

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
GENERAL PERMIT NUMBER OKR04
PHASE II SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGES
WITHIN THE STATE OF OKLAHOMA

RESPONSE TO COMMENTS

Prepared by Michael B. Moe, P.E., Engineering Manager and Karen Milford, P.E.

The Department of Environmental Quality (DEQ), Water Quality Division received thirty-six (36) written comments from three (3) parties concerning the draft general permit OKR04 during the 30-day public comment period which opened on April 1, 2015 and closed on April 30, 2015.

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. The permit will become effective on November 1, 2015. 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 Comments Received Pertaining to the General Permit OKR04 with DEQ's Responses

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

A. Written comments submitted by John W. Hart, President of JW Hart & Associates, LLC on April 29, 2015.

1. Table of Contents **Applicable Language:** IV.B Required Swmp Updates **Comment:** "Swmp" should read SWMP.

DEQ Response: DEQ concurs. The initials "Swmp" in the Table of Contents were revised as recommended to "SWMP".

2. I.A **Applicable Language:** *This includes MS4s designated under 40 CFR §122.32(a)(1) and 40 CFR §122.32(a)(2) that describes the referenced area with a population of at least 10,000 but not exceeding 100,000.* **Comment:** This needs to change. Currently Broken Arrow has a population of 112,000 and Norman has a population of 110,925.

Either the language should be changed or these two cities should be issued Phase I permits.

DEQ Response: The cities of Broken Arrow and Norman were designated as Phase II small MS4s according to the 1999 Phase II Stormwater Final Rule. Both cities were located in Urbanized Areas with populations of at least 10,000 but not exceeding 100,000, as determined by the 1990 Decennial Census by the Bureau of the Census. EPA's 1999 Phase II Stormwater Final Rule ties the definitions of small, medium or large MS4s to the 1990 Decennial Census and does not require the permitted Phase II MS4s to be re-designated until such time as the Phase II Stormwater Final Rule is revised. No changes were made as a result of this comment.

3. **I.A Applicable Language:** *You are authorized to discharge under the terms and conditions of this General Permit if you operate a small MS4 within the permit area described below:* **Comment:** Norman and Broken Arrow, by definition above are not a small MS4. The permit should recognize that the term "large and/or "medium" no longer apply.

DEQ Response: The cities of Norman and Broken Arrow are still small MS4s as defined by the 1999 Phase II Stormwater Final Rule. Thus, they still meet the eligibility language in Part I.A.1 which states "Are not a "large" or "medium" MS4..." Also see Response number A.2 above. No changes were made as a result of this comment.

4. **I.A Applicable Language:** *Are not a "large" or "medium" MS4 pursuant to 40 CFR §122.26(b)(4) and (b)(7) or designated under 40 CFR §122.26(a)(1)(v).* **Comment:** Language should be modified to indicate that previously permitted Phase II entities that have increased in population over 100,000 will still be considered Phase II entities.

DEQ Response: See Response numbers A.2 and A.3 above. No changes were made as a result of this comment.

5. **I.B Applicable Language:** *Authorized Non-Stormwater Discharges: You are authorized to discharge the following non-stormwater sources provided you have not determined these sources to be substantial contributors of pollutants to your small MS4. Your list of allowable non-stormwater discharges and determination documentation must be included in your SWMP:* **Comment:** If the list provided is the list directly from the General Permit, is a determination document still required? Also, is there a standard document for the "determination documentation" and where is the level of effort defined?

DEQ Response: Determination documentation is still needed even if the list provided is the list of non-stormwater discharges directly from the General Permit. MS4s are required to take actions, such as self-evaluation, to identify any non-stormwater discharges within the MS4 (also see Part IV.3.a of the general permit), and then must

determine whether any listed allowable non-stormwater discharges are substantial contributors of pollutants to the MS4. Such evaluations must be documented and maintained with the SWMP. These evaluations do not necessarily require extensive field work and collection of new data, but may instead be based on existing data, review of Material Safety Data Sheet and other literature information, and knowledge of processes and operations. There is no standard determination document developed by the DEQ at this time, but DEQ may develop guidance in the form of fact sheets at some time in the future. You may use any types of “determination documentation.” No changes were made as a result of this comment.

6. Page 4 I.D **Applicable Language:**

State Historic Preservation Office
Oklahoma Historical Society
Oklahoma History Center
800 Nazih Zuhdi Drive
Oklahoma City, OK 73105
Tel: (405) 521-6249

To identify historic properties, go to the following web site at
<http://www.okhistory.org/index>

Oklahoma Archeological Survey
111 East Chesapeake
Norman, OK 73019
Tel: (405) 325-7211

To identify archeological sites go to the following website at:
<http://www.ou.edu/cas/archsur/>

Comment: Need consistent use of "website" throughout the permit.

DEQ Response: In response to the comment, the term “web site” was revised as recommended to “website”.

7. Page 7: II.A **Applicable Language:** *Renewal Permittees: You must submit a new NOI (see Exhibit 2), a summary status of current Storm Water Management Program (SWMP) within the previous permit term,* **Comment:** If annual reports have submitted on time over the past 10 years, why is it necessary to provide a summary status to the DEQ? Entities would be providing information to DEQ that has already been provided to them; this would seem to be redundant reporting.

DEQ Response: When the existing Small MS4 general permit expired and was administratively continued, Small MS4 permittees were given the choice as to whether or not to continue to submit their annual reports to the DEQ during the interim before the general permit was reissued. Most small MS4 permittees chose not to continue submitting their annual reports. Therefore, DEQ needs the existing Small MS4 permittees to submit summaries of their SWMPs to provide information on the current

implementation status for their stormwater programs. No changes were made as a result of this comment.

8. Page 7; II.A **Applicable Language:** *and an updated description of your current SWMP or apply for an individual permit within 90 days of the effective date of this Permit. Authorization under the 2005 Permit will be administratively extended for a period not to exceed 90 days from the effective date of this Permit.* **Comment:** It has been over 5 plus years since the permit expired, and a more reasonable amount of time should be allowed for renewal permittees; 180-120 days would be more appropriate. If the ODEQ required over 5 years to develop this permit, additional time for renewal permittees would seem to be prudent and appropriate.

DEQ Response: The DEQ believes that ninety (90) days following the effective date of this renewal permit is adequate time for existing permittees to prepare and submit their NOIs and SWMP summaries. Furthermore, existing Small MS4s will have one (1) year after the effective date of this renewal permit to revise their existing programs and implement the updated programs under this renewal permit term. No changes were made as a result of this comment.

9. Page 7: II.A **Applicable Language:** *You must include a list of current measurable goals for all six(6) or seven(7) Minimum Control Measures (MCMs) and summary of all Best Management Practice (BMP) activities actually accomplished in your summary status of current SWMP.* **Comment:** Again, this was included in the annual reports and should not have to be included. This requirement should be removed.

DEQ Response: See Response number A.7 above. No changes were made as a result of this comment.

10. Page 8 II.B **Applicable Language:** *For those MS4 cities not located entirely within an UA, your jurisdiction shall cover the entire area within the corporate boundaries of the municipality.* **Comment:** This was a requirement of previously permitted Phase I entities, for Phase II entities the Urbanized Area has been the standard language. From 40 CFR §122.32 *As an operator of a small MS4, am I regulated under the NPDES storm water program? (a) Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, State, Tribal, and local governments, including State departments of transportation; and: (1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated);* Why is the State arbitrarily requiring the entire corporate boundaries to be included, especially when most of the areas within a City outside of the established urbanized area is open space/agriculture?

DEQ Response: The decision to expand permit coverage to the entire corporate boundaries of municipalities was based on discussions and input from stakeholder committees. Stakeholders felt it would be simpler and more straightforward to implement their stormwater programs if they covered the entire area within the corporate boundaries rather than carving out just those areas within UAs. Furthermore, this expansion of permit coverage is more consistent with municipal area as defined in TMDL reports. Since the WLAs developed in TMDLs are based on the pollutant loading generated within the entire corporate boundaries of MS4s, the TMDLs require MS4s to operate their stormwater programs throughout their entire corporate boundaries located within the affected watersheds to ensure compliance with the TMDLs. This designation authority is found at 40 CFR 122.26(a)(9)(i)(C). No changes were made as a result of this comment.

11. Page 13 Part III.B **Applicable Language:** *The SWMP must be modified to implement the TMDL within the timeframe established in the TMDL or as otherwise specified in watered plan* **Comment:** Change "watered" to watershed.

DEQ Response: This typographical error has been superseded by revision to the language in Part II.B. See Response number C.3.b below.

12. Page 13 Part III.B **Applicable Language:** *If a TMDL or watershed plan in lieu of a TMDL is approved for any water body* **Comment:** Inconsistent use of word, should be waterbody as used in next section.

DEQ Response: In response to the comment, the term "water body" was revised as recommended to "waterbody" throughout the general permit.

13. Page 16 Part IV.C **Applicable Language:** *You must continue to implement your SWMP and revise your programs according to Part IV.D.* **Comment:** The use of the word "programs" here can be confusing. In some places the permit refers to specific BMPs as programs, in other areas it refers to "Programs" as minimum control measures; the commenter believes that either BMP or MCM should be used in place of program and/or programs.

DEQ Response: In response to the comment, the sentence has been clarified to read "You must continue to implement your SWMP and revise it according to Part IV.D." Furthermore, the permit has been reviewed to ensure that the use of the word "programs" is clear from context or to replace it with a more appropriate term (for example, "SWMP," "MCM," "BMP").

14. Page 16 Part IV.C **Applicable Language:** *You must revise and update your existing public education and outreach program. The revision of the program shall be completed*

within the first year after effective date of this permit. **Comment:** To be completed in one year is too aggressive. Why would a new BMP be required to be completely developed in one year; in the instance of determining beneficial audiences and proper messages, say for new public education programs, usually there is a required developmental period such as 1st year identifying audience, second year developing proper messages and obtaining funding, 3rd year implementing, 4th year evaluating and so on. The one year implementation is too ambitious and should be extended to at a minimum three years, such as "implemented by year three"

DEQ Response: Existing permittees should already have fully developed and implemented public education and outreach programs under the previous permit term. Part IV.C requires only that any revisions and updates to these existing programs be completed within the first year after the permit effective date. The existing permittees will still have the full five (5) year permit term to implement any new or revised BMPs as well as improvements required under this new permit. No changes were made as a result of this comment.

15. Page 16 Part IV.C **Applicable Language:** *You must continue to implement a public education and outreach program to distribute information and educational materials to the community or conduct equivalent outreach activities to promote behavior change*
Comment: This is a far reach related to NPDES goals. MS4 entities do not have the capability to promote behavior change, they can however provide educational materials to promote the reduction of pollutant contribution by targeted audiences. The words "behavior change" should be removed.

DEQ Response: Public education and outreach programs can and do help change human behavior with respect to reducing the amount of pollutants generated from human actions within the MS4 area. Providing educational materials to promote the reduction of pollutant contribution by targeted audiences is an example of promoting such behavior change. Also, MS4 entities do gain more public support for their SWMPs and increased compliance with the permit requirements as the public gains a greater understanding of the benefits of the SWMP through the education and outreach programs. No changes were made as a result of this comment.

16. Page 16 Part IV.C **Applicable Language:** *Non-traditional municipalities such as universities, hospital complexes, prisons, special districts, etc. and federal facilities must address the community served by the MS4. For example, at a university it would be the faculty, other staff, students, and visitors, while at a military base, it would include military personnel (and dependents) contractors, employees, tenants, visitors, etc.;*
Comment: Municipalities are not Non-traditional; the word municipality should be removed. **Comment:** DOT should also be here, and the education opportunities chosen from applicable audiences.

DEQ Response: Municipalities, as defined in the EPA’s final rules that describe the small MS4 stormwater program, include not only the state’s municipal governments (cities, towns, villages, counties, etc.), but also any other public body created by or under state law that owns or operates a MS4. Examples of other public entities that are included in this program include the Oklahoma Department of Transportation (ODOT), state universities, federal and state prisons, state and federal hospitals, public housing authorities, and school and other special districts. ODOT and its applicable audiences were specified in Part IV.C.1.(1).(c). No changes were made as a result of these comments.

17. Page 16 Part IV.C **Applicable Language:** *Departments of transportation must address the community working on or served by the transportation network within the MS4 including employees, contractors, and the general public.* **Comment:** DOT's are defined by EPA as "Non-traditional MS4s" and should not be in a category by themselves. **Comment:** General public is not applicable. The DOT does not have a general public; as stated by the EPA "Transportation systems often serve a literally transient population"; this means that a limited public audience exists at any time within the established MS4 of the DOT, which is defined as the Right-of-Way (ROW) operations area for a particular roadway with only a traveling audience to educate. No one lives in the ROW, there are no businesses or industries located within the ROW, and given that the transient population typically resides in adjacent "Traditional MS4s" that have general public education programs, programs aimed at this audience are redundant and limited to Webpage opportunities and Adopt-a-highway programs.

DEQ Response: DOTs possess unique characteristics and are required to implement their education and outreach programs not only for the “traveling audience” but also for the general public (see “Road-Related MS4s” from EPA’s website at <http://water.epa.gov/polwaste/npdes/stormwater/Road-Related-MS4s.cfm>). For example, currently ODOT’s statewide anti-litter campaign, annual poster contest, and environmental conference have been documented in the annual reports as successful public education and outreach BMPs. Also ODOT has worked with the general public through Central Oklahoma Storm Water Alliance (COSWA) since 2009. No changes were made as a result of these comments.

18. Page 17 Part IV.C **Applicable Language:** *The details of Blue Thumb Program can be founded from the website* **Comment:** "Founded" should be changes to found.

DEQ Response: In response to the comment, the word “founded” was corrected as recommended to “found”.

19. Page 17 Part IV.C **Applicable Language:** *The public can provide valuable input and assistance to a regulated small MS4’s municipal SWMP* **Comment:** Why is this word

"municipal" used here, there are non-municipal entities that are required to implement the permit.

DEQ Response: In response to this comment, the word “municipal” was removed as recommended.

20. Page 17 Part IV.C **Applicable Language:** *An active and involved community is crucial to the success of a SWMP because it allows for:*

Broader public support since citizens who participate in the development and decision making process are partially responsible for the program and, therefore, may be less likely to raise legal challenges to the program and more likely to take an active role in its implementation.

Shorter implementation schedules due to fewer obstacles in the form of public and legal challenges and increased sources in the form of citizen volunteers.

A broader base of expertise and economic benefits since the community can be a valuable, and free, intellectual resource.

A conduit to other programs as citizens involved in the stormwater program development process provides important cross-connections and relationships with other community and government programs. This benefit is particularly valuable when trying to implement a stormwater program on a watershed basis. **Comment:** All of these are assumptions, and can be debated as to whether or not they are crucial to success. Besides legal notice requirements, and depending on the municipality and/or entity (non-traditional), the number of citizens that have had a pro-active role as assumed here has actually been for the most part non-existent. This should read "An active and involved community is crucial to the success of a SWMP", additional language is not necessary, and is suspect as to its validity.

DEQ Response: DEQ agreed to delete the following language:

- Broader public support since citizens who participate in the development and decision making process are partially responsible for the program and, therefore, may be less likely to raise legal challenges to the program and more likely to take an active role in its implementation.
- Shorter implementation schedules due to fewer obstacles in the form of public and legal challenges and increased sources in the form of citizen volunteers.
- A broader base of expertise and economic benefits since the community can be a valuable, and free, intellectual resource.
- A conduit to other programs as citizens involved in the stormwater program development process provides important cross-connections and relationships with other community and government programs. This benefit is particularly valuable when trying to implement a stormwater program on a watershed basis.

Page 17 Part IV.C.2 was revised as follows:

“An active and involved community is crucial to the success of a SWMP.”

21. Page 16 Part IV.C **Applicable Language:** *Your public participation and involvement program must be reviewed and updated within the first year after the effective date of this initial permit* **Comment:** This is not enough time to develop new programs. Any new program must have City Council and/or public approval first and that is only possible after funding/costs have been defined and a timeline for acquisitions of funds established. Target audiences must also be defined. School programs have taken longer than two years to establish and implement. This should be extended to 3 years.

DEQ Response: See DEQ Response number 14. No changes were made as a result of this comment.

22. Page 19 Part IV.C **Applicable Language:** *Laboratory methods can be reserved for situations where you have identified a problem and need to prove that you have traced the problem to a particular illicit discharger.* **Comment:** This should be changed to "Laboratory methods can be reserved for situations where you have identified a problem and need to enforce on a suspected illicit discharger. Proving that you traced something is a judicial activity.

DEQ Response: In response to the comment, the sentence has been revised as recommended.

23. Page 20 Part IV.C. **Applicable Language:** *Your evaluation shall verify compliance with permit requirements and more importantly, document that tangible efforts have been made towards achieving your identified measurable goals and reducing the impacts of stormwater runoff from the small MS4. Document the evaluation of your illicit discharge detection elimination program annually as required by Part V.C of this Permit.* **Comment:** The word "tangible" is superfluous and not in context and should be removed here and from all other areas that it is used in the permit.

DEQ Response: In response to the comment, the word "tangible" was removed as recommended.

24. Page 23 Part IV.C. **Applicable Language:** *You must review and revise your existing new development and redevelopment post-construction management program, as necessary. The revision shall be completed within the first year after the effective date of this permit* **Comment:** Not enough time to review legal barriers to LID. Recommend this to be extended to three (3) years.

DEQ Response: See DEQ Response number 14. No changes were made as a result of this comment.

25. Page 27 Part IV.D **Applicable Language:** *Changes adding (but not subtracting or replacing) components, controls, or requirements to the SWMP may be made at any time*

upon written notification to the Director. Comment: Why not? What if a BMP, such as retrofitting detention basins, was fully accomplished; why would the MS4 have to replace it just so that the number of BMPs remains the same?

DEQ Response: A BMP may be fully accomplished but over time may prove not to be effective or feasible. If and when that is the case, changes adding components, controls, etc., or replacing an existing BMP are required/needed. When BMPs are effective and feasible, the permittee is not required to implement additional components, controls, etc., or modify the SWMP. No changes were made as a result of this comment.

26. Page 29 Part V.B **Applicable Language:** *Retain Records of All Monitoring Information: Include all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Permit, copies of DMRs, a copy of the OPDES permit, and records of all data used to complete the NOI for this Permit, for a period of at least three (3) years from the date of the sample, measurement, report or application, or for the term of this Permit, whichever is longer. This period may be extended by request of the Director at any time. Submit Your Records: Mail your completed DMR reports, if required, to DEQ along with your annual report. You must retain a description of the SWMP required by this Permit (including a copy of the permit language) at a location accessible to the Director. You must make your records, including the NOI and the description of the SWMP, available to the public. Comment:* This language appears to be from either a Phase I permit or an Industrial MSGP. This section should be modified with the above language removed and instead language that states that if monitoring is performed all records shall be maintained for review. Furthermore, since this is "Recordkeeping" language should be included as to the minimum years records should be maintained.

DEQ Response: This language is necessary for MS4 permittees to implement an effective and defensible monitoring program. It is implied that these recordkeeping requirements apply only if monitoring is actually performed. Also, the permit language does specify that all records shall be maintained for a period of at least three (3) years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. No changes were made as a result of this comment.

27. 30 Part V.C. **Applicable Language:** *You must submit an annual report for each permit year to the Director of DEQ. Mail your report to the address specified in PART II.C or e-mail to DEQ electronically. Your annual report must be received by March 1st of the year beginning in year 2016. Comment:* Why is there not an option for fiscal year reporting? This makes more sense as entity infrastructure reports are completed at this time and the amount effort and funds spent on programs is more easily captured than having to break up years to obtain reporting values.

DEQ Response: In response to the comment, DEQ added an option for fiscal year reporting in Part V.C.1 as follows:

“If you implement your SWMP on a calendar year basis (from January 1st thru December 31st), you must submit your annual report by March 1st of the calendar year, beginning in 2016 for existing permittees or 2017 for new permittees. If you implement your SWMP on a fiscal year basis (from July 1st thru June 30th), you must submit your annual report by September 1st of the fiscal year, beginning in 2016 for existing permittees or 2017 for new permittees.”

28. Page 32 Part VI.A. **Applicable Language:** *Any violation of this permit constitutes a violation of the Oklahoma Pollutant Discharge Elimination System Act, 27A O.S. § 2-6-206 et seq., and the Clean Water Act, and regulations promulgated thereto* **Comment:** "promulgated" should be changed to promulgated.

DEQ Response: In response to this comment, the word “promulgated” was corrected as recommended to “promulgated”.

29. Page 37 Part VI.T. **Applicable Language:** *You shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time you become aware of the circumstances. A written submission shall also be provided within 5 days of the time you become aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; The following shall be included as information which must be reported within 24 hours: 1) Any unanticipated bypass which exceeds any effluent limitation in the permit; 2) Any upset which exceeds any effluent limitation in the permit; and 3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the DEQ in the permit to be reported within 24 hours; and DEQ may waive the written report on a case-by-case basis for reports if the oral report has received within 24 hours.* **Comment:** This language is not applicable to MS4 Phase II permits. Bypass reports are related to wastewater treatment plants which have separate permit requirements for 24 hour reporting, any reporting by the MS4 entity would be redundant. There are no effluent limitations in this permit. There are no maximum daily discharge limitations for the MS4 entities; there may be, however, maximum daily discharge limitations for industrial MSGP holders who have their own reporting requirements. This language and the actions required are redundant with other permit reporting procedures and should be removed.

DEQ Response: This new paragraph is required by 40 CFR 122.41(l)(6) and added because of a comment received from EPA. In accordance with 40 CFR 122.41, this

condition applies to all NPDES (and hence, OPDES) permits. While most MS4 entities will not be subject to effluent limitations, those located partially or entirely within TMDL watersheds may be. No changes were made as a result of this comment.

30. Page 40 Part VII. **Applicable Language:** Definitions **Comment:** There should be a definition for Non-traditional MS4.

DEQ Response: DEQ added a new definition of “non-traditional MS4” as follows:

“Non-Traditional MS4 means state and federal prisons, office complexes, hospitals, state transportation agencies, universities, public housing authorities, schools, and other special districts.”

B. Written comments submitted by Shawn O’ Leary, P.E., CFM, Director of Public Works, the City of Norman, received on April 30, 2015.

1. The City of Norman does not intent to utilize Part VIII: Optional Permit requirements for Municipal Construction activities.

DEQ Response: This comment is acknowledged. Since this MCM is optional, the City of Norman is free to elect not to utilize it. However, as a result of other comments received, DEQ is retaining this optional 7th MCM in the final permit (see Response number C.1 below). No changes were made as a result of this comment.

2. Part III.A.1 requires permittees to develop BMPs for pollutants identified on the 303(d) list of impaired water bodies if the MS4 discharges to an impaired water body. The Canadian River segment which receives stormwater discharges from the City of Norman urbanized area is listed as impaired for lead and turbidity on the current 2012 303(d) list. The draft 2014 303(d) list recommends de-listing the Canadian River for these pollutants. Will permittees who have a 303(d) listed water bodies be required to develop BMPs for pollutants proposed for de-listing?

DEQ Response: The draft 2014 303(d) list of impaired water bodies was approved by EPA in May 2015, subsequent to the public comment period for the Small MS4 General Permit OKR04, and thus is now final and in effect. The city should select its BMPs and update its SWMP for pollutants identified on the final 2014 303(d) list of impaired water bodies. No changes were made as a result of this comment.

C. Written Comments submitted by Richard Smith, Consultant for INCOG’s Stormwater Program, and Vernon Seaman, Manager of Environmental and Energy Planning, INCOG, received April 30, 2015.

1. ISSUE #1: 7th Minimum Control Measure.

INCOG supports keeping this option in the OKR04 permit. ODEQ recently reported that at present there are 26 of the 44 OKR04 permittees that have elected to use the 7th MCM. INCOG has received several concerns from its Green Country Stormwater Alliance (GCSA) members that this option may be deleted. It is important to sustain the flexibility that the 7th MCM affords permittees who elect to use it. And since it is optional, those not wanting to use it are free to not do so. INCOG further recommends that ODEQ devote some staff time to educating all permittees about the benefits of using the 7th MCM, and prepare guidance about how OKR04 permittees can benefit from using this option.

DEQ Response: DEQ acknowledges this comment and concurs that keeping the 7th MCM option would benefit those permittees who elect to use it. DEQ is therefore retaining the optional 7th MCM in the final permit. DEQ will prepare a factsheet regarding how permittees can use this option. No changes were made as a result of this comment.

2. ISSUE #2: IV.C.5.a(4) phrase, "...of BMPs that are put in place after the completion of a construction project..."

After discussing this passage with ODEQ staff, it is apparent that the intent of this passage is to address BMPs that are constructed during the active construction phase as post-construction BMPs that are to be used and maintained after active construction is completed. INCOG recommends that the words "put in place after" be replaced with alternate words, such as, "installed during and still functioning after".

DEQ Response: In response to this comment, DEQ replaced the words "put in place after" with "installed during and left in place after," which, while slightly different than the wording proposed by the commenter, achieves the same intent.

3. The remaining INCOG comments all concern language in Part III.B "Established Total Maximum Daily Load [TMDL] Allocations" under OKR04's Part III "Special Conditions". Part III.B.1 text is:

III.B.1 If a Total Maximum Daily Load (TMDL) ... is established for any water body into which you discharge prior to the date that you submit a NOI, and if that TMDL includes a waste load allocation or load allocation for a parameter likely to be discharged by the MS4, your discharges must meet any limitations, conditions, or other requirements of the waste load allocation (WLA), ... Monitoring and reporting of the discharges may also be required as appropriate to ensure compliance with the TMDL, You must adopt any WLAs assigned to your discharges specified in the TMDL... as measurable goals in your SWMP.

- a. ISSUE #3: "...your discharges must meet any limitations, conditions, or other requirements of the... WLA"

The 2005 OKR04 text for Part III.B.1 is less specific: "...*your discharges must meet the requirements of the TMDL and/or its associated implementation plan...*" The difference between these two versions is that the 2005 OKR04 requirement is to do what the TMDL document requires of stormwater permittees, whereas the 2015 OKR04 requires meeting the TMDL's WLA limitations. This change, in effect is creating numerical criteria to be met by stormwater permittees. For the past 10 years, ODEQ and EPA have approved hundreds of TMDLs in Oklahoma with a special appendix devoted to instructions for stormwater permittees that only required having to implement BMPs and perform monitoring. The stormwater permittee appendices in these TMDLs do not require that the permittee meet the TMDL's numeric limit.

Traditional end-of-pipe point sources, such as wastewater treatment plants (WWTPs), have only one or a few discharge locations and have treatment processes that allow for technological controls of pollutant concentrations in their effluents. Such discharges are able to effectively meet the WLA limits that apply to them in TMDLs. Stormwater permittees do not have treatment processes that can control pollutant loads, and they have many hundreds, even thousands of discrete points of discharge throughout their MS4s. These circumstances make it impossible for stormwater permittees to employ any type of realistic science-based monitoring of all of these outfalls to document compliance with TMDL numerical limits.

INCOG therefore seeks guidance from ODEQ on what specifically will be required of a stormwater permittee to meet these new requirements in Part III.B.1. In what way must a permittee document that the TMDL's WLA limits are being met? Does Part III.B.1 require monitoring of outfalls? If so, how many, under what discharge conditions, what frequency of sampling, by what methods, etc.? If Part III.B.1 does not require monitoring, then by what other means will ODEQ require a stormwater permittee to demonstrate that they are meeting the TMDL's WLA limits?

INCOG recommends that compliance with TMDLs be accomplished solely by the implementation of BMPs as has been the case since the 2005 OKR04 and incorporated in the TMDLs in Oklahoma for many years.

DEQ Response: The Part III.B.1 language has been modified to be consistent with the Lake Thunderbird Report for Nutrient, Turbidity and Dissolved Oxygen TMDLs (November 2013), Appendix E, "MS4 Stormwater Permitting Requirements and Presumptive Best Management Practices (BMP) Approach," which reflects DEQ's current approach to TMDL implementation for MS4s. In this TMDL Appendix, DEQ exercises the flexibility to adopt an approach in which applicable WLAs can be expressed as BMPs or other similar requirements,

rather than as numeric effluent limits, as described in EPA memoranda dated November 22, 2002¹ (EPA 2002) and November 26, 2014² (EPA 2014).

In this approach, the TMDL Appendix lays out specific requirements for MS4s to undertake certain pollutant reduction measures within the terms of their MS4 permits. These measures must be designed to achieve progress toward meeting the reduction goals established in the TMDL in order to comply with the WLAs of the TMDL. These TMDL requirements will rely primarily on a Best Management Practices (BMPs) approach, in which MS4s are required to implement BMPs during the permit term to reflect reasonable further progress towards meeting the applicable water quality standards. MS4 permittees will review the adequacy of their Storm Water Management Program (SWMP) against these requirements.

Stormwater permittees will be allowed to take advantage of existing information on BMP performance and select a suite of BMPs appropriate to the local community that are expected to result in progress toward meeting the reduction goals established in TMDLs. In other words, a stormwater permittee could document that the TMDL's WLA limits are being met by demonstrating that these BMPs will result in progress toward attaining water quality standards. Furthermore, the TMDL Appendix includes four (4) specific provisions for MS4s to follow in developing their TMDL Compliance Plans, as well as Monitoring/Tracking Plans. Compliance with the following provisions will constitute compliance with the requirements of these TMDLs:

1. Develop a TMDL Compliance Plan – Adopt the WLA specified in the TMDL as a measurable goal within 24 months;
2. Develop or Participate in a Pollutant Monitoring and Tracking Program – Implement the program within 36 months;
3. Annual Reporting – Submit a TMDL Implementation Report as part of the Annual Report;
4. Evaluating Progress – Evaluate progress toward achieving the WLA and load reduction goals.

You may find the details of the Lake Thunderbird TMDL, Appendix E regarding Compliance and Monitoring Plans on DEQ's website at http://www.deq.state.ok.us/wqdnew/tmdl/thunderbird/LakeThunderbirdFinalTMDL_ReportNov2013.pdf

¹ Robert H. Wayland, III, Director, Office of Wetlands, Oceans and Watersheds and James A. Hanlon, Director, Office of Wastewater Management, 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,' November 22, 2002.

² Andrew D. Sawyers, Director, Office of Wastewater Management and Benita Best-Wong, Director, Office of Wetlands, Oceans and Watersheds, 'Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,"' November 26, 2014.

Part III.B.1 does not provide stormwater permittees with the details of TMDL requirements, but instead refers them to the stormwater Appendix in the applicable TMDL reports.

While the above reflects DEQ's current approach to implementing TMDLs for MS4s, it is possible that in future TMDLs or MS4 permits DEQ may further exercise its discretion to include clear, specific and measurable requirements and, where feasible, numeric effluent limitations³ as necessary to meet water quality standards. If such were to become the case, MS4 permittees would still have the opportunity to comment on or protest such additional requirements and effluent limitations through the public comment and hearing processes.

b. ISSUE #4: Adopting stormwater WLAs as Measurable Goals.

This appears to be another means by which the limits in TMDLs are to become numerical criteria for stormwater permittees. From the beginning of the OKR04 permit, ODEQ has insisted that quantifiable Measurable Goals (MGs) be established as often as possible, in effect becoming numerical criteria to be met for as many BMPs as possible. This included numeric MGs for numbers of various brochures distributed, numbers of inspections performed, pounds of trash removed by street sweepers, etc. And Annual Reports required that attainment of these numerical MGs be reported, or if not met, then reasons why were required, along with recommended BMP or MG changes.

INCOG requests clarification from ODEQ on how making a TMDL's limits permit-required Measurable Goals will be enforced by ODEQ. How will permittees demonstrate that they have met the numerical MG? Such demonstration would appear to require monitoring data of all MS4 outfalls which is, on a practical level, impossible. If ODEQ requires some other type of demonstration of meeting the numerical MG, what will that be? And will the permittee be considered in noncompliance with the OKR04 permit and/or the TMDL if their data show that they have not met the numerical MG?

³ In the context of TMDLs and NPDES permits for stormwater discharges, "numeric" effluent limitations refer to limitations with a quantifiable or measurable parameter related to a pollutant (or pollutants). Numeric WQBELs may include other types of numeric limits in addition to end-of-pipe limits. Numeric WQBELs may include, among others, limits on pollutant discharges by specifying parameters such as on-site stormwater retention volume or percentage or amount of effective impervious cover, as well as the more traditional pollutant concentration limits and pollutant loads in the discharge.

DEQ Response: For clarification purposes, Parts III.B.1 and 2 have been modified as follows:

Part III.B.1 “If a TMDL or watershed plan in lieu of a TMDL is established for any waterbody into which a MS4 discharges prior to the date that the MS4 submits a NOI, and if that TMDL includes a wasteload allocation (WLA) or load allocation (LA) for a parameter likely to be discharged by the MS4, the MS4’s discharges must meet any limitations, conditions, or other requirements of the implementation plan associated with that WLA, LA and/or TMDL within any timeframes established in the TMDL or watershed plan. Monitoring and reporting of the discharges may also be required as appropriate to ensure compliance with the TMDL, or watershed plan. The MS4 must adopt any WLAs assigned to its discharges specified in the TMDL, or similar targets in the watershed plan, as measurable goals in the SWMP. If the TMDL or watershed plan relies on a BMP-based approach, effective implementation of additional TMDL- or watershed plan-related BMPs will be sufficient to implement applicable WLAs. This BMP-based approach is consistent with EPA memoranda dated November 22, 2002¹ (EPA 2002) and November 26, 2014² (EPA 2014).” If the TMDL or watershed plan specifies additional requirements, the MS4 must also meet these additional requirements.

Part III.B.2 “If a TMDL or watershed plan in lieu of a TMDL is approved for any waterbody into which a MS4 discharges after the date that the MS4 submits a NOI, the MS4 must incorporate any limitations, conditions, and requirements applicable to the discharges into its SWMP to ensure that the requirements of the implementation plan associated with the WLA, LA, and/or TMDL will be met within any timeframes established in the TMDL or watershed plan. Monitoring and reporting of the discharges may also be required as appropriate to ensure compliance with the TMDL or watershed plan. The MS4 must adopt any WLAs assigned to its discharges specified in the TMDL, or similar targets in the watershed plan, as measurable goals in the SWMP. This BMP-based approach is consistent with EPA memoranda dated November 22, 2002¹ and November 26, 2014². If the TMDL or watershed plan relies on a BMP-based approach, effective implementation of additional TMDL- or watershed plan-related BMPs will be sufficient to implement applicable WLAs. If the TMDL or watershed plan specifies additional requirements, the MS4 must also meet these additional requirements.”

ISSUE #5: TMDL Limits Written “In the Aggregate” for Stormwater Permittees. Many, perhaps nearly all of the TMDLs written in Oklahoma that have stormwater permittee limits have them written “in the aggregate”. That is, the TMDL calculation of pollutant maximum loads has one WLA assigned to all stormwater permittees collectively, as if they were a single entity or pollutant source. This is present in the TMDL equation as “WLA_MS4”. For such TMDLs it is not possible to know what individual TMDL pollutant load limit is assigned for each individual stormwater permittee because the TMDL did not calculate individual loads, only the collective (aggregate) load for all MS4s combined.

INCOG seeks clarification from ODEQ on how such “aggregate” TMDLs should be addressed by individual stormwater permittees. It seems reasonable to assume that individual permittees in an aggregate TMDL will not be able to incorporate the TMDL’s WLA for stormwater because none were calculated for each permittee.

DEQ Response: TMDLs are calculated based on the watershed area. If several MS4s are located within the same watershed, the overall WLA for MS4s (WLA_MS4) is calculated and then split among the individual MS4s based on their individual contributions, as determined by model calculations, area within the watershed, and so on. Each MS4 has been assigned its own MS4 WLA instead of an “aggregate” WLA. For example, Moore, Norman and Oklahoma City each have their own WLAs for constituents in the Lake Thunderbird TMDL Report.

Therefore, each MS4 permittee is able to incorporate its individual WLA from the TMDL into its SWMP. The permittee is required to implement specific BMPs that reduce the discharge of the pollutant(s) of concern as necessary to meet the applicable WLA(s) or WQS. Also, the MS4 permittee is required to conduct stormwater monitoring to ensure the effectiveness of those BMPs. 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.