

**FACT SHEET**

**(Draft of June 1, 2020)**

FOR THE DRAFT AUTHORIZATION TO DISCHARGE TO WATERS OF THE UNITED STATES UNDER THE OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES).

DEQ Permit Number: OKR04

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The State of Oklahoma DEQ has made a tentative determination to issue a general permit for the discharge of stormwater from small municipal separate storm sewer systems (MS4s). DEQ is the permitting authority and this permit will be enforceable under both federal and state laws, rules and regulations. Permit requirements are based on NPDES regulations, 40 CFR §§ 122.1 *et seq.*, and the Oklahoma Pollutant Discharge Elimination System Act (OPDES Act), 27A O.S. §§ 2-6-201 *et seq.*, and the rules of DEQ adopted thereunder at OAC 252:606.

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## ISSUANCE OF DRAFT SMALL MS4 GENERAL PERMIT OKR04 FOR STORMWATER DISCHARGES WITHIN THE STATE OF OKLAHOMA

**April 30, 2021**

DEQ has issued the “Small Municipal Separate Storm Sewer System General Permit OKR04 for Stormwater Discharges within the State of Oklahoma” (OKR04). This permit will replace the current OKR04 permit, which will expire on October 31, 2020. Both new MS4 operators and existing permittees must obtain coverage under this new permit in order to discharge stormwater from MS4s in small cities, urbanized areas and other county areas within the State of Oklahoma.

### **A. PERMITTING BACKGROUND**

On November 19, 1996, the Environmental Protection Agency (EPA) Region 6 approved the State of Oklahoma’s application for DEQ to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for discharges of pollutants, including stormwater discharges, within the State of Oklahoma. However, DEQ’s approved program does not include discharges from construction activities located in Indian Country,<sup>1</sup> for oil & gas extraction and for agricultural purposes.

DEQ issued its first OKR04 permit on February 8, 2005. Currently, DEQ is proposing the 2020 OKR04 permit to replace the 2015 OKR04 permit that will expire on October 31, 2020. The issuance procedure for the permit is based on the Oklahoma Uniform Environmental Permitting Act found at 27A O.S. §§ 2-14-101 *et seq.* and rules found at OAC 252:4.

The proposed permit will have a term of five (5) years from the effective date. Every authorization to discharge under this permit will expire at the same time, and all authorizations to discharge will be required to be renewed on the same date. In order to receive this authorization, you must file a Notice of Intent (NOI) with DEQ and pay the application fee (\$100) and annual permit fee (\$748.11). The 1<sup>st</sup> year fee for a new permit will be prorated and covers the period beginning on the issuance date of your authorization and ending June 30th of the coinciding fiscal year. Also, you must develop, implement and enforce a Stormwater Management Program (SWMP) according to the requirements of this permit.

This permit authorizes all existing or new stormwater point source discharges to waters of the state from a regulated small MS4. The Nationwide Urban Runoff Program (NURP), which was sponsored by the EPA in the years 1978 through 1983, showed that stormwater runoff is a significant source of pollutants (EPA, 1983). The study identified 77 priority toxic pollutants in stormwater runoff discharged from residential, commercial and light industrial areas. Of these toxic pollutants, heavy metals such as copper, lead and zinc were detected most frequently and at levels of greatest concern. Floatables, pesticides, nutrients, bacteria, and erosion runoff from construction activities are potential pollutants expected in MS4 discharges.

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<sup>1</sup> Under EPA's 1996 approval of the State of Oklahoma's permitting program, the state was not authorized to issue NPDES permits under the federal Clean Water Act in areas of Indian Country, as defined in 18 U.S.C. § 1151, within the state. 61 Fed. Reg. 65047, 65049 (December 10, 1996). Therefore, this permit does not apply to discharges of stormwater in Indian Country. However, section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 ("SAFETEA"), Public Law 109-59, 119 Stat. 1144 (August 10, 2005), provides the state the opportunity to request approval from the EPA to administer federal environmental regulatory programs, including the Clean Water Act NPDES program, in Indian Country areas of the state. The submission by the state, and review by EPA, of this permit is without prejudice to the state's right to request such approval at any time.

General permits rely on permittees to certify that they meet the eligibility conditions and implement requirements that will ensure compliance with the conditions of the permit. The permit requirements in Part V and Part VI are intended to ensure that those seeking coverage under this permit select, implement, and maintain Best Management Practices (BMPs) for their SWMP that will reduce the discharge of pollutants and effectively control pollutant discharges to the maximum extent practicable (MEP) from the MS4.

### **NPDES Small MS4 General Permit Remand Rule**

On December 9, 2016, EPA issued the Small MS4 General Permit Remand Rule, with an effective date of January 9, 2017, to respond to a remand from the United States Court of Appeals for the Ninth Circuit in *Environmental Defense Center, et al. v. EPA*, 344 F. 3d 832 (9th Cir. 2003). Under the rule, EPA revised the small MS4 regulations to ensure that states review BMPs to be used by MS4s to ensure that the small MS4s reduce the pollutants in the discharge from their systems to the MEP and that states provide public notice and the opportunity to request a hearing.

The rule establishes two alternative approaches that states can use to issue small MS4 general permits. The first option is to issue a general permit that includes all permit terms and conditions to require the MS4 operator to reduce the discharge of pollutants from its MS4 to the MEP to protect water quality and to satisfy the appropriate water quality requirements of the CWA in one comprehensive general permit.

The second option allows states to establish the necessary terms and conditions in two steps. The first step is to issue a base general permit that contains terms and conditions for all MS4s. The second step requires that MS4s develop individual terms and conditions in their SWMPs that states will review. Public notice, comment period and opportunity to request a public hearing is available for both steps in the second option.

The rule also requires that permit terms and conditions are written in a language that is “clear,” “specific,” and “measurable” to avoid uncertainties as to what specific actions the MS4 is expected to take, and therefore make it easier to comply with and assess compliance. The preamble, 81 FR 89335 (December 9, 2016), explains that permit requirements that include “caveat” language such as “if feasible,” “if practicable,” “to the maximum extent practicable,” “as necessary,” or “as appropriate” unless defined would generally not qualify as “clear,” “specific,” and “measurable.”

SWMPs under the two-step option need to meet requirements in the Remand Rule, since detailed permit terms and conditions are outlined in the SWMP document, thus making the approved SWMP document enforceable.

DEQ has chosen the first option (comprehensive general permit approach).

## **B. ELIGIBILITY**

This Permit authorizes discharges of stormwater and certain non-stormwater discharges from small MS4s. All operators of small MS4s meeting any of the requirements below are required to comply with this permit:

1. Small MS4s that are fully or partially located within an Urbanized Area (UA), as determined by the most recent Decennial Census by the U.S. Bureau of Census, must be permitted unless they receive a waiver based on the criteria discussed in Part C. An UA is basically a core city and urban fringe

with a population of 50,000 or more. For those MS4s not located entirely within an UA, the operator of the small MS4 must be permitted to cover the entire area within the corporate boundaries of the municipality.

2. A small MS4 that is located outside of an UA with a population of at least 10,000 but not exceeding 100,000 with a population density of 1,000/square mile or more. Permitting of these MS4s is required on a case-by-case basis based on factors such as rapid growth, high population density or adverse water quality impacts. Small MS4 designation reviews by DEQ are discussed in Part C herein.
3. Designated MS4s that contribute substantial pollutant loads to a regulated MS4 through interconnections shall be required to obtain a permit.
4. Any other MS4 that is designated by the DEQ Executive Director shall be required to obtain a permit.

DEQ relied solely upon the 2010 U.S. Census UA for determining small MS4 automatic designations. A reference map identifying the Census 2010 UAs can be found at the following address: [https://www2.census.gov/geo/maps/dc10map/UAUC\\_RefMap/ua/](https://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/).

“Municipality” is used broadly to describe both traditional and non-traditional MS4s, such as MS4s operated by the federal or state government, or other public entity such as military bases, universities, hospitals, prisons, and county operations.

### **C. SMALL MS4 DESIGNATION AND CRITERIA**

On December 8, 1999, EPA finalized the Stormwater Phase II regulations. In these regulations, designated small MS4s were required to apply for a permit and develop a SWMP. Small MS4s are defined as those towns located within an UA or those towns with at least a 10,000 population and a minimum density of 1,000 people per square mile.

In March 2012, the updated UA delineations based on 2010 census data were released by the U.S. Census Bureau. DEQ has reviewed the newly released UA maps. The updated UA maps for each of the communities were produced and are available on the Census Bureau’s website at the following address: [https://www2.census.gov/geo/maps/dc10map/UAUC\\_RefMap/ua/](https://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/). This 2010 census impacts the scope of coverage of the small MS4 general permit. Small MS4s that are located in an UA and required permit coverage are determined by the latest Decennial Census under 40 CFR § 122.32(a)(1).

Small MS4s that were identified by the 2015 OKR04 permit as being subject to the Phase II regulations are shown in Table C-1.

**Table C-1 Small MS4s Identified in the 2015 OKR04 Permit**

1	Altus, City of	27	Moore, City of
2	Arkoma, Town of	28	Muskogee, City of
3	Bartlesville, City of	29	Nichols Hills, City of
4	Bethany, City of	30	Nicoma Park, City of
5	Bixby, City of	31	Noble, City of
6	Broken Arrow, City of	32	Norman, City of
7	Catoosa, City of	33	Oklahoma County
8	Choctaw, City of	34	Oklahoma Dept. of Transportation
9	Claremore, City of	35	Oklahoma Turnpike Authority
10	Comanche County	36	Okmulgee, City of
11	Coweta, City of	37	Owasso, City of
12	Creek County	38	Ponca City, City of
13	Del City, City of	39	Rogers County
14	Edmond, City of	40	Sand Springs, City of
15	Fort Sill Army Base	41	Sapulpa, City of
16	Glenpool, City of	42	Spencer, City of
17	Harrah, City of	43	Stillwater, City of
18	Jenks, City of	44	Tahlequah, City of
19	Jones, Town of	45	Tinker Air Force Base
20	Logan County	46	The Village, City of
21	Kiefer, Town of	47	Tulsa County
22	Lawton, City of	48	University of Oklahoma
23	McAlester, City of	49	Wagoner County
24	Miami, City of	50	Warr Acres, City of
25	Midwest City, City of	51	Yukon, City of
26	Mustang, City of		

1. Small MS4s that are fully or partially located in an UA

Those towns, cities, state agencies, federal agencies, and counties that are partially or wholly located in an UA are shown in Table C-2. The Phase II regulations allow some entities the opportunity to qualify for a waiver from permitting requirements if these entities meet certain criteria. The determination of small MS4 waivers under 40 CFR §§ 122.32(d), (e) is included in Part C(5) and Table C-6.

**Table C-2 Small MS4s That Are Partially or Wholly Located Within an UA**

	<b>Community/County</b>	<b>Population within UA</b>
1	Cleveland County <sup>1</sup>	0
2	Collinsville, City of	998
3	Forest Park, Town of	998
4	Goldsby, Town of	140
5	Moffett, Town of	128
6	Newcastle, City of	23
7	Pocola, Town of	862
8	Sequoyah County	0
9	Smith Village, Town of	66
10	Sperry, Town of	946
11	Valley Brook, Town of	765
12	Woodlawn Park, Town of	153

<sup>1</sup> All of the UAs in Cleveland County are located within the city limits of Norman, Noble, and Moore.

2. Small MS4s located outside of an UA meeting certain population requirements

There are two (2) cities (see Table C-3) that must be evaluated according to Phase II regulations. Using the small MS4 grade sheet and scoring system described in Table C-4, DEQ has determined the values for each category and all scores were summed to give a final total for each city. A summary of these scores is included in Table C-5. DEQ has determined that an evaluation score of 20 or below will provide reasonable certainty that the small MS4 discharges will not significantly contribute to stormwater pollutant loading for those entities which are located outside of an UA. This system allows DEQ to determine those cities that have a high probability to significantly contribute to the state’s stormwater pollutant load.

**Table C-3 Small MS4s That Are Located Outside of an UA**

	<b>City</b>	<b>Population</b>	<b>Density (Pop/Sq. mi)</b>
1	Guymon, City of	11,442	1,512.7
2	Weatherford, City of	10,833	1,681.6



**Table C-4 Small MS4 Grade Sheet**

<b>Factors</b>	<b>Scores</b>
Population <sup>2</sup>	10
Density <sup>3</sup>	10
High growth or high growth potential change from previous census <sup>4</sup>	10
Corporate land area <sup>5</sup>	10
Contiguity to an urbanized area <sup>6</sup>	15
Discharge or potential discharge to sensitive waters or 303(d) listed streams for stormwater related pollutants <sup>7</sup>	20
HOW, ORW, Scenic River, SWS, or ORW/SWS watersheds <sup>8</sup>	25
<b>Total</b>	<b>100</b>

**Table C-5 Total Final Scores for Each Small MS4**

<b>City</b>	<b>Pop.</b>	<b>Pop. Density</b>	<b>Pop. Changes</b>	<b>Corp. Land</b>	<b>Contiguity to an UA</b>	<b>303(d) listed streams</b>	<b>Sensitive Watershed</b>	<b>Total score</b>
Guymon	4	6	4	0	0	10*	0	24
Weatherford	4	7	4	0	0	10**	0	25

\*Guymon is within 5 miles of Beaver River, North Canadian (OK720510000190\_00) that is impaired for Escherichia coli and Enterococcus

\*\*Weatherford is within 5 miles of Deer Creek (OK520620060010\_00) that is impaired for Escherichia coli and Enterococcus

3. Designated MS4s

No new MS4s that contribute substantial pollutant loads to a regulated MS4 through interconnections have been designated.

4. MS4s designated by the DEQ Executive Director

No new MS4s have been designated by the DEQ Executive Director.

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<sup>2</sup> Population – 2 points for every 10,000 people (rounded up to the nearest 10,000).  
<sup>3</sup> 1 point for every 100 density increase above 1,000 (rounded up to the nearest 100).  
<sup>4</sup> Previous change (Percent) – 2 points for between 0 and 1%; 3 points for changes of 1-10%; 4 points for changes of 10-15%; 5 points for changes of 15-20%; 6 points for changes of 20-25%; 7 points for changes of 25-30%; 8 points for changes of 30-35%; 9 points for changes of 35-40%; and 10 points for 40+%.  
<sup>5</sup> Land Size – 5 points if Corporate Land Area is 10-50% larger than what is necessary to obtain a 1,500 density; and 10 points if Corporate Land Area is 50+% larger than what is necessary to obtain a 1,500 density.  
<sup>6</sup> Contiguity to an Urbanized Area – 15 points if directly adjacent; 10 points if the city boundaries are within 2 miles of an UA; and 5 points if the city boundaries are within 5 miles of an UA.  
<sup>7</sup> 303(d) listed streams – 20 points if the town would directly discharge to the listed stream; and 10 points if the town is within 5 stream miles of the listed stream.  
<sup>8</sup> HQW, ORW, SWS, Scenic River or ORW/SWS watersheds – 20 points if the city would discharge directly to a HQW, SWS, or Scenic River; 20 points if the city is located within a SWS watershed; and 25 points if the city would discharge directly to an ORW or is located within an ORW watershed.

## 5. Phase II Waiver Procedures and Criteria

The Phase II regulations contained two waiver procedures, which are listed under 40 CFR §§ 122.32(d) and (e), to remove non-significant stormwater pollutant contributors from the permit requirements. These waivers allow these designated entities to be excluded from the permit requirements for five (5) years. The Phase II regulation requires DEQ to revisit the waiver designations every five (5) years.

- a. DEQ has determined that an MS4 may qualify for a waiver as specified in 40 CFR § 122.32(d) if the MS4 meets the following criteria:
  - i. The MS4 serves a population of less than 1,000 within the UA.
  - ii. The MS4 is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES stormwater program (see Table C-1).
  - iii. If the MS4 discharges any pollutant(s) that have been identified as a cause of impairment of any waterbody to which it discharges, stormwater controls are not needed based on wasteload allocations (WLAs) that are part of an EPA approved or established “Total Maximum Daily Load” (TMDL).
- b. DEQ has determined that an MS4 may qualify for a waiver as specified in 40 CFR § 122.32(e) if the MS4 meets the following criteria:
  - i. The MS4 serves a population of less than 10,000 within the UA.
  - ii. DEQ has evaluated all waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4.
  - iii. For all such waters, DEQ has determined that Stormwater controls are not needed based on WLAs that are part of an EPA approved or established TMDL or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern (POC).
  - iv. DEQ has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

No entities qualify for a waiver under 40 CFR § 122.32(e). There were twelve (12) entities that were located wholly or partially within an UA (see Table D-2) and evaluated by DEQ. The entities that were granted a waiver are identified in Table C-6.

**Table C-6 Summary of Entities That Are Waived From OKR04 Requirements**

	City/ Town/ County	Population within UA	Interconnected Regulated MS4s within UA	Likely to Substantially Contribute to Pollutant Loadings of Interconnected MS4	List impairments if discharging to a 303(d) stream	Stormwater Controls Required as Part of an Established TMDL	Qualified for waiver
1	Cleveland County	0	Cities of Norman, Noble, Moore, and Oklahoma City	No	Little River: Total Dissolved Solids, Merkle Creek: Macroinvertebrate Bio, Fish Bioassessments, Bishop Creek: Macroinvertebrate Bio, Rock Creek: Enterococcus, Escherichia Coli, Canadian River: Enterococcus	Yes <sup>1</sup>	Yes
2	Collinsville, City of	998	City of Owasso	No	None	No	Yes
3	Forest Park, Town of	998	City of Oklahoma	No	None	No	Yes
4	Goldsby, Town of	140	City of Norman	No	Canadian River: Enterococcus	No	Yes
5	Moffett, Town of	128	None	No	None	No	Yes
6	Newcastle, City of	23	None	No	None	No	Yes
7	Pocola, Town of	862	None	No	None	No	Yes
8	Sequoyah County	0	None	No	None	No	Yes
9	Smith Village, Town of	66	Cities of Oklahoma City and Del City	No	None	No	Yes
10	Sperry, Town of	946	None	No	Delaware Creek: Enterococcus, Macroinvertebrate Bio	No	Yes
11	Valley Brook, Town of	765	City of Oklahoma	No	Crooked Oak Creek: Oil and Grease, Chloride, Dissolved Oxygen, Enterococcus, Escherichia Coli	No	Yes
12	Woodlawn Park, Town of	153	City of Bethany	No	None	No	Yes

<sup>1</sup> A wasteload allocation was not established for Cleveland County.

6. Categories of MS4s

MS4s are separated into three categories based on population as determined by the most recent Decennial Census by the U.S. Bureau of Census:

- a. Category 1 small MS4s serve a population less than (<) 10,000 within an UA, unless otherwise specified.
- b. Category 2 small MS4s serve a population greater than or equal to (≥) 10,000, but less than (<) 50,000, within an UA, or a population greater than or equal to (≥) 10,000 but less than or equal to (≤) 100,000 with a population density greater than or equal to (≥) 1,000/square mile or more located outside of an UA..
- c. Category 3 small MS4s serve a population greater than or equal to (≥) 50,000 within an UA.

## 7. Phase II MS4s Regulated by the 2020 OKR04 Permit

A complete list of MS4s is available on Table C-7.

**Table C-7 Regulated Small MS4s Under 2020 OPDES General Permit**

Category 1 (22)	Category 2 (24)	Category 3 (6)
Arkoma	Altus	Broken Arrow
Catoosa	Bartlesville	Edmond
Choctaw	Bethany	Lawton
Coweta	Bixby	Midwest City
Comanche County	Claremore	Moore
Creek County	Del City	Norman
Fort Sill Army Base	Guymon	
Glenpool	Jenks	
Harrah	McAlester	
Jones City	Miami	
Kiefer	Muskogee	
Logan County	Mustang	
Nichols Hills	Okmulgee	
Nicoma Park	Owasso	
Noble	Ponca City	
Oklahoma County	Sand Springs	
Oklahoma Turnpike Authority	Sapulpa	
Rogers County	Stillwater	
Spencer	Tahlequah	
The Village	Tinker Air Force Base	
Tulsa County	University of Oklahoma	
Wagoner County	Warr Acres	
	Weatherford	
	Yukon	

## D. BASIS FOR PERMIT CONDITIONS

### 1. Statutory Basis for Permit Conditions

The conditions established by this permit are based on section 402(p) of the CWA that mandates that a permit for discharges from MS4s must effectively prohibit the discharge of non-stormwater to the MS4 and require controls to reduce pollutants in discharges from the MS4 to the MEP including BMPs, control techniques, system, design and engineering methods and other such provisions determined to be appropriate. MS4s are not exempt from compliance with water quality standards. Section 301(b) of the CWA requires OPDES permits to include terms and conditions necessary to meet water quality standards. The intent of the permit conditions is to meet the statutory mandate of the CWA.

As authorized by OPDES regulations OAC 252:606-1-3(b)(3) adopting and incorporating by reference 40 CFR § 122.44, the permit will be utilizing structural controls, BMPs, and a comprehensive SWMP as the mechanism to implement the statutory requirements. Section 402(p) of the CWA clearly includes structural controls as a component of the MEP requirement. DEQ has encouraged permittees to explore opportunities for pollution prevention measures, while reserving the costlier structural controls for high priority locations, or where pollution prevention measures are unfeasible or ineffective.

There is a difference between the CWA's statutory requirements for discharges from municipal storm sewers and industrial sites:

- a. Section 402(p) of the CWA requires an effective prohibition on non-stormwater discharges to a MS4 and controls to reduce the discharge of pollutants from the MS4 to the MEP.
- b. Section 402(p) of the CWA requires compliance with treatment or Best Available Technology (BAT) and section 301 water quality requirements on discharges of storm water associated with industrial activity.

Because of the difference in the statutory requirements, and the fact that the CWA does not exempt storm water associated with industrial activity from the requirement to obtain a separate OPDES permit, these stormwater discharges cannot be authorized by the small MS4 permit. Such discharges would require a separate OPDES permit. However, the permittees are responsible for the quality of the combined discharge, and have a vested interest in locating uncontrolled and unpermitted illicit and industrial stormwater discharges.

### 2. Regulatory Basis for Permit Conditions

As a result of the statutory requirements of the CWA, DEQ promulgated the small MS4 permit application regulations, OPDES regulations OAC 252:606-1-3(b)(3) adopting and incorporating by reference 40 CFR §§ 122.30, 122.32-36. These regulations are described in detail for the permit application requirements for operators of small MS4s. The information contained in the NOI and the updated or newly developed description of the SWMP is utilized by DEQ to determine the authorization conditions and the permittee status in regards to these conditions.

### 3. Discharge Goals and Limitations

#### a. Discharge Goals

General permits rely on permittees to certify that they meet the eligibility conditions and implement requirements that will ensure compliance with the conditions of the permit. The permit requirements at Parts IV and V are intended to ensure that those seeking coverage under this permit select, implement and maintain BMPs for their SWMP that will reduce the discharge of pollutants to the MEP and will be adequate and sufficient to meet water quality standards for all POCs. The following goals apply to discharges from small MS4s and must be considered in development of the SWMP:

- i. No discharge of toxic pollutants in toxic amounts. It is the national policy that the discharge of toxics in toxic amounts be prohibited according to section 101(a) of the CWA. The Oklahoma Water Quality Standards (OWQS) [OAC 785:45-5-12(f)(6)] states, "Surface waters of the state shall not exhibit acute toxicity and shall not exhibit chronic toxicity outside the mixing zone."
- ii. No discharge of pollutants in quantities that would cause a violation of OWQS. Section 301(b) of the CWA and OPDES regulation OAC 252:606-1-3(b)(3) adopting and incorporating by reference 40 CFR § 122.44 requires that OPDES permits include ". . . any more stringent limitations, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to state law or regulations . . ." Implementation of the SWMP is reasonably expected to provide for protection of OWQS.
- iii. No discharge of floatable debris, oils, scum, foam, or grease in other than trace amounts. The OWQS (OAC 785:45-5-9) require waters of the state to ". . . be maintained so as to be essentially free of floating debris, bottom deposits, scum, foam and other materials, including suspended substances of a persistent nature, from other than natural sources."
- iv. No discharge of non-stormwater from the MS4, except in accordance with Part I(B). Permits issued to small MS4s are specifically required by section 402(p) of the CWA to ". . . include a requirement to effectively prohibit non-stormwater discharges into the storm sewers . . ." The OPDES regulation OAC 252:606-1-3(b)(3) adopting and incorporating by reference 40 CFR § 122.26 allows the permittee to accept certain non-stormwater discharges, where they have not been identified as significant sources of pollutants. Any discharge subject to its own OPDES or NPDES permit is not subject to the ban on non-stormwater discharges.
- v. No impairment of state-designated beneficial uses of receiving waters as a result of stormwater discharges from the MS4. The State of Oklahoma has adopted an Antidegradation Policy as part of the OWQS (OAC 785:45-3-1). This policy requires maintenance of existing or designated in-stream water uses.

#### b. Discharge Limitations

All entities designated or potentially designated for coverage under this permit discharged from the MS4 prior to August 13, 1979, and thus would not be considered new discharges under 40 CFR § 122.2.

No numeric limitations are proposed at this time. In accordance with OPDES regulations OAC 252:606-1-3(b)(3), adopting and incorporating by reference 40 CFR § 122.44, DEQ

has required a series of BMPs, in the form of a comprehensive SWMP, in lieu of numeric limitations.

## **E. STORMWATER MANAGEMENT PROGRAM**

If you are a renewal permittee authorized by the previous small MS4 general permit, you are required to review and revise your SWMP as needed to meet the requirements of this permit, or as required by the Director to ensure compliance with the CWA. Modifications and updates shall be reflected in your SWMP and implemented within two (2) years of the effective date of this permit. You are required to keep the SWMP document up to date during the term of the permit.

If you are a newly regulated small MS4, you are required to develop a written SWMP according to this permit and include all required MCMs. A list of the BMPs to address the MCMs must be defined in your SWMP and implemented within five (5) years of the permit term. The following items summarize the contents of the SWMP:

### **1. Best Management Practices**

List and define the BMPs that you or another entity will implement for each of the stormwater MCMs.

### **2. The Measurable Goals for Each BMP**

Include, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action.

If you are a renewal permittee authorized by the previous small MS4 general permit, you are required to develop new elements, as needed, and continue to implement and enforce the SWMP. Program improvement and implementation schedules must be provided for full implementation of the complete SWMP as soon as practicable, but no later than five (5) years from the effective date of the permit unless the Director specifies a different deadline.

If you are a newly regulated small MS4, program development and implementation schedules must be provided for full implementation of the completed SWMP as soon as practicable, but no later than five (5) years from the effective date of this permit unless the Director specifies a different deadline. Credible interim progress in developing and implementing program elements must be made over the term of the permit.

### **3. The Responsible Person or Persons**

Identify who will be responsible for implementing or coordinating the BMPs for your SWMP.

### **4. Sharing Responsibility**

Implementation of one or more of your stormwater MCMs may be shared with another government entity or may be fully implemented by another government entity. You may rely on another government entity only under the following conditions:

- 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. There is a written agreement that the other government entity will implement the control measure on your behalf. This agreement must be maintained as part of the description of your SWMP. If the other government entity agrees to report on the minimum measure, you must supply the other government entity with the reporting requirements. If the other government entity fails to implement the control measure on your behalf, then you remain responsible for compliance with permit obligations. You must modify your SWMP within one (1) year to address how you will implement the control measure and comply with permit requirements.

## **F. MENU OF BEST MANAGEMENT PRACTICES FOR PHASE II MS4S**

The Phase II stormwater regulations specified that the state should develop or adopt a menu of BMPs to assist regulated small MS4s in implementing the general permit. DEQ encourages regulated communities to develop their own BMPs for use in their SWMP, but has determined that the EPA menu of BMPs provides appropriate guidance for meeting the conditions of the general permit. The EPA menu of BMPs can be found on the EPA website at the following address: <https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater#edu>.

## **G. EXAMPLE SCHEDULE OF SWMP ELEMENTS**

The following is a partial list of example items that could be used by newly regulated small MS4s for developing their SWMP:

1. First Year of Permit Term
  - a. Develop a written SWMP.
  - b. Evaluate placement of structural controls and retrofitting of existing structures.
  - c. Submit program, including priorities and schedules for street sweeping, creek, waterway or waterbody maintenance.
  - d. Identify a list of allowable non-stormwater discharges.
  - e. Make revisions to ordinances or rules for construction/post-construction/illicit discharges.
  - f. Develop master pollution prevention study.
  - g. Develop and implement illicit discharge/construction education program.
  - h. Develop program for illicit discharge field screening.
  - i. Develop and implement program to receive information from the public.
  - j. Develop MS4 inspection program.
  - k. Develop mapping system for receiving streams and outfalls.
  - l. Implement water quality consideration in site plan reviews.
  - m. Define the need for pollution data from wet weather screening of all watersheds.
  - n. Submit an annual report and continue to do so every year thereafter.
2. Second Year of Permit Term
  - a. Update SWMP to include follow-up activities and spill prevention response for HAZMAT and sanitary sewer leakage and overflow.
  - b. Implement illicit discharge/construction education program.



- c. Implement employee training and education program.
  - d. Conduct construction site inspection.
  - e. Conduct inspection for city facilities and maintenance yards.
  - f. Develop and implement pollution prevention education program.
  - g. Develop program for volunteer stream monitoring.
  - h. Submit schedule for estimates of annual pollutant loading.
  - i. Complete revisions to ordinances.
  - j. Install floatable monitoring devices at selected locations.
  - k. Assess the appropriateness of each BMP and continue to do so every year thereafter.
3. Third Year of Permit Term
    - a. Develop or adopt erosion control manual for construction.
    - b. Consider making changes in street design and parking lot guidelines.
    - c. Develop and implement post-construction education program.
    - d. Develop a long-term O&M program for selected BMPs.
    - e. Create incentives to encourage interest in low impact development.
  4. Fourth Year of Permit Term
    - a. Implement a program for new/significant re-development.
    - b. Implement a program for construction site runoff enhancements.
    - c. Evaluate the hazardous waste program and need for collection and recyclable safe disposal.
  5. Fifth Year of Permit Term
    - a. Complete illicit discharge field screening.
    - b. Complete self-evaluation of your SWMP.

## **H. STORMWATER MANAGEMENT PROGRAM COMPLIANCE**

Compliance with the permit will be accomplished by the implementation of and compliance with the described activities in the various elements of the permittee's SWMP. Permittees must begin implementation of the SWMP as defined by the permittee (which may initially include schedules for program development and implementation) on the effective date of the permit. All the required support and initiation procedures for the program elements should be established, and the activities performed as described and scheduled. The SWMP must be fully implemented within five (5) years from the date of permit issuance.

### **1. Roles and Responsibilities of Permittees**

The regulation OAC 252:606-1-3(b)(3) adopting and incorporating by reference 40 CFR §§ 122.26, 122.32-37 requires permittees to describe the roles and responsibilities of each entity applying for the permit to ensure effective coordination. Interagency agreements may be utilized to implement portions of the SWMP and monitoring program. Permittees are accountable for understanding their role and responsibilities regarding permit conditions.

### **2. Permittees' Legal Authority**

The permittees are required to successfully enforce, implement, and complete the various activities described in the permit and SWMP to the extent their legal authority allows. Failure to adopt rules,

regulations, codes, or other forms of legal authority within your jurisdiction does not constitute a lack of legal authority. These activities shall

- a. control the contribution of pollutants to and quality of stormwater from industrial sites contributing to the storm sewer system,
- b. prohibit illicit discharges to the storm sewer system,
- c. control spills and dumping or improper disposal to the storm sewer system,
- d. control the contribution of pollutants from one portion of the storm sewer system to the other,
- e. require compliance with ordinances, and
- f. require performing site inspections and monitoring.

### 3. Total Maximum Daily Loads

One of the main goals of the CWA is to ensure that all waterbodies achieve their beneficial uses. When a waterbody becomes impaired, a TMDL study is performed to determine the amount of pollutants that can be discharged to the waterbody and still achieve the listed beneficial uses. The DEQ Integrated Water Quality Assessment lists 303(d) waterbodies as Category 5 waters. Impaired waterbodies that have had an EPA/DEQ approved TMDL developed are listed as Category 4 waters in the DEQ Integrated Water Quality Assessment. This list of waterbodies is updated biennially and contains information regarding the reason, or cause, for the impairment. The Integrated Water Quality Assessment can be obtained at the following address: [www.deq.state.ok.us/WQDnew/305b\\_303d/index.html](http://www.deq.state.ok.us/WQDnew/305b_303d/index.html).

### 4. Outstanding Resource Waters (ORW)

Except for discharges of stormwater from temporary construction activities, new discharges located within the watershed of any waterbody designated an ORW in OWQS are not allowed or authorized by this permit. Discharges to ORW waters from MS4s existing as of June 25, 1992, are allowed but such stormwater discharges are prohibited from increased load of any pollutant. If any part of your MS4 discharges to an ORW waterbody, you must document in your SWMP how you will comply with this prohibition.

### 5. Reports Required

If you implement your SWMP on a calendar year basis (January 1<sup>st</sup> to December 31<sup>st</sup>), you must submit your annual report by April 30<sup>th</sup> of the calendar year following the reporting period. If you implement your SWMP on a fiscal year basis (July 1<sup>st</sup> to June 30<sup>th</sup>), you must submit your annual report by October 31<sup>st</sup> of the fiscal year following the reporting period.

- a. The contents of the annual report shall provide
  - i. the status of your compliance with permit conditions and an assessment of the progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP.
  - ii. for each BMP identified in your SWMP, an assessment of the
    - (1) progress toward achieving the measurable goals, and
    - (2) appropriateness of the BMP.

- iii. the results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the SWMP at reducing the discharge of pollutants to the MEP.
  - iv. a summary of the stormwater activities you plan to undertake during the next reporting cycle (including an implementation schedule).
  - v. any proposed changes to your SWMP, including changes to any BMPs or any identified measurable goals that apply to the SWMP elements.
  - vi. a description and schedule for implementation of any additional BMPs or monitoring that may be necessary to reduce or eliminate the discharges of the POC into impaired waters on the 303(d) list.
  - vii. a description and schedule for implementation of any additional BMPs or monitoring that may be necessary to ensure compliance with any applicable TMDL or watershed plan in lieu of a TMDL.
  - viii. information on all new annexed areas and any resulting updates required to the SWMP.
  - ix. notice that you are relying on another government entity to satisfy some of your permit obligations, if any, and a copy of the written agreement with that entity.
- b. If the optional permit requirement for municipal construction activities is elected, you must also provide a progress report concerning the elected optional permit requirements. At a minimum this report shall provide the number of
- i. active construction sites that are currently covered under the elected optional permit requirement.
  - ii. construction projects that were started during the reporting period.
  - iii. construction projects that were completed during the reporting period.
  - iv. construction sites that were covered under the elected optional permit requirement that have reached final stabilization.
  - v. inspections that were conducted.

## I. PERMIT MODIFICATIONS

### 1. Re-opener Clause

DEQ may re-open and require modifications to the permit (including the SWMP) based on the following factors:

- a. The state has made changes to the OWQS.
- b. State and/or federal requirements have changed.
- c. Co-permittees have been added to your program.
- d. SWMP changes impact compliance with permit requirements.
- e. Additional stormwater controls have been identified in a TMDL that may be necessary to maintain applicable water quality standards.
- f. DEQ has deemed that other modifications are necessary to adhere to the requirements of the CWA.

These modifications comply with OAC 252.606-1-3(b)(3) adopting and incorporating by reference 40 CFR § 122.63 which allows permits to be modified to conform to changes in OAC 252.606-1-3(b)(3) adopting and incorporating by reference 40 CFR § 122.41.

Implementation of the SWMP is expected to result in the protection of water quality standards. The permit contains a re-opener clause should new information indicate the discharges from the MS4 are causing, or significantly contributing to, a violation of the OWQS.

## 2. Other Changes

The SWMP is a document prepared by the permittees to address the regulatory application requirements. The document is intended as a functioning mechanism for the permittees' use. Therefore, minor changes and adjustments to the various SWMP elements are expected and desired. Incorporating this form of document into an OPDES permit has some inherent conflicts. The regulatory rules concerning permit changes and modifications do not easily translate to the minor changes that will be necessary to occur to the various elements during the permit term. The changes may be necessary to more successfully adhere to the true intent of the permit to reduce pollutants to the MEP. DEQ has determined that these minor changes that are specifically described in the permit shall not be considered permit modifications as defined in the regulations. The permit must address

- a. the incorporation of the SWMP,
- b. multiple entities as co-permittees, and
- c. the coverage of an entire municipality subject to changes in boundaries and responsibilities.

DEQ has attempted to develop permit language to clarify the permit requirements concerning possible changes to the SWMP, permittees' status and other changes inherently caused by these unique issues. The process for terminating coverage for an existing permittee shall adhere to the regulations in OAC 252:606-1-3(b)(3) adopting and incorporating by reference 40 CFR § 122.64. A Notice of Termination (NOT) will be filed in accordance with permit procedures.

It is the intent of DEQ to allow the permittees to annex lands and accept the transfer of operational authority over portions of the small MS4 without mandating a permit modification. Implementation of appropriate SWMP elements for these additions (annexed land or transferred authority) is required. Upon notification of the additions in the annual report, DEQ may require a modification to the permit based on the new information.

## **J. CONSIDERATIONS UNDER THE LAW**

The discharge that is being controlled by the terms and conditions of this permit is the result of natural precipitation, and as such would continue to be discharged regardless of DEQ action represented here. The terms of this permit require that the permittees minimize or reduce the pollutants in stormwater discharges to the MEP and effectively prohibit non-stormwater discharges into the small MS4s.

## **K. EFFECTIVE DATE**

Dischargers who submit a NOI in accordance with the requirements of this permit are not authorized to discharge stormwater runoff from MS4s under the terms and conditions of this permit until an authorization is received from DEQ. Compliance with permit conditions is required on the effective date of the permit authorization.

## L. PUBLIC PARTICIPATION AND COMMENT PERIOD

A public notice will be published in state newspapers announcing the new proposed Small MS4 General Permit OKR04 December 15, 2020. The comment period will be open until February 15, 2021.

Pursuant to OPDES Act, Title 27A O.S. § 2-14-302, persons wishing to make comments concerning the proposed permit may do so by sending the comments in writing to the contact person for DEQ, at the address listed below, within 30 days after the date of publication or mailing. Comments must provide

1. the name and address of the interested person,
2. the permit name and number to which the request relates,
3. the nature and basis of the interest of the person affected, and
4. a statement of the objection or comment, the basis of the objection or comment and any requested action by DEQ.

To schedule a date and time to review the proposed permit at the office of DEQ, contact the following representative:

Cailyn Prather  
Oklahoma Department of Environmental Quality  
Water Quality Division  
P.O. Box 1677, Oklahoma City, OK 73101-1677

DEQ will also be conducting a public meeting which will consist of a short presentation to help foster understanding of the proposed changes to the new permit. This will be followed by an informal question and answer session with DEQ staff. The public meeting will be held on the following date and time:

10:00 A.M. and 1:00 P.M., January 19, 2021  
Department of Environmental Quality, 1<sup>st</sup> Floor Multipurpose Room  
707 North Robinson, Oklahoma City, OK

Copies of the OKR04 permit and supporting documents are available on the DEQ web site <http://www.deq.state.ok.us/WQDnew/stormwater/>. A copy of the proposed permit can be reviewed at the DEQ Water Quality Division at 707 North Robinson in Oklahoma City or at 9933 East 16th Street, Tulsa from 8:00am - 4:30pm, Monday through Friday.

## M. SUMMARY OF CHANGES FROM PREVIOUS PERMIT

This proposed general permit will replace the previous small MS4 OKR04. Following is a list of changes in the proposed general permit as compared to the previous small MS4 general permit.

1. Part I. Definitions and Acronyms

To improve the clarity of the permit, the following changes have been made:

- a. Definitions have been moved from Part VII to Part I and retitled.
- b. The definition of “Aquatic Resource of Concern,” “Pollutant of Concern,” “Large Common Plan of Development or Sale” and “Waste Load Allocation” have been added.

## 2. Part II. Coverage Under the Permit

To reduce redundant language and clarify permit requirements, the following changes have been made:

- a. Part II(A) has had the language clarified.
- b. Part II(B) has had similar discharges grouped together, allowable discharges have been updated to be consistent with existing OPDES permits and additional requirements that were previously stated in Part IV(C)(3)(a)(7) have been moved to this part.
- c. Part II(C) added non-authorized discharge previously stated in Part D(5) of the 2015 OKR04 Factsheet.

## 3. Part III. Authorization Under the Permit

To reduce redundant language and clarify permit requirements the following changes have been made:

- a. Part III(A) has been moved from I(F) and redundant language has been removed.
- b. Part III(B) has been added to divide MS4s into categories based on population.
- c. Part III(C) has been moved from II(A). A summary status will not be required for reapplication.
- d. Part III(E) has been moved from II(E). The procedures to terminate coverage have been updated to be consistent with existing OPDES permits.
- e. Part III(F) has been moved from II(C) and now includes an email address and language addressing the EPA e-Reporting rule.
- f. The contents of the NOI and NOT have been removed from the body of the permit but are included as Exhibits III and IV.

## 4. Part IV. Special Conditions

To improve clarity, the following changes have been made:

- a. Part IV(A) added “Discharges to Impaired Waters” to the title of this section.
- b. Part IV(B) added language requiring a TMDL pollutant reduction plan, monitoring plan and annual reporting.

## 5. Part V. Stormwater Management Program

To meet the requirements of the EPA Remand Rule, and improve consistency and flow, the following changes have been made:

- a. Part V(A)(3) has had the language modified to be more consistent with this section.
- b. Part V(A)(4) has had the language modified to be more consistent with this section.
- c. Part V(C) has had redundant language, stated in this section, removed from each MCM.

- d. Part V(C)(1) now includes public education, outreach, and involvement under MCM 1. Employee training and public outreach from the remaining MCMs have been moved to MCM 1.
- e. Part V(C)(2) is a new MCM 2 and addresses industrial stormwater runoff control that applies to Category 3 MS4s only.
- f. Part V(C)(3) lists MCM 3 with additional requirements and has been reorganized to improve clarity.
- g. Part V(C)(5) lists MCM 5 and additional requirements have been added.
- h. Part V(C)(6) lists MCM 6 where additional requirements and recommendations have been added.
- i. Part V(D) now includes language that has been revised to reflect DEQ's general permit approach to the EPA Remand Rule.

#### 6. Part VI. Monitoring, Record Keeping, and Reporting

To reflect current regulations and improve clarity, the following changes have been made:

- a. Part VI(A)(4) has been updated to reflect EPA e-reporting rule requirements.
- b. Part VI(C) has been reorganized for clarity, additional reporting requirements have been included for MCM 7 and additional time has been provided for annual report submittal.

#### 7. Part VIII. Optional Permit Requirements for Municipal Construction Activities

Language discussing the technology based effluent limitations has been replaced with a reference to the OKR10 permit for brevity.

#### 8. Exhibits

To maintain consistency with existing OPDES permits and improve clarity, the following changes have been made:

- a. A MCM summary has been added as Exhibit II.
- b. The NOI and NOT forms have been updated under Exhibits III and IV respectively.

### **N. REVIEW BY OTHER AGENCIES AND FINAL DETERMINATION**

A public notice that includes a link to the DEQ webpage where the draft permit may be viewed will be sent to various federal and state agencies upon posting the draft permit in the DEQ webpage. If comments are reviewed from these agencies or other state or federal agencies with jurisdiction over fish, wildlife, or public health, the permit may be denied or additional conditions may be included in accordance with regulations promulgated at 40 CFR § 124.59. The public notice describes the procedures for the formulation of final determinations.