

## 3.5 Offsite BMP Program<sup>1</sup>

Section 3.5 is written specifically for developers and owners of properties within the City that are subject to the 80% Total Suspended Solids (TSS) Removal performance standard and want to learn more about the Offsite Best Management Practice (BMP) Program to potentially avoid the construction of TSS Removal facilities onsite. This section is not intended for property owners who wish to implement TSS Removal BMPs on their land in order to provide sediment reductions.

More detailed information on the framework, costs and BMPs that comprise the Offsite BMP Program is provided in a technical report on the topic developed by Kansas State University and Vireo, entitled *Consultant Services for an Offsite BMP Evaluation Plan, Final Report to the Wichita Stormwater Advisory Board*. This technical report is available on the City's website: <http://www.wichita.gov/Government/Departments/PWU/Pages/Stormwater.aspx>.

### 3.5.1 Introduction

The Offsite BMP Program is a voluntary stormwater quality compliance alternative for developments in the City of Wichita that must meet the 80% TSS Removal performance standard. Owners of properties that participate in the Program elect to fund stormwater quality treatment offsite by paying a fee to support offsite BMPs that reduce sediment pollution instead of constructing onsite BMPs to the required standard. For the City, the goal of the Program is to maximize the economic efficiency by which the City meets its National Pollutant Discharge Elimination System (NPDES) stormwater permitting requirements while protecting water quality in the Little Arkansas River, the Arkansas River and other priority streams. For property owners, this program provides substantial flexibility to comply with the City's NPDES permit-mandated stormwater quality requirements.

Sediment is a significant pollutant in the City's rivers and streams. As a result, the City's post-construction stormwater quality control program focuses on the reduction of sediment via the indicator pollutant, TSS, through the implementation of the 80% TSS Removal performance standard that is described in Volume 2 of this Manual. Similarly, sediment serves as the basis of the Offsite BMP Program thus ensuring that the Program is a viable stormwater quality compliance alternative to the 80% TSS Removal standard.

Properties registered in the Program are not required to have onsite facilities to meet the 80% TSS Removal standard. Rather, the owner of these properties must purchase sediment "reductions" which provide continuous financial support for the implementation of offsite sediment removal or sedimentation prevention BMPs. Located in a priority watershed, these offsite BMPs control sediment by preventing sediment discharges to a priority river or stream, thus compensating for the absence of onsite BMPs. The advantage of the Offsite BMP Program to participating property owners is the ease of implementation. Namely, ***property owners are required only to register their***

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<sup>1</sup> Portions of text for section 3.5 were adapted from Moore et al, June 11<sup>th</sup> 2015.

***property(s) and pay the fee in perpetuity. They are NOT responsible for locating, designing, constructing, operating and maintaining TSS Removal BMPs either onsite or offsite.***

### **3.5.2 Key Definitions and Acronyms**

The following definitions are provided to help readers understand the basic framework of the Offsite BMP Program.

**Existing development** means a developed property that was designed and constructed after January 1, 2011 and therefore is subject to the City's post-construction water quality control requirements (i.e., section 16.32.091 of the City's stormwater management ordinance), namely, meeting the 80% TSS Removal performance standard. An existing development will have a construction plan that was approved by the City after January 1, 2011, which is the date when the City's post-construction water quality control requirements came into effect.

**KDHE** is an acronym for the Kansas Department of Health & Environment.

**New development** – See City Ordinance 16.32.

**Offsite BMP Program** means the voluntary stormwater quality compliance alternative for developments in the City of Wichita which allows owners of properties to provide stormwater quality treatment by paying a fee that will support the administration, operation and maintenance of sediment reduction BMPs located offsite and in a priority watershed.

**Offsite BMP Program fee** means the on-going financial compensation that owners of Registered Properties pay to participate in the Offsite BMP Program instead of implementing onsite controls to meet the 80% TSS Removal standard. Payment of the fee as compensation for the lack of onsite controls will occur in perpetuity or until it is shown that the Registered Property meets the 80% TSS Removal performance standard using BMPs installed onsite. Payment of the fee is the responsibility of the owner of the Registered Property. When the Registered Property is transferred, the fee becomes the responsibility of the subsequent property owner(s).

**Registered Property** means a new development, redevelopment or existing development located within the City of Wichita that is subject to the 80% TSS Removal performance standard, is (or will be) relying on the purchase of sediment reductions to comply with City stormwater quality requirements, and is (or will be) registered by the City in the Offsite BMP Program.

**Redevelopment** – See City Ordinance 16.32

**Sediment reduction** means the annual amount of sediment removed or retained by a sediment reduction BMP, in annual tons of sediment retained.

**Sediment reduction BMP** means a facility that is constructed, operated and maintained to reduce or remove TSS and is enrolled by WRAPS in the Offsite BMP Program, thus providing sediment reductions for one or more Registered Properties.

**TSS** is an acronym for Total Suspended Solids. When considering pollutant loads or concentrations, TSS is often used as an indicator or substitute for sediment.

**WRAPS** is an acronym for the Kansas Watershed Restoration and Protection Strategy. The WRAPS program is assisting the City with the administration and implementation of the Offsite BMP Program.

### 3.5.3 Program Roles and Responsibilities

The four entities that participate in the Offsite BMP Program are listed below. A summary of the responsibilities of the different entities that play a role in the Offsite BMP Program are shown in **Table 3-12**.

1. The **Owner of the Registered Property** is the property owner of a new development, redevelopment or existing development that is subject to the 80% TSS Removal performance standard, but is (or will be) relying on the purchase of sediment reductions to meet the City's stormwater quality requirements. For new developments, the owner of the Registered Property may be a developer.
2. The **City of Wichita** holds the NPDES permit for which the Offsite BMP Program is established. The City's administers the Program (with WRAPs), primarily overseeing the portion of the Program that deals with Registered Properties.
3. The **Owner of the Sediment Reduction BMP** is the owner of the sediment reduction (i.e., offsite) BMPs that are implemented, and have been enrolled by WRAPS, to provide sediment reductions for Registered Properties in the City. Typically, this will be the owner of the land where the BMP is located.
4. The **Kansas WRAPS program** and Kansas State University (KSU) partner with the City to administer the Offsite BMP Program, primarily overseeing the portion of the Program that deals with sediment reduction BMPs.

**Table 3-1. Responsibilities of Offsite BMP Program Entities**

<p><b>Owner of the Registered Property (this may be the developer of a new development)</b></p> <ul style="list-style-type: none"> <li>• Notify City of intent to participate in the Offsite BMP Program and provide documentation of the area(s) within the property to be registered as required in <b>Section 3.5.4</b> of this Manual.</li> <li>• Pay Offsite BMP Program fee, as required by Chapter 16.32 of City code.</li> </ul>
<p><b>The City of Wichita</b></p> <ul style="list-style-type: none"> <li>• Review the information provided by the property owner/developer for the Registered Property. Use this information to calculate the required sediment reduction and the fee.</li> <li>• Bill and collect the fee from the owner of the Registered Property.</li> <li>• Transfer payments to WRAPS to fund their role in the administration, implementation, operation, maintenance, documentation and reporting of the Offsite BMP Program.</li> </ul>
<p><b>WRAPS Program</b></p> <ul style="list-style-type: none"> <li>• Identify, prioritize and enroll Sediment Reduction Properties for participation in the Offsite BMP Program. Work with owners of Sediment Reduction Properties to implement sediment removal or sediment prevention BMPs.</li> <li>• Conduct field checks to ensure that sediment reduction BMPs are maintained and enroll replacement BMPs as needed.</li> <li>• Maintain sediment reduction/BMP database and sediment reductions benefits calculation.</li> <li>• Provide the City the required NPDES permit documentation for permit reporting.</li> </ul>
<p><b>Owner of the Sediment Reduction Property</b></p> <ul style="list-style-type: none"> <li>• Implement, operate, protect and maintain offsite sediment removal or retention BMPs in accordance with the terms of their enrollment with the WRAPS program.</li> </ul>

### 3.5.4 Registering for the Program

#### 3.5.4.1 Eligibility

Any property in the City of Wichita is eligible to become a Registered Property in the Offsite BMP Program. The Program primarily targets new developments, redevelopments or existing developments that are subject to the City’s 80% TSS Removal performance standard as required by Chapter 16.32 of City code.

It is important to note that participation in the Offsite BMP Program ***does not*** relieve the owner of the Registered Property from compliance with post-construction water quantity control requirements outlined in City Ordinance 16.32 (i.e., peak discharge control of the 2-, 5-, 10-, 25- and 100-year return frequency, 24-hour duration storm events).

#### 3.5.4.2 Registration

**New Developments and Redevelopments:** Property owners of new developments or redevelopments who wish to register their property (or portions of their property) in the

Offsite BMP Program shall indicate this intent on the Drainage Plan Cover Sheet with a note stating that the property owner elects to participate in the offsite BMP program.

**Existing Developments:** Property owners, or their acting agent, of existing developments who wish to register their property (or portions of their property) in the Offsite BMP Program shall contact the City Stormwater Management Utility for enrollment.

### **3.5.5 The Offsite BMP Program Fee**

The Offsite BMP Program fee supports the administration, operation and maintenance of sediment reduction BMPs, thus ensuring an overall reduction in sediment loading within the watershed. The fee is used to compensate the Kansas WRAPS program, which serves as the primary administrative entity for the offsite BMP and sediment reduction balancing portions of the Program.

#### **3.5.5.1 Billing and Payment**

In accordance with City Ordinance 16.32, participation in the Offsite BMP Program requires payment of an Offsite BMP Program fee in perpetuity. The fee is billed and collected as a separate line item on the standard utility bill for the Registered Property. Failure to pay the fee will result in payment collections and/or enforcement actions as provided for in the ordinance. Enforcement may include removal from the Offsite BMP Program and retrofitting of the site with appropriate stormwater quality controls to meet City stormwater quality performance standards.

The responsibility for payment of the fee lies with the owner of the Registered Property. However actual payment can be made by someone other than the owner, such as the person(s) typically responsible for utility bill payment (e.g., an occupant or lessee). The fee transfers with the property and therefore becomes the responsibility of the subsequent property owner(s) or designee(s) after a property transfer.

#### **3.5.5.2 Fee Changes or Elimination**

Once a property is registered, the Offsite BMP Program fee calculated by the City is established within the billing system. The amount of the fee remains fixed unless or until:

- the fee is no longer valid for the property as the result of installation of onsite TSS Removal BMPs that meet the performance standards of City Ordinance 16.32, thus eliminating the need for continued purchase of sediment reductions;
- the fee requires recalculation as a result of property redevelopment, grading or other modifications that result in drainage area changes, potentially changing the amount of sediment reduction that must be purchased.

While the City may become aware of either of the above situations through the City's normal land development process, changes on a Registered Property that warrant

elimination or recalculation of the fee could occur without the City's knowledge. Therefore, **it is the responsibility of the owner of the Registered Property to advise the City of conditions that may be cause to recalculate or eliminate the Offsite BMP Program fee.** The City will not reimburse overpayments by the owner of a Registered Property who has failed to advise the City of the need for fee modification or elimination.

Alternately, the City may examine the validity of an Offsite BMP Program fee for any Registered Property at any time to ensure the property conditions remain valid for the established fee.

Requests for fee recalculation or elimination by the owner of a Registered Property must be provided to the City Stormwater Management Utility in writing. The following supporting documentation must accompany the written request:

- A narrative describing the need for recalculation or elimination of the fee;
- *For fee recalculation requests*, submit an engineering drawing to scale that shows the contributing area from the Registered Property that drains into the City's MS4 permit area.
- *For fee elimination requests*, provide engineering drawings (to scale) and associated specifications and calculations which show that the City's stormwater quality management requirements are being met on the property. The fee will not be eliminated until the property is in compliance with these requirements.

### **3.5.5.3 Fee Calculation**

The City will calculate the Offsite BMP Program fee for the Registered Property based on information provided in the drainage plan (described below) and will advise the Registered Property owner of the fee amount. Owners of Registered Properties are encouraged to contact the City's Stormwater Management Utility if additional information is needed to understand the fee calculation.

**New Developments and Existing Developments:** The Offsite BMP Program fee for new developments and existing developments shall be calculated using the *total contributing area* of the Registered Property. The *total contributing area* shall be determined by adding 100% of the pervious area and 100% of the impervious area on the Property that discharges into the City's MS4 permit area.

**Redevelopments:** The Offsite BMP Program fee for redevelopments shall be calculated using the *redeveloped contributing area* of the Registered Property. The *redeveloped contributing area* shall be determined by adding 100% of the pervious area, 30% of the existing impervious area and 100% of the new impervious area of the Property that discharges into the City's MS4 permit area.

### **3.5.6 Program Coordination and Administration**

The City and the Kansas WRAPS program have established a partnership to administer the Offsite BMP Program. This partnership greatly enhances the Program as a viable option to developers and property owners that are subject to City stormwater quality requirements because WRAPS alleviates the responsibilities of design, construction and maintenance of 80% TSS Removal facilities, while the City provides an easy property registration and fee payment process. From the perspective of the owner of the Registered Property, the City's land development process is nearly the same, with no adverse impact on the time or effort it takes to produce, submit and review drainage plans.

The partnership between the City and WRAPS is organized in a manner that eliminates the need for interaction between the owner or developer of the Registered Property and the owner of the sediment reduction BMP. On one hand, The City routinely interacts with developers and property owners through its land development process, therefore it administers the program for Registered Properties. On the other hand, WRAPS is uniquely suited for communication and networking with large landowners who can potentially implement BMPs. With the involvement of both the City and WRAPS, the owners of Registered Properties typically will not have knowledge of the sediment reduction BMPs that are being used to compensate for the lack of TSS removal controls at their property. Similarly, BMP owners typically will not know the Registered Properties for which their BMPs provide reductions.

The primary role of the WRAPS program is to establish, operate and maintain a sufficient bank of sediment reductions from BMPs to exceed the demand for reductions by owners of Registered Properties in Wichita. This role supports the City in meeting the compliance requirements of KDHE for the Offsite BMP Program. WRAPS typically does not interact with Registered Property owners. Rather, services provided by the WRAPS include building and maintaining a "front-loaded" sediment reduction bank, enrolling and coordinating sediment reduction BMP owners and BMPs, inspecting BMP operation and management, and providing reporting and documentation activities to meet the City's permit requirements. WRAPS is paid by the City for these services through funds obtained from the Offsite BMP Program fee.