



## Permitting for Environmental Results (PER)

# NPDES Profile: Kansas and Indian Country

### PROGRAM RESPONSIBILITY

**State of Kansas:** NPDES authority for base program, general permits, and federal facilities

**EPA Region 7:** NPDES authority for pretreatment and biosolids

**EPA Region 7:** NPDES authority for all facilities in Indian Country

### Program Integrity Profile

This profile characterizes key components of the National Pollutant Discharge Elimination System (NPDES) program, including program administration and implementation, environmental outcomes, enforcement, and compliance. EPA considers profiles to be an initial screen of NPDES permitting, water quality, enforcement, and compliance programs based on self-evaluations by the States and a review of national data. EPA will use the profiles to identify program strengths and opportunities for enhancements. For more information, please contact Mike Tate, Kansas Department of Health and Environment, 785-296-5504, or Mark Matthews, EPA Region 7, 913-551-7635.

## Section I. Program Administration

### 1. Resources and Overall Program Management

#### The State of Kansas:

The Bureau of Water and the Bureau of Environmental Field Services at the Kansas Department of Health and Environment (KDHE) have been administering the base NPDES program since June 28, 1974. Kansas was approved to regulate federal facilities on August 29, 1985, and its general permits program was approved on November 24, 1995. Currently, there are only two aspects of the NPDES program (pretreatment and biosolids) for which the State is not officially authorized, even though the State carries out most of the functions of these two programs. There are 55 major and 926 minor NPDES discharger facilities (not including stormwater-only permits) and 441 NPDES concentrated animal feeding operations (CAFOs) (not included in the 926 minor facilities above).<sup>1</sup> The State has two general non-stormwater permits covering approximately 155 dischargers.<sup>2</sup> Currently, there are 72 people involved in the implementation of the NPDES program, some full-time and some part-time. The total number of full-time equivalents (FTEs) dedicated to the program are 39.36. The organization charts at the end of this profile show the break-down of the FTEs. About 17 FTEs are used in compliance and

<sup>1</sup> The National Data Sources column of the Management Report, measure #2, shows 1,152 minor facilities covered by individual permits, based on PCS data as of June 30, 2004. The value of 1,367 total minor facilities (926 + 441 CAFOs) discussed above is based on data from State databases during the same timeframe. The State is working on PCS clean-up to ensure consistency between these data sources.

<sup>2</sup> The National Data Sources column of the Management Report, measure #3, shows 0 facilities covered by general permits because the count of facilities was not entered into ePIFT at the time of the pull in June 2004.

enforcement-related activities, and about 22 FTEs are used in permitting activities (about 5 FTEs in CAFO permitting and the remainder in industrial and municipal permitting). While the fiscal year (FY) 2003 funding for the program was \$2,755,900, stable long-term funding needs to be increased to fully implement all aspects of the program.

The program has experienced staff and management at key positions resulting in a well-run and efficient program. New program staff are trained by a combination of mentoring by experienced staff, EPA-sponsored training opportunities, and self-guided training. The State sees turnover of EPA program staff in the various State coordinator positions as a challenge to stable and efficient interaction between EPA and KDHE.

#### EPA Region 7:

Currently, EPA Region 7 retains authority under the Clean Water Act (CWA) for implementation of the NPDES programs in Indian Country Region-wide. The NPDES Program is housed in the Water, Wetlands and Pesticides Division (WWPD) of Region 7. NPDES permitting for facilities in Indian Country and the oversight of authorized State programs are conducted in the Water Infrastructure Management Branch (WIMB). The Regional NPDES enforcement activities are conducted in the Water Enforcement Branch (WENF).

Two Region 7 staff members are assigned as the leads for the Region 7's oversight of the State's NPDES program; one for permit issuance and one for compliance/enforcement. EPA also has staff members that work on issues related to pretreatment, water quality standards, total maximum daily loads (TMDLs), enforcement, and legal matters. The Region's program in Kansas is primarily devoted to State oversight and direct implementation of the program at six NPDES wastewater treatment facilities in Indian Country.<sup>3</sup> The Region is currently drafting permits (using a cumulative total of about 1 FTE) for the six facilities located in Indian Country (3 casinos - industrial facilities, and 3 publicly owned treatment works [POTWs]) on the Prairie Band Potawatomi Nation, the Sac and Fox Nation of Missouri, and the Kickapoo Tribal lands.<sup>4</sup> Five of the facilities are receiving first-time permits.

## **2. State Program Assistance**

#### EPA Region 7:

Region 7 provides regulatory oversight of the biosolids program in Kansas. The State is also not authorized to administer the pretreatment program; however, the Region signed a memorandum of understanding (MOU) with the State in 1984, which outlines the day-to-day programmatic activities that Kansas implements for this program. Region 7 staff assist the Kansas NPDES program through technical assistance and support. This often entails providing the State with current information on new regulations, guidance, policy, and the like, answering questions about the federal requirements, and providing training on various aspects of the program.

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<sup>3</sup> The National Data Sources column of the Management Report, measure #2, shows only 3 minor facilities covered by EPA-issued permits, because the other 3 permit numbers were not included on the list of EPA-issued permits provided by Region 7 for use in producing the backlog report, which was the national data source for this measure.

<sup>4</sup> The National Data Sources column of the Management Report, measures #6 and #7, show 2 industrial facilities and 2 POTWs, respectively, covered by EPA-issued permits. The other facilities did not have SIC codes entered into PCS at the time of the national data pull.

### 3. EPA Activities in Indian Country

#### EPA Region 7:

NPDES Indian Country permit writers are responsible for overall coordination during Indian Country permitting activities. Indian Country permit writers work with the Regional Indian Program Office in an on-going process to ensure that all contact with Tribal governments is respectful of Tribal sovereignty. Each permit drafted for facilities in Indian Country is reviewed by the Tribe and discussed with the applicant to identify any significant issues during the drafting process.

The NPDES permit writers work closely with other EPA programs, Tribes, States, and other agencies throughout the permitting process. Primarily, coordination involves:

- Consulting with the Water Quality Management Branch, Water Enforcement Branch, and attorneys in the Office of Regional Counsel to discuss and exchange the necessary information on all Indian Country permits and enforcement-related matters.
- Working closely with the Region 7 Environmental Services Division to schedule inspections, assess receiving streams, and provide technical assistance and wastewater operator training.
- Participating in the quarterly Regional meeting of Tribal environmental staff (Regional Operations Committee).

The Region has developed an NPDES Tribal Implementation Strategy to ensure that all permits in Indian Country are current by the end of FY2005.

### 4. Legal Authorities

*EPA is conducting a comprehensive review of the State's legal authorities. This review has not yet been completed. As a result, EPA is reserving this section of the profile; when the legal reviews are complete, EPA will update profiles to include the results of the reviews.*

There are two outstanding petitions for EPA to withdraw the State's NPDES program, one in 1989 and one in 2000. The 1989 petition dealt with public notice and participation as well as inspections, enforcement, and monitoring. The 1990 petition dealt with judicial review procedures.

### 5. Public Participation

*An evaluation of the State's legal authorities regarding public participation will be included in the legal authority review. As noted above, the legal authority review section of this profile is reserved pending completion of the legal authority review.*

#### The State of Kansas:

Kansas administrative regulations (KAR) 28-16-61 require public notification of NPDES permitting actions and they incorporate the federal public notice regulations by reference. In addition, the Kansas Administrative Procedures Act (KAPA, Kansas Statutes Annotated [KSA] 77-501 et seq.) provides for adjudicative means to contest an action taken by KDHE regarding an NPDES permit.

Public notifications and public hearings on actions concerning NPDES permits are carried out in accordance with KAR 28-16-61, which requires notification of pertinent government agencies regarding proposed draft NPDES permits. KDHE sends copies of all public notice documents to all agencies identified in the Water Projects Environmental Coordination Act (KSA. 82a-326). Those agencies include: Kansas Department of Wildlife and Parks, Kansas Forest Service, Kansas Biological Survey, Kansas Historical Society, Kansas Conservation Commission, and Kansas Corporation Commission. In addition, “interested and affected segments of the public” are notified directly by U.S. Mail or e-mail. Those segments include proposed permittees and parties who have indicated an interest in NPDES issues—environmental groups, trade associations, professional associations, public officials, and civic associations.

All NPDES permit actions are published in the Kansas Register, the official State newspaper. Regional and local issues are public noticed in the Kansas Register and local newspapers based upon circulation of the newspaper or status as the official newspaper for the entity.

Newspapers, the Kansas Register, direct mailings, and e-mailings are used as vehicles for informing the public about NPDES permitting actions, including proposed permits. Public notice of existing facilities seldom generates public comments. However, public notice of new or expanding facilities, especially CAFOs, often generates comments. Those comments have led to public hearings and occasional appeals.

The Kansas Open Records Act (KSA 45-215 to 223) ensures free public access to permitting records. The term “public” is not defined in State statute or regulation; however the State does not restrict access to any entity seeking public information. All permit records, including fact sheets, draft permits, permits, notice of intent (NOIs), enforcement actions, and correspondence are available in KDHE’s Central Office and are open to the public. General information about the permitting program is posted on the Internet, as are copies of 5 general permits and NOI forms, at <http://www.kdhe.state.ks.us/water/index.html>. Kansas does not post individual permits on their Web site, nor are public comments posted on the Web site. The public can access enforcement and compliance actions through Envirofacts and Environmental Compliance History Online (ECHO) Web-based databases.

#### EPA Region 7:

The public participation activities of the NPDES program in Region 7 are consistent with NPDES program regulatory requirements under the CWA. The Region publishes public notices of all individual minor permits in a local newspaper circulated in the geographic area of the discharge. A mailing list of interested parties is developed for each permit and detailed information is provided for submitting comments and requesting public hearings. The Region also has a hotline with a toll-free number where citizens can call and report any environmental concerns.

The Region does not post the minor permits that it issues on the Web, but access to any public information (permit application, draft and final permits, NOIs, monitoring data, plans and reports, compliance data, etc.) is available through the Freedom on Information Act (FOIA) process. The general stormwater permit for construction sites in Indian Country is posted on the EPA Headquarters Web site as are NOIs for construction sites. The EPA Headquarters is in the process of posting all the permits and fact sheets for the major permits that have been issued since January of 2001. Instructions for accessing these documents are available at <http://www.epa.gov/npdes/permitdocuments>. There are currently 25 Kansas permits posted on that Web site.

## 6. Permit Issuance Management Strategy

### The State of Kansas:

As of April 22, 2005, 100% of major NPDES facilities have current permits, and 96.6% of minor facilities are covered by current individual or general permits, bettering national goals for current permit rates.<sup>5</sup> (These numbers include CAFOs; unpermitted industrial facilities [stormwater] are not included in these percentages.) These numbers are better than the goals set by EPA and were achieved during the past several years through steady reductions in backlogs. There are 5.4% (77 facilities) of the minor facilities that have permits expired more than one year; 0.7% (10 facilities) of the minor facilities have permits that have been expired more than five years; and 0.3% (4 facilities) of the minor facilities have permits that have been expired more than 10 years. (Source of data: PCS)

The State has implemented a couple of innovations that have greatly contributed to its ability to issue permits on a timely basis: 1) Responsibility for lower priority permits (such as non-discharging lagoons) has been reassigned to other staff, allowing veteran NPDES permit writers to concentrate on more complex and higher priority permits; 2) Responsibility for all remaining “non-controversial” permits has been consolidated under a single permit writer. This increase in efficiency allows 80 to 100 permits per year to be produced by a single individual, while allowing for the other permit writers to concentrate fully on more complicated permits.

In order to address the EPA’s priority permits effort, the State has made all NPDES permits that have been expired for more than 2 years a priority, and will issue at least 95% of these permits by December of 2005.

**Table 1: Percentage of Facilities Covered by Current Permits in Kansas**  
(State-issued permits)

	2000	Nat’l Avg.	2001	Nat’l Avg.	2002	Nat’l Avg.	2003	Nat’l Avg.
Major Facilities	81%	74%	98%	76%	98%	83%	100%	84%
Minor Facilities Covered by Individual Permits	79%	69%	83%	73%	91%	79%	92%	81%
Minor Facilities Covered by Individual or Non-Stormwater General Permits	79%	69%	83%	73%	91%	85%	92%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (The values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.)

<sup>5</sup> The National Data Sources column of the Management Report, measure #20, shows 91.8% of minor facilities covered by current permits. This value is based on PCS data as of June 30, 2004 for individual permits and does not include facilities covered by general permits. (See also section I.1 and measure #3.) The 96.6% value is based on data from the Kansas database and includes facilities covered by non-stormwater general permits, all of which are current.

### EPA Region 7:

The Regional NPDES program has developed a Tribal Permit Strategy that is currently being implemented to improve the effectiveness and efficiency of permit issuance in Indian Country. The strategy expands the existing NPDES program activities to include ongoing consultation with Tribal applicants during the permit writing process. A key piece in the strategy is that the Region will work closely with Tribes to conduct stream assessments and determine stream use categories. Currently, all of the receiving streams have been evaluated, and the Region is applying appropriate water quality-based permit limits. The strategy's goal is to ensure that all permits in Indian Country are updated and current by the end of FY2005. Currently, five of the six EPA-regulated facilities are awaiting new permits, and the permit for the sixth facility is expired.<sup>6</sup>

## **7. Data Management**

### The State of Kansas:

The KDHE uses an Oracle database management system (DBMS) for primary management of the Kansas water pollution control program. The KDHE Bureau of Water transferred the data that were in the old IBM AS400 system to the new Oracle database system in December 2003. Since that time, the KDHE has been adding enhancements to the Oracle database system, including more information as it becomes available, bringing in information from other database systems and including a data transfer program to transfer selected data from the Oracle database system to the Permit Compliance System (PCS) via the 80-column card image batch load method. In addition, a Lotus Notes DBMS is used to track compliance requirements in permits, administrative orders, and consent agreements. The CAFO database is on a Lotus Notes DBMS, with backup on an IBM AS/400 system. In addition, the State keeps an electronic copy of all its current permits in a Word Perfect file on a network-based shared folder. The Oracle DBMS contains the data available for each NPDES permittee (except for the schedules of compliance and all CAFO data), pretreatment, and Kansas non-NPDES permits.

The KDHE provides data to PCS but does not use PCS to manage its NPDES program. Currently, the KDHE manually generates the facility, pipe schedule, parameter, and limits data cards from the existing database. The State has a grant from EPA to develop a program to electronically transfer data from their database system to PCS at set intervals.

The KDHE uses a computer program named "DEEMERs" to capture discharge monitoring report data from the major and certain minor facility permittees. The DEEMERs program is a joint effort between Kansas, Tennessee, and EPA Region 7. It allows permittees to electronically report discharge monitoring report (DMR) data to the KDHE using DEEMER software customized for each permittee based on the permit monitoring requirements entered into PCS. One of the sub-programs within the DEEMERs program develops a DMR data file, which can be loaded directly into PCS with no further processing by the State.

The KDHE will use ICIS-NPDES (Integrated Compliance Information System, or modernized PCS) as they currently use PCS, which is only approximately 1% of the time. The State database is believed to

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<sup>6</sup> The National Data Sources column of the Management Report, measure #18, shows 4 applications pending for EPA and the State combined. Data for this measure were not broken out by EPA and State activity due to the difficulty of doing so on a national basis. One additional facility had a previous permit with dates in PCS, but has undergone substantial changes and is now considered to be a new application.

be complete, up-to-date, and as accurate as necessary to manage the program. However, additional information is being added as it becomes available and as other requirements and opportunities emerge to better manage the program. A number of special reports and programs have been developed to assist staff in management of the program, such as the annual permit billing, the permit renewal application process, and inspections completed and scheduled.

The KDHE does not load all the water enforcement database (WENDB) required data elements into PCS, but does load a subset of the WENDB elements. The primary information not loaded concerns details of permit schedules of compliance and required actions in administrative orders and consent agreements. However, EPA Region 7 receives copies of all NPDES permits, including those which contain enforceable compliance schedules, and also receives copies of all administrative orders and agreements issued and notification of when they are completed. The KDHE uses a Lotus Notes database system to track progress on enforceable schedules in both permits and orders/agreements. Lotus Notes allows the agency to assign tracking to certain individuals and sends reminders to them when a compliance item is overdue. It provides readily available, easy access to all KDHE parties interested in the status of enforcement actions, such as schedules of compliance in permits and orders/agreements. All activities are linked by the common State permit number. Kansas is expanding the enforcement data to be loaded to PCS through the data transfer program, but will continue to track individual compliance items through its Lotus Notes database.

The State routinely uploads the data for major facilities into PCS and follows the data quality protocols required by PCS. However, significant discrepancies may exist between the Kansas database system and PCS for minor facilities. A new Oracle DBMS was implemented late in calendar year 2003, which will result in data quality improvements where the data entry rates are low. (See the first paragraph in this section that discusses the new Oracle DBMS.) Data quality will improve for both major and minor facilities as the KDHE updates PCS using the data transfer program, which is being written under a grant previously issued to the State by the EPA.

The KDHE has collected latitude and longitude data for most Kansas NPDES facilities. Latitude and longitude data have been collected for all major facilities at both the facility and pipe/outfall levels. The amount of latitude and longitude data collected for minor facilities depends on the nature of the facility (mechanical or lagoon) and the standards for the data collection program at the time the data were collected. Most of the latitude and longitude data have been collected within the last few years using GPS units. Some of the latitude and longitude data, especially for minor facilities, are from conversion of legal description data. In addition, the data have been validated through a program available in ArcView. Currently, the vast majority of the latitude and longitude data are stored in an ArcView database and in an Excel spreadsheet. These data will be used to populate the Oracle database when it is finalized, and then loaded into PCS using the data transfer program.

#### EPA Region 7:

Region 7 uses PCS to track basic permit and compliance information for major and minor facilities, including sanitary sewer overflows (SSOs) and combined sewer overflows (CSOs), stormwater, CAFOs, pretreatment, and biosolids. Region 7 uses the Integrated Compliance Information System (ICIS) to track Inspection and Case Conclusion Data Sheet information, verify enforcement data and record tips and complaints received by the Region. Online Tracking Information System (OTIS) and Envirofacts pull data from PCS to update each database.

Quarterly noncompliance reports (QNCRs) are retrieved from PCS by looking for major facilities in significant noncompliance (SNC), as well as the enforcement actions being issued to address the facilities in SNC. Region 7 also checks how long facilities have been in SNC status.

The Region enters all WENDB data elements for EPA-issued permits. The Region collects and enters into PCS the latitude and longitude data for facilities, but not outfalls. Region 7 always checks the PCS Audit Reports to ensure that the data are accurately captured in PCS and that the data are entered into PCS as soon as they are received, so further processing can be completed.



## **Section II. Program Implementation**

### **1. Permit Quality**

#### The State of Kansas:

The State has mechanisms in place to ensure that quality permits are being issued. A checklist is used to ensure that the standard permitting process is followed. The State has many experienced permit writers who review the work of those with less experience. All permits are reviewed by the permitting unit chief, and are sent to EPA for review. EPA Headquarters conducted a limited review of KS permit quality in 2002 and the Region conducted a review in April of 2003. These reviews have identified only a few non-systemic deficiencies, mostly concerning documentation of permit conditions, such as that in fact sheets. The State has worked to address these deficiencies to the extent that resources allow. For instance, extensive and detailed fact sheets would be time consuming for the State to prepare, and KDHE doesn't believe that there is a public desire for such fact sheets. So the State tries to seek a balance by preparing fact sheets containing basic information which are not too time-consuming to prepare. If someone wants more detailed information on the permit derivation process, they can obtain it by request to the State.

The State requires all major facilities and certain industrial dischargers to conduct EPA-approved acute/chronic Whole Effluent Toxicity (WET) testing. Permits contain appropriate numeric WET limits including sub-lethal chronic effects. If toxicity problems are identified in the reporting of WET tests, appropriate follow-up action is taken (e.g. toxicity reduction evaluations and investigations). KDHE has provided training on WET analyses through their operator certification program, and also as a part of a CWA section 104b(3) grant to analyze WET at major discharging facilities (Grant Number CP997225-01-0).

#### EPA Region 7:

The Region 7 permit quality assurance efforts are based on an extensive review process. All permits undergo an internal peer review using the experts in the Regional office that have extensive experience in writing NPDES permits. All staff members involved in writing or reviewing permits have attended the EPA NPDES Permit Writers' Training Course and use checklists to ensure that all required program elements under the Clean Water Act (CWA) are met. Clear fact sheets that meet all the regulatory requirements are developed for all minor facility permits. The permits are also reviewed by the Regional water quality staff, Regional Public Affairs Office and the Office of Regional Counsel. In addition, each receiving stream is evaluated by the Regional Environmental Services Division to determine the appropriate use categories and provide a basis for water quality- and technology-based permit limitations.

The Region is beginning to implement a stepped-up permit review process for State permits. The current goal is to thoroughly review at least 20% of the major permits issued by States (including a mix of randomly and specifically selected permits). These reviews will include the use of standardized checklists.

All facilities in Indian Country are minor facilities and have been tested for WET and passed. There are no chronic or acute limits in the Indian Country permits.

## 2. Pretreatment

### The State of Kansas:

Kansas is not authorized to administer the pretreatment program; however, the State performs all day-to-day activities through an MOU signed in 1984. The KDHE performs as if authorized to implement the program, but does not approve newly developed pretreatment programs.

The EPA has approved 15 publicly owned treatment works pretreatment programs in Kansas. Recently, Region 7 and the State identified the cities of Great Bend and Manhattan as cities that they would like to see develop a pretreatment program. Virtually all industries have current control mechanisms (permits), issued either by the approved POTW program or permitted directly by the State. The State uses multiple tools to identify and issue permits directly to categorical industries outside of approved pretreatment program cities. Once a candidate is located, the KDHE sends that industry a package designed to lead it through a decision-making exercise to determine if the facility is regulated by a federal categorical standard. Once identified, the State issues the facility a permit.

The State has identified 50 significant industrial users (SIUs) outside of cities with approved pretreatment programs. Of those 50 facilities, all of them have current control mechanisms in the form of permits. This amounts to 100% of facilities classified as SIUs. The KDHE implements the program on a day-to-day basis and the Region would like for them to permit non-categorical SIUs in non-program cities.

### EPA Region 7:

Since the KDHE permits industrial users not covered by approved local programs, the Region does not directly implement or interface with SIUs located in non-pretreatment cities. The Region does, however, inspect and sample a number of these industrial facilities during the year.

Either the KDHE or the Region audit all approved pretreatment programs at least once every five years. Each program usually receives two Pretreatment Compliance Inspections (PCIs) between audits. Most cities do not receive an on-site inspection every year, unless there is considerable significant noncompliance noted on the city's annual report. In Kansas, there were no PCIs conducted in FY2004; however, there was one audit conducted. POTWs with approved pretreatment programs submit annual reports directly to the Region for review. Copies are sent to the State for their review, and Region 7 and the KDHE coordinate any necessary follow-up actions.

To date, there are no regulated facilities in Indian Country.

## 3. Concentrated Animal Feeding Operations

### The State of Kansas:

There are 441 Kansas CAFOs covered by the new federal NPDES CAFO Rule.<sup>7</sup> The State has performed outreach concerning the revised CAFO rule and met with various interest groups to discuss options for developing nutrient management standards. The State is pursuing the adoption of the new

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<sup>7</sup> The National Data Sources column of the Management Report, measure #11, shows 488 CAFOs covered under the new rule. This is based on an estimate as of March 2004, which has since been revised.

CAFO regulations by referencing the federal regulations and plans to adopt the Natural Resource Conservation Service Nutrient Management Standards (NRCS 590) and the Kansas Department of Agriculture Nutrient Utilization Plan for the State technical standards. Although it has taken longer than expected, the State is trying to get all statutory and regulatory changes required by the new CAFO regulations in place by mid-July 2005, so that nutrient management plans can be in place by December 2006.<sup>8</sup>

The State issues individual permits to each CAFO and had issued 402 such permits as of April 2005.<sup>9</sup> Currently, there are 117 large swine CAFOs that are required to have nutrient utilization plans that address nitrogen application rates. All CAFOs are currently required to develop manure/waste management plans which address 6 of the 9 items required in nutrient plans under the new federal CAFO rule. In addition, current permits contain requirements to ensure adequate waste holding capacity, proper use of wastes (including the requirement to apply wastes at agronomic rates), and the requirement to maintain an operations log to track the wastewater operating levels in each retention structure, the date and amount of wastewater irrigated on each land application site, weather conditions at the time of application, and the crops irrigated.

#### EPA Region 7:

Currently, there are no confirmed CAFOs in Indian Country in Kansas.

## **4. Stormwater**

#### The State of Kansas:

Kansas has a general construction permit to cover all construction over one acre. Two Phase II municipal separate storm sewer system (MS4) general permits were issued in October of 2004 to cover all MS4s inside and outside urban areas.<sup>10</sup> The State has three Phase I MS4s. Kansas City's permit was issued for the first time in 2001. The other Phase I MS4s (Wichita and Topeka) are operating under permits that have been expired for more than one year. The State is trying to reissue the expired Phase I MS4 permits by September 2005. While KDHE issues stormwater permits to industrial facilities that otherwise need NPDES permits, they have not been issuing industrial stormwater permits to facilities that do not otherwise need NPDES permits, due to resource constraints (i.e., the State does not have an industrial stormwater general permit). This represents a significant gap in KDHE's NPDES program. KDHE has committed to issuing a general permit for these facilities, as part of the 2005/2006 work planning process.

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<sup>8</sup> The National Data Sources column of the Management Report, measure #15, shows that CAFO legal authority was expected in July 2004. This is based on an estimate made during the first quarter of calendar year 2004, and progress has been slower than expected. The July 2005 estimate is based on information as of the fourth quarter of calendar year 2004.

<sup>9</sup> The National Data Sources column of the Management Report, measures #11 and #26, shows 90% of 488 total CAFOs covered by NPDES permits. These values are based on information as of March 2004.

<sup>10</sup> The National Data Sources column of the Management Report, measure #30, shows that the Phase II storm water small MS4 permits are not current, based on data as of July 1, 2004, and therefore not reflecting the issuance of the two permits in October 2004.

EPA Region 7:

The Region has a general construction permit in place to cover construction over one acre in Indian Country. If any industrial facilities in Indian Country require a stormwater permit, they are permitted individually. There are no regulated MS4s in Indian Country.

## 5. Combined Sewer Overflows/Sanitary Sewer Overflows

The State of Kansas:

Long-term control plans (LTCPs) and their implementation are required by the NPDES permits for each of the three combined sewer overflow communities in Kansas. All of the LTCPs have been submitted. KDHE uses the permit as the means to require implementation of the LTCPs. The permit also contains a requirement that the LTCP be updated at the end of each permit cycle. The re-issued permit then requires continued implementation of the updated LTCP.

Sanitary sewer overflow (SSO) events which present a public health threat require public notification. If a facility doesn't perform the public notification through the local media, then KDHE issues a health advisory through appropriate media outlets. The State tracks reported SSOs (which are reported on KDHE-provided forms) and lists 53 municipalities as having significant SSO problems. The State also provides EPA with a list of corrective actions to be taken, including permit schedules, State revolving fund (SRF)-funded projects, and administrative consent agreements. Satellite collection systems are not permitted, however, the State has the authority to address SSOs in satellite communities in various ways.

While there are no regulations requiring capacity, management, operation and maintenance (CMOM) programs, there are a few larger cities that have collection system operation and maintenance programs similar to the CMOM plan requirements.

EPA Region 7:

The EPA is working to identify training, outreach opportunities, and incentives to implement CMOM within EPA Region 7.

## 6. Biosolids

The State of Kansas:

The Biosolids program in Kansas is not authorized, and the State is not seeking formal authorization of the program. However, the State handles the day-to-day management of the 40 Code of Federal Regulations (CFR) part 503 Biosolids program—investigating complaints, reviewing annual reports, and submitting the results of these reports to Region 7. The State includes a citation requiring compliance with 40 CFR part 503 in NPDES permits for municipal facilities. Compliance with the biosolids requirements is ensured by thorough review of the annual reports required to be submitted by major facilities. Kansas also requires that minor mechanical facilities send a copy of their annual report to the State; these are all reviewed for compliance with program requirements. EPA is responsible for enforcement activities associated with the 40 CFR part 503 regulations.

Almost all facilities in Kansas apply treated biosolids as an agricultural fertilizer. Kansas City operates a sludge incinerator, and Johnson County Wastewater landfills the sludge produced by several treatment plants.

EPA Region 7:

Kansas does not have authority to administer the 40 CFR part 503 Biosolids program, so the Region retains primacy in the State. Kansas runs a parallel program based on State law and includes language in NPDES permits that requires compliance with 40 CFR part 503. Appropriate enforcement action is pursued if the annual report (or a citizen complaint) reveals that program requirements are not being met. Tracking is done manually. Region-wide, approximately 70 percent of biosolids are land-applied or distributed for use. The Regional biosolids program is administered by one coordinator who devotes about ¼ FTE to the program.

## Section III. NPDES Compliance Monitoring and Enforcement Response

*In a separate initiative, EPA's Office of Enforcement and Compliance Assurance (OECA), EPA Regions, and the Environmental Council of the States have developed a tool for assessing State performance in enforcement and compliance assurance to ensure that States meet agreed-upon minimum performance levels and provide a consistent level of environmental and public health protection nationwide. OECA will use the State profiles to focus these efforts and identify areas needing further discussion and evaluation.*

### 1. Enforcement Program

#### The State of Kansas:

The KDHE has a penalty policy that considers the seriousness of the violation, compliance history, and economic benefit factors in calculating penalties. The trend over the past three years for enforcement actions and penalties shows a significant increase in penalties assessed. The EPA's Office of Enforcement and Compliance Assurance (OECA) trend data shows, very positively, that the percentage of NPDES major facilities in SNC has been decreasing from 36% in FY2001 to 9% in FY2003. The OECA trend data for issuing formal enforcement actions shows a slight decrease from 21 actions in FY2001 to 15 actions in FY2003. KDHE also uses Schedules of Compliance in permits as an enforcement tool to achieve compliance with the permit limits for both SNC and non-SNC facilities.

**Table 2: Enforcement Trends\***

Calendar Year	Formal Enforcement Actions Issued to Major and Minor Facilities		Original Penalties Assessed***
	Original	Settlement**	
2001	16	14	\$62,000
2002	28	8	\$114,500
2003	25	7	\$141,700

\*Includes CAFOs.

\*\*Includes current year original and previous year carry-over cases.

\*\*\*Sum of penalties assessed in original order.

Note: Data for this table was provided by the KDHE. Minor facility information including CAFO and stormwater facilities are not required to be entered into PCS.

KDHE state databases show that all 6 major facilities in SNC in FY2003 were addressed by formal enforcement actions.<sup>11</sup>

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<sup>11</sup> The National Data Sources column of the Management Report, measures #35, #36, and #37, show 0% SNC addressed by FEA, 83% SNC returned to compliance without FEA, and 0 FEAs at major facilities, respectively, in FY2003. The 6 FEAs mentioned above did not appear in the national data pull for various reasons, such as PCS coding inconsistent with national definitions.

There are 441 CAFOs covered under the new NPDES CAFO Rule. Both the overall and the CAFO-only data provided by the State show that, over the past three years, there is a consistent number in enforcement actions and an increasing amount of penalties assessed.

**Table 3: CAFO Enforcement Trends**

Calendar Year	Formal Enforcement Actions Issued		Original Penalties Assessed**
	Original	Settlement*	
2001	11	7	\$62,000
2002	7	4	\$75,500
2003	10	2	\$125,000

\*Includes current year original and previous year carry-over cases.

\*\*Sum of penalties assessed in original order.

Note: Data for this table was provided by the KDHE. Minor facility information including CAFO and stormwater are not required to be entered into PCS.

The State inspects CAFOs every other year, or more often on an as-needed basis. Some of the KDHE's criteria to target CAFOs for enforcement includes: continued failure to contain runoff; continued spills; over-application and discharge from land application sites; failure to obtain or modify a permit before initiation or change of operation; and, in some cases, one-time discharges causing significant environmental impact.

The KDHE's Water Quality Guidance Memorandum (from Karl W. Mueldener, Director, Bureau of Water, signed December 9, 1997) provides guidance for enforcing permit requirements and orders, and outlines water enforcement procedures. The document is useful because it sets out procedures for specific types of enforcement options, including: on-site visits or inspections; letters of warning; directives; administrative orders; consent decrees; and referrals to the State Attorney General or EPA Region 7 for civil or criminal action. It also outlines factors that are considered in selecting the appropriate enforcement option, including environmental impact and compliance history, and the State's penalty policy.

Escalation of enforcement responses by the KDHE from informal letters of warning to formal administrative orders, where the noncompliance has not been resolved, is based upon the permittee's response to the previous KDHE action. The enforcement guidance allows the KDHE to skip intermediate steps in the enforcement matrix and go directly to more severe enforcement levels, including court action, where necessary, to protect human health and the environment from immediate threats. The KDHE follows federal requirements for the time frame for responding to SNC criteria for major facilities, but occasionally uses schedules of compliance in permits instead of formal enforcement actions when appropriate to accomplish compliance with the permit.

EPA Region 7:

Region 7's NPDES enforcement program includes approximately seven staff positions devoted to NPDES enforcement and one staff position devoted to data entry into PCS. This includes staff involved with inspection targeting; review and evaluation of inspection reports; oversight of enforcement orders, State program assistance; responding to citizen complaints; oversight of State enforcement programs; enforcement case development; negotiation of enforcement cases; and tracking and evaluation of supplemental environmental projects (SEPs), schedules, and other deliverables required by orders. The scope of Region 7's enforcement program includes both oversight for authorized State NPDES programs and direct implementation for the Regional NPDES program, primarily in Indian Country.

The Region formally targets inspections to investigate facilities that have the greatest potential for noncompliance. The Region also identifies noncompliant facilities according to national and Regional priorities. Inspection reports are reviewed to determine if an enforcement action is required. The Region has worked diligently and will continue to aggressively pursue appropriate enforcement actions against noncompliant facilities.

Region 7 uses the Interim Clean Water Act Settlement Penalty Policy to determine the penalty for violations in each enforcement action. Economic benefit is also a factor of consideration that is used in determining how the violator benefitted from its noncompliance. EPA considers economic benefit and the ability to pay in determining penalties on a case-by-case basis.

From OECA Trend Data: The OECA trend data shows a decrease in the number of new SNC facilities in the Region; an increase in the number of those facilities addressed by formal enforcement actions; and an increase in the number of those facilities that returned to compliance on their own.

**Table 4: OECA Trend Data**

Year	No. of New SNC Facilities at the Beginning of the Year (7/1-6/30)		Percentage of SNC Facilities Addressed with Formal Enforcement Actions (10/1-9/30)		Percent of SNC Facilities Returned to Compliance on Their Own (10/1-9/30)	
	Regional Total	Kansas Total	Regional Total	State % of Reg. Total	Regional Total	State % of Reg. Total
2001	109	19	8%	0%	78%	100%
2002	108	9	10%	0%	80%	89%
2003	67	7	14%	0%	82%	86%

Based on the OECA trend data, NPDES major facilities in SNC in Region 7 have generally decreased from 123 in 2001, to 95 in 2002, to 67 in 2003. NPDES major facilities in SNC in Kansas have also decreased from 21 in 2001, to 8 in 2002, to 6 in 2003. The Region will include reporting of noncompliant major facilities on the QNCR in its quarterly review with the State, and discuss any concerns to ensure the continued lowering of major SNC facilities.



## 2. Record Keeping and Reporting

### The State of Kansas:

The KDHE keeps up-to-date and accurate information on each permittee. Data are stored in both electronic-based and hard-copy files for each permittee. Electronic files are used to store basic facility information; addresses; outfall data; parameters and the permit limits; discharge monitoring report data; bypass and CSO reports; certified operator information; a summary of the schedule of compliance items and completion dates, if in the permit; enforcement action requirements and completion dates, if any; and an electronic copy of the current permit. The paper files are divided into permit-related topics; inspections; discharge monitoring reports and bypasses/CSO reports; and other miscellaneous topics, such as those related to requests and approvals for collection system extensions. Enforcement files contain necessary information to defend against subsequent appeals or court actions. Additional performance data will be available for other facilities upon completion of the new State DBMS. The Region has indirect access to the files and electronic data by requesting information.

The KDHE does not use PCS to manage its NPDES program. The State inputs data to PCS using the 80 column card format batch loading system. Discrepancies exist between the State database and PCS in data for minor NPDES facilities. Although the KDHE provides updates for PCS for facility name changes, permit effective and expiration dates, and whether a facility or permit has become inactive for minor facilities, not all information has been updated for minor facilities in PCS. In addition, the KDHE has not provided data for new minor NPDES permits, making the PCS database less complete than the State database.

Kansas has a grant from EPA to develop a program to electronically transfer data from the State database to the PCS database. This should resolve any discrepancies between the two databases. It is anticipated that this data transfer program should be completed by the end of 2005.

### EPA Region Kansas:

Region 7 keeps up-to-date and accurate information on the permittees for which it is responsible. Data are stored in PCS and hard copy files for each permittee. The Region uses PCS to store basic facility information, addresses, outfall data, parameters and permit limits, discharge monitoring report data, bypass and CSO reports, a summary of the schedule of compliance items, and completion dates. Hard copy files are divided into permit-related topics, inspections, discharge monitoring reports and bypasses/CSO reports, and other miscellaneous topics such as those related to requests and approvals for collection system extensions. Enforcement files contain necessary information to defend against subsequent appeals or court actions.

Region 7 uses PCS as one of its tools to manage its NPDES program. Region 7 inputs directly into PCS all of its enforcement actions, inspections, facility information, limits, outfall data, and permit issuance and expiration dates.

Region 7 is confident that data quality will improve with the release of the new ICIS-NPDES, as the new system is much more functional than the current form of PCS. ICIS-NPDES will be more intuitive and have a much more modernized approach for entering NPDES data.

### 3. Inspections

#### The State of Kansas:

The KDHE's Wastewater Treatment Facility Inspection Policy (dated September 24, 2003) outlines the type of facility and frequency of inspections. The policy states that all major dischargers are to be inspected annually. The OECA trend data shows that during the past three years, KDHE has inspected approximately 70% of their major facilities. In the Kansas NPDES Program Assessment (dated January 30, 2004), the KDHE states that 98% to 100% of major discharging facilities are inspected annually.

**Table 5: Kansas Inspection Trends**

Year	% Major Facility Inspections According to OECA Trend Report (7/1-6/30)	% Major Facility Inspections According to the KDHE Data (10/1-9/30)*
2001	64	114**
2002	76	107**
2003	64	95 <sup>12</sup>

\*KDHE inspections are on a FY cycle.

\*\*Some facilities were inspected twice in the time periods shown.

The Bureau of Water's Wastewater Treatment Facility Inspection Report contains the KDHE's inspection strategy. Inspection frequency is based on a facility's potential to impact surface water. The inspection scheme, in order of highest to lowest impact, follows:

- Major discharging facilities - annually, at a minimum
- Minor mechanical facilities - once every 2½ years, at a minimum
- Lagoon systems - once every 5 years, at a minimum
- Cooling water dischargers - once every 5 years, at a minimum
- Other non-mechanical facilities - once every 5 years, at a minimum

The KDHE also targets facilities with compliance issues, based on discharge monitoring reports or other information. In addition, those facilities with the closest permit expiration dates are inspected first. The KDHE uses a watershed-based permitting cycle where all permits in the same basin expire in the same year, and those facilities are inspected in the same relative time frame.

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<sup>12</sup> The National Data Sources column of the Management Report, measure #32, shows 64% of major facility inspected during inspection year 2003. Differences between PCS data and KDHE data are due to a number of factors, including the difference in time frame, differences in accounting for changes in the universe of major facilities, and other factors.

The KDHE considers the risk to public health and the environment in determining the priority and the type of enforcement response necessary to prevent or correct the situation. The order of priority is:

1. Any facility creating an imminent public health or environmental hazard;
2. Major facilities, due to their larger quantity of wastewater and amount of pollutants;
3. Smaller facilities discharging high concentrations of pollutants or affecting a more valuable resource; and
4. Facilities with chronically poor compliance records.

Stormwater permittees are targeted based on complaints.

The KDHE expects that each field inspection is preceded by a complete review of the files by the field inspector. The time required for file reviews versus field inspections will vary based on the complexity of the facility. The KDHE Central Office staff evaluate permit compliance monitoring data submitted by permittees and provide this information to the field inspector.

The State participates in new EPA initiatives as State resources permit. For example, the KDHE participates in the industrial stormwater initiative, but does not have the resources for the entire stormwater program.

#### EPA Region 7:

Region 7 uses numerous criteria when selecting targets for inspections such as history of noncompliance, citizen complaints, State requests, impaired water bodies, environmental justice concerns, watershed impacts, and Regional and National initiatives. Targets are selected to address and prevent environmental harm as well as in the priority wet-weather areas and core program areas. Wet-weather has been a national priority for EPA the past few years and Region 7 has focused inspection resources on meeting this priority.

The Region 7 targeting team shares the inspection list each year with the State and requests comments on it from the State.

Inspection of major facilities does not occur once every year because of the combined resource limitations faced by both Region 7 and its four States. Minor facilities may not get inspected every five years because of similar resource constraints.

The OECA trend report shows an increase in the total number of Region 7 inspections at major and minor facilities in the Region. The report also shows that the percentage of inspections in Region 7 at minor facilities has generally increased. The percent of Region 7 inspections at major and minor facilities in Kansas has slightly decreased. The percent of Region 7 inspections at minor facilities has fluctuated as shown in the table below.

**Table 6: EPA Region 7 Inspection Trends**

Year (7/1-6/30)	Total Major and Minor Facility Inspections		Percent of Minor Facility Inspections vs. Total	
	Region Wide	In Kansas	Region Wide	In Kansas
2001	81	16	47%	50%
2002	122	16	43%	63%
2003	141	14	61%	57%

#### 4. Compliance Assistance

##### The State of Kansas:

The KDHE's principal methods of compliance assistance are providing help through on-site visits, e-mails, and telephone contacts. Funds from CWA section 104(g)(1) are used to provide on-site training and technical assistance for municipalities through the State training center. The State has an operator training and certification program. That program coordinates training efforts by the KDHE staff and third parties offering training throughout the State. The KDHE staff present at trade associations and participate in professional organizations.

The State has a Pollution Prevention Institute housed at Kansas State University. The Institute provides free, non-regulatory technical assistance and training in pollution prevention and environmental compliance. The services address all media (air, water and land). Through permit compliance schedules and enforcement settlements, the KDHE has required permittees to utilize the Institute or other experts in pollution prevention to review load source and reduction for direct and indirect discharge industries.

The KDHE measures outcomes from compliance assistance activities by permit compliance rates. The OECA trend data shows that over the previous three years there was a significant drop in the percent of major facilities in SNC.

**Table 7: Percent Major Facilities in SNC**

Year	% SNC
2001	36%
2002	14%
2003	9%

##### EPA Region 7:

Region 7's compliance assistance activities are directed toward minor wastewater treatment facilities in Indian Country. Regional office staff attends the quarterly meeting of the Regional Operations Committee Council, which is an environmental forum of all Tribes in Region 7. Information on EPA programs is often presented at this meeting. Presentations on SSOs, wastewater permits, stormwater, water quality criteria, sludge, and CAFOs are just a few of the many presentations given by the Regional staff.

The Region provides on-site compliance assistance/inspections for all discharging wastewater treatment facilities in Indian Country. On-site compliance assistance involves an evaluation of the system's performance toward meeting NPDES permit requirements. It also involves making suggestions and providing hands-on training, if requested, on how to meet and maintain compliance with permit requirements.

The effectiveness of compliance assistance activities is generally indicated by the lack of citizen complaints and compliance orders. (Only one compliance order has been needed in the last two years to ensure compliance in Indian Country.)

## **Section IV. Related Water Programs and Environmental Outcomes**

### **1. Monitoring**

#### The State of Kansas:

Kansas does not have a monitoring program that satisfies all 10 elements described in EPA's "10 Elements of a State Water Monitoring Program", but is currently trying to improve the program by drafting a strategy. The Performance Partnership Grant (PPG) with the State does not include a reference to a strategy or the 10 elements of the monitoring program; however the State did submit an outline for a strategy in December 2004. The State's monitoring program uses data from a statistical approach implemented by other partners, and the State is currently evaluating the implementation of a statistical approach. The State's current monitoring network includes statewide monitoring on a bi-monthly basis. The current State monitoring program provides background data for calculating most TMDLs and NPDES permits.

### **2. Environmental Outcomes**

#### The State of Kansas:

There are 23,731 miles of perennial rivers and streams, 110,225 miles of intermittent and ephemeral streams, and 188,487 acres of lakes/reservoirs/ponds in Kansas.<sup>13</sup> According to the 2004 Kansas water quality inventory prepared under CWA section 305(b), Kansas assessed 19,501 stream miles for water quality from the period of January 2000 through December 2003 (82.1% of the 23,731 perennial miles). All 19,501 miles were assessed for acute aquatic life criteria. Data supported that 59.5% of the streams were fully supportive of their aquatic life use, 26.8% of the streams were partially supporting their aquatic life use, and 13.5% of the streams were not supportive of their aquatic life use.

In terms of human health-related uses, Kansas assessed 373 interior stream miles for fish consumption and found that 44.7% and 55.2% of the assessed streams were fully supporting/not fully supporting for fish consumption, respectively. Kansas has no information regarding primary contact recreational use on streams in 2000. Since then, however, Kansas legislation has implemented a revised monitoring plan for primary contact use in State streams. Future assessments on the health of Kansas streams are expected to include primary contact recreational use. Kansas does report secondary contact recreational uses. Of the 19,373 interior stream miles assessed for secondary contact recreation (wading, boating, etc.), 15,151 interior stream miles are fully supportive of their secondary contact recreation use designation. 3,302 interior stream miles were found to only partially support secondary contact recreational use and the remaining 920 miles were found not to support secondary contact recreational use.

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<sup>13</sup> Because of the dry conditions and large number of intermittent/ephemeral waters in Kansas, it is appropriate to express the percentage of stream miles monitored as a percentage of both the total and the perennial stream miles. See Management Report measures #39, #47 and #48.

There are 188,487 acres of publicly owned lakes, reservoirs, and ponds in Kansas. The State assessed all 188,487 acres for aquatic life (acute criteria only) use and human health related uses. Use designations along with their use status is listed in the table below:

**Table 8: Kansas Waters Use Designations and Status**

Use	Acres Fully Supporting	Acres Threatened	Acres Partially Supporting	Acres Not Supporting	Insufficient Data (acres)
Aquatic Life	75,488	25,453	61,259	18,953	7,077
Fish Consumption	165,188	0	10,194	328	12,480
Primary Contact	41,612	23,366	112,258	3,877	7,077
Secondary Contact	87,918	25,720	64,876	2,599	7,077

Kansas has an extensive long-term monitoring program that has led to one of the largest 303(d) lists of impaired waterbodies in the nation. And as a result, Kansas has accumulated 2,197 approved TMDLs to date for their impaired waters.<sup>14</sup>

#### EPA Region 7:

To conduct assessments of surface waters, Tribes develop data and information to compare against their water quality standards. Two enhancements important to facilitate Tribes' assessments are the collection of data and information describing the resource and the development of water quality standards.

Currently, no Tribes in Region 7 have federally approved water quality standards. Additional technical support and funding are needed to aid in the development of monitoring plans, quality assurance/quality control (QA/QC) development, and the collection of data used to support assessments. Also, federal regulations currently exempt Tribes from CWA section 305(b) assessment reporting requirements. Currently, assessments of Indian Country waters are not a planned activity, except for site-specific NPDES permits for dischargers (Tribal and non-Tribal entities), which are located within the external boundaries of a Tribal reservation.

### **3. Water Quality Standards**

#### The State of Kansas:

KDHE's water quality standards and NPDES programs have been consolidated in one section (Technical Services) since 1997. Since the responsibility for water quality standards development and NPDES permit issuance fall under a single individual, the two program functions are tightly integrated. Kansas also has implementation procedures for standards and for permitting (including water quality-based permits) that explain how water quality standards are used to develop NPDES permits. Current narrative nutrient standards are difficult to implement due to a lack of reliable translators; however, KDHE is listing waters as impaired for nutrients and developing TMDLs for those waters. The State adopted E. coli criteria for streams in 2003, and standards for E. coli in lakes by December 2004. The State submitted a nutrient reduction plan to EPA in December of 2004. Kansas has a

<sup>14</sup> The National Data Sources column of the Management Report, measure #54, shows 1,430 TMDLs completed through FY2003. Kansas completed an additional 767 TMDLs between 9/30/03 and 11/15/04.

rule-referenced internal system and procedure for making timely updates to standards. Kansas is required by State statute to perform use attainability analyses (UAAs) on all classified waters of the State which do not currently have a UAA on file. They are systematically completing UAAs to make use designations. Designated uses form the basis of water quality-based NPDES permits in Kansas. Through its water quality certification process, KDHE identifies the designated uses for receiving streams and determines the appropriate criteria for those uses. Kansas has met the required schedule for the triennial review. There are two (2) outstanding water quality standards disapprovals from previous triennial reviews in Kansas; the EPA and the KDHE are working together to resolve those previous disapprovals.

#### EPA Region 7:

A Regional team has been developed to address water quality protection in NPDES permits for facilities in Indian country where Tribes do not have an authorized water quality standards (WQS) program. This team includes the Region's WQS program, NPDES program, Indian Programs Office, Environmental Services Division (lab), and the Office of Regional Counsel. A draft protocol to identify roles and responsibilities in the NPDES process (e.g., WQS, UAAs, CWA section 401 certification, wasteload allocations, NPDES development, and the like) has been developed. In particular, the team is considering how to better protect drinking water sources.

Currently, no Tribes in Region 7 have authorized water quality standards programs.

## **4. Total Maximum Daily Loads**

#### The State of Kansas:

Total maximum daily loads are needed for water bodies listed as impaired under CWA section 303(d). Water quality-based effluent limits (WQBELs) are needed if there is reasonable potential that technology-based permit limits are not sufficient to meet surface water quality criteria.

EPA and the State determine ambient background levels of pollutants in water bodies from existing monitoring or modeling data where it is available. If no ambient data are available, a background level may be assumed (e.g., for ammonia a 0.1 mg/l background is assumed) if it is reasonable to believe that there is a background concentration of the particular pollutant of concern. A permittee can also be required to monitor for ambient background if there is a particular concern.

There is ongoing coordination between watershed planning, technical services, and the permit writers on interpreting TMDLs and their wasteload allocations (WLAs) and monitoring requirements to ensure TMDL and WQBEL consistency. TMDL development now entails two-way communication in the review of draft TMDLs by the KDHE permitting sections on wasteload allocations.

Kansas is in the final stages of basin permitting, but is not yet in sync with the TMDL development schedule, chiefly because the TMDL schedule is still driven by court decree and not by programmatic strategic planning. The two processes should synchronize in one to two permit cycles.

The current review and certificate process is coordinated between the TMDL developers and the permitting section to ensure that information in the TMDL is sufficient to prepare permits. Future TMDL development is expected to contain additional pertinent information to guide the development of permits with WQBELs.



With reissued permits for facilities discharging to 303(d) listed waterways without an approved TMDL, KDHE is writing water quality-based permits that implement State standards and criteria. General permit language for animal feeding operations (AFOs) is included in TMDLs, as are the typical requirements of most CAFOs. Future TMDLs will incorporate general permit language pertinent to stormwater.

As of November 15, 2004, the State had 2,197 EPA approved TMDLs in place and continues to make adequate progress in meeting their scheduled TMDLs.<sup>15</sup>

EPA Region 7:

There are no specific federal TMDL activities planned in Indian Country.

## 5. Safe Drinking Water Act

The State of Kansas:

The State's standards identify use designations for drinking water, and provide a higher degree of protection for them.

EPA Region 7:

The drinking water program is consulted to provide information and to review permits where there are concerns related to drinking water sources and wellhead protection areas. Where it is appropriate to protect drinking water sources and certain recreational uses, the Regional NPDES permits require disinfection.

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<sup>15</sup> The National Data Sources column of the Management Report, measure #54, shows 1,430 TMDLs completed through FY2003. Kansas completed an additional 767 TMDLs between 9/30/03 and 11/15/04.

## **Section V. Other Program Highlights**

### The State of Kansas:

Kansas has implemented a number of procedures that have contributed to the low permit back-log: 1) expanded use of general permits; 2) consolidation of diverse NPDES duties to single individuals to provide a broader knowledge of integrated issues; 3) relieving NPDES permit writers of the responsibility for lower priority permits (such as non-discharging lagoons); and 4) assigning “non-controversial” permits to a single permit writer.

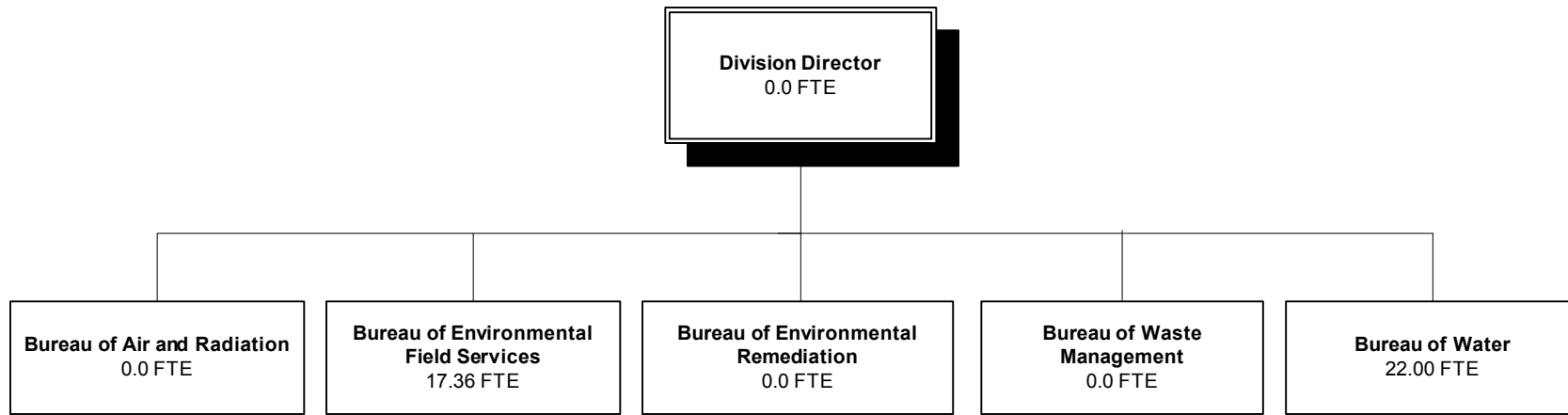
There are also a number of innovations that enhance the NPDES program. Some of the more notable ones are: 1) synchronized permitting on a watershed basis; 2) electronic DMR submission; 3) improved consistency of enforcement through committee review; 4) developing and utilizing a database to track schedules of compliance; and 5) use of administrative order templates for minor violations.

### EPA Region 7:

The Region has successfully worked with the Tribes to evaluate each receiving stream location to determine the appropriate use categories. This information is used only to establish water quality-based permit limitations.

# Division of Environment - NPDES Resources

November 2003

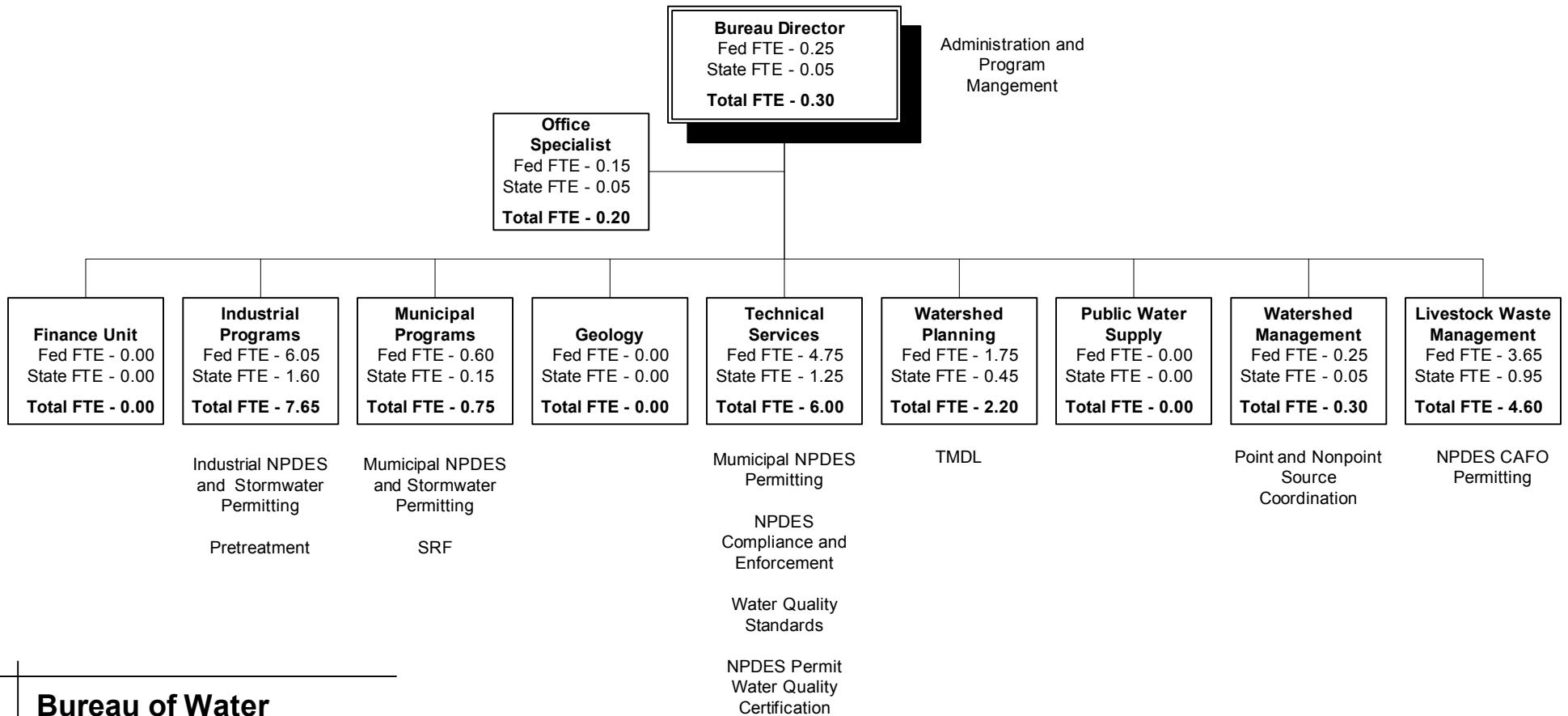


**Division of Environment**

39.36 FTE

# Bureau of Water - NPDES FTEs

November 2003



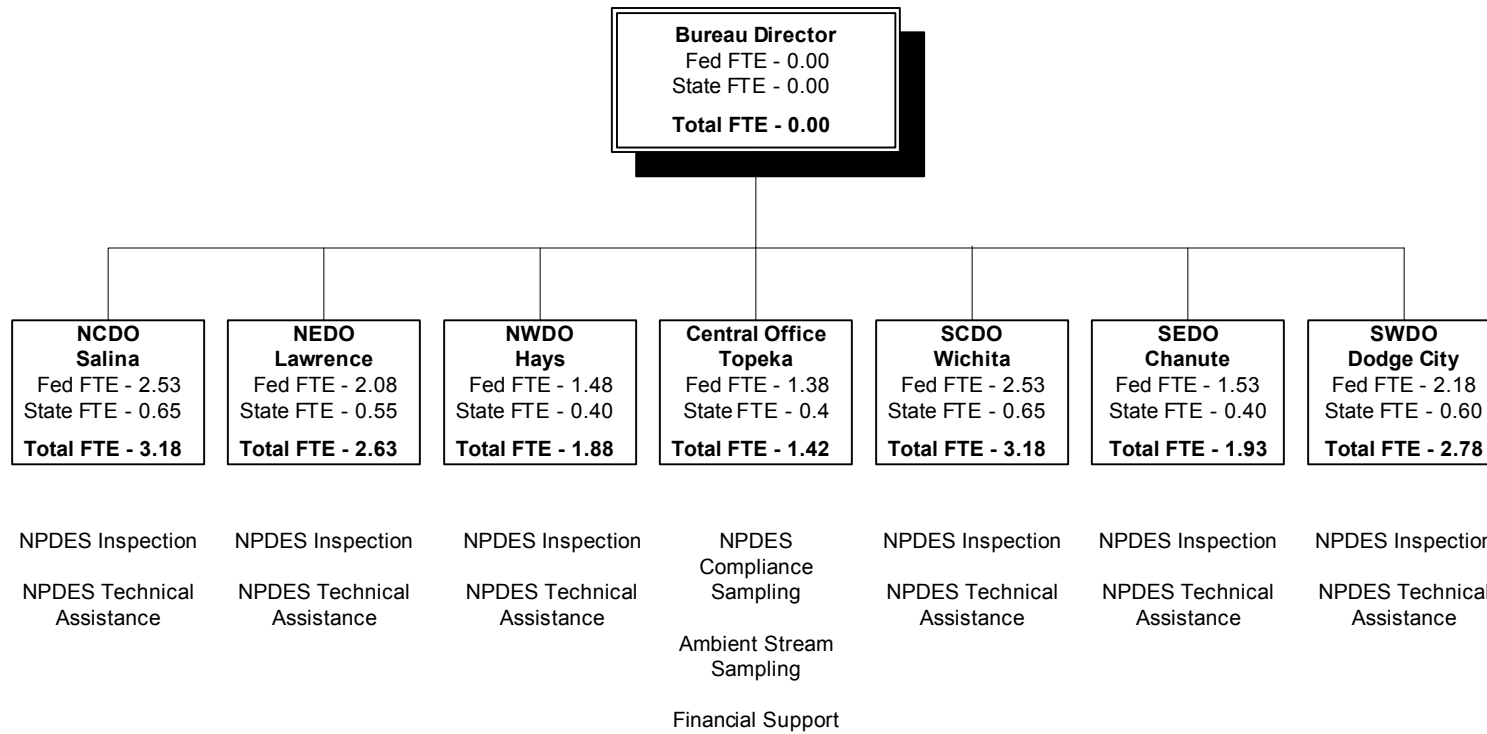
## Bureau of Water

Fed FTE - 17.45  
State FTE - 4.55

**Total FTE - 22.00**

# Bureau of Environmental Field Services - NPDES FTEs

November 2003



## Bureau of Environmental Field Services

Fed FTE - 13.71  
 State FTE - 3.65  
**Total FTE - 17.36**

# NPDES Management Report, Spring 2005

## Kansas

			Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data	
						State Activities	EPA Activities	State Activities	EPA Activities
<b>NPDES Progress</b>									
Universe	1	# major facilities (6,690 total)	I.1		n/a	55	0		
	2	# minor facilities covered by individual permits (42,057 total)	I.1		n/a	1,152	3	1,367	6
	3	# minor facilities covered by non-storm water general permits (39,183 total)	I.1		n/a	0	0	155	
	4	# priority permits (TBD)	I.6			--	--		
	5	# pipes at facilities covered by individual permits (142,761 total)	I.7		n/a	1,517	--		
	6	# industrial facilities covered by individual permits (32,505 total)	I.1		n/a	745	2		3
	7	# POTWs covered by individual permits (15,197 total)	I.1		n/a	462	2		3
	8	# pretreatment programs (1,482 total)	II.2		n/a	n/a	15		
	9	# Significant Industrial Users (SIUs) discharging to pretreatment programs (22,158 total)	II.2		n/a	n/a	238		
	10	# Combined Sewer Overflow (CSO) permittees (831 total)	II.5		n/a	3	--		
	11	# CAFOs (current and est. future) (17,672 total)	II.3		n/a	488	--	441	
	12	# biosolids facilities (TBD '05)	II.6			--	--		
NPDES Program Administration	13	State or Region assessment of State NPDES program (none (N)/assessment (A)/profile (P))	I.1	50 states 2004	n/a	A, P	P		
	14	% pipes at facilities covered by individual permits w/ lat/long in PCS	I.7		46.3%	5.9%	--		
	15	State CAFO legal authority expected (mo/yr)	II.3	2005	n/a	7/04	n/a	7/05	
	16	# Withdrawal petitions/legal challenges (22 total)	I.4		n/a	2	n/a		
	17	DMR data entry rate	I.7		95%	99%	--		
	18	# permit applications pending (1,011 total)	I.6		n/a	4	--	0	5
NPDES Program Implementation	19	% major facilities covered by current permits	I.6	90%	83.7%	100.0%	n/a		
	20	% minor facilities covered by current individual or non-storm water general permits	I.6	90% 12/04	87.0%	91.8%	0.0%	96.6%	
	21	# major facilities w/permits expired >10 yrs. (56 total)	I.6		n/a	0	0		
	22	% priority permits issued as scheduled (TBD '05)	I.6	95% 2005		--	--		
	23	% pretreatment programs inspected/audited during 5 yr. inspection period	II.2		85.3%	n/a	100.0%		
	24	% SIUs w/control mechanisms	II.2		99.2%	n/a	100.0%		
	25	% of CSO permittees with long-term control plans developed or required	II.5	75% 2008	82.2%	100.0%	--		
	26	% CAFOs covered by NPDES permits	II.3		35%	90%	--	91%	
	27	# biosolids facilities that have satisfied part 503 requirements (TBD '05)	II.6			--	--		
	28	# Phase I storm water permits issued but not current (76 total)	II.4		n/a	2	0		
	29	# Phase I storm water permits not yet issued (5 total)	II.4		n/a	1	0		
	30	Phase II storm water small MS4 permits current (Y/N/D (draft) (35 States)	II.4	100% states 2008	n/a	N	n/a	Y	
	31	Phase II storm water construction permit current (Y/N/D (draft) (49 States)	II.4	100% states 2008	n/a	Y	Y		
NPDES Compliance Monitoring and Enforcement Response	32	% major facilities inspected	III.3		71%	64%	7%	95%	
	33	(inspections at minors) / (total inspections at majors and minors)	III.3		76%	38%	57%		
	34	% major facilities in significant non-compliance (SNC)	III.1		20%	9%	--		
	35	% SNCs addressed by formal enforcement action (FEA)	III.1		14%	0%	--	100%	
	36	% SNCs returned to compliance w/o FEA	III.1		70%	83%	--	0%	
	37	# FEAs at major facilities (666 total)	III.1		n/a	0	0	6	
	38	# FEAs at minor facilities (1,660 total)	III.1		n/a	15	2		

### Explanation of Column Headers:

**Profile Section:** For each measure, this column lists the section of the profile where the program area (including any additional data for the measure) is discussed.

**National Data Sources:** The information in these two columns is drawn from two types of sources:

(1) EPA-managed databases of record for the national water program, such as PCS, the National Assessment Database, and the National TMDL Tracking System. NPDES authorities are responsible for populating PCS with required data elements and for assuring the quality of the data. EPA is working to phase in full use of NAD and NTTs as national databases.

(2) Other tracking information maintained by EPA Headquarters for program areas such as CAFOs, CSOs, and storm water.

The [definitions document](#) accompanying this Management Report provides a detailed definition of each data element in the National Data Sources columns.

**Additional Data:** These columns provide additional data in cases where information from other data sources differs from information in the National Data Sources column for reasons such as different timing of the data "snapshot." Additional data should generally adhere to the same narrative definitions as data in the National Data Sources, and should be derived using similar processes and criteria. Our goal is to work with the States on these discrepancies to ensure consistent and accurate reporting. A State contact is available who can respond to queries. The profiles discuss each additional data element.

**State Activities:** Information in these columns reflects activities conducted by the State program. (Shaded cells in these columns indicate that the work may not be entirely the State's responsibility, but a breakdown of the data into EPA and State responsibilities is unavailable.)

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# NPDES Management Report, Spring 2005

## Kansas

		Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data		
					State Activities	EPA Activities	State Activities	EPA Activities	
<b>Water Quality Progress</b>									
Universe	39	River/stream miles (3,419,857 total)	IV.2		n/a	133,956	n/a	23,731	
	40	Lake acres (27,775,301 total)	IV.2		n/a	188,487	n/a		
	41	Total # TMDLs in docket at end of FY 2003 (52,795 total)	IV.4		n/a	1,693	--		
	42	# TMDLs committed to in FY 2003 management agreement (2,435 total)	IV.4		n/a	190	0		
	43	# Watersheds (2,341 total)	IV.2		n/a	--	--		
Water Quality Administration	44	On-time Water Quality Standards (WQS) triennial review completed (42 States)	IV.3		n/a	Y	n/a		
	45	# WQS submissions that have not been fully acted on after 90 days (32 total)	IV.3	<25% submissions	n/a	n/a	0		
Water Quality Implementation	46	State is implementing a comprehensive monitoring strategy (Y/N) (TBD)	IV.1	all states 2005	--	--	--		
	47	% river/stream miles assessed for recreation	IV.2		13.8%	14.5%	n/a	81.6%	
	48	% river/stream miles assessed for aquatic life	IV.2		22.0%	14.6%	n/a	82.1%	
	49	% lake acres assessed for recreation	IV.2		49.4%	100.0%	n/a		
	50	% lake acres assessed for aquatic life	IV.2		48.5%	100.0%	n/a		
	51	# outstanding WQS disapprovals (23 total)	IV.3		n/a	2	n/a		
	52	WQS for E. coli or enterococci for coastal recreational waters (12 States)	IV.3	35 states 2008	n/a	n/a	n/a		
	53	WQS for nutrients or Nutrient Criteria Plan in place (13 States)	IV.3	25 states 2008	n/a	N	n/a		
	54	Cumulative # TMDLs completed through FY 2003 (10,807 total)	IV.4		n/a	1,430	--		
	55	# TMDLs completed in FY 2003 (2,929 total)	IV.4		n/a	104	0		
Environmental Outcomes	56	# TMDLs completed through FY 2003 that include at least one point source WLA (5,036 total)	IV.4		n/a	730	--		
	57	% Assessed river/stream miles impaired for swimming in 2000	IV.2		--	--	n/a		
	58	% Assessed lake acres impaired for swimming in 2000	IV.2		--	74.6%	n/a		
	59	# Watersheds in which at least 20% of the water segments have been assessed and, of those assessed, 80% or more are meeting WQS (440 total)	IV.2	600 2008	n/a	--	--		

### Explanation of Column Headers:

**Profile Section:** For each measure, this column lists the section of the profile where the program area (including any additional data for the measure) is discussed.

**National Data Sources:** The information in these two columns is drawn from two types of sources:

(1) EPA-managed databases of record for the national water program, such as PCS, the National Assessment Database, and the National TMDL Tracking System. NPDES authorities are responsible for populating PCS with required data elements and for assuring the quality of the data. EPA is working to phase in full use of NAD and NTTs as national databases.

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