite@ks.gov).

Sincerely,



Scott L. Satterthwaite, M.S.  
Environmental Specialist, B.E.F.S

EC: KDHE- Hook, NEDO, Basiotis  
Cochran-KCD-USACE  
Talcott- RIC