



## FACT SHEET



# ISSUANCE OF DRAFT GENERAL PERMIT OKR10 FOR STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES WITHIN THE STATE OF OKLAHOMA

June 29, 2012

The Oklahoma Department of Environmental Quality (DEQ) has issued the “General Permit OKR10 for Stormwater Discharges from Construction Activities within the State Of Oklahoma”. This permit will replace general permit OKR10, which expired on September 12, 2012. Both new 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 DEQ to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for discharges of pollutants, including stormwater discharges, within the State of Oklahoma. However, 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 purposes.

DEQ issued its first Construction General Permit (CGP) GP-005A on September 9, 1997 and amended it on February 1, 1999. DEQ issued the second CGP on September 13, 2002 and the third on September 13, 2007. Currently, DEQ is proposing the 2012 CGP OKR10 to replace the 2007 CGP OKR10 which will expire on September 12, 2012. The issuance procedure for the permit is based on the Oklahoma Environmental Code found in Title 27A of the Oklahoma Statutes, Section 2-14-101, et seq, and rules found in Oklahoma Administrative Code (OAC) 252:004-7.<sup>2</sup>

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 CGP once the authorization to discharge is issued by 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.

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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.

<sup>2</sup> DEQ Chapter 4. Rules of Practice and Procedure: <http://www.deq.state.ok.us/rules/004.pdf>

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 Outstanding Resource Waters (ORW) as defined in Oklahoma Water Quality Standards (see OAC 785:45-5-25).<sup>3</sup> If stormwater runoff from your construction site 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 completed SWP3 to DEQ for review. You must also submit a copy of your SWP3 for DEQ to review if your stormwater runoff discharges into an Aquatic Resource of Concern (ARC) as identified by the U.S. Fish and Wildlife Service (found in Addendum A, Part A of the CGP) and the Oklahoma Department of Wildlife Conservation (found in Addendum A, Part B of the CGP).

**You must receive an authorization to discharge from DEQ prior to commencing any construction activities with stormwater discharges.** In order to receive this authorization, you must file a Notice of Intent (NOI) with DEQ and pay the applicable application fee<sup>4</sup> and annual permit fee<sup>5</sup>. Also, you must develop and implement a storm water pollution prevention plan (SWP3) according to the requirements of this permit.

### **Public Participation and Comment Period**

A public notice was published in State newspapers announcing the new, proposed Construction General Permit on June 29, 2012. **The comment period will be open until July 31, 2012.** If you have any comments regarding the proposed CGP, please submit them in writing to:

Robin Bankhead  
Water Quality Division  
Oklahoma Department of Environmental Quality  
P.O. Box 1677  
Oklahoma City, OK 73101-1677  
405-702-8100  
E-mail: [Water.Comments@deq.ok.gov](mailto:Water.Comments@deq.ok.gov)

DEQ will also be conducting a public meeting which will consist of a short presentation to help foster understanding of the proposed changes to the Construction General Permit. This will be followed by an informal question and answer session with DEQ staff then an opportunity for the public to make formal public comments. The public meeting will be held:

**2:00 P.M., Monday, July 30, 2012**  
**Department of Environmental Quality**  
**1<sup>st</sup> Floor Multipurpose Room**  
**707 North Robinson**  
**Oklahoma City, OK**

<sup>3</sup> Title 785, Chapter 45 Oklahoma's Water Quality Standards:

[http://www.owrb.ok.gov/util/rules/pdf\\_rul/RulesCurrent2011/Ch45-Current2011.pdf](http://www.owrb.ok.gov/util/rules/pdf_rul/RulesCurrent2011/Ch45-Current2011.pdf)

<sup>4</sup> See OAC 252:606-3-4(d)(1) - Stormwater application fee: <http://www.deq.state.ok.us/WQDnew/rules/252-606-TXT.pdf>

<sup>5</sup> See OAC 252:606, Appendix D(A)(1): Fees for Stormwater Permits and Other General Permits (New)

Copies of the CG 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 permit is too large to fax. Written copies of the CGP can be picked up in person from the [DEQ office at 707 North Robinson in Oklahoma City](#)<sup>6</sup> from 9:00am - 5:00pm. However, a nominal copying fee may apply.<sup>7</sup> Applicants needing an NOI for the stormwater construction general permit can either download it from the link above or call DEQ's Environmental Complaints and Local Services (ECLS) Storm Water Unit at 405-702-6100.

## Summary of Changes and Additions to the Proposed 2012 OKR10

This proposed general permit will replace the OKR10, which expires on September 12, 2012. Following is a list of the most significant changes from the proposed permit as compared to the previous OKR10 issued on September 13, 2007.

1. *Permit Area:* For clarification purpose, a footnote was added to indicate that construction activity associated with oil and gas extraction under SIC group 13 and pipelines under SIC group 46 are regulated by the EPA, but EPA is not currently regulating them.
2. *Limitations on Coverage:*
  - a. Revised the statement regarding eligibility criteria for protecting endangered species in order to limit contact with the USFWS when applicants do not meet the criteria; and
  - b. Updated the language to include that the stormwater discharges from concrete and asphalt batch plants are covered under this permit.
  - c. Updated the language regarding construction activities for oil and gas operations and pipelines to be consistent with EPA 2006 final rule exemption.
3. *Notice of Intent:*
  - a. Added the new application fee requirement;
  - b. Added an area to describe the purpose of the project;
  - c. Added an indication of whether your site is a part of the common plan of development or sale
  - d. Added a certification statement to indicate that the applicant is registered with the [Oklahoma Secretary of State](#); and
  - e. Added a certification statement to indicate that the applicant has prepared an SWP3 for their site.
4. *Special Conditions and Effluent Limitation*
  - a. Added a new requirement of "Non Numeric Technology Based Effluent Limitations". These limitations are required by the national effluent limitations guidelines (ELG) and New Source Performance Standards (NSPS)<sup>8</sup> found in [40 CFR Part 450](#) and consistent with [EPA's final construction general permit](#)<sup>9</sup>;

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<sup>6</sup> Directions to DEQ in Oklahoma City can be found at <http://www.deq.state.ok.us/mainlinks/map2deq.pdf>

<sup>7</sup> See OAC 252:4-1-6: Administrative fees: <http://www.deq.state.ok.us/rules/004.pdf>

<sup>8</sup> NSPSs are technology-based standards for facilities that qualify as new sources under [40 CFR 122.2](#) and [40 CFR 122.29](#).

<sup>9</sup> Information about EPA's Construction General Permit can be found at: <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>

- b. Added new “Numeric Limitation and Sampling Requirements” to this permit, including effluent limitations, for stormwater discharges from asphalt batch plants; and
  - c. Added new “Water Quality Based Effluent Limitations” to this permit so that stormwater discharges will not violate any water quality standard. There are additional requirements for stormwater runoff into impaired streams, outstanding resource waters (ORW), or aquatic resources of concern (ARC).
5. *Responsibilities of Operators*: For those who meet the definition of “operator” as given in Part 9 of the permit, additional clarification has been included about the responsibilities of “primary operators” and “secondary operators.”
6. *Storm Water Pollution Prevention Plan*:
  - a. For clarification purpose, a reference was added to “the practice of engineering” that is to be designed by a licensed professional engineer;
  - b. Modified the content of SWP3 to be consistent with EPA’s final construction general permit. Modifications include spill prevention and response, inspection, staff training requirements, and corrective actions.
7. *Definitions*:
  - a. The terms “impaired water” and “water quality impaired water” were added for clarification purposes;
  - b. Modified the terms of “stabilization” and “operators”.
8. *Endangered Species*:
  - a. Replaced the term “Sensitive Waters and Watershed” with “Aquatic Resources of Concern”;
  - b. Modified documentation requirement to include buffer and buffer alternative information; and
  - c. Included new specific requirements regarding inspection frequency and stabilization.
9. *Addendum A “Oklahoma Aquatic Resources of Concern (ARC) Harboring Endangered and Threatened Species and Their Critical Habitat of Concern”*: Updated the list according USFWS’s recommendation.
10. *Addendum G “Additional Requirements for Concrete and Asphalt Batch Plants” and Addendum H “Annual Comprehensive Site Compliance Evaluation Report”*: Addendums G and H have been added to assist those operators of concrete and asphalt plants who are required to comply with this permit.
11. *Addendum I “Buffer Guidance”*: Added this new Addendum to provide compliance alternatives to the buffer requirements.

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

In an effort to alleviate misunderstandings concerning various requirements (i.e. development of acreage that is part of a larger common plan of development, endangered species, historic preservation, filing an NOI, filing an NOT, etc.), the following examples are given.

**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 into waters 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 stormwater 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 lands in Oklahoma, or any construction activities associated with Oil & 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 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 permit would not be needed when 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:

1. Complete all the blanks on the NOI form and submit it to DEQ for review.  
(The NOI form can be found in Addendum B of the CGP. It is also available on-line at <http://www.deq.state.ok.us/WQDnew/stormwater/>);
2. Before submitting your NOI, develop 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 DEQ for review if your stormwater discharges into ORW or ARC. 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 don't need to submit your SWP3 when you submit your NOI;
3. Pay the applicable application and permit fees.<sup>10</sup> An invoice will be sent to you after DEQ has completed their review of your NOI;
4. Receive an authorization from DEQ. Once an authorization is issued by DEQ, you may discharge from your site under the terms and conditions of this 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 were 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?**

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<sup>10</sup> These are the fees for 2012. But in future years, you must verify the fees which can be found in Title 252, Chapter 606 of the DEQ regulations (<http://www.deq.state.ok.us/WQDnew/rules/252-606-TXT.pdf>). The application fee for the CGP can be found in 252:606-3-4(d)(1), and the annual fee for the CGP can be found in 252:606, Appendix D(A)(1): Fees for Stormwater Permits and Other General Permits (New).

You must apply for the permit if you meet one or both components of the definitions of “operator” as given in Part 3.6.3 and 9.16 of the CGP. 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”.

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: I’ve heard that there are now “primary operators” and “secondary operators”. What is the difference?**

First of all, all operators must meet the definition of “operator”(see previous response). For a construction project that has multiple operators, the Primary Operator is the one who is ultimately responsible for controlling stormwater runoff from all the earth-disturbing activities at the entire construction site. The Primary Operator is also responsible for obtaining permit coverage for the entire development and for developing and maintaining an SWP3 for the entire development.

For a construction project with multiple operators, a Secondary Operator is one who has operational control of stormwater discharges from earth-disturbing activities on a portion of the construction site. Secondary Operators must be thoroughly familiar with and adhere to provisions of the permit, the NOI, the SWP3, all [BMPs](#), and all control measures which apply to their areas of activity. Secondary Operators must notify the Primary Operator prior to beginning any earth-disturbing activity and execute any written notification required by the Primary Operator. They must also avoid damaging or interfering with the effectiveness of any control measure on the construction site and notify the Primary Operator if such damage occurs.

Primary Operators have to ensure that the Secondary Operators are aware of all these control measures and must document this notification. This is one of the requirements that must be met under Contractor Certification (Part 4.6 of the CGP). An example of a Contractor Certification form can be found in Addendum D of the CGP.

**Example 7: 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 first thing you must do is determine whether your project area drains to Aquatic Resources of Concern (see Addendum A of the permit). These are watersheds containing endangered species or their designated critical habitat. If the proposed construction site or land disturbing activity is not located within any of the corridors of the ARC, no further investigation is required.

If your construction site is located within a corridor of an ARC, you have several options:

- a. Complete the measures specified in Part 3.5.2 of the CGP to protect endangered or threatened species and/or their critical habitat.
- b. If those measures cannot be met (see Part 1.3.2.E.2.c of the CGP), applicants may use Addendum I Buffer Guidance to evaluate alternatives of buffer requirements & select equivalent sediment controls or contact DEQ for further consultation.
- c. The applicant's Federally-approved construction activities are authorized by an appropriate Federal or State agency, and that authorization addresses [Section 7 of the Endangered Species Act \(ESA\)](#).<sup>11</sup> Applicants selecting this option (see Part 1.3.2.E.2.d of the CGP) must include documentation from USFWS or a qualified biologist that demonstrates a Section 7 consultation has been completed. The SWP3 must comply with any conditions resulting from that consultation.
- d. If the applicant's stormwater discharges are addressed in another operator's certification of eligibility (see Part 1.3.2.E.2.a, b, c, or d) that includes the applicant's project area., the applicant agrees to comply with applicable measures or controls upon which the other operator's certification was based (Part 1.3.2.E.2.e).

You must check the appropriate box on the NOI under "ENDANGERED SPECIES" and document in your SWP3 how the control measures selected protect endangered species. Include any conditions that were incorporated in correspondence between the USFWS, ODWC or others.

#### **Example 8: 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 National Historic Preservation Act](#)<sup>12</sup> may apply.

#### **Example 9: 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, 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.

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<sup>11</sup> Regulations outlining the process for ESA Section 7 consultation and conference are codified in 50 CFR part 402: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title50-vol9/pdf/CFR-2011-title50-vol9-part402.pdf>

<sup>12</sup> Regulations outlining the Protection of Historic Properties through the 106 Process can be found at: <http://www.achp.gov/regs-rev04.pdf>



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

**Example 10: 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 before the 90<sup>th</sup> day (e.g., construction is finished and final stabilization has been achieved), a new NOI is not required to be submitted. You must remain in compliance with existing requirements of the CG Permit OKR10 issued September 13, 2012 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 11: If a utility company provides services inside a new development, does that company need to obtain permit coverage?**

If the utility company has operational control over the construction site and/or has day-to-day supervision and control over a specific phase of construction activities occurring at the construction site, the utility company or its contractor could be considered a “secondary operator”. They need to be covered by either the Primary Operator’s permit and SWP3, or they need to obtain their own separate permit coverage. If the utility subcontractor cannot be considered an operator and obtain permit coverage, the subcontractor must sign the “contractor certification” which says he/she agrees to comply with the terms and conditions of the SWP3 and CG permit.

**Example 12: 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 stormwater controls based on the specifics of the site. Some of the factors to consider include:

- more stringent local development requirements and/or building codes;
- precipitation patterns for the area when the project will be underway;
- soil types;
- slopes;
- layout of structures for the site;
- nearby water bodies (are they ORW or ARC);
- safety concerns (e.g., potential hazards of water in [stormwater retention ponds](#) such as the safety of children; the potential of drawing birds to retention ponds which can pose a hazard to aircraft); and
- coordination with other site operators.

The approach and BMPs used for controlling pollutants in stormwater 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. Small 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 with large construction sites, erosion and sediment control at small construction sites is best accomplished with proper planning, installation, and maintenance of controls.

**Example 13: Must every permittee have their 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 CGP;
2. Any area of your construction site is located within an Aquatic Resources of Concern water or watershed identified in Addendum A of the CGP;
3. The area to be disturbed on your construction site is forty (40) acres or more.

**Example 14: 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 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 15: 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 NOD);
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. 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 [riprap](#), gravel, gabions, etc. Impervious cover such as concrete or asphalt should be avoided as a final stabilization technique.

**Example 16: Can I modify the NOI that I have submitted to 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 five acres to seven acres). The amended NOI shall include the facility's assigned permit number and request for 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 17: Can I request an inspection from the DEQ prior to submitting my NOT?**

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 (Addendum E of the CGP) to DEQ for an inspection prior to submitting a NOT. DEQ will schedule an inspection and provide any assistance necessary within 30 days of receipt of the written request. Upon completing the inspection, DEQ will notify the permittee of any needed changes to the site conditions, or that the site has met the termination requirements under the permit. Only one Inspection Request Form can be submitted to DEQ within a ninety (90) day period. Additional compliance inspections may occur within this 90 day period at the discretion of 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.

**Example 18: If I operate a construction site associated with oil and gas operation and pipelines, am I required to file an NOI?**

The Energy Policy Act of 2005 amends the Clean Water Act with regard to oil and gas exploration, production, processing, and treatment activities. The June 12, 2006 final rule exempts the oil and gas industry, including associated construction activities, from NPDES stormwater permits. Therefore, Facilities that are currently regulated under DEQ's permit, such as Natural Gas Liquid Extraction Plants (NAICS 211112, CIS 1321) and Oil and Gas Field Services for Company Base Operating Stations (NAICS 213112, SIC 1389), are not required to obtain permit coverage. Therefore, you are not required to file an NOI and obtain the permit coverage under this permit if you operate a construction site associated with oil and gas operation and pipelines.

However, facilities have a discharge of a reportable quantity release or contribute pollutants (other than non-contaminated sediment) that result in a violation of a water quality standard are required to obtain and maintain OPDES permit coverage for stormwater for the entire operating life of the facility. The Director may authorize coverage under this permit for any construction activities within those facilities after appropriate controls and implementation procedures designed to bring the discharge into compliance with water quality standards unless and/or until termination requirements are met.

**The following questions and answers are about the estimated buffer performance guidance and Sediment Removal Efficiency Tables (I-1 through I-4) in Attachment 1 of Addendum I (eye).**

*A. What if my specific buffer vegetation is not represented in Tables I - 1 through I - 4?*

Tables I - 1 through I - 4 provide a wide range of factors affecting buffer performance. However, there may be instances where the specific buffer vegetation type on your site is not listed. If you do not see a description of the type of vegetation present at your site, you should choose the vegetation type that most closely matches that found on your site. You can contact your local

[Oklahoma Conservation Commission District Office](#) or your [Natural Resources Conservation Field Service Centers](#) (NRCS) for assistance in determining the vegetation type from Tables I-1 through I-4 that most closely match your site-specific vegetation.

*B. What if there is high variability in local soils?*

DEQ recognizes that there may be a number of different soil type(s) on any given construction site. General soil information can be obtained from USDA's Web Soil Survey reports<sup>13</sup> (<http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>) or from individual site assessments performed by a certified soil expert. Tables I-1 through I-4 present 11 generic soil texture classes, grouping individual textures where DEQ has determined that performance is similar. If your site contains different soil texture classes, you should use the soil type that best approximates the predominant soil type at your site.

*C. What if my site slope is greater than 9% after final grade is reached?*

As indicated in the buffer performance tables, the estimated sediment removal efficiencies are associated with disturbed slopes of up to 9% grade. Where your graded site has an average slope of greater than 9%, you should calculate a site-specific buffer performance.

*D. How do I calculate my own estimates for sediment reduction at my specific site?*

If you determine that it is necessary to calculate your own sediment removal efficiency using site specific conditions (e.g., slopes at your site are greater than 9%), you can do so by choosing from [available mathematical models](#) that are available to facilitate this calculation, including [USDA's RUSLE](#)-series programs, [USDA's WEPP](#) erosion model, SEDIMOT, or other equivalent models.

*E. What is my estimated buffer performance if my site location is not represented by Tables I-1 through I-4?*

If your site is located in an area not represented by Tables I-1 through I-4, you should use the table that most closely approximates conditions at your site. You may also choose to conduct a site-specific calculation of the buffer performance.

*F. What if only a portion of my site drains to the buffer area?*

If only a portion of your site drains to a surface water, where that water is within 50 feet of your construction activities, you are only required to meet the equivalency requirement for the stormwater flows corresponding to those portions of the site.

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<sup>13</sup> The Web Soil Survey is unavailable nightly between 12am - 5am for soil survey data updates. It may also be unavailable on Tuesdays and Thursdays between 7pm - 9:30pm, the 3<sup>rd</sup> weekend of each month, and the 2<sup>nd</sup> Sunday of each month for scheduled maintenance and software updates.