

**OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
GENERAL PERMIT NUMBER OKR10**

**STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY ON SITES OF
ONE ACRE OR MORE UNDER THE CONSTRUCTION GENERAL PERMIT OKR10 WITHIN THE
STATE OF OKLAHOMA**

RESPONSE TO COMMENTS

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The Department of Environmental Quality (DEQ), Water Quality Division received two (2) written comments from the Department of Transportation (ODOT) and City of Norman at the DEQ public meeting on August 23, 2017. DEQ also received three (3) written comments from three (3) parties concerning the draft general permit OKR10.

After reviewing the comments and considering the issues raised, 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>.

DEQ's responses to comments were provided to all parties that submitted comments within the thirty (30) day public comment period. This will be the DEQ's final permit decision.

A summary of the comments received, DEQ's responses, any resulting modifications to the draft permit, and staff-identified changes are listed below.

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

A. Written Comments submitted by Michele Dolan, Stormwater Manager from Oklahoma Department of Transportation (ODOT) dated August 15, 2017.

1. Can DEQ add a layer to the Flex Viewer Map online to demonstrate the MS4 entities? This will assist with the MS4 entry on the Notice of Intent Form.

DEQ Response: DEQ plans to update the mapping system to add a layer to assist the permittees with the MS4 information on the NOI form. No changes were made to the permit as a result of this comment.

2. Several places in OKR10, the terms "approved" and "established" TMDL is used. On the Data Viewer map, the term "completed" TMDL is used. Are these terms interchangeable or do they mean different things?

DEQ Response: The terms "approved" and "completed" TMDL are interchangeable for the proposed permit and Data Viewer. No changes were made to the permit as a result of this comment.

B. Written Comments submitted by Michele Loudenback, from City of Norman dated August 23, 2017.

1. 1.2.C.5 - Hazardous is defined; Should leachable? Define leachable?

DEQ Response: DEQ has added the following definition, **Leachable Hazardous Substance** refers that those hazardous substances which are naturally extracted from some material during rain or routine external building wash events.

2. 1.2.C.12 – Uncontaminated should mean that there are no pollutants – sentence is awkward – look at rephrasing?

DEQ Response: Uncontaminated flow or discharge means a flow or discharge does not cause or contribute to an exceedance of applicable water quality standards in the context of authorized non-stormwater discharge. Use of this term is consistent with EPA’s 2017 CGP. No changes were made to the permit as a result of this comment.

3. 2.2.2 – “will be removed at appropriate time to ensure...” if there is no specified time; it is unlikely that the temporary measures will be removed in a timely manner; thus, they could end up being litter or causing other unforeseen problems.

DEQ Response: DEQ has removed the following language from Section 2.2.2, “or will be removed at an appropriate time to ensure final stabilization is maintained”.

4. 4.3.16 – “prior to earth-disturbing activities or ...” There should be training requirements for new employees and for continuing training (maybe annually like OKR05)?

DEQ Response: Language in this Part indicates that the permittees must ensure that all the personnel, including new personnel, understand the requirements of the permit related with their specific responsibilities. Annual continuing training like MSGP OKR05 is not necessary due to the nature of CGP OKR10. No changes were made to the permit as a result of this comment.

C. Written Comments submitted by David B. Hall for Bruce Moore, Manager, from Air & Water Quality Services of American Electric Power dated August 29, 2017.

1. Notice of Intent Contents (Part 2.1.6.J, K, L, U, V): The referenced notice of intent requirements were mentioned during the Oklahoma Department of Environmental Quality public meeting on August 23, 2017 as required by the United States Environmental Protection Agency. ODEQ was required to insert those requirements for the EPA to approve the draft OKR10 permit. Upon review of the EPA’s 2017 Construction General Permit and eReporting tool (NeT), which they require for the submission of NOIs, the referenced requirements were not found. AEP proposes that these requirements are arduous and not-necessary for ODEQ Notice of Intent submission.

DEQ Response: EPA’s eReporting Rule requirements will take effect during the life of this permit. Because of this, DEQ decided to implement the requirements with this permit instead of modifying the permit at a later date. No changes were made to the permit as a result of this comment.

2. Definition of “large bare area” (Part 3.3.2.A, footnote 3): Defining a large bare area for site stabilization is subjective. The size of large bare areas depends on a number of factors including, but not limited to current site climate conditions, physical and chemical soil properties, total project extent and project content. AEP proposes that permit not define this term and let the site and project scope determine what constitutes a “large bare area”.

DEQ Response: Both the stakeholder advisory committee and DEQ working group recommended to define the term “large bare area” in order to provide clarity, guidance, and consistency necessary for site inspection. No changes were made to the permit as a result of this comment.

3. Notice of Termination Contents (Part 2.2.1.F): the referenced notice of termination requirement is beyond difficult for long electric transmission line projects. Final, updated site maps showing all completed plans and project extent is not feasible for project timelines and budgets. During the Oklahoma Department of Environmental Quality public meeting on August 23, 2017, ODEQ officials mentioned that requiring these maps will make the ODEQ inspector's job easier. In addition providing final project designs and maps will violate North American Electric Reliability Corporation.

DEQ Response: The proposed permit requires an updated map of facilities or sites that show all disturbed areas over the course of the construction, including stabilized areas of concrete or asphalt batch plants, equipment staging yards, stockpiles, borrow areas, wash-out areas, previously disturbed areas etc. DEQ will work with the permittees if there is any confidential information that is against security issues of the permittees. No changes were made to the permit as a result of this comment.

4. Definitions Section (Part 8.0): Move definitions section to the beginning portion of the OKR10 document

DEQ Response: The stakeholder advisory committee and DEQ work group had reached the conclusion after discussing at the meetings that the definition part will not be moved to the front of this proposed permit. No changes were made to the permit as a result of this comment.

5. Municipal Separate Storm Sewer System (Part 2.1.6.O): Include a reference to the location of an updated and managed list of regulated Oklahoma MS4's.

DEQ Response: See Response number A.1 above.

6. Terminating Coverage Requirement (Part 1.4.3): Only one NOT can be submitted in a 90-day period. AEP may have projects that meet termination requirements before the 90-day period is expired and will not be able to close out projects in a timely manner.

DEQ Response: Part 1.4.3 specifies that one NOT form can be submitted to DEQ within a 90-day period. A permittee may submit one NOT for each separately permitted site at any time. The 90-day period only applies to submitting a NOT for any given site. No changes were made to the permit as a result of this comment.

7. Stormwater Pollution Prevention Plan Submission (Part 2.4): The SWP3 must be submitted if the project falls in the area of an approved TMDL or watershed plan or local compliance plan. TMDLs can be added at any time, this may cause AEP to modify project requirements and SWPPP document mid-construction project.

DEQ Response: The proposed permit requires permittee to submit a copy of the SWP3 to DEQ for review if the permittee discharges into a watershed with an approved TMDL. The approval process for a TMDL is a long process. If a TMDL, that has a stormwater requirement, is approved after a site has received an authorization, DEQ will not require permittees to modify their SWP3 to address the approved TMDL unless those permittees need to amend their NOIs. No changes were made to the permit as a result of this comment.

8. Turbidity Impaired Water (Part 3.5.1): Requirements changed from only sediment impaired waters in 2012 OKR10 to sediment and/or turbidity impaired waters in 2017 draft OKR10. Streams can be listed as sediment and/or turbidity impaired at-will, increasing the requirements of the permit from the time of authorization.

DEQ Response: This topic was discussed and the final language agreed to by both the stakeholder advisory committee and DEQ work group. The increased requirements are minimal and only increase site inspection and stabilization requirements to 7 days from 14 days. No changes were made to the permit as a result of this comment.

D. Written Comments submitted by Matthew Hite, Vice President of Government Affairs, from GPA Midstream Association dated August 29, 2017.

1. Section 1.1.1. Should be revised to reflect the exemption applied to oil and gas exploration, production, processing, or transmission facilities in accordance with 33 U.S.C. § 1342(1)(2), 33 U.S.C. § 1362(24), and 40 C.F.R. § 122.26(a)(2)(ii), as incorporated by reference by 27A O.S. 1-3-101(4) and OAC 252:606-1-3(b)(3)(L).

Suggest that the following language be added to Section 1.1.1:

1.1.1 DEQ is not the Permitting Authority:

- A. Any Construction Activity on Indian Country Lands in Oklahoma:
- B. Construction activity associated with oil and gas extraction under the Standard Industrial Classification (SIC) Group 13 (Note: The DEQ has authority over the natural gas liquid extraction plans identified under SIC code 1321, and service company base operating stations identified under SIC code 1389. Any construction activities associated with facilities identified under SIC code 1321 are required to be covered under this permit unless exempted as set forth below): Pipelines under SIC 46, except pipeline within certain facilities regulated by DEQ; Natural gas transmission under SIC Group 492, except that the DEQ has jurisdiction over natural gas liquid extraction plants.

Stormwater discharges from construction of field activities or operations associated with oil or gas exploration, production, processing, or treatment operations, or transmission facilities are exempted from NPDES/OPDES permit coverage unless, in accordance with 40 CFR § 122.26(c)(1)(iii), the facility:

- Has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR § 117.21 or 40 CFR § 302.6 at any time since November 16, 1987;
- Or has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR § 110.6 at any time since November 16, 1987;
- Or contribute to a violation of a water quality standard.

DEQ Response: Part 1.1.1 specifies those construction activities that DEQ is not permitting authority. Where DEQ does not have jurisdiction, it is up to the Oklahoma Corporation Commission (OCC) or EPA to exempt those construction activities. Therefore, exemption language is not needed in DEQ's proposed permit and shall not be included. No changes were made as a result of this comment.

2. Part 1.3 Obtaining Authorization – the draft permit requirements for submitting a notice of intent do not include the processing time for authorization of coverage.

Suggest the following be added to the permit:

Part 1.3.1.E. A completed NOI form must be submitted to the ODEQ at least seven days prior to the commencement of construction to obtain provisional coverage seven days from the postmark date for the delivery to ODEQ. Authorization is no longer provisional when ODEQ review and approve the coverage.

DEQ Response: Obtaining a written authorization prior to coverage under a permit is required by DEQ statutes. No changes were made as a result of this comment.

1. Part 1.4 Terminating Coverage – the draft permit requirements for terminating coverage indicates at least a 30 day period for the ODEQ to review NOT for completeness and accuracy and inspect the construction site. This process is cumbersome and time consuming to both the ODEQ and operator.

The NOT process should be streamlined to allow a more precise termination sequence which will reduce the burden of the ODEQ as well as the operator. Suggest language similar to the following:

Part 1.4.3: Authorization of large construction must be terminated by submitting a NOT on a paper form to ODEQ supplied by the executive director. Authorization to discharge under this general permit terminates at midnight on the day a paper NOT is postmarked for delivery to the ODEQ. Compliance with the conditions and requirements of this permit is required until a NOT is submitted.

DEQ Response: During the stakeholder advisory committee and DEQ work group meetings, it was discussed that self-termination created problems when permittees failed to pass the final inspections and were required to resubmit a new NOI and pay additional fees. These changes are necessary to eliminate the operator having to submit a new NOI and pay the fees. No changes were made as a result of this comment.

E. Written Comments submitted by T Rolloff, P.G., Senior Project Manager, from Apex TITAN, Inc. dated August 28, 2017.

1. Comment 1 Section 3.6.3(A)

It is not clear if Primary Operators are required to identify and include, in their LCPD SWPPP, ground disturbances from all entities that can be defined as Secondary Operators.

In many past cases, Primary Operators of LCPDs, in their SWPPP (and permit coverage) have not, and will not, included consideration of some utility placements or other minor ground disturbance projects of “Secondary Operators” within an LCPD. Under these circumstances, even if the ground disturbance from a (Secondary) Operator is, for example, a small pit excavation, the (secondary) Operator is compelled to go through the process and expense of developing a swppp and acquiring permit authorization for ground disturbance that may be less than 0.01 acres.

Request the DEQ clearly define the requirements of the Primary Operators as they relate to ground disturbance from Secondary Operators; particularly those disturbances of less than one acre.

- An aside to the comment above: within the context of the above comment, I asked a regulator from a neighboring state to define their LCPD permit nomenclature. This is the response received:

We consider utility work performed and supervised by utility companies to be stand-alone construction projects which are separate for permitting purposes from construction in the same general vicinity. Stand-alone construction projects are subject to the construction stormwater permit requirements if the stand-alone construction activities will disturb 1 acre or more.

Even if an Authorization is not needed, utility companies should provide appropriate sediment and erosion control measures as needed to ensure that no water quality violations result from project activities, even when disturbing less than 1 acre.

DEQ Response: Primary operator is responsible for obtaining permit coverage for the construction site in accordance with the general permit. The “primary operator” shall identify all “Secondary operators” and specify the areas of the construction site where they will be operating. If “Secondary operators” are not covered under the primary operator’s authorization, this operator must obtain its own permit coverage.

DEQ agrees that utility work can be considered as a stand-alone project and is subject to stormwater permit requirements if such utility work will disturb areas of 1 acre or more. However, this stand-alone project is not required to apply for permit coverage if disturbance is less than 1 acre unless the construction activity is a part of a larger common plan of development. The operator for this utility work could be a secondary operator who has control and is covered by the authorization and SWP3 held by primary operator.

No changes were made to the permit as a result of this comment.

2. Comment 2 Section 3.6

Linear projects that may have only a few feet of narrow ground disturbance within areas identified as sensitive areas or drainages, are subject to additional requirements under 3.51 and 3.52 (for at least for those few of disturbance).

Request that the DEQ consider a ground disturbance threshold for the additional ARC/ORW requirements for linear projects having the majority of project ground disturbance (>1 acre) outside sensitive areas subject to additional requirements, or provide subjective review for projects requiring permit authorization but having less than an acre of disturbance within sensitive areas or sensitive drainages. Note: Ground disturbance projects of less than an acre located in these areas are not subject to these requirements.

DEQ Response: For those disturbed area within ARC or ORW, including an area of less than 1 acre for linear project, the proposed permit requires the permittee to implement additional requirements under Parts 3.5.1 and 3.5.2. For the disturbed area of the linear project located outside of ARC or ORW, these additional requirements do not apply. No changes were made as a result of this comment.

PART II Staff Identified Changes

During review of the draft permit, a few grammatical and typographical errors were identified and corrected.

1. Page 2, Part 1.2.1.C.5 has been modified to correct a grammatical error as follows:
 5. Routine external building wash-down that do not use soaps, solvents and/or detergents and external surfaces do not contain leachable hazardous substances (e.g. paint or caulk containing polychlorinated biphenyls (PCBs));
2. Page 6, Part 2.1.6.J “imperious” was corrected to impervious.
3. Page 10, Part 3.3.1.D.3 has been modified for clarification purpose as follows:

Stabilization is not required for exit points at linear utility construction sites if other controls at the exit point are provided to minimize sediment track-out.
4. Page 15, Part 3.3.3.B.3.e.(1) A comma was added after phrase “Keep waste container lids closed during precipitation event,” for clarification purpose.
5. Page 21, Part 4.1.5 “implement” was corrected to implementation.
6. Page 30, Parts 4.3.19.A.3 and 4 have been revised so that deficiencies can be discovered by DEQ and others. The revised language shows as follows:
 3. If results of inspections or investigations indicate that SWP3 modifications are necessary for compliance with this permit;
 4. Where inspector or investigator determines it is necessary to install and/or implement additional controls at the site in order to meet the requirements of this permit (e.g., an approved TMDL report applies to the site);
7. Page 5, Part 3.3.2.A.2 has been modified as follows:
 2. Complete the installation of stabilization measures as soon as practicable, but no later than 14 calendar days after stabilization measures have been initiated, or 7 calendar days if you discharge to an impaired water, or ORW, or ARC (see Part 3.3.2.A.2.c.)
8. Page 13, Part 3.3.2.B.1 has been modified to be added a reference as follows:
 1. If you use vegetative cover to stabilize an exposed portion of your site temporarily and finally (also see Part 8.30 Definitions of Temporary and Final Stabilization), you must comply with one of the following criteria:
9. Page 15, Part 3.3.3.B.4.b has been modified to include a clean-up requirement as follows:
 - (4) Clean up immediately if there is an overflow or if a discharge occurs outside of the leak-proof container or pit.