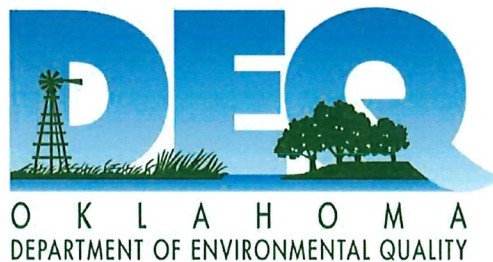


**Oklahoma Department of Environmental Quality
Water Quality Division**

**OPDES General Permit OKR10
for Stormwater Discharges from Construction Activities
within the State of Oklahoma**

DEQ Responses to Public Comments

September 16, 2022



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The Oklahoma Department of Environmental Quality (DEQ) published a notice in The Journal Record, a daily business and legal newspaper, on July 28, 2022, regarding the draft 2022 General Permit OKR10 for Stormwater Discharges from Construction Activities within the State of Oklahoma, pursuant to the Oklahoma Pollutant Discharge Elimination System (OPDES) Act, Title 27A Oklahoma Statute (O.S.) § 2-6-201, *et seq.*, the Oklahoma Administrative Code (OAC) 252:606, and the policies and procedures of DEQ. DEQ also published notice on DEQ's website at <https://www.deq.ok.gov/permits-for-public-review/> on July 28, 2022. The public review period ended at 4:30 p.m. on August 28, 2022. During the public review period DEQ received written comments from three persons/entities concerning the draft 2022 OKR10 permit.

DEQ reviewed the comments, prepared the following responses, and made some changes in the draft 2022 OKR10 permit in response to the comments received. DEQ's responses to comments were sent to all persons/entities that submitted comments during the 30-day public review period. The permit will become effective on October 18, 2022. This will be DEQ's final permit decision. A summary of the comments, DEQ's responses, and changes made to the draft 2022 permit after the public review are listed below.

A copy of the final permit, fact sheet, and responses to comments are available on DEQ's website at [OKR10 Construction Stormwater - Oklahoma Department of Environmental Quality](#).

DEQ's Responses to Comments

PART 1 DEFINITIONS

Comments from John Smith:

1. The EPA also defines qualified inspector as someone who has passed the EPA or similar inspection class. Why does OK DEQ not require this?

DEQ Response: DEQ agrees that, under the definition of "Qualified Person" or "Qualified Personnel," the term "skills and training" should be clarified to include a requirement to complete and pass EPA's construction inspection course or to hold a similar certification or license. The requirement in EPA's Construction General Permit (CGP) does not go into effect until February 17, 2023; DEQ will implement a similar requirement to take effect six months after the effective date of OKR10 (i.e., April 16, 2023). DEQ will add a link to the EPA construction inspection course to our website, as well as edit the definition section to state the following:

Qualified Person or Qualified Personnel means those (either the operator's employees or outside personnel) who are knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, the skills and training to assess conditions at the construction site that could impact stormwater quality, and the skills and training to assess the effectiveness of any control measures selected to control the quality of stormwater discharges from the construction activity. Beginning April 16, 2023, for inspections that are required in accordance with Part 5.4 and Addendum C, a qualified person or qualified personnel means those (either the operator's employees or outside personnel) who, at a minimum, possess a valid construction inspection certification or license from a program (such as the EPA construction inspection training course) that, at a minimum, covers principles and practices of erosion control and pollution prevention practices at construction sites; proper installation and maintenance of erosion and sediment controls and pollution prevention practices used at construction sites; and performance of inspections, including the proper completion of required reports and documentation, consistent with Part 5.4.

Part 5.3.P.1.c has also been updated as follows: “Personnel responsible for the inspections as required in Part 5.4. Such personnel must be a “qualified person,” including meeting the training requirements for inspections, as defined in Part 1.FF.” The requirements of Part C.4.C have also been updated to include “inspector certifications/licenses” among the documentation that must be retained with the SWP3.

PART 2 COVERAGE UNDER THIS PERMIT

Comments from the City of Norman:

1. Part 2.2.B.10: Recommend reformatting for clarity: discharges or flows from emergency firefighting activities that either: a) do not involve per- and polyfluoroalkyl substances (PFAS)-containing aquatic firefighting foams (AFFFs), or b) involve PFAS-containing AFFFs and are consistent with Part 4.4.F of this permit. Measures shall be taken by the permittee or site/facility, as soon as practicable, to reduce any such pollutant releases to avoid or minimize the impacts on water quality and to ensure public health and safety. After the emergency has ceased, non-stormwater discharges (e.g., discharges associated with cleanup) are prohibited. Determination of cessation of the emergency is at the discretion of the emergency on-site coordinator; and

DEQ Response: DEQ concurs. The recommended change has been made.

PART 3 AUTHORIZATION UNDER THIS PERMIT

Comments from the City of Norman:

1. Part 3.2.B: Should this reference be to Part 3.4?

DEQ Response: This reference should be to Part 3.5. The permit has been updated accordingly.

2. Part 3.4, second paragraph: Clarification: Does DEQ have any recommendations on how applicants can verify their discharge point [when discharging to a separate storm sewer system]? What if the storm sewer system is not mapped or the map is not available to the public?

DEQ Response: Under the OKR04 Small Municipal Storm Sewer System (MS4) General Permit, MS4s are required to maintain and manually update a map of their storm sewer system showing the locations of all outfalls and the names and locations of all waters of the state that receive discharges from those outfalls (Part V.C.3.a.vii). While these maps should be publicly available, DEQ recognizes that the quality and availability of such maps may vary greatly, depending on the size and corresponding resources of the MS4. Where such maps are not readily available, DEQ recommends that applicants do the best they can to verify their discharge point using GIS resources such as Google maps, topographic maps, street maps, or by walking the drainage system. No changes have been made to the permit as a result of this comment.

PART 4 EFFLUENT LIMITATIONS

Comments from the City of Norman:

1. Part 4.2.L: Clarification: What is the reasoning behind including the term “impoundment” here? We typically do not hear permittees refer to sediment basins as impoundments. There is already a fair amount of confusion about the difference between sediment basins and detention/retention ponds and introducing another term may only increase the confusion. Recommend adding the following sentence for clarity and removing references to impoundments hereafter:

“L. Install Sediment Basins/Impoundments

Sediment basins may also be referred to as sediment ponds or impoundments, but will be referred to hereafter as sediment basins.

1. Velocity dissipation devices shall be placed at...”

DEQ Response: During its review of the draft OKR10 permit, EPA required DEQ to add the term “impoundments” to reflect and implement the requirements of 40 C.F.R. Part 450 – Construction and Development Point Source Category. Specifically, 40 C.F.R. § 450.21(f) states, “Surface outlets. When discharging from basins or impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.” However, DEQ concurs that the City of Norman’s recommended change meets the intent of the rule and eliminates redundancy in the permit. Thus, DEQ has made the recommended change and eliminated the appearance of the term “impoundment” after this first appearance and explanation, to eliminate redundancy in the permit.

2. Part 4.3.B: Recommend removing Part 4.3.B.3. While this does not happen frequently, we do sometimes see builders selling homes without permanent stabilization in the back yards. Temporary stabilization is not a long-term solution and homeowners do not typically spend the extra money to lay sod. This can lead to long term erosion issues.

DEQ Response: DEQ recognizes that, for residential construction, it may not always be feasible for the homebuilder to complete final stabilization prior to occupation of the home by the homeowner. For this reason, DEQ believes it is appropriate to include an option for the homebuilder to establish temporary stabilization and inform the homeowner of the need for and benefits of final stabilization. While DEQ acknowledges that temporary stabilization is not a long-term solution, it is in the homeowners’ best interest to establish final stabilization. No changes have been made to the permit as a result of this comment.

3. Part 4.4.F.1: Clarification: Can DEQ provide examples of control measures and protocols that can be used to minimize PFAS discharges? If not in the permit, then in the fact sheet, or other guidance document?

DEQ Response: Control and management of PFAS is a rapidly developing field. At present, DEQ is not aware of any examples of specific BMPs, control measures, or protocols that can be used to minimize PFAS discharges. However, general BMPs for pollution prevention, such as source

reduction/substitution, minimizing exposure, good housekeeping (i.e., immediate clean-up in all situations where AFFFs have been used), secondary containment, sediment controls (including diversions and other measures that prevent discharges), etc., can also be effective at reducing or eliminating discharges of PFAS. As DEQ becomes aware of specific BMPs, control measures, or protocols for minimizing PFAS discharges, DEQ will post links to such BMPs on our website. No changes have been made to the permit as a result of this comment.

4. Part 4.4.F.3: Clarification: Are permittees now required to submit an Annual Report or should this be the SWP3?

DEQ Response: This is a typographical error made when updating the draft permit. Permittees are not required to submit Annual Reports. This language has been revised to read: "Document all activities undertaken in fulfillment of Parts 4.4.F.1-2 in the SWP3."

Comments from John Smith:

1. The EPA OKR10 requires turbidity benchmark monitoring for high priority sites. Why does OK DEQ not require turbidity monitoring for all high priority sites?

DEQ Response: EPA's 2022 Stormwater Construction General Permit (CGP) requires turbidity benchmark monitoring for sites discharging to sensitive waters (sediment-impaired or designated high quality waters). Such sites are categorized as high priority construction sites in DEQ's OKR10 Stormwater CGP. DEQ has opted not to use benchmark monitoring in its OKR10 Stormwater CGP. Instead, DEQ establishes additional or more stringent BMP requirements for high priority construction sites (see Part 4.6) to prevent sediment (and associated turbidity) from causing, having the reasonable potential to cause, or contributing to a violation of a water quality standard (WQS), including establishing larger natural buffers, reducing the drainage area that requires installation of sediment basins, shorter timeframes for stabilization, and more frequent inspections. Additional protective measures for high priority construction sites, including information/documentation reporting and recordkeeping requirements, are established in Part 5.3.I.

If stormwater is discharged into a waterbody with an approved TMDL or watershed plan, the permittee must describe and implement any measures necessary to meet the requirements of the approved TMDL or watershed plan and/or associated implementation schedule established in the TMDL or watershed plan. Monitoring and reporting of discharge quality may also be required if necessary to ensure compliance with an approved TMDL or watershed plan. See Part 5.3.I.4.

If violations of WQS do occur, the permittee must implement appropriate corrective actions as describe in Part 5.5. If violations remain or re-occur, then DEQ may take enforcement action (including penalties) or may terminate coverage under this permit and require the site to obtain coverage under an alternative general permit or individual permit may be issued. No changes have been made to the permit as a result of this comment.

PART 5 STORMWATER POLLUTION PREVENTION PLAN (SWP3)

Comments from Brendan Haugh:

1. Please add additional text stating that records may be maintained electronically wherever OKR10 states that records/reports need to be maintained on site or at an easily accessible location (Sections 5.2.C & 5.3.T & 5.4.G & 5.5.C). "Easily accessible location" may be interpreted to account for electronic availability but believe there is merit in clearly conveying that records may be maintained and made available electronically.

DEQ Response: DEQ agrees to clarify that "easily accessible location" can be interpreted to include electronic availability, with the caveat that the SWP3 must still be readily available in a form and location that can be accessed by a reasonable person. DEQ will add the following sentence to the permit wherever it refers to keeping a copy of the SWP3 on-site or at an easily accessible location: "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."

2. Section 5.4 (Inspection Requirements) states that rain event inspections must be conducted within 24 hours of the end of a half-inch storm event. My understanding is that ODEQ does not expect rain event responses to be conducted on weekends or federal holidays, so it'd be greatly appreciated if that were conveyed in OKR10. A possible addition would be: "on the next business day following the end of a storm event of 0.5 inches or greater". There would ultimately be no benefit to conducting a rain event inspection on a non-workday, as only the individual performing the inspection will be available. Any on-site equipment, BMP maintenance companies, and other such individuals who may be able to address stormwater issues will not be available until the next working day.

DEQ Response: The DEQ concurs with the need for clarification on when inspections must be conducted. DEQ has added the following footnote to Part 5.4.B regarding frequency of inspections: "Inspections are only required during the site's normal working hours. For the purposes of the inspection requirements in this Part, conducting an inspection "within 24 hours" means that once the conditions in Part 5.4.B are met, you have 24 hours from that time to conduct an inspection. For clarification, the 24 hours is counted as a continuous passage of time, and not counted by business hours (e.g., 3 business days of 8 hours each). When the 24-hour inspection time frame occurs entirely outside of normal working hours, you must conduct an inspection by no later than the end of the next business day."

3. I'd like to request an amendment to Part 5.4 - Inspection Requirements of OKR10. The current standard inspection frequency only allows for inspections every 14 days and within 24 hours of the end of a half-inch rain event. I'd like to request an additional option of inspecting every 7 days without the requirement to respond to rain events. The majority of state general permits currently allow for both a 7-day frequency and a 14-day frequency that includes rain events, so the 7-day inspection without rain concerns is a widely accepted standard. The site ultimately is inspected at a greater rate and with better consistency when on a 7-day frequency. A site that we consult on in Oklahoma has received 26 routine inspections with 10 rain events for a total of

36 site visits, for example, while it would be inspected 52 times in the same time period at a 7-day frequency. The 7-day frequency allows for better consistency and scheduling amongst permit holders, consultants, and BMP maintenance companies. Since rain events are unpredictable, it is logistically preferable for all parties if inspections can be set at an exact schedule while eliminating the variable of rain. It is demonstrably better for the regulating agency, the regulated community, and the environment for a site to be on a 7-day schedule. I appreciate your consideration, please let me know if any other information is needed in support of this request.

DEQ Response: DEQ does not concur. DEQ believes that for site inspections to be effective in assessing whether erosion, sediment, and pollutant prevention controls are properly installed, operational, and working as intended to minimize pollutant discharges, it is necessary that at least some of the inspections be conducted during or shortly after rain or snowmelt events. Allowing an option for facilities to conduct site inspections every seven days with no regard to rain or snowmelt events, could result in all site inspections being performed during dry weather, especially in the western part of the state. DEQ also recognizes that some facilities may not have the capabilities or resources to perform inspections on a weekly basis. Finally, DEQ notes that the requirement to conduct site inspections every 14 days is a minimum requirement, and facilities may choose to perform inspections more frequently. No changes have been made to the permit as a result of this comment.

Comments from the City of Norman:

1. Part 5.4.A: Clarification: Are footnote numbers 18 and 19 in the correct locations? Why does number 18 not apply to the routine 14 and 7 calendar day inspections? Why is number 19 not included for snowmelt or high priority sites per Part 5.4.B? Recommend moving footnote number 18 to the following location for both standard and high priority sites: You must conduct a site inspection (18) once...

DEQ Response: Footnote number 18 ties to the sentence, “If you hire a third party to conduct inspections, and that party cannot implement corrective actions without prior approval, at least one member of your stormwater team must be present during inspections.¹⁸” References to footnote number 18 within Table 5-1 are in error, and should have referred to footnote number 19. To provide additional clarity (and eliminate the need for footnote number 19), the text in the Routine Inspection Frequency/Standard cell in Table 5-1 has been revised to read as follows:

“You must conduct a site inspection when discharge is occurring:

- Once every 14 calendars days, and
- Within 24 hours of the end of a storm event of 0.5 inches or greater, and
- Within 24 hours of a discharge generated by snowmelt.”

Similar revisions have been made to the text in the Routine Inspection Frequency/High Priority cell in Table 5-1.

ADDENDUM F EFFLUENT LIMITATIONS SUMMARY

Comments from the City of Norman:

1. Part 4.2 Sediment and Erosion Controls, Provide and maintain natural buffers and equivalent erosion and sediment controls: Recommend deleting extra row. Recommend adding language about the 50 foot buffer for ephemeral streams.

DEQ Response: DEQ concurs. The table has been updated accordingly.

2. Part 4.4 Pollution Prevention Requirements: Recommend additional row [before Sanitary Waste] to include PFAS management.

DEQ Response: DEQ concurs. The table has been updated accordingly.

Parts 2 – 8: Incorrect References and Typographical Errors in Various Sections

Comments from the City of Norman:

- Part 2.2.B.11: Recommend removing the extra space after “excavations.”
- Part 3.1.B.3: Recommend [fully] justifying format throughout document.
- Part 3.2.A, footnote #9: Recommend adding a space after “SWP3.”
- Part 4.2.A: Clarification: Should this be a reference to Part 4.6.B?
- Part 4.2.E.1: Clarification: Should this be a reference to Part 4.6.B?
- Part 4.2.L.5: Recommend consistency in referencing numerical values, there are 3 different forms used in the permit: 1. 5, 2. five, 3. five (5).
- Part 5.4.C: Clarification: Should this be a reference to Part 5.4.B? Reference should be Table 5-1, not Table 5.1.
- Part 5.4.E.1: Clarification: Is this a reference to Part 5.3.L?

DEQ Response: DEQ concurs with the City of Norman’s recommendations and changes have been made in various parts and subparts of the final 2022 OKR05 permit to fix all the inadvertent errors and/or incorrect references. Regarding consistency in numerical values, DEQ has updated the permit so that numerical values from 1 – 9 appear as text (e.g., one, five, seven, etc.) and numerical values of 10 or greater appear as numbers (e.g., 10, 12, 24, etc.).

Additional Changes to the Final Permit

- Part 2.3.H has been deleted as being redundant, and requirements have been consolidated into Part 2.3.B.
- Addendum F. Part 4.2 Sediment and Erosion Controls, Provide and maintain natural buffers and equivalent erosion and sediment controls: A line has been added stating: “No natural buffer zone is required for discharges to road ditches, county ditches, stormwater conveyance channels, storm drain inlets, or sediment basins/impoundments.”

