

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

RESPONSE TO COMMENTS CONCERNING

GENERAL PERMIT NUMBER OKR04

PHASE II SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGES WITHIN THE STATE OF OKLAHOMA

The Department of Environmental Quality (DEQ), Water Quality Division received written comments from three parties concerning draft General Permit number OKR04 Phase II Small Municipal Separate Storm Sewer System Discharges (MS4) within the state of Oklahoma. A copy of the written public comments is attached.

After reviewing the comments and considering issues with the permit and other related issues, changes were made to the draft permit. A decision has been made to issue General Permit number OKR04 with an effective date of February 8, 2005.

A summary of staff-identified corrections, comments received, responses, and any changes to the draft permit follows.

I. COMMENTS RECEIVED PERTAINING TO THE GENERAL PERMIT.

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

1) **Written Comments from The Indian Nations Council of Governments (INCOG) dated December 22, 2004.** INCOG submitted four (4) comments pertaining to the draft permit.

A) Comments submitted by INCOG:

- i) Comment specifics: "PART I.B. TYPES OF AUTHORIZED DISCHARGES (Item "s"): INCOG agrees with ODEQ that the OKR04 permit conditions should not impede in any way the fire-fighting capabilities or activities of local fire departments. However, we also agree with ODEQ that under some circumstances, the residues and flows from certain fire-fighting incidents can result in a release of pollutants from the incident scene into local storm drains and/or waters of the State. Rather than deleting this Item "s" (which would therefore make all water from every fire-fighting incident an unallowable discharge subject to enforcement under OKR04), INCOG proposes a provision be added to paragraph 2 so that any releases of pollutants from fire-fighting incidents be treated as any other potential spill. Cities already have response plans for spills and accidental releases in their communities regarding toxic substances. Every county in Oklahoma is obligated under SARA Title III to have a Local Emergency Planning Committee (LEPC) to assist cities with such situations. Cities in both the ACOG and INCOG areas have agreements with Oklahoma City and Tulsa, respectively, as well as many with agreements with private emergency response firms, to address illegal disposal and pollutant spills. Once a fire incident is successfully concluded, the

Incident Commander, Fire Chief, or other responsible official, should conduct an evaluation to determine if any release of pollutants occurred from the scene, and if so, the city should summon its resources to contain and remediate just as with any other spill of pollutants.

INCOG SUGGESTION: Add to Part I.B.2 the sentence: *“In the case of discharges from fire fighting activities to the SMS4 and/or waters of the State, the Incident Commander, Fire Chief or other on-scene fire fighting official in charge must make an evaluation regarding potential releases of pollutants from the scene. Any pollutant releases will be considered “spills” and subject to all provisions of this permit regarding requirements for the permittee to take all appropriate action to ensure public health and safety and protect water quality.”*

DEQ RESPONSE: The language relating to firefighting discharges in Part I.B.2, Authorized Non-Storm Water Discharges, and Part VIII.3.a(3), Prohibition on Non-Storm Water Discharges, was modified as follows: Discharges or flows from emergency fire fighting activities provided procedures are in place for the Incident Commander, Fire Chief or other on-scene fire fighting official in charge to make an evaluation regarding potential releases of pollutants from the scene. Measures must be taken to reduce any such pollutant releases to the maximum extent practicable subject to all appropriate actions necessary to ensure public health and safety. These procedures must be documented in your SWMP. Discharges or flows from fire fighting training activities are not authorized by this permit.

- ii) Comment specifics: “PART IV.A REQUIREMENTS (5) Sharing Responsibility: Part II.B.3 specifies that “entity” pertains only to “another government entity already regulated under the stormwater regulations...” However, Part IV.A is more ambiguous leading the reader to think that the Part IV.A reference to “entity” goes beyond a co-permittee (the intent of Part II.B.3 and Part IV.A.5 as stated in the ODEQ’s OKR04 Workshops). Part IV.A.5 needs to have the same language as Part II.B.3, otherwise it might be interpreted that any contractor, private foundation or agency providing assistance to a Phase II city would need to sign a written agreement that would obligate them as co-permittees to fulfill requirements of the city’s permit. If, for example, INCOG or Blue Thumb or a private consulting firm prints brochures for distribution by Phase II cities, then this is done as technical assistance, or as a paid for service if the costs are supported by the city. However, the Phase II city is still responsible for meeting all permit requirements as they are the permittee utilizing outside technical assistance. Even INCOG’s many regional services we will conduct for our Phase II cities do not, in themselves, constitute total fulfillment of any MCM or BMP. We are acting as any contractor would, providing certain specific services that will assist cities with implementing portions of certain BMPs. As an analogy, a consulting firm or laboratory that collects chemical samples for a wastewater treatment plant and analyzes those samples may be doing so in order that the city meets its permit obligations, but the consultant or firm does not sign agreements that its services are subject to OPDES permit obligations. It is the city itself that has the permit obligation. Conversely, a city that co-permits with another Phase I or Phase II city should have a written agreement that clearly specifies what actions each will take to mutually fulfill the co-permit requirements, as both are permittees.

INCOG SUGGESTION: Change the language of Part IV.A.5 to be consistent with Part II.B.3: *“Implementation of one or more of your storm water minimum control measures may be shared with another government entity already regulated under the storm water regulations (40 CFR Sec.*

122.26 and 122.23) or may be fully implemented by another such regulated entity. You may rely on another such regulated entity only if...

DEQ RESPONSE: PART II.B.3 and PART IV.A.5 are meant to accomplish separate goals. PART II.B.3 is a requirement for making a complete and proper NOI application for permit coverage, while PART IV.A.5 is a requirement relating to the permittee's SWMP and documentation. PART II.B.3 requires documentation of regulated entities that will be relied upon to satisfy part or all of one of the permit requirements. No changes to PART II.B.3 were made in response to this comment. This requirement in NOI application submittal is necessary to allow for proper review of BMPs and other activities that will be performed. PART IV.A.5 was meant to document and track agreements between government entities. Language was added in PART IV.A.5 to clarify the documentation of written agreements is necessary only for those agreements between "government entities."

PART IV.A.5 now reads as follows:

5. Sharing Responsibility

Implementation of one or more of your storm water minimum control measures may be shared with another government entity or may be fully implemented by another government entity. You may rely on another government entity only if:

- a. The other government entity implements the control measure;
- b. The particular control measure, or component of that measure, is at least as stringent as the corresponding permit requirement;
- c. The other government entity agrees to implement the control measure on your behalf. Written acceptance of this obligation is required. This obligation must be maintained as part of the description of your storm water management program. If the other government entity agrees to report on the minimum measure, you must supply the other government entity with the reporting requirements contained in PART V.C. If the other government entity fails to implement the control measure on your behalf, then you remain responsible for compliance with permit obligations.

- iii) Comment Specifics: "PART V. MONITORING, RECORD KEEPING AND REPORTING: It will be helpful if the first paragraph of this section clarifies that "monitoring" does not refer to the general "dry weather field screening" or routine construction site and SMS4 inspections that will be done.

INCOG SUGGESTION: Add a sentence at the end of paragraph #1: *"For purposes of this section, "monitoring" refers only to the formal sampling and laboratory analyses required to meet DEQ requirements to document compliance with TMDLs and other OPDES permit programs, or to document the impacts of pollution sources for enforcement or other legal actions."*

DEQ RESPONSE: Changes have been made to PART V. so that consistency with intent is achieved. The use of field test kits, dry weather monitoring, or any other monitoring program is not compromised or prohibitive.

PART V.A.2-3 were changed as follows:

2. Conducting Monitoring

If you plan to conduct monitoring, you are required to comply with the following:

a. Representative monitoring

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Laboratory Methods

If laboratory analysis is conducted it must be conducted according to test procedures approved under 40 CFR part 136.

3. Records Of Monitoring nformation

Monitoring records must include:

- a. The date, exact place, and time of sampling or measurements;
- b. The names(s) of the individual(s) who performed the sampling or measurements;
- c. The date(s) analysis were performed;
- d. The names of the individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results or observations of such analyses.

- iv) Comment Specifics: “PART VIII.A OPTIONAL FOR SMALL MS4s SEEKING COVERAGE FOR MUNICIPAL CONSTRUCTION ACTIVITIES UNDER THIS PERMIT: INCOG supports the extension of “optional” coverage for counties to all of the county, not just the Urbanized Area (UA). Granting this county-wide extension should not be predicated upon requiring the county to deploy all elements of its Phase II program county-wide. All Phase II counties have a small fraction of their area covered by the OKR04 permit, namely around 1% of which is urbanized area. And while it is true that many of the Phase II activities and BMPs will be implemented county-wide (e.g. use of a regional stormwater website), many actions will focus only on the UA portion of the county (e.g. placement of door-hangers in residential neighborhoods). County construction activities will benefit from the county-wide application of the “optional” permit condition by providing an expeditious permitting mechanism for counties to conduct construction related projects.

INCOG SUGGESTION: Add the following sentence to the first paragraph of Part VIII.A: *“For counties, this option shall apply to all non-incorporated portions of the county”*.

DEQ RESPONSE: Changes were made to PART I.A and PART VIII.A.1.b to allow the use of the optional MCM for local government entities, within the boundaries of their local authority. The following changes were made:

PART I.A – Added the sentence “Storm water discharges associated with construction activities are allowed within the boundaries of your local authority in compliance with PART VIII.A.

PART VIII.A.1.b – Added the sentence “Local government entities are allowed use of PART VIII of this permit for storm water discharges related to construction activities within the boundaries of your local authority.

2) Written Comments from The City of Bartlesville dated December 27, 2004. The City of Bartlesville commented upon the required annual permit fee required for the OKR04 General Permit.

Comment specifics: “It is our understanding that the permit will have a yearly fee (\$550) that is paid to the ODEQ to cover administrative costs for this program. While the permit is an unfunded mandate for both the ODEQ and City, the financial burden to comply with this program ultimately falls on the City to prepare, implement and monitor this program. Thus the City does not agree with the ODEQ requiring a fee to pay for its administrative costs. For that reason, the City of Bartlesville requests a waiver of the yearly permit fee of the first five (5) years to allow the City to identify and secure a revenue source for this program.”

DEQ RESPONSE: The OKR04 general permit is an NPDES permit. Under state law and DEQ rules, fees are utilized to partially offset administrative costs of the program. DEQ does not have any legal authority to grant fee waivers and is unable to grant this request. No changes were made to the permit in response to this comment.

3) Written Comments from The Oklahoma Department of Transportation (ODOT) dated December 30, 2004. ODOT comments pertain to several issues. These issues are related to A) Requests for technical assistance, B) Permitting questions, C) Compliance statements, and D) Clarification questions.

A) Comments requesting technical assistance:

- i. Comment specifics: “Draft General Permit, page 2, Part I.C. 5. Discharges Exceeding Water Quality Standards. ODOT does not have the expertise to identify and define water quality standards exceedances. It would have to rely on DEQ or other State Water Quality agencies for information on this requirement. Will DEQ provide assistance with this issue?”

DEQ RESPONSE: The DEQ will provide assistance and guidance where possible, however DEQ technical assistance and guidance does not replace the permittee’s responsibility to comply with permit requirements. No changes were made to the permit in response to this comment.

- ii. Comment specifics: “Draft General Permit, page 2, Part I.C. 6. Discharges not consistent with a TMDL. It was ODOT’s understanding from the Public Hearing that currently no TMDL’s exist within the State of Oklahoma. When such time comes that TMDL’s are established, this would require extensive assistance from DEQ or other Water Quality agencies in identification, BMP requirements and other technical assistance.”

DEQ RESPONSE: The DEQ will provide assistance and guidance where possible, however DEQ technical assistance and guidance does not replace the permittee's responsibility to comply with permit requirements. No changes were made to the permit in response to this comment.

- iii. Comment specifics: "Draft General Permit, page 8, Part III. C. Discharges To Outstanding Resource Waters. If ODOT is now or may be affected by this in the future, we would request that DEQ assist with meeting this requirement through education of the current loads and how to prevent causing future impairments."

DEQ RESPONSE: The DEQ will provide assistance and guidance where possible, however DEQ technical assistance and guidance does not replace the permittee's responsibility to comply with permit requirements. No changes were made to the permit in response to this comment.

- iv. Comment specifics: "Draft General Permit, page 18, Part V. Monitoring. It is ODOT's understanding from the Public Hearing that Monitoring will not be required until such time that TMDL's have been established. As mentioned above, ODOT requests that DEQ and other Water Quality agencies provide assistance with the Monitoring requirements by technical advisement, coordination through other agencies, etc."

DEQ RESPONSE: The DEQ will provide assistance and guidance where possible, however DEQ technical assistance and guidance does not replace the permittee's responsibility to comply with permit requirements. No changes were made to the permit in response to this comment.

B) Comments pertaining to permitting issues and questions:

- i) Comment specifics: "Draft General Permit, page 6, Part II.B. 3. Relying on another Government Entity. ODOT has been a co-permittee with Oklahoma City and Tulsa for the NPDES Phase I MS4 permits since 1996. In order to streamline the permit process, ODOT would prefer to obtain a single storm water permit from DEQ that would cover the four urbanized areas as a stand-alone permit for ODOT only. Meaning ODOT would no longer be a permittee with Oklahoma City and Tulsa. ODOT would participate and report on activities that may occur as a group effort to further water quality endeavors with other entities and accomplish any or all of the six minimum control measures but this would only be reported as part of ODOT's continuing BMP's. As ODOT continues to develop its Storm Water Management Plan in the coming years, we plan to expand the program to larger areas of the state."

DEQ RESPONSE: Coverage under this permit does not extend to Phase I areas. DEQ is willing to work with ODOT in the future to develop a single permit to cover both Phase I and Phase II ODOT MS4 areas. No changes were made to the permit in response to this comment.

- ii) Comment specifics: "Draft General Permit, page 26, Part VIII. B. 1. b. Requirements For Small MS4's That Elect To Adopt The Optional Permit Requirements For Municipal Construction Activities. Under the 4th MCM or the optional construction requirements, would the Contractor be required to obtain an industrial permit as well as the construction permit?"

DEQ RESPONSE: Anyone that meets the criteria requiring coverage under a storm water NPDES permit must obtain said coverage. The optional MCM only covers the permittee for construction activities and some limited support activities such as concrete batch plants and asphalt batch plants. Contractors could not be covered for any activities under the optional provisions of Part VIII. If the contractor conducts activities other than the support activities covered by the construction permit, then they must obtain industrial storm water permit coverage if necessary. No changes were made to the permit in response to this comment.

- iii) Comment specifics: “Draft Fact Sheet, page14, L.1.a. 303(d) List of Impaired Waters. How does DEQ anticipate entities will document in the SWMP that they are not causing violations to 303(d) receiving waters?”

DEQ RESPONSE: The DEQ anticipates the documentation that discharges are not causing violations to be done through a reasonable method. Such methods could be, but are not limited to, estimates of pollutant quantities discharged and effectiveness of selected BMPs, analytical monitoring of the receiving water at representative outfall sites, implementation of structural BMPs which are evaluated and/or monitored for elimination of pollutant loading, or implementation of procedural BMPs that are known to prevent the discharge of the pollutant in question. No changes were made to the permit in response to this comment.

- iv) Comment specifics: “DEQ’s new Storm Water permit has been written for municipalities and has many aspects that do not apply for the Oklahoma Department of Transportation. ODOT hopes to work with DEQ to develop a Storm Water program that can be tailored toward the processes that apply for the Oklahoma highway system and its facilities.”

DEQ RESPONSE: The DEQ recognizes that ODOT does not have all the tools available to traditional municipalities. However, ODOT must do everything within its authority and then may rely on DEQ for assistance with compliance. No changes were made to the permit in response to this comment.

C) Comments pertaining to compliance issues:

- i) Comment specifics: “Draft General Permit, page 12, Part IV.3.b.(2) Illicit Discharge Detection and Elimination, Rationale. As a State agency, ODOT by law cannot develop an ordinance or legal mechanism. For this regulatory mechanism requirement, ODOT will enforce and update policies and procedures, special provisions, specifications, plan notes, or equivalent control measures. This comment will suffice wherever the development of an ordinance is mentioned throughout the OKR04 document.”

DEQ RESPONSE: The DEQ recognizes that ODOT does not have all the tools available to traditional municipalities. However, ODOT must do everything within its authority and then may rely on DEQ for assistance with compliance. OKR04 permit provisions allow for DEQ assistance where the regulated entity does not have jurisdiction or authority. No changes were made to the permit in response to this comment.

D) Comments requesting clarifications:

- i) Comment specifics: “Draft General Permit, page 37, Part VIII. B. 13. (2). Storm Water Management. Would you give examples of post-construction storm water BMP’s that need authorization under a separate OPDES permit?”

DEQ RESPONSE: The wording in question is “However, post-construction storm water BMPs that discharge pollutants from point sources once construction is completed...” It is the discharge of pollutants from a “point source.” Point source discharges commonly refer to discharges of either industrial or municipal wastewater. An example is a detention pond or impoundment into which industrial wastewater is discharged after construction is completed. No changes were made to the permit in response to this comment.

- ii) Comment specifics: “Draft General Permit, page 40, Exhibit 1. Endangered Species/ Aquatic Resources of Concern. The Salt Plains National Wildlife Refuge is mentioned in Northeast and Northwest Oklahoma. Is there a different distinction between these two listings?”

DEQ RESPONSE: There is only one Salt Plains National Wildlife Refuge in Oklahoma. It is located in Alfalfa County. There is no distinction between these two listings. No changes were made to the permit in response to this comment.

II. STAFF IDENTIFIED CHANGES

GENERAL PERMIT NUMBER OKR04

Pg. 1, PART I.A – Typographical corrections, punctuation.

Pg. 1, PART I.A – Spelled out the acronym (SWMP) Storm Water Management Plan.

Pg. 1, PART I.A. – Added the sentence “Storm water discharges associated with construction activities are allowed within the boundaries of your local authority in compliance with PART VIII.A.”

Pg. 2, PART I.B.2 – Spelled out the acronym (OPDES) Oklahoma Pollution Discharge Elimination System and (NPDES) National Pollutant Discharge Elimination System.

Pg. 2, PART I.B.2 – Removed subgroup “s. Discharges or flows from fire fighting activities”.

Pg. 2, PART I.B.2 – Added subgroup “w. Discharges or flows from emergency fire fighting activities”.

Pg. 2, PART I.C.5 – Spelled out acronym (BMPs) Best Management Practices.

Pg. 3, PART I.D – Typographical corrections, spelling.

Pg. 4, PART I.E.2.a – Spelled out acronym (NOI) Notice of Intent.

Pg. 4, PART I.E.1.(2). – Typographical corrections, punctuation and added acronym (ESA).

Pg. 4, PART I.E.2 – Typographical corrections, spelling.

Pg. 4, PART I.E.2.d – Typographical corrections, spacing.

Pg. 7, PART II.B.4 – Typographical corrections, spacing.

Pg. 7, PART II.D – Corrected title of section to read “PART II.D CO-PERMITTEES”.

Pg. 7, PART II.E.2 – Grammatical correction from “an” to “a”

Pg. 8, PART III.B – Corrected title of section to read “ESTABLISHED TOTAL MAXIMUM DAILY LOAD ALLOCATION” to be consistent with content of the section.

Pg. 9, PART IV.A.2 & .3 – Removed “The” from the title line.

Pg. 9 & 10, PART IV.A.5. – Added “government” to make consistent with “government entities” stated in PART II.B.3.

Pg. 18, PART V.A.2.b – Replaced the title of “Test Procedures” with “Laboratory Methods”. Revised original sentence to say “If laboratory analysis is conducted it must be conducted according to test procedures approved under 40 CFR part 136.”

Pg. 19, PART V.A.3.f – Added “or observations” to include the results of “dry weather field screening”.

Pg. 19, PART V.C.1.a – Spelled out acronym (MEP) Maximum Extent Practicable.

Pg. 19, PART V.C – Added a new subgroup “2.” for clarification of reporting requirements from election of optional MCM.

Pg. 21, PART VI.H.2 – Spelled out acronym (NOT) Notice of Termination.

Pg. 24 & 25, PART VII – Typographical corrections, capitalization.

Pg. 26, PART VIII.A.1.b – Typographical corrections, capitalization.

Pg. 26, PART VIII.A.1.b. – Added the sentence “local government entities are allowed use of PART VIII of this permit for storm water discharges related to construction activities within the boundaries of your local authority.”

Pg. 27, PART VIII.B.1.b – Renumbered and added the requirement “(1). Concrete or asphalt batch plant activity is not located in the watershed of an Outstanding Resource Water as defined in the Oklahoma Water Quality Standards. ” to be consistent with the State Law.

Pg. 29, PART VIII.B.3.a.(3) – Added conditions and requirements to the discharges from fire fighting activities

Pg. 32, PART VIII.B.10.c – Typographical corrections, capitalization.

Pg. 39, PART VIII.B.13.e – Deleted “Except for flows from fire fighting activities,”

Pg. 39, PART VIII.B – Added section “14. Final Stabilization” to make optional MCM consistent with Federal and State laws.

Pg. 43, Exhibit 2.A – Typographical corrections, capitalization.

DRAFT FACT SHEET

Pg. 4, PART B.b.2. – Added a paragraph titled “Criterion D” that was originally omitted.

Pg. 4, PART B.b.2.d – Typographical corrections, spelling.

Pg. 5, PART C.3 – Typographical corrections, spelling.

Pg. 9, PART I.5 – Added “government” to make consistent with “government entities” stated in PART II.B.3 of the permit.

Pg. 12.7 – Added the sentence “ Storm water discharges associated with construction activities are allowed within the boundaries of your local authority in compliance with PART VIII.A of this permit.”

Pg. 22, PART R – Typographical corrections, spelling.

Pg. 23, PART R – Typographical corrections, spelling.