

FACT SHEET

FOR THE REISSUANCE OF OPDES STORMWATER CONSTRUCTION GENERAL PERMIT OKR10 FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY WITHIN THE STATE OF OKLAHOMA.

DEQ Permit Number: OKR10

Issuing Office: Oklahoma Department of Environmental Quality (DEQ)
Water Quality Division
707 North Robinson
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

Prepared By: Michelle Chao, Permit Writer
Kimberly Carkin, P.E., Permit Writer
Municipal Discharge and Stormwater Permit Section
Water Quality Division

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Reviewed By: Patrick Rosch, P.E., Manager
Municipal Wastewater Group
Water Quality Division

Michael B. Moe, P.E., Manager
Municipal Wastewater and Stormwater Permit Section
Water Quality Division

The State of Oklahoma DEQ has made a tentative determination to issue a general permit for the discharge of stormwater from construction activities. 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 C.F.R. § 122.26 *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.

The Oklahoma State Legislature has voted to move Water Quality Standards (WQS) from the Oklahoma Water Resources Board (OWRB) to the Oklahoma Department of Environmental Quality (DEQ). OAC 785:45 will be re-written as OAC 252:730 and OAC 785:46 will be re-written as OAC 252:740. OAC 252:690 will be incorporated into OAC 252:740 upon completion of permanent rulemaking by DEQ for WQS.

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ISSUANCE OF DRAFT GENERAL PERMIT OKR10 FOR STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES WITHIN THE STATE OF OKLAHOMA

DEQ is reissuing the “General Permit OKR10 for Stormwater Discharges from Construction Activities within the State of Oklahoma” (OKR10). This permit will replace the current OKR10 permit, which will expire on October 17, 2022. Both new permittees and existing permittees must obtain coverage under this new permit to discharge stormwater from construction activities 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 the discharges from construction activities which are located on Indian Country lands, or construction activities associated with oil and gas extraction¹ under the Standard Industrial Classification (“SIC”) Group 13², crude petroleum and refined petroleum products pipelines under SIC Group 46³, and natural gas transmission under SIC Group 492⁴, agricultural production and services⁵ under SIC Groups 01, 02 and 07; forestry under SIC Group 08; and fishing, hunting and trapping under SIC Group 09. Discharges associated with such activities are not covered under this general permit.

DEQ issued its first OKR10 on September 9, 1997, and amended it on February 1, 1999. Currently, DEQ is proposing the 2022 OKR10 permit to replace the 2017 OKR10 permit which will expire on October 17, 2022. The issuance procedure for the permit is based on the Oklahoma Environmental Code found in Title 27A of the Oklahoma Statutes § 2-14-101, *et seq.*, and the rules found in Oklahoma Administrative Code (OAC) 252:004-7.⁶

The proposed permit will have a fixed term of five (5) years from the effective date of DEQ’s issuance. Each authorization to discharge issued under this permit will expire at the same time, and all authorizations to discharge will be required to be renewed on the same date. Discharges will be covered under OKR10 once the authorization to discharge is issued by DEQ.

¹ An authorization to discharge stormwater from a construction activity associated with oil and gas extraction under the SIC Group 13, or pipelines under SIC Group 46, or natural gas transmission under SIC Group 492, may be obtained through the EPA National Pollutant Discharge Elimination System (“NPDES”) eReporting Tool for its Construction General Permit (“CGP”).

² DEQ shall have jurisdiction over natural gas liquid extraction plants under SIC 1321 and service company base operating stations under SIC 1389.

³ Except pipelines within certain facilities regulated by DEQ.

⁴ DEQ shall have jurisdiction over natural gas liquid extraction plants under SIC 1321.

⁵ An authorization to discharge stormwater from construction activities associated with agricultural and forestry, fishing production and services under SIC groups 01, 02, 07, 08 and 09, may be obtained by contacting the Oklahoma Department of Agriculture, Food & Forestry’s Agriculture Pollutant Discharge Program at (405)522-5493.

⁶ DEQ Chapter 4. Rules of Practice and Procedure: <http://www.deq.state.ok.us/rules/004.pdf>

The permit authorizes stormwater discharges associated with construction activities that result in land disturbance of equal to or greater than one (1) acre, or less than one (1) acre if they are part of a larger common plan of development or sale that disturbs one (1) acre or more. The permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, and borrow areas) that are directly related to a construction site which is required to have permit coverage. Those support activities are not commercial operations, do not serve unrelated different sites, and do not continue to operate beyond the completion of the construction activity of the site it supports. However, the permit does not authorize any stormwater discharges from support activities within the watersheds of Outstanding Resource Waters (ORW) as defined in Oklahoma Water Quality Standards (see OAC 785:45-5-25).⁷

You must receive an authorization to discharge from DEQ prior to commencing your construction activities with stormwater discharges. To receive an authorization, you must file a Notice of Intent (NOI) with DEQ and pay the applicable application fee and annual permit fee⁸. Also, you must develop and implement a Stormwater Pollution Prevention Plan (SWP3) in accordance with the requirements in this permit.

You must submit a completed Notice of Termination (NOT) if you wish to terminate the coverage under this permit. Your authorization to discharge will terminate when DEQ's termination letter has been issued.

B. ELIGIBILITY

1. This permit authorizes discharges of stormwater and certain non-stormwater discharges from construction activities. All operators of construction activities meeting any of the requirements below are required to comply with this permit:
 - A. Construction sites that are greater than, or equal to, one acre⁹.
 - B. Construction sites that are less than one acre if it is part of a larger common plan of development or sale which will ultimately disturb land equal to or greater than one acre¹.
2. This permit identifies high priority construction sites based on total acreage and receiving waters. High priority construction sites are sites that
 - A. are 40 acres or greater, or
 - B. discharge within one mile of a receiving waterbody which is identified by DEQ on the latest Section 303(d) list as impaired (i.e., not meeting water quality standards) for sediment and/or turbidity, or

⁷ Title 785, Chapter 45 Oklahoma's Water Quality Standards 785:45-5-25(a)(1) The limitations contained in 785:45-5-25(c)(1) for additional protection of Outstanding Resource Waters shall apply to all discharges from point sources except such limitations do not apply to discharges of stormwater from temporary construction activities. Discharges of stormwater from point sources existing as of June 25, 1992, are also excepted from the 785:45-5-25(c)(1) rule prohibiting any new point source discharges, but such stormwater discharges are prohibited from increased load of any pollutant.

⁸ See OAC 252:606: http://www.deq.state.ok.us/eclsnew/fees/252606_StormWater.pdf

⁹ As defined in 40 C.F.R. § 122.26 (b)(14)(x) for construction sites of five or more acres, and 40 C.F.R. § 122.26 (b)(15)(i) for construction sites of more than one acre but less than five acres, including the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb land equal to or greater than one acre, and those construction site discharges designated by DEQ as needing a stormwater permit under 40 C.F.R. § 122.26 (a)(1)(v), or under § 122.26 (a)(9) and § 122.26 (g)(1)(i).

C. are located within an ARC, ORW, or waterbody with a TMDL or watershed plan¹⁰.

For discharges that enter a separate storm sewer system prior to discharge, the first water of the state to which you discharge is the waterbody that receives the water from the storm sewer system. In such a case, you are considered to discharge to the impaired water if your site is located within one mile of the separate storm sewer system outfall that discharges to the impaired water. Separate storm sewer systems include both MS4s and non-MS4s. Separate storm sewers do not include combined sewer systems or sanitary sewer systems.

You are not considered to discharge to an impaired water if your site or discharge point is located within one mile of an impaired receiving waterbody, but the point of discharge (or the separate storm sewer outfall if discharging to a separate storm sewer system) is outside the watershed of this waterbody.

C. EFFECTIVE DATE

Dischargers who submit a NOI in accordance with the requirements of this permit are not authorized to discharge stormwater runoff from construction activities 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.

D. SUMMARY OF CHANGES FROM PREVIOUS PERMIT

This proposed general permit will replace the previous OKR10 general permit. Following is a list of changes in the proposed general permit as compared to the previous OKR10 general permit.

1. Part 1. Definitions and Acronyms (Part 8 of the previous permit)

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

- a. Definitions have been moved from Part 8 to Part 1 and retitled;
- b. The definition of “Aquatic Resource of Concern” has been added;
- c. The definition of “Construction Activities” has been revised to exclude certain utility construction activities;
- d. The definition of “Immediately” has been added;
- e. The definition of “Qualified Person or Qualified Personnel” has been added, including a requirement beginning April 16, 2023, for inspectors to meet certification/licensure requirements; and
- f. The definition of “Stabilization” has been revised and requirements for “Temporary Stabilization” and “Final Stabilization” have been incorporated into Part 4.3.

¹⁰ This refers to TMDLs or watershed plans that assign specific requirements to stormwater discharges associated with construction activities (e.g., Lake Thunderbird Report for Nutrient, Turbidity and Dissolved Oxygen TMDLs).

2. Part 2. Coverage Under the Permit (Part 1 of the previous permit)

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

- a. Part 2.1 has had the eligibility language clarified;
- b. Part 2.2.A. has been slightly revised to clarify what construction support activities are covered under the permit;
- c. Part 2.2.B has had similar discharges grouped together, allowable discharges have been updated to be consistent with other existing OPDES permits, and PFAS BMP requirements have been added for discharges or flow from emergency firefighting activities;
- d. Part 2.2.C has been updated to be consistent with other existing OPDES permits;
- e. Part 2.3 has been revised to include prohibited discharges that were covered at Part 3.3.A of the previous permit;
- f. Part 2.4 has been added to incorporate language from Part 9 of the previous permit (Part 9 has been removed from the draft permit); and
- g. Part 2.5 has been added to incorporate language from Part 10 of the previous permit and to clarify requirements regarding endangered species (Part 10 has been removed from the draft permit).

3. Part 3. Authorization Under the Permit (Part 2 of the previous permit)

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

- a. Part 3.1 has been moved from Part 3.6 of the previous permit, and additional language has been added to clarify operator types and responsibilities;
- b. Part 3.2 has been revised to clarify the processes for obtaining or amending an authorization;
- c. Part 3.3 has been added to identify high priority construction sites;
- d. Part 3.4 has been revised to clarify deadlines for NOI submittal for operators of new construction projects/activities, existing operators of on-going construction projects/activities that have active authorizations for coverage under the 2017 OKR10 CGP, and existing operators of on-going construction projects/activities that did not receive authorization to discharge under the 2017 permit.
- e. Part 1.4 of the previous permit has been moved to Part 3.6 and the language has been slightly revised to clarify that termination inspections will be performed at DEQ's discretion. DEQ has determined that it does not have sufficient resources or staff to perform an inspection for every project/activity for which termination of coverage is being requested;
- f. Part 2.4 of the previous permit has been removed and submittal of a SWP3 will not be required, unless specifically requested by DEQ. DEQ has determined that the agency resources and staff level of effort required to perform these SWP3 reviews were excessive compared to the benefits of such reviews, and resulted in little improvement or value added to the quality of SWP3s prepared by the applicants and/or their consultants;
- g. Part 2.5 of the previous permit has been removed and language regarding reporting requirements has been incorporated into Part 3.6; and

- h. Parts 3.3 (Content of the NOI) and 3.7 (Contents of the NOT) have been updated with additional information requirements. The NOI and NOT forms have been removed from the permit and are available as separate documents.
4. Part 4. Effluent Limitations (Part 3 of the previous permit)

To improve clarity, the following changes have been made:

- a. Part 4.1 has been reorganized;
 - b. Part 4.2.B - language has been incorporated from the addenda and Table 4.1 has been added for reference;
 - c. Part 4.2.L - language has been incorporated from Part 5 (Part 4 of the previous permit) and reorganized, and the header reference to “sediment basins” have been updated to “sediment basins/impoundments” to be consistent with the effluent limitations guidelines (ELGs) of 40 C.F.R. Part 450 Construction and Development Point Source Category. Language has also been added stating, “Sediment basins may also be referred to as sediment ponds or impoundments, but will be referred to hereafter as sediment basins;”
 - d. Part 4.3 - language has been incorporated from the definition of “Stabilization” in the previous permit and reorganized and revised to clarify the deadlines and criteria for temporary and final stabilization;
 - e. Part 4.4 - language has been reorganized to improve clarity, additional requirements have been incorporated to be consistent with the ELGs of 40 C.F.R. Part 450 and with other existing OPDES permits, and PFAS management language has been added;
 - f. Part 4.5 – language has been added to clarify that monitoring for compliance with numeric ELGs must be conducted in accordance with test procedures approved under 40 C.F.R. Part 136, including holding time and documentation requirements; and
 - g. Part 4.6 - the title of this section has been revised and language has been reorganized.
5. Part 5. Stormwater Pollution Prevention Plan (Part 4 of the previous permit)

To improve clarity, the following changes have been made:

- a. Parts 5.2A., 5.2.C, 5.3.T, 5.4.G, and 5.6.C have been updated to clarify that “an easily accessible location” can “include electronic availability, provided that the SWP3 is still readily available in a form and location that can be accessed by a reasonable person.”
- b. Part 5.3.D has been revised to clarify that contractors are agreeing to implement and comply with the permittee’s/primary operator’s SWP3, including BMPs and other controls (Note: Contractor certification is recommended but not a requirement of this permit.);
- c. Part 5.3.I has been added to address high priority construction sites;
- d. Part 5.3.K.2.b has been revised to be consistent with other existing OPDES permits;
- e. Part 5.3.P has been revised to reference the training requirements in Part 1.FF (definition of “Qualified Person”); and
- f. Parts 5.4 and 5.5 have been added to address inspection and corrective action requirements.

6. Part 7. Standard Permit Conditions

Language in this section has been revised and requirements have been added to be consistent with the requirements of 40 C.F.R. Part 122.41 Conditions applicable to all permits.

7. Addenda

To improve clarity, the following changes have been made:

- a. Addendum A has been updated;
- b. Addenda B, C, D, G, and J (Notice of Intent, Notice of Termination, Contractor Certification, Annual Comprehensive Site Compliance Evaluation Report, and Notification of Change of Ownership, respectively) of the previous permit have been removed and will be available as separate documents. The remaining addenda have been relabeled accordingly.
- c. Addendum C (Addendum F of the previous permit) requirements for concrete and asphalt batch plants have been incorporated into Parts 4 and 5 where possible, and the addendum has been generalized to cover all construction support activities;
- d. Addendum D (Addendum H of the previous permit) requirements for buffers have been reorganized and typographical errors in Tables D-3 and D-4 have been corrected; and
- e. Addendum F is a new addendum that summarizes the effluent limitations requirements of Part 4 in Table F-1 for convenient reference.

E. 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 and that lays out procedures and deadlines for submitting public comments or requesting a public meeting will be sent to various federal and state agencies upon posting the draft permit to the DEQ webpage. If comments are received 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 C.F.R. § 124.59. The public notice describes the procedures for the formulation of final determinations.