

Stormwater Advisory Board (SWAB)
February 17, 2012; Friday, 3:00 PM
SWAB Meeting Minutes – Unofficial, no quorum present
W.A.T.E.R. Center, 101 E Pawnee, Wichita, KS

Present: Hoyt Hillman, Vice-Chair; MS Mitchell, Member; Larry Henry, Member; Joe Pajor, Member; Richard Basore, ex-officio Member; Scott Lindebak, Support Staff; Colleen Shirley, Secretary **Others:** Don Carlson, KDHE B.O.W.; Joe Mester, KDHE B.O.W.; Joe Hickle, Tim Austin (Poe & Assoc.), Mark Hall, Don Henry **Absent:** Chris Bohm, Chair; Jim Weber, 2nd Vice-Chair; David Leyh, member; Gary Oborny, member; Jeff Bradley, member

Regular Agenda

I. Welcome and Call to Order – Hoyt Hillman; Vice-Chair

As of 3:15 PM, only 4 voting members and 1 ex-officio present, quorum requirements have NOT been met. Per Hoyt, we will have an un-official meeting for the purpose of taking notes and providing information to the members not in attendance as there are non-members scheduled on the agenda and they are here. The “unofficial meeting” convened at 3:16 PM. Hoyt reminded speakers to state their name for the record (recorder and secretarial notes).

II. Review and Approve/Revise Minutes from February 3, 2012 Meeting

Hoyt stated there would be no vote to approve the minutes, but asked if there were any known issues identified by the Board. Hoyt also stated he did see “one or two” things but would bring them up at the next scheduled SWAB meeting.

III. Review General Construction Permit with Don Carlson & Joe Mester; KDHE

Hoyt asked Don Carlson (*hereafter referred to as DC*) if he would like to start. DC said he is aware of several questions or concerns posed by the Board. He mentioned that Chris wanted him to remind the Board the reason behind the need to get the permit expedited. DC reviewed the history of this permit process (summary follows): December 2009 EPA published final regulations for the construction and development industry which took effective February 2010. Due to possible litigation and a challenge by the industry in regards to the regulations on turbidity limits, the EPA published a final ruling in November 2010 which issued a stay on the turbidity limits to provide them a chance to review. In late 2011 KDHE was in the process of starting to re-issue the stormwater construction runoff general permit (*hereafter referred to as “the permit” or “general permit”*) as it was scheduled to expire/end December 31, 2011. Currently it is administratively extended while the reissuance is being worked on. During the process it was discovered KDHE could have the capability of having their permit effective for the full 5 year term (unless KDHE went in to reissue or modify it) if they are able to issue their permit *before* EPA formalized the new turbidity limits. At this time Joe Mester (*hereafter referred to as JM*) quickly assembled a draft permit in order to beat the December 31st deadline, which they weren’t able to accomplish, but also to create a permit the EPA wouldn’t challenge minus the turbidity standard. The draft permit had to be submitted to EPA for review and approval before putting it out on public notice. As the EPA review takes some time, KDHE did their best to expedite the permit. At this time they realized there were significant advantages to getting the permit out as soon as possible.

In late 2011, EPA took their package for the turbidity regulations to the White House OMB to review, basically the last step before they turn it over to the Federal Register and publish the new limits. It is the understanding of KDHE that OMB had it for a couple weeks when EPA then withdrew the package from review. In January 2012 EPA published, in the Federal Register, a notice requesting input on the efficiencies of technologies that could be used to reduce turbidity as well as other comments. The comment period for this notice ends March 5, 2012. Without knowing EPA’s reasoning or how quickly they will take final action and submit for publication; it could be a very quick turn around and re-instituting the formal publication of the new standards.

DC reminded the group that KDHE noticed several significant advantages, both from the regulatory and the environmental standpoint of getting their permit out. One of which is buying 5

years without having to implement the formal turbidity and monitoring limits as they foresee a lot of trouble in regards to permit compliance and the “learning curve” of the industry to be able to implement this. KDHE fully expects those who initiated the original litigation to take issue with the standards; one disadvantage is during those periods, if EPA were to stay the numeric criteria again or put it on hold, the various states who have already issued their permits still have state permits out there and EPA does not consider them to be “their” permit under those conditions. If KDHE had turbidity limits in their permit it would be necessary to enforce them and monitor reporting. DC stated if we are going to see litigation, we would rather wait for the finalization, especially if there may be another change in the permit limit. Another concern is the types of material EPA is looking at; whether its passive technologies or active treatment systems, it is going to involve some type of solid settling aid - chemical/material to aid in reducing soil particles in the water. As a result, it’s not a situation where “if a little is good than a lot is better” and its necessary to recognize although the industry may be very good at earth moving activities and construction of buildings they haven’t had to operate any chemical type treatment systems or employ these type of chemicals. Essentially in Kansas the industry has not been exposed to these technologies; they don’t have a good handle on it and a lot of the consulting firms haven’t really come up with the necessary choices of equipment, the most effective chemicals or operating protocols for their clients that will need to be employed to satisfy the permit requirements.

Again, without knowing what the ultimate (turbidity) number is going to be, it will be difficult to even prepare for the implementation of the limits once they go into effect. There are a lot of regulatory, environmental and administrative type issues that need to be resolved. The draft general permit (we are currently reviewing) has been approved by EPA as it stands. DC stated although they do not oppose extending the comment period for their permit, in this case they felt it was best to try and get their permit issued as soon as possible. Right now, if it was necessary to go back and make major changes to the general permit, KDHE would be required to have the permit reviewed and approved by EPA again, which will take time, and then put back on public notice. DC said KDHE has received comments from City of Wichita and County Highway Association, and they feel they can accommodate the majority of the concerns that were raised and still get the permit out as they consider them to be minor modifications.

Hoyt thanked DC for the background information and stated he believes the Board is interested in assisting KDHE make their March 1st deadline.

JM commented there were more comments than just the two (City of Wichita & County Highway Association) mentioned, there were also in-house comments, mostly typos. KDHE has ‘informally’ tracked the changes made so far, up to 17 ‘tweaks’ in the permit. These ‘tweaks’ include a paragraph needing changed to two paragraphs, punctuation changes and changes to the notice of termination. One big change is in regards to the sedimentation basin criteria, KDHE will be making that easier to calculate. JM stated he has copies of the current changes showing where they are right now with the exception of any possible modifications from this Board.

Comment from Hoyt and Scott, the document titled “Changes made to the Stormwater Runoff from Construction Activities General Permit placed on public notice December 28, 2011 prior to issuance” will be scanned and sent to all Board members for their review. (*Note from Secretary – the referenced document will be sent out with the minutes.*)

Hoyt reminded DC and JM of one item in particular the Board is concerned with is the 60-day requirement for the application prior to the construction period. DC asked what exactly the issue was, what problem the Board sees as this has been in the permit for the last 15 years.

Scott pointed out the blue-lined version of the permit page 7 of 17 where it appears this is a new or additional requirement as nothing appears to be anything crossed out. JM noted there was no cross-out because they simply rearranged the paragraph by taking the last sentence and made it the first sentence in the paragraph. No actual wording or requirements changed, just the paragraph structure; this was done to make it more obvious. Apparently it worked, this requirement has been in the permit for 15 years and isn’t new.

DC stated he had difficulty finding the issue, and noted there are two parts to the provision. The first is KDHE has one person reviewing and going through the permits, on average there are 860 new projects per year. Obviously KDHE does want to get these done as quickly as possible; permits issued or comments out within a 30-day period. The reason he had difficulty locating the issue is the permit doesn’t allow start of construction until the permit is authorized. Whether the permit is submitted 30-days or 60-days prior it doesn’t matter because construction cannot begin until it is

authorized. DC explained if the requirement is listed as 30-day, everyone will wait until the last minute to submit, they are trying to prevent delays in this process. KDHE wants to insure people understand these applications have to be received so they can be entered into the queue for review and processing. When they do receive panic calls they do try to help; they place high priority projects at the top of the list and will work with others as much as possible, however with the staffing and resources available it is best to have the applications in quickly.

JM added this also provides KDHE some protection if someone complains about the turn-around time; as preparation, review and approval can take 60 days (more if there are problems). He stated KDHE provides a review for every stormwater submittal received, last year they received 752. They review every erosion and sediment control plan, every summary of the stormwater plan and provide comments through e-mail or phone calls depending on how many comments/issues there are (whichever is most efficient).

Hoyt commented DC was interested in the City of Wichita policy on timing and asked Scott if he would provide information.

Scott answered from the City's perspective the 60-days is not an issue; however he was hoping other members of the Board, who are directly involved in the industry, could have been in attendance to comment on their perspective. Scott pointed out often the building permit is submitted and the City is expected to respond within 7-14 days or they will be receiving phone calls wanting status updates, what's going on, why haven't they heard yet, etc. He added they often don't submit the application until the last minute because of client changes, required adjustments and the like. Scott stated from past experience, the normal practices are a sprint at the end because they have finance deals going on, they have to break ground before a specific date or they are closing on the property... In reality he believes everything is working and if the 60-day requirement is something that has been included in the previous permits (stated he was confused by the editing and did not realize it was simply a paragraph change and not an add-on) it shouldn't be an issue.

DC explained they basically have one person to do the review work; when there is a high priority project or a need for assistance, there are others who will fill-in. The ultimate goal is to get the permit out within 30 days. If there are any identified problems they quickly communicate the issue informally with a phone call, then if necessary with a detailed e-mail, so the issues can start to be addressed as soon as possible and not delay the permit.

JM asked if there was another way to rephrase the 60-day requirement sentence for a better understanding of it. He said he was open to suggestions.

Hoyt requested clarification; this was an internal KDHE process and not really related to EPA's requirements, correct? DC said yes, but his concern is not setting a precedent where the NOI can be submitted within 15 days and then expect a 15 day turn-around. That time frame is not going to be possible with KDHE's resources and the number of projects. He did say they would not be opposed to changing the wording "the NOI shall be submitted" to "the NOI should be submitted" to improve the understanding there will be a time lag from application to permit allowing a period for review.

Hoyt thanked DC and JM for their time and their comments and asked them to stay for the next agenda item. Another concern the Board has involves the peak flow rates and downstream channel protection in stream bank erosion. Joe Hickle will be making a presentation with regards to concerns he has on the way those are calculated, Hoyt commented DC and JM may have suggestions.

IV. Presentation – Joe Hickle with PEC

Document titled "SWAB Technical Design Questions from Professional Engineering Consultants" was passed around to go along with the presentation prior to beginning. (**Note from Secretary – the referenced document will be sent out with the minutes. Also, as a lot of information referencing the screen and hand-out along with equations, calculations and hypotheticals were provided at this time, a complete summary of this section is not included here. Please review the hand-out associated with this presentation. If necessary a copy of the recording is available, please contact Colleen.*)) Joe Hickle (hereafter referred to as JH) thanked the Board for allowing him the opportunity to present today as the industry views the SWAB as a forum to ask questions, help make

improvements to the process and make recommendations on their behalf. JH stated there are three areas within the stormwater design manual he believes require clarification.

1. ISSUE 1: "The Water Quality Volume calculation method for redevelopment sites is unclear." There are four plausible ways to compute the volume, the Stormwater Manual has an example for a vacant site, but there isn't one for redevelopment sites. He continued by quoting "Ordinance Section 16.32.091 C 2 Storm water runoff from at least thirty percent (30%) of the site's existing impervious cover and for one-hundred percent (100%) of any new land disturbance that will result from the proposed redevelopment shall be treated for water quality prior to discharge from the redevelopment site in accordance with the storm water treatment standards and criteria provided in the Storm Water Manual." At this time he directed everyone's attention to both the hand-out and screen to show various example calculations. (Listed as Method 1, Method 2, Method 3 and Method 4. Visual A.) After reviewing the different methods JH proposed using method 2 to appropriately apply the water quality credit for a development site. Reasoning; it applies 30% directly out of the ordinance to the existing condition, and he is ok with applying the post run-off factor because, after all, we are calculating the water quality for the developed site. Follow the rest of the math and the result is a median value, not the lowest or highest. Another good point, the 2.113 acre feet will actually be reduced 10% when the engineers try to figure out how large the weir has to be to meet the detention times. He concluded his first point by stating this issue could be clarified by updating or ratifying the manual to include some type of computation once the method has been determined. At this point JH asked if there were any questions. Hoyt commented he was able to follow along and thanked JH for the amazing job and for the information.
2. ISSUE 2: "Channel Protection Volume Detention Time - Meeting the hydrograph centroid time delay of 24 hours may be difficult to achieve for most sites. Applying the 24 hour hydrograph centroid time delay takes up too much available pond storage volume for larger storms up to the 100 year event. The weir discharging the 1 year storm has to be delayed too long during the 1 year storm's duration (after the peak time) for both the small and large storms, that when the larger storms (100 year) occur, their accumulated volume is typically more than the pond can handle." JH directed the group to the next page (Visual B) Channel Bank Protection Hydrograph to show the differentiation in peak times in 1-year/24-hour storms, 100-year storms and a 1.2 water quality storm. (*Again, references pointing out information on the graph not included here.*)
3. ISSUE 3: "For projects that plan to use a dry pond or extended wet pond design, where both water quality volume (WQv) and channel protection volume (CPv) are required to be met, is there not a **double counting** of the WQv inside the larger CPv? (See page 3 and reference Visual B and Visual C.) Suggested clarifications for issues 2 and 3 are listed on page 4 and reference Visual D.

At this time, JH completed his presentation by referencing page 5 reviewing the ability to compute the water quality volume and the channel volume for both dry and wet ponds. His conclusions are also listed on page 5. Included in the hand out are pages 3-34, 3-40, 3-49, 4-45, 4-51 and 4-54 of the design manual which contain text needed for clarification about multiple storm volumes.

Hoyt asked Scott if what he thinks about considering some of the changes in our manual. Scott asked the Board to allow him and his staff to evaluate the suggestions, after a thorough review they will make recommendations back to the Board. Hoyt then asked if there were any recommendations from KDHE. DC said he didn't believe so, then referred back to the comment letter (from C.O.W.) and offered clarification the section in the KDHE permit was not intended to address the overall hydrology. He said they were looking to insure the immediate impact of stormwater releases from the footprint of a project itself would not create a localized problem as opposed to looking at basin-wide problems. Trying to tie this in to the stormwater construction permit would create delays. He stated they have no problem with using the controls for wet/dry ponds downstream as a tool to manage a construction site, but it is beyond the stormwater construction permit.

Hoyt asked Scott if he had a timeline for responding to JH. Scott responded, probably within 2 to 4 weeks. Hoyt thanked the speakers (JH and KDHE reps) for sharing their knowledge, recommendations and time. He then moved onto the next agenda item, Sub-Committee Reports.

V. Sub-Committee Reports

i. **O & M Committee** (Larry, Jim and Richard)

Richard said they have not met and have nothing to report.

ii. **Liaison Committee** (Jeff, Gary and Hoyt)

Hoyt said they have not met and have nothing to report.

iii. **Downstream Channel Protection Committee** (Chris, Scott, Jeff, Hoyt & Mitch)

Hoyt stated, with Scott's assistance they have scheduled a tour on February 22nd from 1:30-3:30 for the DCP Sub-Committee to ride around the Gypsum Creek Pond. He asked Scott if he had anything to add. Scott informed the group they have developed a set of maps for review of that specific watershed and they will be available for the tour. He also extended an invitation for anyone who would like to attend.

VI. Review Response Letter to Poe & Associates-tentative

Hoyt verified this would not be reviewed at this time. He mentioned Tim Austin from Poe & Associates had been in attendance for this meeting but had just left.

VII. Next Business Items

Hoyt passed around a hand-out with information on a Water Quality Seminar taking place in Topeka on February 23rd from 9am until 2pm put on by Kansas Society of Professional Engineers. He then asked if there was additional business to discuss. Scott wanted to point out the City just underwent an audit from the Region 7 EPA. They were here for 3 days (February 14 through February 16) and toured municipal facilities, reviewed detailed records, etc. EPA made a general comment the City of Wichita has come a long way in the last 6 ½ years since they've been in our community with an inventory of our storm sewer system. With digital topography we've gained a better understanding of our watersheds, with our post-construction program they've seen 'huge leaps' as it wasn't even 'dreamt up' when they visited before. When departing, their comments were within 45 days the inspector will have his draft report of Wichita submitted to his supervisor. Probably within 30 – 45 days after that a document should be issued to the City. In between the completion of the draft and the document the inspector may issue a possible notice of violation to the City *IF* he found anything in non-compliance. That would occur after their legal department has reviewed to see if there are items they want to take legal action against. (Example: a private development using straw wattles not properly overlapped = failure to properly install BMP on a construction site.) Overall EPA said one area of most concern is seeing the City has a very defined process on insuring inspections are done, as stated in our ordinance, every two years once the permanent post-construction BMP is developed. Scott informed EPA there are plans of doing notifications, plans on getting inspections back from the community. He explained it was the job of the O&M Sub-Committee within the next 6 months to develop a thorough procedure on who will be doing the inspections, what type of notification the City will give to the landowner/tenant and provide guidance and how to begin the process.

Hoyt asked if the EPA indicated any incentives or punitive action associated with trying to get in compliance. Scott replied he did not believe they saw any of that but to keep in mind their report was not complete and the EPA staff stayed an additional night in Wichita and could possibly toured again without City chaperone or review. He commented there was certainly area for further review of private and public developments.

Hoyt asked again if there was any additional information to come before the Board.

JM addressed a couple points from his review of the previous meeting minutes.

1. He commented regarding a misconception on the 18-month window for compliance when the new permit goes into effect. A new NOI will not need to be submitted. What will need to be done with that project is update the stormwater plan for the site. Nothing needs to be submitted to KDHE, just update the stormwater plan and meet the few requirements. The consultants will need to go through the general permit to see what changes will need to be made and update the plan accordingly.

2. He remarked on Scott's statement about the City of Wichita being held to a higher standard, but they try to treat everyone equally. He stated he believes Wichita is doing a good job.
3. As he mentioned earlier, KDHE is addressing the critical water quality management areas. Currently there are none in the state at this time. Once they have been established there will be a link on the website indicating these.
4. Final area addressed is the misconception a geologist, architect, landscape architect or engineer is also required to be a qualified sediment erosion control specialist. Just the fact they are PE or geologist or something to that affect, they are equal in our mind and do not ALSO have to be erosion control specialists.

E. Adjournment

Hoyt reminded attendees this was an unofficial meeting and no motion is required for adjournment. Unofficial meeting adjourned at 4:30pm.

NEXT MEETING 03/02/12