



OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
GENERAL PERMIT NUMBER OKR05
STORM WATER DISCHARGES FROM INDUSTRIAL FACILITIES UNDER THE
MULTI-SECTOR INDUSTRIAL GENERAL PERMIT WITHIN THE STATE OF
OKLAHOMA

RESPONSE TO COMMENTS

The Department of Environmental Quality (DEQ), Water Quality Division received ten (10) written comments from two (2) parties concerning the draft general permit OKR05 for storm water discharges from industrial facilities under the Multi-Sector General Permit (MSGP) within the state of Oklahoma

After reviewing the comments and considering issues with the permit, changes were made to the draft permit. A copy of the final permit, fact sheet, and response to comments has been posted on DEQ's website at <http://www.deq.state.ok.us/WQDnew/stormwater/index.html>.

The DEQ's responses to comments were provided to all parties that submitted comments within the thirty (30) day public comment period. The permit will become effective on September 9, 2011. This will be the DEQ's final permit decision.

A summary of the comments received, DEQ's responses, modifications after the public review, and staff-identified changes are listed as follows:

PART I Comments Received Pertaining to the General Permit with DEQ's Responses

The majority of the comments were for clarification purposes. All comments were fully considered and changes were made where appropriate.

A. Written Comments submitted by Diana Holmes from Dolese Bros. Co. dated July 20, 2011.

1. Clarification of "Practice of Engineering"

We recommend clarification of the phrase "practice of engineering" in the Part 11, Definitions section of the general permit text. This phrase is used in Part 4.1, Storm Water Pollution Prevention Plan Requirements:

You must prepare a Storm Water Pollution Prevention Plan (SWP3) for your facility before submitting your NOI for permit coverage. If you prepared a SWP3 for coverage under a previous general permit, you must review and update the SWP3 to implement all provisions of this permit prior to submitting your NOI.

Your SWP3 must be prepared in accordance with good engineering practices. Use of a registered professional engineer for SWP3 preparation is not required by the permit. However, if any part of the SWP3 involves the “practice of engineering”, then those engineering practices and designs are required to be prepared by a registered professional engineer.

The only other reference to this phrase is made in Part 12, Sector Specific Requirements, Paragraph 9.a:

9. *Storm Water Pollution Prevention Plan (SWP3). Reorganized the SWP3 requirements slightly, and modified them to be consistent with the EPA’s MSGP 2008. The following major changes have been made to the permit:*

a. *Added a clarification of “Practice of Engineering”. Those engineering practices and designs are required to be prepared by a registered professional engineer;*

We infer that including this phrase with no further explanation or definition may contribute to misinterpretation or confusion. Perhaps examples of your intent of “Practices of engineering” could be cited.

DEQ Response: “Practice of engineering” is defined by the Statutes and Rules of Oklahoma State Board of Licensure for Professional Engineers & Land Surveyors. Section 472.2 “Definitions” states “practice of engineering means any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the engineering use of land and water, teaching of advanced engineering subjects or courses related thereto, engineering research, engineering surveys, engineering studies, and the inspection or review of construction for the purposes of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, chemical, environmental, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the design review and integration of a multidiscipline work, planning, progress and completion of any engineering services.” A reference to the Section 472.2 “Definitions” is added to the proposed permit as a result of this comment.

2. Removal of Substitute Sampling Requirement:

We noted the new provision for substitute sampling in Part 5.4, Adverse Climatic

Conditions Waiver, shown below, and recommend its removal.

When adverse weather conditions prevent the collection of samples according to the relevant monitoring schedule, you must take a regular sample and a substitute sample during the next qualifying storm event. Adverse conditions (i.e., those which are dangerous or create inaccessibility for personnel) may include such things as local flooding, high winds, electrical storms, or situations which otherwise make sampling impracticable such as drought or extended frozen conditions. You must report any failure to monitor and indicate the basis for not sampling during the usual reporting period in your inspection report.

Dolese Bros. Co. has been sampling storm water runoff at our sites for at least 20 years. We have learned during this time that storm water samples can be collected at most outfalls during most conditions. Only during extreme events is it difficult or unsafe to collect samples.

Given the fact that these extreme events are quite rare, we do not believe that it would be beneficial to collect two samples during a future storm event in an attempt to “substitute” the sample that could not be collected. Reasons for these beliefs are as follows:

- The quality of the sample that was not collected will never be known, regardless of how many future samples are collected.
- The collection of two (2) samples during the next qualifying storm event should prove to very similar in quality to each other—both of which are essentially representing the quality of the water that is leaving the site that day. Any significant variability in the quality of the waters collected at the same outfall, minutes apart, would likely signify that water sampling is not representative of the effluent waters—because the quality of the effluent storm water runoff should not have much variability.
- The analysis of storm water quality effluent over a period of months or years is the most accurate indicator of the quality of water that exits a site. Careful analysis of this effluent data will signify whether Best Management Practices (BMPs) are performing effectively, or whether they need to be improved.

Please consider removing the requirement that states that substitute sampling needs to be collected, based on the reasoning shown above.

DEQ Response: The ODEQ agrees with this comment and has made the change in the proposed permit.

3. Clarification of the Elimination of the Permit Language, “No Discharge”

In Part 12, Sector Specific Requirements, Paragraph 12, the statement is made that the definition for No Discharge has been removed from this permit:

12. Definitions. Added a definition for “Impaired Water”, “Total Maximum Daily Loads” and removed the definition for “No Discharge” because this definition no longer applies to the permit.

Below is the text from the previous permit that included the definition of No Discharge.

“No discharge” means all discharges associated with industrial activity, including rain, snow, snowmelt, surface runoff and drainage within the facility boundaries are retained on the site, and there are not any discharges of storm water associated with industrial activity to any state waters or municipal separate storm sewer systems (MS4s) under any conditions. An example of a facility with “no discharge” would be a quarry located in the bottom of a pit with no potential outfalls. However, a processing area on the top of the pit would not meet this “no discharge” requirement.

We do not understand the removal of this terminology from the permit language, because No Discharge conditions are often recorded at our facilities. No Discharge is noted, for example, for facilities situated in alluvial deposits, where runoff may not occur. Our facilities’ Quarterly Visual Monitoring reports often record “No Discharge”, outfall by outfall, to indicate no discharge of storm water associated with industrial activity occurred during the quarterly monitoring period. Possibly the reference concerns the removal of the No Discharge Exemption. We do not understand the intent of the removal of No Discharge from the permit language, so perhaps an additional clarification would be appropriate.

DEQ Response: The definition of “No discharge” has been removed from the proposed permit due to the removal of the No Discharge Exemption. The definition of “No discharge” would not apply for the facilities where a measurable discharge does not occur and “No discharge” has been recorded in the quarterly visual monitoring reports. No changes were made to the proposed permit as a result of this comment.

4. Timeframe for Notification of Transfer of Coverage

We believe the requirement to receive authorization to transfer permit coverage at least 2 days prior to taking over operation control is impracticable. This requirement is stated in Part 10, Transfer or Termination of Coverage, Paragraph 10.1.1, Transfer of Permit Coverage:

10.1 Transfer of Permit Coverage

Automatic transfers of permit coverage under 40 CFR 122.61(b) as adopted by reference in OAC 252:606-1-3 (b)(3)(FF) are not allowed for this general permit.



1. Transfer of coverage from you to a new owner/operator (e.g., facility sold to a new company): the new owner/operator must complete and file an NOI in accordance with Part 2 and receive authorization from the DEQ at least 2 days prior to taking over operational control of the facility. You should file a NOT (Notice of Termination) following receipt of authorization by the new owner/operator.

Based on our own experience with several company acquisitions, we recommend that the timeframe for notification to transfer permit coverage be revised to “no more than 30 days after taking over operational control of the facility.” For many reasons, including the immediate effects to employees and to markets, these transactions are kept extremely confidential until the final agreement is made by all parties involved.

- Because of confidentiality concerns, prior preparation in most cases would not be feasible, or legal to discuss, for that matter.
- Often, last-minute negotiations may postpone the actual date of transfer much later than the initially intended or anticipated date of transfer.
- The submittal of a Notice of Intent form dated prior to the actual date of ownership of the facility would not be “true and accurate,” as the NOI certification language itself states.

The 30-day recommendation is based on our last notification of transfer of ownership of permitted facilities (to ODEQ Water Quality Division, OPDES OKG11 General Permit for Concrete Batch Plants), which was made on 7 June 2011, 18 days after the agreement was signed on 20 May 2011. Although we made the notice as soon as possible, 18 days had elapsed before we received an executed version of the Bill of Sale for the transaction. Copies of this document were also submitted to ODEQ with our permit transfer requests as assurance of the new ownership.

DEQ Response: The ODEQ feels that the 30 day recommendation is not feasible as no entity would be responsible for storm water discharges during the transition period. The ODEQ has changed the proposed language of the permit to read “the new owner/operator must complete and file an NOI in accordance with Part 2 at least 2 days prior to taking over operational control of the facility.”

B. Written Comments submitted by David B. Hall, Ph.D., Manager, from Public Service Company of Oklahoma and American Electric Power (PSO/AEP) on July 21, 2011.

1. General Comments

In many sections of the proposed MSGP, ODEQ has added language regarding various procedures that must be contained within the Storm Water Pollution Prevention Plan (SWPPP). PSO/AEP is requesting language be

added to the MSGP stating the facility may reference existing plans or procedures in the SWPPP in lieu of adding these to the SWPPP. This will allow a facility to reduce the number of plans or procedures that must be maintained by facility management.

DEQ Response: The SWPPP requirements were reorganized and modified to be consistent with the EPA's MSGP 2008. If portions of the SWPPP requirements are addressed in another document, it is permissible to reference the appropriate section of that document and include it with the SWPPP as an attachment or appendix. No changes were made to the proposed permit as a result of this comment.

2. Section 2.1, Notice of Intent (NOI) Deadlines

Table 2-1 "deadlines for NOI submittal", indicates that industrial facilities have 90 days from the issuance of the MSGP to submit the NOI for facilities wanting to retain coverage under the permit. Facilities are required to indicate on the NOI that the SWPPP has been updated to meet the new requirements of the proposed MSGP.

The revised MSGP contains substantial changes to the SWPPP that PSO/AEP does not believe can be accomplished in the 90-day period specified in the proposed MSGP. PSO/AEP is requesting this period be extended to 120 days to allow sufficient time for industrial facilities to update their SWPPP's and train facility personnel on these new requirements.

DEQ Response: The ODEQ does not prohibit submitting an NOI after the deadlines provided in Table 2-1. However, we believe that ninety (90) days following the effective date of the permit would be adequate for existing permittees to submit their NOIs and update their SWPPPs. No changes were made to the proposed permit as a result of this comment.

3. Section 1.3.1 How to Obtain Authorization

Item 3 in this section describes the procedure ODEQ will use to calculate the storm water fees for the first year of the permit. It also states the fee must be paid by the facility to obtain authorization for coverage under the permit, but it does not contain any provisions for how a facility is to determine and submit the fee.

PSO/SEP suggests clarifying language by stating the facility must submit the \$100 fee with the NOI to obtain coverage under this permit. In addition, ODEQ should further clarify that the annual fee ODEQ invoices to the facility will be prorated for the first year of the permit.



DEQ Response: The permit application fee and annual fee schedules are established in the Rules of the ODEQ (OAC252:606). The fees may change over the life of the permit so they are not specified in the proposed permit. No changes were made to the proposed permit as a result of this comment.

4. Section 4.2.8.1.D.a-d Spill Prevention and Response Procedures

This section requires procedures to be developed for labeling of containers, use of preventative measures, spill response, and notifications. PSO/AEP is requesting these be deleted from the proposed rule because these items are adequately addressed with other federal and state environmental rules, and do not need to be duplicated in the storm water rules, or the storm water pollution prevention plans.

DEQ Response: The ODEQ has reorganized the requirements and modified them to be consistent with the EPA's MSGP 2008. If portions of the requirements are addressed in another document, it is permissible to reference the appropriate section of that document and include it with the SWPPP as an attachment or appendix. No changes were made to the proposed permit as a result of this comment.

5. Section 4.2.8.1E.b Routine Facility Inspection Documentation

New language in this section requires the following to be documented with routine inspections:

- Inspection date/time;
- Name and signature of inspector;
- Weather information and description of any storm water discharges;
- Previously identified pollutants discharged; and,
- Incidents of noncompliance.

PSO/AEP is requesting these new requirements be deleted from the proposed permit. These requirements are irrelevant to the inspection or cannot be consistently quantified between inspections. For example:

- Documenting the time of an inspection is meaningless in relation to the a storm event, or evaluation of storm water controls;
- The name/signature of the inspector is unimportant when the duly authorized person is signing the inspection documents in accordance with the regulations;
- The purpose of developing a storm water pollution plan is to ensure appropriate controls are used that are effective for the facility allowing for the weather that impacts the facility. Therefore, documenting the weather during the very short time that personnel are conducting an inspection is meaningless and irrelevant;

- Listing previously identified pollutants on the inspection form is irrelevant and is an unnecessary burden on the facility, because the purpose of developing an effective storm water pollution prevention plan is to require facilities to control identified potential pollutants; and,
- Listing incidents of previously identified non-compliance issues is not necessary and reported to ODEQ. In addition, without a complete analysis of a storm water discharge and evaluation of that data using the Water Quality Screening Model, a facility cannot determine if a water quality violation has occurred.

DEQ Response: The DEQ acknowledges this comment. However, we feel that the new language is important to specify the minimum requirements in your inspection form. For example, “weather information and a description of any discharges occurring at the time of the inspection” would help an inspector to determine whether he/she could conduct a routine facility inspection. Also it appears to be a misreading with regards to document “any previously unidentified discharges of pollutants and any incidents of noncompliance observed” in your comment. No changes were made to the proposed permit as a result of this comment.

6. Section 4.2.17 Comprehensive Site Inspection

New language in this Section states that the facility must indicate the potential pollutants that could enter the drainage system.

The purpose of the SWPPP is to require industrial facilities to identify materials that are exposed to storm water that could potentially discharge pollutants to waters of the State. Identifying these potential pollutants on the Comprehensive Site inspection Report is redundant to the SWPPP. PSO/SEP requests the language be deleted from the MSGP.

DEQ Response: Section 4.2.17 The Comprehensive Site Compliance Evaluation is required to be reported to the ODEQ annually in order to demonstrate that the facility is in compliance with the permit. The evaluation must include the information of any “previously unidentified discharges from the site and pollutants in existing discharges”. No changes were made to the proposed permit as a result of this comment.

PART II Staff Identified Changes

A. Permit



Page 9, Table 1-3 Specific Effluent Limitation Guidelines – Removed the storm water discharge associated with exploration and construction activities at crushed stone mines, construction sand and gravel, or industrial sand mining facilities.