

**Oklahoma Department of Environmental Quality  
Water Quality Division**

**OPDES Multi-Sector General Permit OKR05  
for Stormwater Discharges from Industrial Activity  
within the State of Oklahoma**

**DEQ Responses to Public Comments**

**June 5, 2017**



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The Oklahoma Department of Environmental Quality (DEQ) published a notice in The Journal Record, a daily business and legal newspaper, on April 3, 2017 regarding the draft 2017 Multi-Sector General Permit OKR05 for Stormwater Discharges from Industrial Activity within the State of Oklahoma pursuant to Oklahoma Pollutant Discharge Elimination System (OPDES) Act, Title 27A O.S. § 2-14-305 et seq. and the Oklahoma Administrative Code (OAC) 252:004 and 252:606, the rules of the DEQ and made it available for public review and comment. The public review period ended at 4:30 p.m. on May 2, 2017. DEQ also conducted a public meeting for the draft 2017 OKR05 Permit on May 2, 2017. During the public review period DEQ received written comments concerning the draft 2017 OKR05 permit.

DEQ reviewed the comments and prepared the following responses and several changes were made in the draft 2017 OKR05 permit in response to the comments received. The DEQ's responses to comments were sent to all individuals/entities that submitted comments during 30-day public review period. The permit will become effective on July 5, 2017. This will be the DEQ's final permit decision. A summary of the comments, DEQ's responses, and changes made to the draft 2017 permit after the public review are listed below.

A copy of the final permit, fact sheet, and responses to comments are available on DEQ's website at <http://www.deq.state.ok.us/WQDnew/stormwater/index.html>.

## DEQ's Responses to Comments

### Part 2: Notice of Intent Requirements

**Comments from American Electric Power:** In Part 2.2 - Applicable Deadlines for submitting NOI, DEQ states in Table 2-1 "Deadlines for NOI Submittal", that affected facilities must submit their NOI for coverage within 90 days from the effective date of the permit. AEP/PSO is opposed to this language because, the MSGP also states the SWP3 for facilities located in sensitive waterbodies or watersheds with approved TMDLs, or a watershed plan has been prepared for that watershed, must submit their SWP3 for approval prior to submitting the facility's NOI. Because of this language, AEP/PSO believes affected facilities will not have sufficient time to revise and obtain approval for their SWP3 from DEQ before the 90-day window expires. Therefore, AEP/PSO requests the effective date of the permit be changed to 180 days after the permit becomes final.

**DEQ Response:** If you are an existing permittee/facility/applicant, the OKR05 permit requires you to submit your NOI within 90 days from the effective date of OKR05 General Permit. If your facility is located along a sensitive waterbody or within a watershed with an approved TMDL or watershed plan, you must also submit your SWP3 to DEQ for review. While the permit requires you to develop and implement your SWP3 prior to submitting your NOI, it doesn't require you to submit your SWP3 for approval prior to NOI submittal. Instead, as long as you update/revise and implement your SWP3 in accordance with the new 2017 OKR05 permit and submit a copy to DEQ along with a complete and accurate NOI and applicable fees, you are in compliance with the application process. If you are an existing facility, you will be updating/revising your existing SWP3 rather than creating a new SWP3 from scratch and DEQ believes that 90 days is sufficient time to do so and apply for permit coverage. The 90-day NOI submittal deadline is continued from the previous permit and facilities have been able to comply with this deadline in the past. As a result, the 90-day submittal deadline has not been changed in the final 2017 OKR05 permit. However, Section 1.9.5 of the final permit has been revised to clarify that you must "Submit a copy of your SWP3 along with your NOI to DEQ...."

**Comments from Dolese:** Page 18, 2.2 Application Deadlines for Submitting NOI, this section states that new operations must submit an NOI (Notice of Intent) at least 30 days prior to operation of the facility. The 30-day lead time requirement is impractical for the construction industry because of the fast-paced nature of our business. The OKG11MT permit for mobile concrete batch plants allows these plants to be set up on a

new site with a 7-day notice. Additionally, Texas requires only a 7-day advance notification for new operations, and Louisiana, only 2 days. We recommend that the advance notification period for the NOI to be changed to 7 days or less. If this is not done, then we recommend that OKR05 language be modified to specify that exceptions to the 30-day requirement can be made.

**DEQ Response:** DEQ partially concurs. It typically takes DEQ 10-14 days to review and approve an NOI when DEQ review of the SWP3 is not required; longer when DEQ review of the SWP3 is required. DEQ has therefore revised the application deadlines for new operations to require that “An NOI must be submitted to DEQ at least **14 days** prior to operation, or at least **30 days** prior to operation if the facility is located within a corridor/area of Federal and State sensitive waters and watersheds or located in a watershed with an approved TMDL report or watershed plan in lieu of a TMDL.” In cases where there will be urgency, you may contact DEQ to request an expedited approval. And DEQ will work with you to complete the review and approval process as quickly as possible. In all cases, you must still receive authorization from DEQ prior to commencing operation of the facility.

### **Part 3: Control Measures and Effluent Limits**

**Comments from the City of Oklahoma City (OKC):** page 22, section 3.1.2.1- Minimizing Exposure, store leaky vehicles and equipment indoors or, if stored outdoors, use drip pans and absorbents; OKC’s modification recommendation, store leaky vehicles and equipment indoors or, if stored outdoors, use well maintained drip pans and absorbents.

**DEQ Response:** DEQ concurs with OKC’s recommendation and changes have been made in Part 3.1.2.1 of the final 2017 OKR05 permit to include the proposed language.

**Comments from American Electric Power:** Section 3.1.2.3 - Preventative Maintenance, this section contains a requirement which states that if a facility is not able to complete repairs, maintenance, or replacement of ineffective stormwater controls within 14 days of discovery, the facility must notify DEQ that additional time will be necessary to complete work on the controls. AEP/PSO believes this notification is burdensome and unnecessary, and requests this language be removed from the final permit.

**DEQ Response:** A simple email or brief letter to DEQ will be sufficient for this type of notification. DEQ doesn’t anticipate that sending such notification will be burdensome for the permittee. Such notification to DEQ regarding failure to complete repairs, maintenance, or replacement of ineffective stormwater controls within 14 days of discovery will help to avoid any non-compliance with the permit or confusion on the part of DEQ, EPA or MS4 inspectors. , In addition, such notification to DEQ should, in most cases, result in timely implementation of repairs or modifications and pollution prevention, and ensure that the conditions prompting the need for these repairs and improvements are not allowed to persist indefinitely. No changes have been made in the final 2017 OKR05 permit in response to this comment.

### **Part 4: Stormwater Pollution Prevention Plan**

**Comments from Dolese:** Page 30, 4.2.2 Site Description, Receiving Waterbody, this section states that each outfall must be identified by unique 3-digit identification. Since the inception of the storm water program, storm water outfalls have been identified with 2-digit numbers. The expense of materials and time involved to re-identify all outfalls to add an additional digit (new sign markers, site map identification, and SWP3 references) would be significant. Also, there is no logical reason for using a 3-digit ID since it is unlikely that any facility in the state has more than 99 storm water outfalls. We recommend that the OKROS maintains the system that has been in use for over 20 years of 2-digit enumeration for storm water outfall identification.

**DEQ Response:** DEQ's previous stormwater general permits didn't have any specific designation requirements for stormwater outfalls. However, EPA and DEQ have been using the unique 3-digit ID numbers for industrial and municipal wastewater outfall identification for many years. EPA introduced use of the unique 3-digit ID number for stormwater discharge outfalls in EPA's 2015 MSGP. For consistency and simplification, as well as to comply with federal e-reporting requirements, DEQ is also adopting the unique 3-digit ID number for stormwater discharge outfalls in the 2017 OKR05 permit. If your facility already has permanent signs or markers at the outfall locations, you may cross-reference those designations in the SWP3 for clarification and to avoid any confusion. You are not required to replace those permanent signs or markers with new markers. However, you are required to use the 3-digit ID numbers when you submit NOI, DMRs and other related documents to DEQ. No changes have been made in the final 2017 OKR05 permit in response to this comment.

**Comments from American Electric Power:** Section 4.2.4 - Description of Stormwater Controls to Meet Technology-Based and Water Quality-Based Effluent Limits, The language in this section specifically requires facilities meet technology and water-quality based effluent limits at the stormwater discharge outfalls. In order to meet these requirements, facilities may be required to install weirs or similar equipment to obtain valid analytical data for comparison with the applicable effluent limits. Because of the costs involved, AEP/PSO requests the language be removed from the permit.

**DEQ Response:** The expired 2011 OKR05 included the requirements that all permittees covered by the permit must meet non-numeric effluent limitations and applicable numeric effluent limitations in the stormwater discharges associated with industrial activities. It also included water quality-based effluent limitations which stated that the permittee's discharge of stormwater must not cause or have the reasonable potential to cause or contribute to violation of water quality standards. Therefore, the statement/language in the current permit to meet non-numeric effluent limitations and applicable numeric effluent limitations is not a new requirement. Furthermore, this permit doesn't require any additional or new numeric effluent limitations which will require a permittee to install weirs or similar equipment to obtain valid analytical data for comparison with the applicable effluent limits. No changes have been made in the final 2017 OKR05 permit in response to this comment.

**Comments from the City of Oklahoma City (OKC):** Page 32, Section 4.2.3.4, "For flows from emergency firefighting activities, you must include an evaluation regarding potential releases of pollutants from the scene and measures to reduce such pollutant releases to minimize the impact on water quality and to ensure public health and safety." OKC's modification recommendation, "For flows from emergency firefighting activities, you must include an evaluation regarding potential releases of pollutants from the scene and measures that will be taken by the permittee, as soon as practicable, to reduce any such pollutant releases to avoid or minimize the impact on water quality and to ensure public health and safety."

**DEQ Response:** DEQ concurs with OKC's recommendation and changes have been made in Part 4.2.3.4 of the final 2017 OKR05 permit to include the proposed language.

**Comments from Dolese:** Page 33, 4.2.3.8 - Sampling Data, this section states that we must include a brief summary of all storm water discharge sampling data collected at the facility during 3 years prior to the date of the submission of an NOI, and include it in the SWP3. All storm water discharge sampling data is already required to be included in the SWP3, as well as the ACSCER summary of data and findings, for at least 3 years. Summarizing this existing data is redundant and unnecessary. We recommend that this summary requirement for existing facilities is removed from the OKR05.

**DEQ Response:** Summarizing the prior 3 years of data under Part 4.2.3.8 is not duplicative. This summary will help the facility and the inspectors to compare the current state of the facility's compliance with the permit against compliance with the previous permit, to assess whether stormwater quality has

improved or gotten worse from one permit cycle to the next. No changes have been made in the final 2017 OKR05 permit in response to this comment.

**Comments from Dolese:** Page 37, 4.4 - SWP3 Availability, A portion of this section states that the SWP3 must be made available to the public. We are opposed to this provision for the following reasons: 1) the public does not have access to our facilities, for purposes including safety and security. 2) Any citizen suspecting a storm water violation or problem should work through the appropriate regulatory agency to resolve their potential concerns. 3) Any potential storm water violations should be apparent from the perimeter of the facility, based on the quality of the storm water observed. Citizens are always welcome to contact us to discuss and resolve any potential problems. 4) We consider our SWP3s to be our confidential and proprietary property. These plans are very expensive and time-consuming to create, and we do not publish them in the public domain. We do not want our plans plagiarized or duplicated by others. We agree with transparency but strongly oppose mandatory public access to our plans or facilities.

**DEQ Response:** Based on the comments, Part 4.4 of the OKR05 permit is revised to no longer require the SWP3 to be made available to the public. The revised language states that DEQ encourages you to make your SWP3 available to the public for viewing in any accessible format during normal business hours. This could include making a copy physically available at the facility and/or electronically available on the company web site.

## **Part 6: Corrective Actions**

**Comments from American Electric Power:** Section 6.3.1- Immediate Actions, New language in this section indicates a facility must take immediate actions to correct ineffective stormwater controls that may allow pollutants to be discharged in stormwater discharges. Additional language does recognize that initiation of corrective actions may not occur. Because the potential problem may have been discovered, "too late in the work day" to initiate those activities. AEP/PSO is opposed to this new requirement because it is very subjective to interpretation. AEP/PSO, instead, suggest that language in the permit be changed to mirror language used in OKR 10 to state that "immediately" means "as soon as practicable, but no later than the end of the next work day" following the day the problem has been identified.

**DEQ Response:** The nature and characteristics of stormwater discharges from an industrial activity are completely different from a construction activity. The definition of "immediately" included in Part 6.3.1 states that *if a problem is identified at a time in the work day when it is too late to initiate corrective action, the initiation of corrective action must begin no later than the following work day.* This language is no more subjective than "as soon as practicable," and allows a permittee to take adequate and appropriate corrective action no later than the end of the next work day in the event of late detection. No changes have been made in the final 2017 OKR05 permit in response to this comment.

## **Part 7: Monitoring Requirements**

**Comments from American Electric Power:** Section 7.2.1.1-Quarterly Visual Monitoring Procedures, Table 7-1 "Visual Monitoring of Stormwater Discharges" indicates that stormwater samples should be collected quarterly and held longer than 24 hours to evaluate Settled Solids. AEP/PSO believes the requirement for holding a sample for 24 hours for evaluation would not provide useful data for facility management to establish effective stormwater controls at outfalls. Therefore, AEP/PSO requests this requirement be removed from the final permit.

**DEQ Response:** Observations shall be made for settled solids after allowing the sample to sit for sufficient time to obtain an effective result. Once the sample has settled, you should then note the type and size of materials that are settled at the bottom of the bottle. Based on the EPA guidance document for stormwater

sampling and monitoring, the settled solid measurement time has been revised to “after at least 60 minutes” instead of “after 24 hours” in the final 2017 OKR05 permit.

**Comments from Timber Creek:** Automated samples can be a valuable asset & can facilitate sample collection within 30 minutes when manual sampling is not practicable or possible. Provided they are not precluded from use. However, visual analysis of sample within 30 minutes after collecting it places an unnecessary burden on permittees. The quarter visual analysis has no time sensitive parameters that mandate visual analysis within 30 minutes. For many operators, the operational tempo increases during storm events requiring their attention and time on often issues. A sample collected, capped and placed in the refrigerator or on ice can be analyzed for the visual parameters at any point afterwards. (Foam may be an exception but will likely be noted at collection). We recommend the following language for 7.2.1.1 must be made during day light hours (e.g. normal working hours) – on a sample collected in a clean, colorless glass or plastic container and examined in a well-lit area after collecting it.

**DEQ Response:** The purpose of the visual sampling and monitoring is not only to collect the physical samples at the discharge locations/outfalls, but also to visually inspect the discharge for anything unusual in the discharge or at the outfall. In addition, it is important to make a note of anything you observe at the discharge location that might influence the sample results. Without a physical presence, you will miss the visual observations of the discharges. That is why DEQ doesn't recommend the use of an automatic sampler. However, in case of unsafe sampling locations, or a facility with several sampling locations, automatic samplers may be used to collect samples within the first 30 minutes, triggered by the measurable storm event. Such conditions must be documented in the SWP3.

Foam, odor, and clarity generally fade away over time. If the collected sample has not been examined within the required time, the observations will not provide an accurate result. Therefore, conducting a visual assessment within the shortest possible time is preferred. However, the required assessment time has been revised with the following requirement in consultation with DEQ's laboratory personnel: perform visual observations as soon as possible, but no later than 60 minutes (except as noted in Table 7-1 below) after collecting it.

**Comments from American Electric Power:** Section 7.2.3.1-Discharges to Impaired Waters Monitoring, New language in this section states that facilities discharging stormwater to an impaired waterbody, or a waterbody with an established TMDL, or for which a watershed plan has been prepared, must collect stormwater samples for applicable analyses. AEP/PSO believes this language should be modified to state that should a facility discharge to an impaired waterbody, facility management may self-certify the pollutant of concern for the impaired waterbody is not present onsite, and is not required to provide additional data and/or studies for the pollutants of concern." Additional language in this section states: "No monitoring is required when a waterbody's biological communities are impaired, but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment, or when a waterbody's impairment is related to hydrologic modifications, impaired hydrology, or other non-pollutant. Permittees should consult with DEQ for any available guidance regarding required monitoring parameters under this part."

Further clarification is needed by DEQ regarding this language. The permit has not established any context for the use of the phrase "a waterbody's biological communities" leaving it open for interpretation. Further, the permit does not clarify how DEQ could determine if a waterbody meets the conditions outlined in this section and, therefore, would make it impossible to determine situations where monitoring would be applicable.

**DEQ Response:** In order to discharge stormwater to impaired waters without an approved or established TMDL, annual monitoring is required for all pollutant(s) causing the impairment, or their surrogate(s). Following the first year, impaired waters monitoring is no longer required if the pollutant of concern is not detected and is not expected to be present in the discharge, or is detected but it is

determined that the pollutant's presence is caused solely by the natural background levels. Self-certification is not enough to replace the testing requirement to determine the presence of a pollutant in the stormwater discharges from industrial activity.

However, DEQ concurs with the comment regarding the use of the phrase "a waterbody's biological communities." Based on this comment, the language regarding "a waterbody's biological communities" has been revised to provide context and clarifying examples, as follows: "...when a waterbody's biological communities are impaired (i.e., when a waterbody is listed on the 303(d) list as impaired based on fishes bio-assessments, macroinvertebrate bio-assessments, or other biological criteria), but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment,..."

**Comments from Dolese:** These sections state a requirement for permittees to sample discharge waters for parameters known to be present in nearby impaired waters. However, the parameters causing the impairments may oftentimes not be present at the discharging facility. Individual sectors already specify parameters of concern for each industry; therefore there should not be an additional requirement to test for parameters that are not present at that particular operation. For instance, potential pollutants at limestone mining operations do not include Bacteria; therefore sampling for Bacteria should not be required for these operations located within watersheds identified as impaired for Bacteria. If a parameter of concern for a particular sector is the one of the parameters causing the waters to be impaired, we certainly agree that discharge sampling analysis would be appropriate. We recommend that DEQ reconsider this requirement, which calls for excessive and irrelevant sampling; and modify it to include sampling parameters that are shared.

**DEQ Response:** As mentioned in the previous DEQ Response, following the first year, impaired waters monitoring is no longer required if the pollutant of concern is not detected and is not expected to be present in the discharge, or is detected but it is determined that the pollutant's presence is caused solely by the natural background levels. For example, bacteria are not expected to be present in the stormwater discharges from limestone mining operations. However, the presence of a septic system or portable toilets at a limestone mining facility can cause bacteria to be present in the stormwater discharge. Effluent limitation guidelines (ELGs) are applicable to only certain pollutants for only 9 sectors out of 29 different sectors. The list of parameters included in the ELGs may not be the only pollutants possibly present in the stormwater discharges.

When developing TMDLs, DEQ evaluates contributions from upstream segments and contributing waterbodies. In some instances, upstream sources may be identified as a contributor to impairment. Stormwater discharges to impaired waters monitoring will help DEQ to identify such sources. Where DEQ has reason to believe that permitted facilities have the potential to cause or contribute to impairment in downstream waters, DEQ may require them to perform additional monitoring and/or adopt additional control measures to address the potential contribution to the impairment. The permittee must notify DEQ if they determine that they can discontinue impaired stream monitoring. No changes have been made in the final 2017 OKR05 permit in response to this comment.

**Comments from OG&E: Part 7.2.3 - Discharges to Impaired Waters Monitoring**

a. Verification of Impaired Waters, OG&E supports the monitoring for storm water discharges to impaired waters which could result in narrowing the scope and agency resource burden in development of total maximum daily load (TMDLs) however, OG&E believes that it is prudent for DEQ to provide permit holders that will be affected by this new monitoring requirement with current, and confirmed 303(d) listing justifications. Timely and appropriate validations of the impaired waters listing is important so as to not unnecessarily burden state and regulated industry resources or, drive unnecessary compliance requirements or, unnecessarily foreclose new development, the cost of which is ultimately borne by customers. There should also be a mechanism in place to ensure that when an impaired water body is delisted, the monitoring

requirement is withdrawn or when a TMDL is completed for the listed pollutant that the monitoring requirement be adjusted accordingly.

b. **Consistency & Efficiency in the Use of Monitoring Data**, Permit holders are currently required to monitor and test discharges for pollutants with standard analytical methods in accordance with EPA guidelines as described in 40 CFR Part 136 . As a result, monitoring data currently exists for many impaired stream listings that are readily and publicly accessible in several databases including the Environmental Protection Agency's (EPA) STORET database, Oklahoma Water Resources Board's (OWRB) interactive database and the United States Geological Survey's (USGS) database. The use of readily available data will help verify the current condition of suspected impaired waters thereby reducing resource burdens and unnecessary permitting and compliance issues. There are however some impaired waters listings that have been listed for many years with no available supporting data. Coon Creek (WBID OK520710010030\_00) is an example of such an impairment listing, for the pesticide Chlorpyrifos, listed in 2002 Integrated Report.

c. **Appropriate Timing and Monitoring Requirements**, Section 7.2.3.1 of the proposal describes an example regarding the requirement to monitor outfalls that discharge to turbidity-impaired water bodies. OG&E supports the concern regarding turbidity; however, the current turbidity monitoring standard is designed to identify turbidity pollution from sources other than natural conditions and as such is assessed as a seasonal base flow measurement. It is not appropriate then to monitor turbidity or total suspended solids (TSS) during a runoff event, for which there is no statewide standard or use support assessment protocol for high flow events which occur during such runoff events. Appropriate monitoring requirements which are commensurate to the conditions being monitoring in, are critical to the development, and accurate assessment of water quality and the prevention of unnecessary compliance requirements which are ultimately borne by our customers and communities.

**DEQ Response:** OG&E's comments regarding validation, consistency and appropriateness of impaired waters are outside the scope of this permit. The assessment of impaired waters is not within DEQ's jurisdiction. The Oklahoma Water Resources Board (OWRB) and Oklahoma Conservation Commission (OCC) are the responsible agencies for collecting and assessing the sample data based on Water Quality Standards in OAC 785:45 and OAC 785:46.

The 303(d) lists of impaired waters are reviewed every 2 years and public comments are collected before finalizing the lists. If a receiving waterbody is impaired, DEQ must follow the rules based on the receiving waterbody's status. OG&E may make comments on the 303(d) listing of specific waterbodies, if they have any, at the time of the upcoming 2016 Integrated Report's (IR) public comment period. All waterbodies in the Integrated Report are assessed by OWRB and OCC. When they assess the waterbody, they use their collected data as well as other agency's available data, such as data from USGS. Once waterbodies are listed as impaired, they will remain on the list until they meet the applicable water quality standards.

Turbidity standards are only applied for base flow (75% flow or lower), excluding high flow. However, that does not exclude all runoff. Additionally, OAC 785-45-12(8) states that "Concentrations of loads of suspended or bedded sediments that are caused by human activity shall not impair the Fish and Wildlife Propagation use or any subcategory thereof." TSS is used as a surrogate for Turbidity. Stormwater monitoring should be applied to meet the applicable water quality standards and stormwater requirements. No changes have been made in the final 2017 OKR05 permit in response to this comment.

**Comments from Poultry Federation:** Section 7.2.3.1 of the draft permit collectively to require dischargers within one mile of an impaired receiving water body on the 303(d) list not meeting an applicable water quality standard to monitor, once per year, all pollutants for which the water body is impaired and for which a standard analytical method exists, at each outfall discharging storm water to impaired waters without an established TMDL or watershed plan in lieu of a TMDL. However, if Section 7.2.3.1 is read alone, it can be interpreted to require all dischargers in a watershed to sample for the pollutants causing the impairment.

The Poultry Federation respectfully requests DEQ to clarify the provisions of Section 7.2.3.1 only apply to dischargers within one mile of an impaired receiving water body. Were this not the intention of the DEQ, the Poultry Federation would be opposed to the final permit and would respectfully request the DEQ to re-evaluate their position on this issue. The Poultry Federation believes having dischargers identify potential sources of pollutants and implement Best Management Practices to address pollutants at their source most successfully and efficiently achieves the protection of water quality. Clarification of Section 7.2.3.1's scope and application will provide certainty for those coming under its reach while protecting the safety and integrity of Oklahoma's environmental resources.

**DEQ Response:** Part 3.2.2 of OKR05 permit clearly states that you are considered to discharge to an impaired water if your facility or discharge point is located within 1 mile of a receiving water body which is identified by DEQ on the 303(d) list as not meeting an applicable water quality standard. If a facility is not located within 1 mile of a receiving water body or if a facility is located within 1 mile of an impaired receiving water body but is located in a different watershed, then the facility will not be required to monitor for the pollutant in their discharge(s) of stormwater. The provisions of Section 7.2.3.1 only apply to dischargers within 1 mile of an impaired receiving water body, not all the facilities located in the watershed of an impaired water. To clarify this, a footnote has been added to the heading for Part 7.2.3 cross-referencing Part 3.2.2 for the definition of discharge to impaired waters.

**Comments from Amelia Hudson:** Please clarify when impaired waters monitoring is required. Substantially identical outfalls – if the permittee goes through the process of determining two or more outfalls are substantially identical, why is sampling all outfalls on a rotating basis necessary? What is the intent of allowing for substantially identical outfalls, if not for lessening the burden of sampling at multiple outfalls? For permittees who elect to install automatic samplers this creates an additional burden.

**DEQ Response:** Impaired waters monitoring is required when the discharge is to an impaired stream or within 1 mile of the impaired stream. As noted in the previous DEQ Response, this is clearly stated in Part 3.2.2 of the OKR05 permit, and a cross-referencing footnote has been added to the heading for Part 7.2.3.

Part 4.2.5.4 of the OKR05 permit includes specific protocols to follow in determining substantially identical outfalls. If the facility has two or more discharge points that discharge substantially identical stormwater effluents, then the facility may conduct monitoring on just one of the discharge points and the results also apply to the other substantially identical discharge points. The permittee documents the determination of substantially identical discharge points in the SWP3. The rotating basis of sampling for visual monitoring will provide evidence to confirm whether the identified outfalls are substantially identical.

As mentioned in a previous DEQ Response, the purpose of the visual sampling and monitoring is not only to collect physical samples at the discharge locations/outfalls, but also to visually inspect the discharge for anything unusual in the discharge or at the outfall. Without a physical presence, you will miss the visual observations of the discharges. That is why DEQ doesn't recommend the use of an automatic sampler.

## **Part 11: Sector-Specific Requirements**

**Comments from General Electric:** Sector I: "Stormwater discharges from Oil Field Service Maintenance Yards not elsewhere classified, identified under SIC Code 1389, are also under DEQ jurisdiction. Operators/owners with stormwater discharges from oil field service maintenance yards must submit an NOI to DEQ for authorization." GE submits that the above paragraph will create confusion because it apparently introduces a new concept of "Oil Field Service Maintenance Yards" as a subset of facilities classified under SIC Code 1389, without providing a definition. We recommend that DEQ strike the above paragraph in order to maintain an approach consistent with the majority of states relying on SIC Codes for permit applicability determinations such that all facilities within SIC Code 1389 would be treated the same. Should DEQ not decide to adopt this approach, then a definition of "Oil Field Service Maintenance Yards" should be included

that makes it clear this subset of SIC Code 1389 is intended to cover only those locations with potential exposure of industrial activities to stormwater due to outdoor maintenance activity. The cited paragraph should be stricken.

The U.S.EPA Industrial Stormwater regulations adopted SIC Codes as the standard for determining permit applicability because SIC Codes were "commonly used and accepted" standards that were "generally used and understood." 55 Fed.Reg.47990, 48010 (Nov. 16, 1990). SIC Code 1389 is defined as "Oil and Gas Field Services. Not Elsewhere Classified." DEQ's reference to "Oil Field Service Maintenance Yards, therefore, appears to be a subset of SIC Code 1389. The federal rules and the rules of most states that follow the federal approach, facilitate compliance on the part of the regulated community because they rely on the SIC Code system - a system that businesses already utilize for tax and financial reporting purposes -- to determine permit applicability. GE believes that creating a subset of SIC Code 1389 that is treated differently for permitting purposes will only create confusion and additional compliance burden for the regulated community. Therefore, we submit that the cited paragraph above should be stricken and all facilities under SIC Code 1389 should be treated the same, consistent with many other states in which GE operates.

Alternatively, DEQ should adopt a definition of "Oil Field Service Maintenance Yards." Should the Department decide not to follow this approach, then a definition of "Oil Field Service Maintenance Yards" should be included in the permit. As DEQ is no doubt aware, many facilities classified under SIC Code 1389 serve as a base of operations for oilfield service activity. These facilities often have minimal or no industrial activity at the facility itself, because the oilfield service activity that requires classification under SIC Code 1389 takes place offsite at a customer location. These facilities often serve as locations out of which to conduct employee meetings and training, store equipment and vehicles, and in some cases perform maintenance on equipment. By including the term "maintenance yards," DEQ rightly appears to be focused on those locations that conduct maintenance in an outdoor location. GE agrees that facilities that do not have such activity, e.g., those that only serve as meeting and storage locations should be excluded. GE submits "Oil Field Service Maintenance Yards" should be defined as facilities with potential exposure of stormwater to industrial activities due to outdoor maintenance activity.

**DEQ Response:** Under Oklahoma Statutes, environmental jurisdiction over facilities classified under SIC Code 1389 is split between the Oklahoma Corporation Commission (OCC) and DEQ. OCC has jurisdiction for most activities of oil field service companies handling exempted wastes. However, wastewater discharges from oil field service maintenance yards, including total retention ponds, are regulated by the DEQ. Oil field service maintenance yards are also subject to DEQ stormwater construction and stormwater operation permitting requirements. DEQ agrees that additional clarification regarding the subset of SIC 1389 facilities requiring authorization under the OKR05 permit needs clarification. Based on this comment, Tables 1-2 and 1-3 and Sector I of the final OKR05 permit have been revised to clarify that only a subset of facilities classified under SIC Code 1389, specifically Oil Field Service Maintenance Yards, are subject to DEQ authority for stormwater permitting. All other facilities classified under SIC Code 1389 are subject to EPA authority for stormwater permitting. A definition of "Oil Field Service Maintenance Yards" has also been added to Sector I: *Oil Field Service Maintenance Yards* are facilities which serve as a base for oil field service operations (operations which provide services to the [petroleum exploration](#) and [production](#) industry but do not typically produce petroleum themselves) and at which equipment maintenance is performed outdoors. If your maintenance yard and associated activities are not exposed to stormwater (i.e., all maintenance activities are conducted indoors or under cover), and all of your responses to the 11 questions in Section III of the NEC form are "No", you may qualify for No Exposure Certification and you don't have to prepare a SWP3 for your maintenance yard activity.

**Comments from Jonathon Queen:** After a review of the Sector L draft, industry representatives have identified several objections to the proposed revisions. In what appears to be an attempt to clarify what is or is not covered in Sector L, Sector L has become more unclear. This is evident in Section L.6 –

Requirements Applicable to Earth Disturbing Activities Conducted once Landfill Operations Begin. As noted, earth disturbing activities (landfill operation related activities) must comply with 11.L, with the exception of 11.L.5 – Additional Technology-Based Effluents, 11.L.7 – Additional SWP3 Requirements, and 11.L.8 – Effluent Limitations, Monitoring and Reporting Requirements. Section L.6 goes on to note that discharges from areas where earth disturbing activities (landfill operation related activities) have ceased and stabilization, as specified in 11.L.6.1.p, has been completed, are no longer subject to 11.L.6. However, these stabilized earth-disturbing activities (landfill operation related activities) are now applicable to 11.L.5, 11.L.7, and 11.L.8. Therefore, if you comply with 11.L.6.1.p you are not required to comply with 11.L.6. However, if you cannot comply with 11.L.6.1.p, you are required to comply with all of 11.L.6. Additionally, pending compliance with 11.L.6 determines whether the earth-disturbing activities (landfill operation related activities) must comply with 11.L.5, 11.L.7, and 11.L.8. It is unclear why landfill operation related activities are sometimes required to comply with certain sections of Sector L and not required to comply with certain other sections of Sector L.

The inclusion of Section L.6.1 – Technology-Based Effluent Limits Applicable to All Earth-Disturbing Activities Conducted once the Landfill Operations Begin and requirements within L.6.1 appear to be closely related to requirements included in the OPDES Stormwater General Permit for Construction Activities within the State of Oklahoma Permit No. OKR10. The inclusion of L.6.1 indicates that DEQ WQD does not believe that all landfill operation related activities are covered under the current Sector L. Therefore, landfill operation related activities, which are required in order to operate the facility in accordance with DEQ LPD regulations, are not covered under the current Sector L. In more general terms, the inclusion of Construction General Permit requirements indicates that the General Permit sector specific requirements for this industrial activity do not allow for the operation related activities to comply with DEQ industry regulations.

Additionally, in the Sector L draft, Section L.6.1 requires compliance with all sub bullets, a. through p., without indication if exclusion of certain sub bullets is allowed in non-applicable related circumstances. The use of the word “must” in many of the sub bullets indicates that a site must comply with the sub bullet. However, the sub bullet does not always specifically note the standard which must be met or provide the design requirements which must be utilized. For example, sub bullet a. indicates that the site must minimize the amount of soil exposed during earth disturbing/construction activities. However, a standard indicating compliance with sub bullet a. is not provided.

How can the site determine if they have met the standard required for sub bullet: a. if an DEQ inspector is on site, how do they determine if the standard required for sub bullet a. has been met? Another example is sub bullet b. This sub bullet pertains to design of erosion and sediment controls. However, it leaves the determination of frequency, intensity, and duration to the site. If the site selects a frequency, intensity, and duration that appear reasonable or logical, does DEQ WQD have the authority to dispute that selection? Continued examples of missing design requirements or standards are evident throughout the remaining sub bullets of Section L.6.1.

It appears that DEQ WQD, with the revisions to Sector L (specifically L.6 and L.6.1), is trying to dictate to landfill operators how to develop and manage the internal operations of their sites. It would be more reasonable and clear for DEQ WQD to determine the standard that stormwater discharges from these industrial activities should meet. The internal operations that the landfills utilize to meet the stormwater discharge standard should be determined by the site taking into consideration site specific functionality and demand.

The industry representatives request that Sector L be revised or returned to the current Sector L standard and simply revise the definition for what is defined as landfill operation related activities. The industry representatives would also request that DEQ WQD and/or Environmental Complaints and Local Services (ECLS) issue stormwater discharge authorizations in accordance with the Sector L requirements. However, the industry representatives are aware, based on previous meetings that DEQ WQD is unlikely to revert back

to the current Sector L standard at this point in the process. Alternatively, the industry representatives would ask that Sections L.6 and L.6.1 either be removed or that significantly more clarity be provided. However, the industry representatives are also aware, based on previous meetings that DEQ WQD is unlikely to remove or provide significantly more clarity at this point in the process. Therefore, the industry representatives are requesting that DEQ WQD add text to Section L.6.1 and L.6.1.p that will allow for site specific functionality and flexibility regarding stormwater management from solid waste facilities, as discussed in our February 21, 2017 meeting. Proposed text for DEQ WQD to consider is provided below.

#### L.6 Technology-Based Effluent Limits Applicable to All Earth-Disturbing Activities Conducted once the Landfill Operations Begin

The following technology-based effluent limits apply to authorized discharges from all earth disturbing activities during landfill operations as defined in Part 11.L.4.6 UNLESS THE SITE IS OPERATING IN ACCORDANCE WITH SITE SPECIFIC CONTROLS/BMPS LISTED IN THE SITE SWP3 THAT WILL EFFECTIVELY CONTROL STORMWATER DISCHARGES. These limits OR SITE SPECIFIC CONTROLS/BMPS supersede the technology-based limits listed in Part 3.1.2 and Part 11.L.5 of this Permit.

p. Site stabilization requirements for earth-disturbing activities: You must comply with the following stabilization requirements except where the intended function of the site accounts for such disturbed earth (e.g., the earth disturbances will become actively landfilled, or the stormwater controls/BMPS implemented at the active landfill area effectively control stormwater discharges from the disturbed area):

- Temporary stabilization of disturbed areas: Stabilization measures must be initiated immediately in portions of the site where earth disturbing activities performed for purposes of landfill site preparation/construction have temporarily ceased, but in no case more than 14 days after such activities have temporarily ceased UNLESS THE SITE IS OPERATING IN ACCORDANCE WITH SITE SPECIFIC CONTROLS/BMPS LISTED IN THE SITE SWP3 THAT WILL EFFECTIVELY CONTROL STORMWATER DISCHARGES FROM THIS AREA. Temporary stabilization measures include temporary seeding, mulching and/or installing and maintaining adequate downgradient stormwater controls/structural BMPs. Temporary stabilization measures must be implemented to minimize mobilization of sediment or other pollutants until active landfilling activities commence.

**DEQ Response:** Based on the comments received from Mr. Queen to address the concerns described in the comments. The term *earth-disturbing activity* is replaced with the term *new cell construction* in Part 11, Sector L of the final 2017 OKR05 permit. The definition in Part 11.L.4.6 has been revised to clarify which activities are considered new cell construction. In addition, headings and text in Parts L.6 and L.6.1 through L.6.4 have been revised to clarify that the requirements of these sections apply only to new cell construction.

## Part 12: Appendices

**Comments from OG&E:** Appendix A - Oklahoma Sensitive Waters and Watersheds Harboring Endangered and Threatened Species and Their Critical Habitat of Concern

a. Consistency on Definitions of Habitat ranges, The Cimarron River is listed in Appendix A as critical habitat with a 2-mile corridor (1 mile from each bank) of the main stem of the Cimarron River from the US Hwy-77 Bridge in Logan County upstream to and including Beaver County. However, the Final Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner (*Notropis Girardi*), lists the critical habitat corridor as 300 ft. on each side of the stream width at bank full discharge. Additionally, the Canadian River is listed as critical habitat having a 2-mile corridor (one mile from each bank) of the main stem from the Eufaula Reservoir flood pool upstream to the northern border of Custer County. However, the Final Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner

(*Notropis Girardii*) lists the critical habitat corridor as 300 ft. on each side of the stream width at bank full discharge. These are two examples of inconsistent definitions which provide for uncertainty in the rule's implementation and compliance requirements for those impacted in those areas.

**DEQ Response:** The US Fish and Wildlife Service (USFWS) field office in Tulsa determines the size of the critical habitat for Endangered and Threatened Species within the state of Oklahoma. Critical habitat is the specific area(s) within the overall geographic area occupied by the species at the time it was listed that contain the physical or biological features that are essential to the conservation of endangered and threatened species and that may need special management or protection. Critical habitat may also include areas that were not occupied by the species at the time of listing but are essential to its conservation. The size and designation of the critical habitat depends on various factors such as space, cover or shelter, food, water, air, minerals, nutrition, sites for breeding, and protection from disturbances. These factors generally vary widely. For consistency and simplicity, a one-mile corridor from each river bank has been used as critical habitat in all of DEQ's stormwater general permits, based on consultation with the USFWS Tulsa field office. No changes have been made in the final 2017 OKR05 permit in response to this comment.