

RESPONSE TO COMMENTS
AND FINAL PERMIT DECISION

This is the Department's response to comments received on the subject draft permit and final permit decision in accordance with regulations promulgated at 40 CFR Part 124.17.

OPDES Permit Number: OKR04 Phase II Small Municipal Separate Storm Sewer System (MS4) Permit

Issuing Office: Oklahoma Department of Environmental Quality (DEQ)
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Date Prepared: April 16, 2021

Permit Action: Response to comments received on the proposed permit publicly noticed on December 15, 2020 by DEQ and final permit decision to reissue OPDES Permit No. OKR04.

CHANGES FROM DRAFT PERMIT AS A RESULT OF PUBLIC COMMENTS

No changes were made to the permit as a result of public comments.

OTHER CHANGES FROM DRAFT PERMIT

1. Part V.C.4: Minimum Control Measures (MCMs), MCM 4 Construction Site Stormwater Runoff Control and Exhibit II: MCM Summary

A footnote was added to Table V-5 Minimum Frequency of Construction Site Inspections and Table 2-1 MCM Summary to clarify requirements that apply to construction sites that discharge within 1 stream mile of a waterbody that is impaired for sediment or turbidity.

2. Part V.C.5.a.iii Minimum Control Measures (MCMs), MCM 5 Post-Construction Management in New Development and Redevelopment

The link to the EPA Water Quality Scorecard guide was updated.

3. Exhibit 1: Endangered and Threatened Species and Their Critical Habitat of Concern

The list of sensitive waters, watersheds and the state map have been updated.

COMMENTS RECEIVED ON DRAFT PERMIT

The following comments were received on the draft permit:

- Email from Julie Shannon, City of Yukon, to Cailyn Prather, DEQ, dated January 20, 2021.

- Comment from Micheal Jordan, resident of City of Edmond, submitted on the DEQ public review webpage, dated February 5, 2021.
- Comment from Erik Brandt, Oklahoma County, submitted on the DEQ public review webpage, dated February 12, 2021.

RESPONSE TO COMMENTS

1. COMMENT

Ms. Shannon states that she has “concerns that there are not enough parameters for these Stormwater Programs. The cities pass [stormwater] fees but do not always use the money on the Stormwater Programs. [She] would like to see some studies done and recommendations on basic program costs, breaking points where staff should be added especially with the [total maximum daily loads] TMDLs because another level of expertise will be needed. Part of the audit might be to discuss the program fees and how they are used.

[She] would like to see some recommendations on pay scales for Stormwater Program personnel. [They] created the position in Tahlequah (combined with Floodplain Manager) [which] started at about \$30,000 which is not really high enough pay for someone with an Environmental Science background so turnover is always going to be a problem there. There needs to be some sort of basic job description, suggested pay benchmark, suggested duties, etc. Cities are taking the money via fees in the utility bills but not creating positions... they just stick it on the Fire Chief or the Code Enforcement person who has another full time job. The TMDL is going to require more and [she is] concerned that the data is not going to be collected in a professional [manner].

[She] would vote in favor of having the option to pay some sort of impact fee for the [DEQ] to contract out the testing for the TMDLs so that there would be consistency in the data collection and QC.”

RESPONSE

While DEQ understands, determining program cost, program structure and salary ranges are outside the scope of DEQ's jurisdiction as a permitting authority. In addition, due to the high level of variability in MS4s, each individual MS4 is best positioned to evaluate available resources and organizational structure to determine staffing requirements, salaries and budget allocation. DEQ encourages the MS4s to share information and work together and with organizations such as COSWA and INCOG to develop these types of materials. Certain deficiencies regarding staffing levels and budget may be noted or discussed during an MS4 program evaluation; however, DEQ does not have the jurisdiction to mandate specific remedies to these deficiencies.

DEQ recognizes the importance of quality assurance and quality control to ensure monitoring programs will provide accurate, meaningful data. In order to address this concern, the draft permit requires that MS4s use approved analytical methods and develop a quality assurance project plan (QAPP) that meets minimum standards developed by the Environmental Protection Agency. These minimum standards will ensure a minimum level of consistency in monitoring programs as well as standardizing sample collection methods and analysis. In addition, DEQ is developing guidance for implementation of TMDLs by MS4s.

DEQ charging and collecting an impact fee would require legislative authority which is outside the scope of this permit renewal.

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

2. COMMENT

Ms. Shannon states that “[DEQ] should consider creating a position for a “Community Liaison” to help

communities who have new programs, new program managers, or who need basic benchmarks, materials and templates for all of the documents related to the Stormwater Management Program and maybe to help with Audit prep and Audit findings integration. There is a lot to learn and no one to train a new employee. [Stormwater program managers] are just thrown into it and expected to be good at every aspect of the job to meet permit requirements. Most uneducated people would have a difficult time even reading the permit language. Most small cities staffs are made up of employee with less than a college education because most City jobs do not require an education. There is no way to force cities to create adequate programs but if there was more help and guidance coming from [DEQ] on the front end, it might make a difference.”

RESPONSE

This comment discusses concerns with DEQ staff rather than the content of this permit. While DEQ does not have a position dedicated solely to the MS4 program, technical assistance can be provided on request by various staff members in WQD. Assistance can be provided on subjects such as how to develop a program, identify deficiencies, prepare for an evaluation and prepare annual reports. In addition, DEQ will be developing outreach, training, and guidance materials, as well as annual report and stormwater management plan templates, to support MS4s.

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

3. COMMENT

Mr. Jordan states that “[he] would suggest to take the [notice of intent] NOI and [notice of termination] NOT forms out of the general permit. If, for some reason, they ever need to be modified/changed, you will not have to open the general permit to change them.”

RESPONSE

Several stakeholder meetings were held between June and December 2019. Stakeholders who were present at these meetings largely supported keeping the NOI and NOT forms in the general permit. Based on this feedback, DEQ will keep the forms as part of the permit.

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

4. Draft Permit, Part I, Page 6, Section B, Schedule of Compliance

Mr. Brandt states that “Oklahoma County is disputing Part IV. of the permit, more specifically, the cost associated with the North Canadian River TMDL. Oklahoma County agrees that a TMDL is necessary along the North Canadian as it is an important river for the State of Oklahoma and water quality is of utmost importance. The North Canadian River travels from west to east across the county and the cities are the biggest contributor of the bacteria that has degraded this waterbody. As the North Canadian enters, on the west side, the first contributor to this problem is a landfill, industrial activities, and dense residential. As the North Canadian River leaves the downtown area it is then affected by another landfill, waste water treatment plant, and more residential. The portion of the North Canadian that is located in unincorporated Oklahoma County is undeveloped and the development that does exist is sparse. The only contributor in Oklahoma County’s jurisdiction is the Horseshoe Lake Power Plant; not regulated by Oklahoma County. Another contributor to this bacteria impairment is Oklahoma City’s biosolid applications that take place in the unincorporated jurisdiction. Many of these contributors to this bacteria impairment are regulated by the State of Oklahoma.”

RESPONSE

This comment does not relate directly to the content of this permit. However, each MS4 that is identified in a TMDL report as a potential contributor must evaluate their MS4 for sources of the pollutant of concern (e.g., bacteria) and implement best management practices (BMPs) to address that pollutant. If the MS4 determines that there are no potential sources of the pollutant within their jurisdiction or that potential sources are already regulated (e.g., point source discharges, biosolids application sites), this should be documented in the MS4's TMDL pollutant reduction plan.

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

5. COMMENT

Mr. Brandt stated that the “permit specifies that if the POC (Pollutant of Concern) is bacteria many of the BMPs that are addressed deal with the sanitary sewer system and unincorporated Oklahoma County does not have any sanitary sewer. Oklahoma County understands that septic systems, pet waste, livestock, and horse stables can contribute to this impairment and have no issue sending out information to make people aware of the issue and how they can help correct. Oklahoma County has an issue with taking on additional costs to correct an issue that it had little responsibility creating.”

RESPONSE

This comment does not relate directly to the content of this permit. However, regulated MS4s must assess their regulated area for sources of the pollutant of concern and implement BMPs that will address the identified sources. If a certain bacterial source (e.g., sanitary sewer system) is not present within the MS4's regulated boundary, the MS4 should note that in its TMDL pollutant reduction plan and is not required to implement BMPs specifically targeting that source. Development and distribution of information and educational materials to the public on sources such as septic systems, pet waste, livestock, and horse stables is an appropriate control measure for such sources (see MCM 1 in the permit).

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

6. COMMENT

Mr. Brandt stated that “[t]he State of Oklahoma needs to have more restrictions or improve upon existing permitting to reduce the effect of landfills, waste water treatment plants and biosolid applications.”

RESPONSE

This comment does not relate directly to the content of this permit. However, wastewater discharges associated with point sources such as landfills and wastewater treatment facilities are regulated under individual OPDES permits. These permits must meet minimum requirements specified by the Environmental Protection Agency and include narrative and numerical criteria to ensure discharges do not violate water quality standards and are protective of the receiving water's beneficial uses. Biosolids application sites are also regulated by DEQ and should have no discharges. When DEQ identifies discharges related to biosolids application, it takes appropriate enforcement to ensure that application practices are corrected and the discharges are eliminated. Concerns regarding the monitoring limits or permit requirements can be made during the public comment period of those individual OPDES permits. Environmental complaints related to such sources should also be reported to DEQ online at <https://www.deq.ok.gov/environmental-complaints/> or by calling 1-800-522-0206.

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

7. COMMENT

Mr. Brandt stated that “coordinating with other jurisdictions [is an issue]. Tulsa County area utilizes [Indian Nations Council of Governments] INCOG and the Green Country Stormwater Alliance. Oklahoma County could utilize COSWA (Central Oklahoma Stormwater Alliance) but a much more coordinated effort needs to be made when dealing with this issue to be efficient with resources. Del City, Spencer, Jones, Choctaw, Harrah and unincorporated Oklahoma County have very limited resources to tackle unfunded mandates. Counties in Oklahoma are at a stark disadvantage when it comes to enacting additional fees to address this type of issue.”

RESPONSE

This comment does not relate directly to the content of this permit. However, MS4s are encouraged to work together to develop a regional, coordinated approach to address permit requirements; however, DEQ does not require that the MS4s implement permit requirements on a regional basis. DEQ acknowledges that smaller MS4s, including counties, have limited resources to implement permit requirements, and therefore developed tiered permit requirements in the draft permit. These tiered permit requirements are based on the MS4 population.

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