



## FACT SHEET

### REISSUANCE OF GENERAL PERMIT OKR10 FOR STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES WITHIN THE STATE OF OKLAHOMA

July 24, 2007

The Oklahoma Department of Environmental Quality (DEQ) has issued the “General Permit OKR10 For Storm Water Discharges From Construction Activities Within The State Of Oklahoma”. This permit will replace general permit OKR10, which expired on September 12, 2007. Both new owners/operators and existing permittees must obtain coverage under this new permit in order to discharge stormwater from construction activities.

#### Background

On November 19, 1996, the Environmental Protection Agency (EPA) Region 6 approved the State of Oklahoma’s application for the DEQ to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for discharges of pollutants, including storm water discharges, within the State of Oklahoma. However, the DEQ’s approved program does not include the discharges from construction activity which are located on Indian Country<sup>1</sup> lands, or related to construction activity for oil & gas extraction and agricultural purpose.

The DEQ issued its first Construction General Permit (CGP) GP-005A on September 9, 1997 and amended it on February 1, 1999. The second CGP was issued by the DEQ on September 13, 2002. Currently the DEQ is proposing the reissuance of the CGP OKR10 to replace the expired CGP OKR10. The issuance procedure for the permit is based on the Oklahoma Environmental Code found at Title 27A of the Oklahoma Statutes, Section 2-14-101, et seq, and rules found at Oklahoma Administrative code (OAC) 252:004-7.

The proposed permit will have a fixed term of five (5) years from the effective date of DEQ issuance. Every authorization to discharge under this permit will expire at the same time, and all authorizations to discharge will be required to be renewed on the same date. Discharges will be covered under the general permit once the authorization to discharge is issued by the DEQ.

This permit authorizes any stormwater discharges associated with construction activities that result in land disturbance of equal to or greater than one (1) acre, or less than one (1) acre if they are part of a larger common plan of development or sale that totals at least one (1) acre. The permit also authorizes any stormwater discharges from support activities (e.g. concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, and borrow areas) that are directly related to a construction site that is required to have permit coverage, and is not a commercial operation serving unrelated different sites.

However, the permit does not authorize any stormwater discharges from support activities within the

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<sup>1</sup> Under EPA’s 1996 approval of the State of Oklahoma’s permitting program, the State was not authorized to issue NPDES permits under the federal Clean Water Act in areas of Indian Country, as defined in 18 U.S.C. § 1151, within the State. 61 Fed. Reg. 65047, 65049 (December 10, 1996). Therefore, this permit does not apply to discharges of stormwater in Indian Country. However, section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (“SAFETEA”), Public Law 109-59, 119 Stat. 1144 (August 10, 2005), provides the State the opportunity to request approval from the EPA to administer federal environmental regulatory programs, including the Clean Water Act NPDES program, in Indian country areas of the State. The submission, by the State, and review, by the EPA, of this permit is without prejudice to the State’s right to request such approval at any time.

Outstanding Resource Waters (ORW) as defined in Oklahoma Water Quality Standards (see OAC 785:45-5-25). If stormwater runoff from your construction activity discharges into an ORW, you must specify the receiving water as an ORW in the Storm Water Pollution Prevention Plan (SWP3) and submit a copy of the complete SWP3 to the DEQ for review.

You must receive an authorization to discharge from the DEQ prior to commencing the construction activity with storm water discharges. In order to receive this authorization from the DEQ, you must file a Notice of Intent (NOI) and pay the applicable permit fee of \$254.21 to the DEQ. Also, you must develop and implement a storm water pollution prevention plan (SWP3) according to the requirements of this permit.

### **Public Comment Period**

A Public Notice was published in state newspapers announcing this new issue on July 23, 2007. The comments can be made by writing to:

Kim Wyatt  
Water Quality Division  
Oklahoma Department of Environmental Quality  
P.O. Box 1677  
Oklahoma City, OK 73101-1677  
405-702-8100  
E-mail: [kim.wyatt@deq.state.ok.us](mailto:kim.wyatt@deq.state.ok.us)

During the comment period, any interested persons may submit written comments stating their issues and may request a public meeting. If the DEQ determines that a significant degree of public interest exists, the DEQ will schedule a public meeting in the area of concern.

Copies of the Permit, Notice of Intent (NOI), Notice of Termination (NOT), and supporting documents are available on the DEQ web site <http://www.deq.state.ok.us/WQDnew/stormwater/>. The size of this permit makes it infeasible to fax. Applicants for storm water construction general permit coverage may contact the office shown above for a copy of the NOI.

### **Summary of Changes and Additions of OKR10**

This proposed general permit will replace the OKR10, which expired on September 12, 2007. Following is a list of the most significant changes from the proposed permit as compared to the previous OKR10 issued on September 13, 2002.

1. *Permit Area:* For clarification purpose, added the area of the permit coverage where the EPA maintains permitting authority (see Table 1-1 Areas of Coverage Where the EPA is the Permitting Authority within the State of Oklahoma). These changes are consistent with the latest version of the Memorandum of Agreement (MOA) between the DEQ and the EPA (Region 6), dated November 19, 1996, as revised August 4, 1997.
2. *Authorized discharges:* (a) Included the authorized discharges from construction sites of less than one acre is part of a larger common plan of development or sale which is equal to or greater than one acre; (b) Added a restriction for discharges from support activity within State identified Outstanding Resource Waters; (c) Updated the authorized discharges to include a list of allowable non-stormwater discharges, including two new non-stormwater discharges: discharge from landscape irrigation, and uncontaminated flows from excavation dewatering activities if operational and structural controls are used to reduce any pollutant releases.

3. *Limitations on Coverage:* (a) Revised the statement regarding oil and gas exploration, production, processing or treatment operations or transmission facilities to reflect the Energy Policy Act of 2005; (b) Removed the “six months” requirement to implement a TMDL and included the statement that indicates the implementation time shall be consistent with the approved TMDL.
4. *Obtaining Authorization:* Clarified documentation requirement for SWP3 and payment requirement for permit authorization.
5. *Terminating Coverage:* Added a new option for the DEQ’s inspection to provide necessary assistance prior to termination of the permit coverage.
6. *Notice of Intent:* (a) Added a new option for NOI modification; (b) Specified three (3) conditions under which owners/operators must submit their completed SWP3 along with NOI submittals.
7. *Responsibilities of Owner/Operators:* Provided further clarification on responsibilities of utility companies or their contractors who have met the definition of “owners/operators”.
8. *Special Conditions, Management Practices, and Other Non-numeric Limitations:* Included specific requirements in order for the ODEQ to determine the “reasonable potential” and develop appropriate permit conditions.
9. *Storm Water Pollution Prevention Plan:* (a) Modified documentation requirement to include the measures necessary to protect the endangered species and any conditions recommended by the USFWS, ODWC, or others; (b) Included the information on BMPs and controls for the construction site to reduce and eliminate discharges of pollutants of concern into any 303(d) impaired waters, and on the receiving waters with approved TMDL; (c) Updated the maintenance language to clarify the implementation of modification of existing BMPs.
10. *Signatory Requirements:* Updated the language to clarify the ability of owners/operators to sign the NOIs, and NOTs.
11. *Notice of Termination:* Modified the NOT to include the information pertaining to the new owners/operators.
12. *Definitions:* (a) Added new terms for clarification purposes: dewatering activities, municipal separate storm sewer system or MS4, outstanding resource waters, total maximum daily load or TMDL; (b) Modified the terms of ephemeral stream and waters of the State to be consistent with Oklahoma Water Quality Standards.

### **Examples Concerning the Permit Requirements**

In an effort to alleviate misunderstandings concerning the requirements for development of acreage that is part of a larger common plan of development, endangered species, historic preservation, filing an NOI, and filing an NOT, the following examples are given to help you decide what to do.

#### **Example 1: What types of construction activities may be covered under this stormwater general permit?**

Any construction activity that will disturb one (1) or more acres and has the potential to discharge pollutants from stormwater runoff to a water of the State of Oklahoma must have permit coverage. These regulated construction activities also include those activities that result in land disturbance less than one (1) acre if they are part of a larger common plan of development or sale that totals at least one (1) acre.

Construction and construction-related activities refer to the actual land-disturbing construction activities and those activities supporting the construction project such as construction materials, equipment storage, maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), measures used to control the quality for stormwater associated with construction activity, or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants). It does not refer to routine construction activities that are part of the normal day-to-day operation of a completed facility (e.g., daily cover for landfills, maintenance of gravel roads or parking areas, landscape maintenance, etc).

Also, it does not include any construction activities on Indian Country in Oklahoma, or any construction activities associated with Oil and Gas extraction ( SIC Group 13, 46 and 492) and Agricultural production and services (SIC Group 01, 02, 07, 08 and 09). Linear construction using soil plows or other trenchless equipment or techniques which do not include excavation or create overburden do not need to be covered under this permit. However, linear construction using trenching or any excavation and replacement of overburden is required to obtain permit coverage.

**Example 2: What must I do if my construction project will disturb less than one acre and is part of a larger common plan of development or sale exceeding one acre?**

If your smaller project is part of a larger common plan of development or sale that collectively will disturb one or more acres (e.g., you are building on six half-acre residential lots in a 10-acre development or are putting in a parking lot in a large retail center) you need permit coverage. The “plan” in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of owner/operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit.

For some situations where less than one acre of the original common plan of development remains undeveloped, a permit may not be needed for the construction projects “filling in” the last parts of the common plan of development. A case where a permit would not be needed is where several empty lots totaling less than one acre remains after the rest of the project was completed-providing stabilization had also been completed for the entire project. However, if the total area of all the undeveloped lots in the original common plan of development were more than one acre, a permit would be needed.

Likewise, if you are the developer of a 10 acre housing project and you sell 3 acres to a homebuilder, you may modify your permit by submitting a revised NOI (mark checkbox of “modification of current permit”). You will retain responsibility of the remaining seven acres, and the homebuilder who bought three acres of the housing project may obtain the permit authorization by submitting a new NOI for the three-acre development.

**Example 3: How can I obtain the permit authorization if I am building on a construction site with one (1) or more acres?**

A construction activity, which includes sites disturbing one or more acres, or less than one acre of total land area that is part of a larger common plan of development or sale cumulatively disturbing one or more acres, is required to receive a permit authorization before you start grading the site. In order to receive a permit authorization, you must:

- a. Complete all the blanks on the NOI form and submit it to the DEQ for review.

NOI form is provided in Addendum B of the permit and also available at <http://www.deq.state.ok.us/WQDnew/stormwater/index.html>;

- b. Develop and implement a Storm Water Pollution Prevention Plan (SWP3) according to the requirements in Part 4 of the permit. You are required to submit a copy of your complete SWP3 to the DEQ for review if your discharges meet the special conditions listed in Part 3.4 of the permit. These special conditions include discharges within the Outstanding Resource Waters defined in Oklahoma Water Quality Standards, and the Sensitive Waters and Watershed defined by the US Fish and Wildlife Service and the Oklahoma Department of Wildlife Conservation. You are also

required to submit a copy of your complete SWP3 to the DEQ for review if your site will disturb 40 or more acres of land. If your discharges do not meet these special conditions, you are not required to submit a copy of the complete SWP3 along with your NOI submittal;

- c. Pay the applicable permit fee. The statement of the fee due will be sent to you after completing the NOI review;
- d. Receive an authorization from the DEQ.

Once an authorization is issued by the DEQ, you may discharge from your site under the term and conditions of this permit. However, the DEQ may deny the authorization that has been issued based on a review of the NOI and other information, and require you to submit an application for an individual OPDES permit.

**Example 4: When can you consider future construction on a property to be part of a separate plan of development or sale?**

In many cases, a common plan of development or sale consists of many small construction projects that collectively add up to one (1) or more acres of total disturbed land. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction is completed.

After the initial “common plan” construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development. For example, after a house is built and occupied, future construction on that lot (e.g., reconstructing after a fire, adding a pool or parking area, etc.) would stand alone as a new “common plan” for purposes of calculating acreage disturbed to determine if a permit was required. This would also apply to similar situations at an industrial facility, such as adding new buildings, a pipeline, a new wastewater treatment facility, etc. that was not part of the original plan.

**Example 5: With all the people involved in a construction project, how do I know if I am the one that needs to apply for the permit?**

You must apply for the permit if you meet one or both components of the definitions of “operator”. This means you have operational control over either the construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., owner or developer of project), or you have day-to-day operational control of these activities at a project which are necessary to ensure compliance with a Storm Water Pollution Prevention Plan (SWP3) for the site or permit conditions (e.g., general contractor, or utility contractor). In situations, where your activity is part of a large common plan of development or sale, you are only responsible for the portions of the project for which you meet the definition of “operator”.

In many cases, there may be more than one party at a site performing tasks related to “operational control” and hence, more than one operator must submit an NOI. Depending on the site and the relationship between the parties (e.g., owner, developer, general contractor, utility contractor), there can either be a single party acting as site operator and consequently be responsible for obtaining permit coverage, or there can be two (2) or more operators all needing permit converge.

If you have operational control over utility installation (e.g., telephone, electric, gas, cable TV, etc.), you may need permit coverage. Your activities must be covered under an SWP3 (either a “joint SWP3” for the larger common plan of development or sale, or your own SWP3). You are responsible for

maintenance of the SWP3 on the areas disturbed by your activities. You must ensure the protection of endangered species, implementation of Best Management Practices (BMPs), and final stabilization requirements. This applies to utility companies and their contractors. However, you are probably not an operator and subsequently do not need permit coverage if you are a subcontractor hired by, and under the supervision of, the owner or a general contractor. You must sign a “contractor certification” or similar arrangement.

**Example 6: What must I do to satisfy the permit eligibility requirements related to Federal and State listed endangered species?**

Applicants are required to evaluate the potential effects of the stormwater discharges and stormwater discharge-related activities on listed endangered species prior to submitting their NOIs. The permit includes two (2) steps to make such self-assessment or contact with the appropriate wildlife agency. You must determine whether your project area drains to Federal and State identified sensitive waters and watersheds (see Addendum A of the permit) harboring those endangered species or their designated critical habitat. If your construction site is located within a corridor of a sensitive water or watershed, you have several options:

1. The applicant must include this information in the SWP3 as well as a detailed description of the pollution prevention measures required to protect the endangered and threatened species, or
2. If you are able to utilize option 1, 3 or 4 (see Part 1.3.2.E.2.b, d, or e of the permit), you do not need to contact the U.S. Fish and Wildlife Service (USFWS) or the Oklahoma Department of Wildlife Conservation (ODWC). Otherwise, you may contact these agencies for either a written response that will conclude the no jeopardy effects on listed species and critical habitat of the applicant's storm water discharges and storm water discharge-related activities, or a written concurrence on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat; or
3. The applicant's construction activities are authorized by the appropriate Federal or State agency and that authorization addresses the incidental taking of listed species by the applicant's storm water discharge or storm water discharge-related activities; or
4. The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility. By certifying the eligibility, the applicant agrees to comply with applicable measures or controls upon which the other operator's certification was based.

You may check the appropriate checkbox on the NOI under “ENDANGERED SPECIES” and document in your SWP3 how the control measures selected to protect such endangered species, including any conditions that were incorporated in correspondence between the USFWS, ODWC or others. The permit requires that SWP3 must be submitted to the DEQ for review if your construction project is within a corridor of a Federal or State identified sensitive water or watershed.

**Example 7: What does the permit require regarding historic preservation?**

This permit does not currently impose special requirements related to historic preservation, though the DEQ may modify the permit at a later date. The absence of permit provisions related to historic preservation in no way relieves applicants and permittees of their obligations to comply with applicable State or local laws for the preservation of historic properties. The applicants and permittees must comply with the State Antiquities Act (Title 53, Chapter 20, Section 361) where applicable and Burial Desecration Law (Title 21, Chapter 47, Section 1168.0-1168.6), as well as with any applicable local laws

concerning the identification and protection of historic properties. Applicants and permittees who may receive Federal finding or other Federal assistance in the completion of their projects must be aware that compliance with Section 106 of the Act may apply.

**Example 8: How many Notices of Intent (NOIs) must I submit? Where and when are they sent?**

You may submit an NOI to cover all your activities on the lots in a larger common plan of development or sale, or an NOI for each individual lot. For example, you can submit an NOI for each separate lot in a residential subdivision, or for two (2) separate buildings being constructed at a manufacturing facility. However, you must develop the site map for the SWP3 to identify those areas of the overall project that are under your control.

You must sign the NOI and send it to the following address: Department of Environmental Quality, Environmental Complaints and Local Services, Storm Water Unit, P.O. Box 1677, Oklahoma City, OK 73101-1677, or FAX to (405) 702-6223.

No construction activity is allowed on the site until you have received authorization from the DEQ.

**Example 9: If I am currently permitted on an ongoing construction project, do I have to submit a new NOI to be covered by the permit?**

Yes. If you are the operator of an on-going construction project, or a construction project that started prior to the effective date of this permit, you must complete a new NOI form within 90 days of the effective date of this permit. If you are eligible to submit an NOT (e.g., construction is finished and final stabilization has been achieved) before the 90th day, a new NOI is not required to be submitted. You must remain in compliance with existing requirements of General Permit OKR10 issued September 13, 2002 until a new authorization is received or an NOT is submitted. Also you must update your SWP3 to comply with any new requirements within 90 days after the effective date of this permit.

**Example 10: If a utility company provides services inside a new development, does this company need to obtain permit coverage?**

If the utility company has operational control over the construction plans and specifications and/or has day-to-day supervision and control over a specific phase of the construction activity occurring at a construction site, this utility company or its contractor would be considered as an “operator” of the construction activities and need to obtain the permit coverage. If a utility subcontractor cannot be considered the operator and obtain permit coverage, this subcontractor must sign the “contractor certification” which says he/she agrees to comply with the terms and conditions of the SWP3 and general permit.

**Example 11: Do I have flexibility in preparing the Storm Water Pollution Prevention Plan (SWP3) and selecting Best Management Practices (BMPs) for my site?**

Storm water pollution prevention plan requirements were designed to allow maximum flexibility to develop storm water controls based on the specifics of the site. Some of the factors you might consider include: more stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby water bodies; safety concerns (e.g., potential hazards of water in storm water retention ponds to the safety of children; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

The approach and BMPs used for controlling pollutants in storm water discharges from small construction sites may vary from those used for large sites since their characteristics can differ in many ways. Operators of small sites may have more limited access to qualified design personnel and technical information. Sites may also have less space for installing and maintaining certain BMPs. A number of structural BMPs (e.g., use of inlet protection, or silt fence) and non-structural BMPs (minimizing disturbance, good housekeeping) have shown to be efficient, cost effective, and versatile for small construction site operators to implement. As is the case with large construction sites, erosion and sediment control at small construction sites is best accomplished with proper planning, installation, and maintenance of controls.

**Example 12: Must every permittee have his/her own separate SWP3 or is a “joint plan” allowed?**

A permittee is required to submit one SWP3 for a site that incorporates the required elements. A “joint” SWP3 may be developed and implemented as a cooperative effort where there is more than one operator at a site. Permittees shall develop their SWP3s to cover either the entire site or all portions of the site where they have operational controls.

Permittees are required to submit a copy of the completed SWP3 if their discharges meet the following conditions:

1. Any area of your construction site is located within the watershed of an Outstanding Resource Water identified in Addendum F of the permit;
2. Any area of your construction site is located within a sensitive water and watershed identified in Addendum A of the permit;
3. The area to be disturbed on your construction site is forty (40) acres or more.

**Example 13: If a project will not be completed before this permit expires, how can I keep permit coverage?**

If the permit is reissued or replaced with a new one before the current one expires, you will need to comply with whatever conditions the new permit requires in order to transition coverage from the old permit. This may include submitting a new NOI. If the permit expires before a replacement permit can be issued, the permit will be administratively “continued.” You are automatically covered under the continued permit, without needing to submit anything to the DEQ, until the earliest of:

1. The permit being reissued or replaced;
2. Issuance of an individual permit for your activity; or
3. The Director issues a formal decision not to reissue the permit, at that time you must seek coverage under an alternative permit.

**Example 14: When can I terminate permit coverage? Can I terminate coverage (i.e., Liability for Permit Compliance) before the entire project is finished?**

You can submit an NOT for your portion of a site providing: (1) you have achieved final stabilization of the portion for which you are the responsible permittee; (2) another operator/permittee has assumed control over all areas of the site that have not been finally stabilized for which you are the responsible permittee (for example, a developer can pass permit responsibility for lots in a subdivision to the homebuilder who purchases those lots, providing the homebuilder has filed his or her own NOI); (3) coverage under an alternative OPDES permit has been obtained for the discharges; or (4) for residential construction only, you have completed temporary stabilization and the residence has been transferred to the homeowner.

Note: Final stabilization includes either vegetative or non-vegetative practices. Vegetative final stabilization requires 70% coverage of the natural vegetative cover in that part of the country. If the natural vegetation in your area covers 50% of the land, final stabilization is achieved when coverage of 35% or more of the land is achieved (70% of 50%). Non-vegetative stabilization could include rip rap, gravel, gabions, etc. Impervious cover such as concrete or asphalt should be avoided as a final stabilization technique.

**Example 15: Can I modify the NOI which I have submitted to the DEQ?**

Yes. After issuance of an authorization, an amended NOI may be submitted by a permittee if circumstances change (e.g. the area to be disturbed has changed from 5 acres to 7 acres). The amended NOI shall include the facility's assigned permit number and request a change. The original authorization number will be retained. DEQ will provide an acknowledgement by mail or e-mail that the amended NOI has been received. Permittees must update their SWP3s to reflect the modification.

**Example 16: Can I request an inspection from the DEQ prior to submitting my NOT?**

The DEQ will review NOTs for completeness and accuracy and inspect the site for which the NOT was submitted within 30 days of receipt of the NOT. Permittees can submit an Inspection Request Form (see Addendum E of the permit) to the DEQ for an inspection prior to submitting a NOT. The DEQ will schedule an inspection and provide any assistance necessary within 30 days of receipt of the written request. Upon completing the inspection, the DEQ will notify the permittee of any needed changes to the site conditions, or that the site has met the termination requirements under this permit. Only one Inspection Request Form can be submitted to the DEQ within a ninety (90) day period. Additional compliance inspections may occur within this 90 day period at the discretion of the DEQ. Enforcement actions may be taken if a permittee submits a NOT without meeting one or more of the terms and conditions under the permit.