

**RESPONSE TO COMMENTS FOR
CONSTRUCTION STORMWATER NPDES GENERAL PERMIT ARR150000**

The following are the responses to comments concerning the Draft Construction Stormwater General Permit ARR150000. Public notice of the Draft Permit was published by the Arkansas Department of Environmental Quality (ADEQ) on August 24, 2011. Responses to comments received on the subject draft permit in accordance with regulations promulgated at 40 C.F.R. § 124.17 and APCEC Regulation No. 8, Administrative Procedures are as follows:

This document contains a summary of the comments that the ADEQ received during the public comment period. Where there were similar issues raised throughout the comments, they are combined with one response from the ADEQ. Page numbers and references are to the public notice of the draft permit, and may have changed in the final copy of the permit.

The following people or organizations sent comments to the ADEQ during the public notice period. A total of eighty-eight (88) comments were raised by ten (10) separate commenters.

Commenter	# of Comments Raised
1. Jennifer Harmon, Engineer with Terracon	33
2. Joseph C. Burak, Executive Officer with HBA of Greater Little Rock	5
3. Amanda Gallagher, Engineer with GBMc & Associates	15
4. Randy Thurman, Executive Director with Ark. Environmental Federation	3
5. David Hall, Manager with American Electric Power	9
6. Stephen Cain, Senior Environmental Engineer with Ark. Electric Cooperative Corporation	1
7. Robert Hileman with Ark. General Contractors	6
8. Bob Vasquez, Environmental Manager with AT&T Services, Inc.	7
9. Lorie H. Tudor, Acting Assistant Chief Engineer – Planning with AHTD	4
10. Ben Peters, City of Bentonville (Received after deadline on 9/23/11)	5

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Date Prepared: 09/22/2011

Comment 1:

Part 1.B.2.A : 40 CFR 450 doesn't define construction activities as stated in this item. However, it does refer back to 40 CFR 122.26 for the definition.

Response 1:

Part I Section B.2.A references the types of discharges that are eligible for coverage under this permit, not defining construction activities. 40 CFR 450 defines a new source with relation to the effective date of the rule, which would be a type of discharge that is eligible for coverage under this permit.

Comment 2:

Part 1.B.6.A: In Part 1.B.4 there is a NOTE stating that the NOC will NOT be issued until payment is received, so how can an automatic coverage site receive a NOC.

Coverage posting for a site with automatic coverage should be identified as a separate type of NOC. It should be renamed to an Automatic Coverage NOC or something that doesn't contradict the NOTE in item 4.

Response 2:

Part I Section B.6.A of the permit is regarding the submission of materials to the Department. It is implied that this section is not applicable to Automatic Coverage sites, as they do not need to submit materials to the Department.

Comment 3:

Parts 1.B.7.A & C: How is the applicant to know if the NOI has been deemed complete? If the applicant provides an email address, could the Department email the applicant to inform them of when the application has been deemed complete? The routing sheet used could easily be amended to include this requirement, if an email address is provided. There is a time discrepancy between something is submitted, received and deemed complete. An applicant has no way of knowing when their application was deemed completed.

Response 3:

The Department concurs that the permittees can be emailed with the completeness date if an email address is provided. Upon the permittee's request via email or telephone, the Department will provide the administrative completeness date.

Comment 4:

Part 1.B.7.B: Why was Endangered Species requirement removed from the NOI contents?

Response 4:

The inclusion of the Endangered Species Checklist was redundant with Part II Section B.22 and was taken out. Part II Section B.22 states that the permittee must comply with all applicable local, state and federal requirements. The state of Arkansas has not adopted the requirements of the Endangered Species Act. The U.S. Fish & Wildlife Service administers the requirements of the Endangered Species Act. Permittees must comply with all federal regulations, but coverage under this general permit does not imply compliance with the Endangered Species Act.

Comment 5:

Part 1.B.8.C: Posting of coverage for Linear Projects- Due to the large area that these projects could encounter, perhaps the requirement of posting the NOC at the storage/office yard and at the active area would be more effective.

Response 5:

The permit does not preclude the permittee from making a copy of the NOC and posting it both at the active area of construction and at the storage/office yard. If a permittee wishes to post the NOC at their storage/office yard, that would be fine. It is important, though, to have a copy of the NOC posted at any areas of active construction and moved as necessary.

Comment 6:

What about small sites that are discharging to a 303 impaired water? How are they to determine if their receiving stream is listed on the 303d list?

Response 6:

Part I Section B.14 excludes small sites from Section B.11.D, Discharges into Receiving Waters with an Approved TMDL. Since there is no exclusion for Part I Section B.11.E, Discharges into Impaired Receiving Waters (303(d) List), this section still applies to small sites. Part I Section B.11.E outlines that sites discharging to 303(d) listed water bodies are eligible for coverage as long as any additional BMPs necessary to protect water quality are included in the SWPPP. The referenced section has the website address to the 303(d) list and permittees may call staff for assistance or to answer any questions.

Comment 7:

Part 1.B.17.C: This requirement for submittal to the Department should be removed. The operator is required by [Part II Section B.1.A] to retain the records for three (3) years. If the Department needs to see the records, they may be requested.

Response 7:

Part I Section B.17.C refers to the certifications that an operator of a large plan of development must collect from each of the individuals working on each site. The Department concurs that the records can be requested if needed and has removed the requirement to submit the certifications. A statement will be added to the Notice of Termination form that will require an operator of a large plan of development to certify that the certifications have been collected.

Comment 8 – Below is a summary of common comments regarding the signatory requirements on inspection forms:

Part 2.A.4.L: Inspections. The first sentence of this section states that the inspections shall be conducted by “qualified personnel”. This is a contradiction to the requirement that the operator or cognizant official must sign the inspection in Part 2.A.2.A. The term “cognizant official” is not defined elsewhere in the permit, but the term “qualified personnel” is defined clearly.

For an operator or cognizant official to sign off on the current inspection form, they must have actually completed the inspection. Why should the cognizant official or responsible official sign the inspection reports? Often the cognizant official or responsible official are not on the site. Another method for ensuring that the inspection reports are completed and signed should be found. Perhaps an inspector training or inspector certification could be used.

Response 8:

The Department concurs that the permit requirements in Part II Section A.2.A and Part II Section A.4.L are contradictory. Part II Section A.4.L.2.k (Inspection form requirements) has been changed to read, “Signature of qualified signatory official, in accordance with Part II.B.9”

With the revised wording, the Department disagrees that the operator or cognizant official who signs the inspection form must be the same person who actually completes the inspection. The Department believes a responsible or cognizant official should be required to review the inspections reports and by signing the reports, they are confirming that they are aware of the conditions at the construction site.

Comment 9:

Part 2 Section A.2.D: “The operator must post the NOC near the main entrance of the construction site and visible to the public. The NOC will indicate the location of the SWPPP.” A statement should be added that if the SWPPP location is changed from the initial location, the NOC shall be updated to reflect the correct location of the SWPPP.

Response 9:

The Department concurs; the permit has been updated.

Comment 10:

Part 2.A.4.A.1): How can a description provide a topographic view? Perhaps this should be moved to the site map requirements.

Response 10:

The permit has been updated to move the pre-construction topographic view to the site map section of the SWPPP.

Comment 11:

Part 2.A.4.F.6): should include “if used” at the end of the requirement. Not all projects will use off-site storage.

Response 11:

Permittees are responsible for determining which items in the SWPPP pertain to their site and which items are not applicable. It is implied that the SWPPP guidelines in the permit are the minimum acceptable measures for those activities outlined. If an activity is not present on site, then the SWPPP does not need to identify the place where that non-existent activity occurs and also does not need to identify controls for the activities not taking place on site.

Comment 12 – Below is a summary of common comments regarding the inspection form:

Inspector Qualifications – The inspection form is not the place to detail the qualifications

of the inspector. This information would be better if located elsewhere in the SWPPP.

Beginning and Duration of Storm Event – Why would an inspection being conducted on the seven day option need to record the beginning and duration of the storm event? They are not required to conduct an inspection after a rain event. Additionally, in many instances, the rain event occurs during non-working hours when no personnel are on site. In those instances, an approximation using information available should be acceptable.

Location of BMPs used on-site – The locations of BMPs are shown on the site map for the project. Describing the same information on the inspection form is redundant and unnecessary.

Response 12:

Inspector Qualifications

The Department has deleted the Inspector Qualifications requirement on the inspection form.

Beginning and Duration of Storm Event

It would be important to note if a rain event had occurred since the last inspection. For example: If silt fences are knocked down, but no rain event had taken place since the last inspection, then maybe additional training needs to be given to staff working in the area, in addition to replacing the controls, rather than assuming that all damage is done due to storm events. The storm event item now reads, “*Approximate* beginning and duration of the storm event”

Additionally, if no rain event had occurred between inspections, the inspector can always state that the section is not applicable.

Location of BMPs used on-site

The location of BMPs requirement has been changed to read, “Locations of BMPs in need of maintenance or where maintenance was performed.”

Comment 13 – Below is a summary of common comments regarding employee training:

The permit requires the SWPPP implementation to be performed by “qualified personnel” and defines this term. Any training of such a person is explicitly implied when that person is named. Expanding the training requirement to include employee training for any person who has any type of dealings or interaction with the SWPPP would cost the project time and money. This seems to be an excessive requirement and one that is typically used at an industrial facility.

Operators are already certifying that the permit terms and conditions will be performed adequately by themselves and any subcontractors for the project. This proposed training standard will be costly to implement and is not required by federal or state regulation. Since no implementing federal or state regulation requires this section and operators are fully accountable for any violation, this section is unnecessary.

Multiple commenters requested that the requirement to perform employee training be removed from the permit.

The following revision to the employee training section was suggested:

The operator may train site personnel, including contractors and subcontractors, responsible for implementing activities identified in the storm water pollution prevention plans or otherwise responsible for storm water management at the site regarding the components and goals of the SWPPP. Training may address topics such as installation and maintenance of erosion and sediment control measures, proper inspection techniques, and stabilization practices. The SWPPP should identify periodic dates for such training and records of training must be maintained with the SWPPP. Training records that are maintained electronically (i.e., database, etc) do not need to be maintained with the SWPPP, but must be accessible upon request.

Response 13:

Employee training is important for those staff members involved in activities on site that can affect stormwater quality. The amount and content of the training can and should be tailored to fit the specific needs of the project and the employees. For example, those who are in charge of installing and maintaining BMPs or inspecting the site should be trained more in proper erosion control practices, while other employees who are not in control directly with the implementation of the SWPPP should have a short explanation of the importance of solid waste control and not damaging any BMPs on site.

It is ultimately up to the permittee to ensure that the staff on site is implementing the SWPPP properly. This section is not excessive in the opinion of the Department.

The section has been modified for clarification, as follows:

Employee Training. The permittee is responsible for training personnel who are responsible for implementing activities identified in the SWPPP on the components and goals of the SWPPP and the requirements of the general permit. This includes contractors and subcontractors. Training should be given by a knowledgeable and qualified trainer. The SWPPP shall identify periodic dates for such training and records of training must be maintained with the SWPPP. Training records that are maintained electronically (i.e. database, etc) do not need to be maintained with the SWPPP, but must be accessible upon request. Formal training classes given by Universities or other third-party organizations are not required but recommended for qualified trainers; the permittee is responsible for the content of the training being adequate for personnel to implement the requirements of the permit.

In direct response to the proposed changes to this section: The operator is already responsible for the actions of their personnel with regards to stormwater management practices. This section outlines what the permittee is responsible for with regards to training. Changing the section to say the operator “may” train personnel makes the section completely irrelevant.

Comment 14:

Part 2.A.5 & 6. These two items seem unnecessary and should be removed. Part 2.A.4.B requires that the responsible parties be identified within the SWPPP. Contractors and Inspectors are specifically called out in the examples of who should be identified.

Response 14:

Parts II Sections A.5 & A.6 have been removed from the permit.

Comment 15:

A draft inspection form was not public noticed for review.

Response 15:

Public notice of the inspection form is not necessary. All of the requirements of an inspection form are outlined in Part II Section A.4.L.2 and these same elements will be incorporated into the ADEQ inspection form. It is not required that ADEQ's inspection form be used; if a permittee wishes to make their own inspection form, they must comply with the requirements as outlined in Part II Section A.4.L.2.

Comment 16:

Page 11 of Part I, Section B.12 addresses requirements from the applicable effluent limitations guidelines.

It appears that the Effluent Limitation Guidelines and the Stormwater Pollution Prevention Plan are not incorporated together within the permit. There are opportunities for the ELG to be incorporated into the SWPPP that are not being used. For example, Dewatering (Part 1.B.12.C) simply states that dewatering activities are prohibited unless managed by appropriate controls. In the draft permit, there are no requirements that the applicant address the dewatering practices for the project. Discussion of how a site is to control stormwater volume and velocity could be addressed in the SWPPP, however, this is only mentioned in the ELG portion of the permit.

Response 16:

All elements of the permit must be complied with, regardless of whether these elements are incorporated into the SWPPP. Permittees are free to add information based on Best Engineering Judgement (BEJ) to the SWPPP of how they will comply with the Effluent Limitation Guidelines (ELGs) if they wish, as the SWPPP outline in the permit is only the minimum information required. For more information regarding revisions to the dewatering requirements, see Response 23.

Comment 17:

Page 7 of Part I, B, Introduction: 1st sentence on the page "The CGP authorizes stormwater discharges from large and small construction activities that result in total land disturbance equal to or greater than one acre, where those discharges enter surface Waters

of the State or a Municipal Separate Storm Sewer System (MS4) leading to surface Waters of the State....”

This language seems similar to the draft Guidance on Waters of the U.S. Why is this language necessary in the permit?

Response 17:

This statement is necessary to establish that discharging to a Municipal Separate Storm Sewer System (MS4) that leads to a surface Water of the State does not exempt a permittee from coverage under the Construction General Permit. Operators of large and small construction activities are required to obtain coverage from ADEQ and their construction activities are not covered under the MS4 permit. However, if the permittee is in the jurisdiction of an MS4, the MS4 may have more stringent requirements than the General Permit ARR150000. If that is the case, the MS4 has the right to reject coverage of discharge related to construction activities if the more stringent requirements cannot be met.

Comment 18:

The Eligibility section on page 7 states that the permit contains eligibility restrictions, as well as permit conditions and requirements. The operator must continue to satisfy the eligibility provisions to be eligible for coverage. However, we do not see a finite list detailing what the eligibility restrictions are. It might be helpful to see such a list for permit holders to understand the restrictions.

Response 18:

Part I Sections B.2.A-C of the permit detail the eligibility requirements for the permit. Essentially, the three main eligible categories are (A) stormwater discharges from construction activities as defined by the referenced 40 CFR sections, (B) stormwater discharges from construction support activities as defined in this section (Part I Section B.2.B) of the permit, and (C) other activities at the discretion of the Director as defined as eligible in 40 CFR 122.26(b)(15)(ii). The remainder of the permit further clarifies which activities are and are not eligible for coverage.

Comment 19:

Page 8 of Part I: Requirements for Qualifying Local Programs. There is only a single MS4’s stormwater program that meets the Arkansas’s minimum stormwater requirements (Hot Springs). How can we expand this to other cities?

Response 19:

If an eligible municipality is interested in becoming a Qualifying Local Program (QLP), they can apply at any time under the conditions listed in 40 CFR 122.44(s). No cities are currently expressing interest to the ADEQ in becoming a QLP. The construction stormwater general permit ARR150000 would need to be modified and public noticed in order to add a QLP, or the Department would wait until the next permit issuance to add the QLP.

Comment 20:

Page 24 of Part II, J (Post Construction Stormwater Management): This section references Section 404 permits. This sentence stems from the EPA/Corps Guidance on waters of the U.S. Does ADEQ agree that unless stormwater measures are on a streambank or in a wetland (both highly unlikely occurrences), stormwater devices do not need Section 404 permits. Does ADEQ agree with that statement?

- We also find this entire section confusing since on **Page 11, Part 1, 11** (Limitations on this Coverage (Exclusions)) it states in (A) that Post Construction Discharge is not covered by this permit. Yet (J) on Page 24 is dedicated entirely to post-construction stormwater management. We recommend that Section 11(A) be deleted from the final permit.
- We recommend replacing the language at the end of (J) with something to the effect of, “If the following practices are adhered to (list those practices), then we can be assured that at least 80% of total suspended solids will be removed from these flows.” This clarifies the expectation and duty of the builder/developer instead of leaving it up to interpretation.

Response 20:

Permittees must meet all applicable federal requirements; statements in this General Permit cannot relieve permittees from requirements in other federal regulations, as outlined in 40 CFR 122.4. As the Department is not the administrator of Section 404 permits, we cannot comment on what projects do and do not need Section 404 permits. Please contact the US Corps of Engineers for guidance on when a Section 404 permit is needed.

Post construction discharges cannot be covered by the Construction General Permit (CGP), as permit coverage is typically terminated after construction activities ceased. In order for post-construction discharges to be covered under a permit, the permit must stay in effect. The permit only covers the installation of post-construction stormwater measures for discharge of stormwater after a project has been completed. Part II Section A.4.J outlines that management of stormwater above pre-development levels is required to be designed to remove a goal of 80% of Total Suspended Solids (TSS).

The wording of Part II Section A.4.J is remaining unchanged. The practices listed in this section can be designed to different removal efficiencies. Using the suggested wording would imply that any installation of the listed practices would remove 80% TSS, which is not correct. It is up to the permittee to properly design and install the controls that have a goal of removing 80% of TSS.

Comment 21:

Page 14 of Part I, 17 (Responsibilities of the Operator of a Larger Common Plan of Development for a Subdivision): This indicates the developer might be responsible for upkeep and maintenance of the stormwater pond throughout the entire construction process. At what point will the initial operator be able to turn things over?

Response 21:

Part II Sections B.17.B & B.17.C explain when a permittee of a larger common plan of

development can terminate permit coverage. There are several conditions that must be met prior to termination, and there is more than one scenario when a permittee of a larger plan of development could terminate. Part II.B.17.D goes over some examples for when coverage is needed and when terminations can be completed.

Comment 22:

Page 12 of Part I, Section B.12.B addresses soil stabilization requirements under the applicable effluent limitations guidelines.

The section states that stabilization must be completed within a period of time determined by the permitting authority. The draft permit provides timeframes in which stabilization practices must be initiated. However, no reference could be found on the deadline in which stabilization must be completed. We request clarification on this issue.

Response 22:

The Department believes the current language is adequate. Full stabilization is only required in order to terminate the permit. If a permittee permanently ceases construction activities at a site, they must immediately begin stabilization procedures. Due to weather fluctuations and other conditions that could be outside of the permittee's control, final stabilization is not required until the point that the permittee wishes to terminate the permit and vegetation is established at 100% coverage and 80% density.

Comment 23:

Page 12 of Part I, Section B.12.C addresses the requirements for dewatering activities.

The section states that dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls. The term "appropriate controls" is vague. The previous permit contain examples of appropriate controls and more detailed requirements for dewater activities. We request clarification on what is considered "appropriate controls".

Response 23:

The Department concurs; Part I Section B.12.C has been revised as follows (insertion in italics):

Dewatering. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls. *There shall be no turbid discharges to surface waters of the state resulting from dewatering activities. If trench or ground waters contain sediment, it must pass through a sediment settling pond or other equally effective sediment control device, prior to being discharged from the construction site. Alternatively, sediment may be removed by settling in place or by dewatering into a sump pit, filter bag, or comparable practice. Ground water dewatering which does not contain sediment or other pollutants is not required to be filtered prior to discharge. However, care must be taken when discharging ground water*

to ensure that it does not become pollutant-laden by traversing over disturbed soils or other pollutant sources.

Comment 24:

Page 13 of Part I, Section B.15 and Page 27 of Part II, Section B.4 – Continuation of the Expired General Permit and Continuance of the Expired General Permit.

Both the above referenced sections address the continuation of an expired general permit. The two sections contain similar requirements with the exception of the requirements for when the permit is re-issued or replaced. Page 13 of Part I, Section B.15 requires the operator to notify the Department of his/her intent to be covered under the renewed or replaced permit 180 days prior to the expiration date and not later than 30 days prior to the expiration date.

Page 27 of Part II, Section B.4 requires the operator to comply with the conditions of the new permit within 90 days after the issuance of the renewed permit in order to maintain authorization to discharge. This section is consistent with Page 9 of Part I, Section B.6.C which requires operators who were covered under the 2008 CGP to notify the Department via a Notice of Intent within 90 days of the effective date of the renewed permit in order to maintain permit coverage.

We feel only one section addressing the Continuation of an Expired Permit is necessary. We recommend maintaining the wording in Page 27 of Part II, Section B.4. This is consistent with how current general permits have been previously handled.

Response 24:

Part I Section B.15 and Part II Section B.4 of the draft general permit both stated procedures for the continuation of coverage under an expired permit. These two sections were contradictory in their requirements. Part I Section B.15 has been removed, and Part II Section B.4 has been revised to state the following:

Continuance of the Expired General Permit. An expired general permit continues in force and effect until a new general permit is issued. If this permit is not re-issued or replaced prior to the expiration date, it will be administratively continued in accordance with Arkansas Act 731 of 2011 and remain in force and effect. If the permittee were granted permit coverage prior to the expiration date, the permittee will automatically remain covered by the continued permit until the earliest of:

- A. Re-issuance or replacement of this permit, at which time operators must comply with the conditions of the new permit, within 180 days prior to expiration date and no later than 30 days prior to expiration date; or
- B. The operator's submittal of a Notice of Termination (NOT); or
- C. Issuance of an individual permit for the project's discharges; or

D. A formal permit decision by the ADEQ to not re-issue this general permit, at which time operators must seek coverage under an individual permit.

Small site operators are responsible for ensuring that the site is in compliance with any changes or updates of this general permit, by reviewing the ADEQ website at:

http://www.adeg.state.ar.us/water/branch_permits/general_permits/storm_water/construction/construction.htm .

Part I Section B.6.C has been removed, as it referenced the 2008 permit and was unnecessary.

Comment 25:

Pages 21 and 22 of Part II, Section A.4.G.2.d addresses deadlines for stabilization.

The section requires that stabilization measures be initiated by the fourteenth day after construction activity temporarily or permanently ceases. This is in contradiction with Page 13 of Part 1, Section B.12.B – Effluent Limitation Guideline Soil Stabilization which requires stabilization of disturbed areas be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site. We request clarification on the deadline for stabilization for sites where construction has been permanently ceased.

Response 25:

The permit has been updated. The language has been clarified by removing “or permanently” from the permit. With this wording, stabilization measures must be initiated by the fourteenth day after construction activity temporarily ceases and immediately after construction activities have permanently ceased.

Comment 26 – Below is a summary of common comments regarding the winter conditions inspection exemption:

Part II, Section A, Paragraph 4.L.4- “If there is any runoff from the site at any time during snow cover, melting conditions would be considered to be existent at the site and this inspection waiver would not apply.”

In “winter conditions” as defined by the permit, many jobsites are shut down to protect the safety of the personnel travelling in dangerous road conditions. It is plausible that snow could begin melting when no one is on site. This sentence requires a person to be on site to perform inspections in such conditions. We feel that this could potentially cause a hazard to the inspector, thus creating an unsafe environment that would be in conflict with current OSHA regulations.

Response 26:

The Department concurs with the statement that jobsites should be shut down to protect personnel safety during severe weather events and has added the following section:

- 5) Adverse Weather Conditions. Adverse conditions are those that are dangerous or create inaccessibility for personnel, such as local flooding, high winds, electrical storms, or situations that otherwise make inspections impractical, such as extended frozen conditions. When adverse weather conditions prevent the inspection of the site, an inspection should be completed as soon as is safe and feasible. If adverse weather conditions prevent compliance with the permit, documentation of the beginning and ending date of adverse weather conditions should be included in the SWPPP.

Comment 27:

Treatment of equipment, vehicle, and wheel wash water

In Section D.1, treatment of various wash waters using a sedimentation basin or alternative means is required under the proposed permit. The AEF recommends that this language be changed to “A BMP must be specified in the SWP3 for wash waters generated on site.”

Response 27:

Part I Section B.12.D.1 now states, “Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or BMP control that provides equivalent or better treatment prior to discharge.”

Comment 28:

Part I, Section B.12 – Effluent Limitation Guidelines (ELG)

Subsection A - Erosion and Sediment Controls

Language in subsections A.1) and A.2) indicates the operator is to “control storm water volume” or “control total storm water volume” to minimize soil erosion. The use of these terms is vague, but could be interpreted to mean that the site management is required to contain or manage on-site the volume of storm water generated from very large, non-typical storm events for that area. SWEPCO/AEP requests these terms be deleted from the draft permit.

Subsection A.5) states the “The design, installation and maintenance of erosion and sediment controls to address...the nature of the resulting storm water runoff...” Because the term, “the nature of the resulting storm water runoff” can not be quantified, SWEPCO/AEP is requesting this term be deleted from the permit.

Response 28:

Part I Sections B.12.A.1 & B.12.A.2 of the permit require the operator to minimize soil erosion. As long as controls were designed, installed, and maintained in line with Best Management Practices (BMPs), the operator is complying with the permit. It is understood that minimization and elimination are not synonymous terms, and large, non-typical storm events may cause soil erosion and possible failures of BMPs. As long as maintenance procedures are followed, and BMPs are designed and installed adequately, the permit will not be violated.

Part I Section B.12.A.5: If there are deficiencies in the BMPs and it is showing in the stormwater runoff in some way, the permittee should to react to this and re-design, re-install, or maintain the controls, as appropriate. Defining any possible factor that should cause a permittee to go through this process is impossible, and the Department believes the intent of the permit is clear in this section.

Comment 29:

Part II, Section A.4.L- Inspections

Subsection 1) Inspection Frequency

Language in Subsection 1)a. states “...(a rain gauge must be maintained on-site).” SWEPCO/AEP requests this language be replaced with language which would allow the operator to use a rain gauge or other means for tracking rainfall at a site.

Response 29:

The Department believes that the term “rain gauge” is generic enough to refer to any device that can measure the amount of rainfall. This device must be kept on the permitted site in order to ensure accuracy of the amount of rainfall at the specific location.

Comment 30:

Subsection 2) Inspection Forms

New language in Subsection 2) Inspection Forms, states that the inspection form should document the following:

“...

- d Beginning and duration of the storm event,
- e. Description of any discharges during the inspection, and
- f. Locations of discharges of sediments/other pollutants...”

SWEPCO/AEP constructs linear projects, such as transmission power lines, that can cover considerable distances. Often, a storm event will occur at a remote location where no employees or contractors are present to document the information contained in this section. Additionally, severe weather conditions may prevent access to remote areas. SWEPCO/AEP is requesting this new language be deleted from the permit because it is not possible to fulfill these requirements.

Response 30:

If the general permit does not allow the operational flexibility required for the type of construction projects that SWEPCO/AEP performs, the option of obtaining an individual permit is available. Below are explanations of the need for the three required inspection form items in question.

Part II Section A.4.L.2.d (Beginning and duration of the storm event): The beginning and duration of the storm event is most important to document when taking the inspection frequency option that requires the permittee to inspect the site within 24 hours of the end of a storm event. However, it is useful to note this information when following the other option of weekly inspections, as it is important to note if BMPs have dealt well with a

storm event. This section of the permit is being changed to read, “*Approximate* beginning and duration of the storm event.” If no staff is present at the site when a storm event begins and/or ends, a best judgment on the beginning and duration of the storm should be made. Storm data can be found from various sources and approximated on the inspection form. Also see Response 12.

Part II Section A.4.L.2.e (Description of any discharges during the inspection): If stormwater is currently leaving the site during the inspection, a description of the discharge should be made. Inspections are not required to be undertaken exclusively during rain events, so the concern regarding staff members not being present is not applicable to this section.

Part II Section A.4.L.2.f (Locations of discharges of sediments/other pollutants): It is usually clear, after a storm event is over, where sediment and other physical contaminants (trash, gravel, etc.) have left a construction site during a storm. Staff members do not have to be present at the site during the storm event to inspect at a later time and note that sediment has escaped the site.

Comment 31:

SWEPCO/AEP requests that the following be deleted from the inspection documentation requirement:

“...
g. Locations of BMPs used on-site...”

The locations of these BMPs should be identified on the site map contained with the SWPPP. Placing this information on the inspection form is redundant and unnecessary.

Response 31:

The requirement has been changed to “Locations of BMPs in need of maintenance or where maintenance was performed.” The Department concurs that the SWPPP should have the location of the BMPs; the previous requirement that all BMPs be listed on the inspection form is redundant. The Department does not agree that the requirement should be deleted entirely, as location of the BMPs that need maintenance should be noted in order to more easily determine if corrective actions have been completed.

Comment 32:

Part II, Section A.4.M - Maintenance

New language in the second sentence of this paragraph states:

“Any repairs that are needed based upon an inspection shall be completed within (3) business days of discovery and, when practicable, before the next storm event or as otherwise directed by state or local officials.”

SWEPCO/AEP requests this language be modified to state:

“Any repairs that are needed based upon an inspection shall be completed within (3) business days of discovery or, when practicable, before the next storm event or as otherwise directed by state or local officials.”

SWEPCO/AEP believes that weather conditions and other factors may prevent the operator from making the needed repairs within 3 days. Improvement in weather and site conditions may be required before repairs may be made.

Response 32:

If Part II Section A.4.M is revised as suggested in the comment, repairs could take an indefinite amount of time, as long as they are completed before the next storm event. Due to the possibility of unforeseen storm events, a maximum amount of time needs to be specified; the Department believes 3 days is adequate time to complete repair activities. This portion of Part II Section A.4.M has been revised as follows:

Any repairs that are needed based on an inspection shall be completed, when practicable, before the next storm event, but not to exceed a period of three (3) business days of discovery, or as otherwise directed by state or local officials.

This section goes on to say that more time is allowed in situations where the locations are inaccessible to equipment necessary for the repairs. In a situation where this occurs, thorough documentation in the SWPPP is required.

Comment 33:

Part II Section B.6 – Duty to Mitigate

ADEQ proposes to modify the first sentence of this section to state, “The operator...or prevent any discharge or sludge use or disposal in violation of this permit...”

SWEPCO/AEP does not believe ADEQ should require off-site disposal of sediment from a storm water settling pond resulting from storm water runoff. The operator should be allowed to use material as fill material at the existing site. Therefore, SWEPCO/AEP requests the phrase “... or sludge use or disposal...” be removed from the draft permit.

Response 33:

Part II Section B.6 of the permit reads in full:

Duty to Mitigate. The operator shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has reasonable likelihood of adversely affecting human health or the environment.

This section does not ban the use of sediment from settling ponds as fill on site. As long as the sludge use or disposal is not in violation of the permit and does not have reasonable likelihood of adversely affecting human health or the environment, the use of material from sedimentation ponds should be allowed by the permit. If sediment from ponds is to be used on site as fill, the SWPPP should include BMPs to prevent sediment from leaving the site after use. If the sediment from ponds is to be used at a different location than the permitted construction site, contact the Department’s Solid Waste Division for instruction on complying with all applicable Solid Waste permitting requirements.

Comment 34:

Part II Section B.10 – Certification

SWEPCO/AEP requests the certification contained in the draft permit be replaced with the following certification contained in the EPA General Permit for Storm Water Discharges from Construction Activities:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those person directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Response 34:

The current certification language is as follows, with underlines where the current and suggested certifications differ:

I certify under penalty of law that this document and all attachments such as Inspection Form were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The language currently in the permit clarifies what is meant by “all attachments” and has some minor grammatical differences. The Department feels this version is superior and is not changing the current language.

Comment 35:

The following revised wording was suggested for Part I Section B.6.C:

“Permitted Ongoing Project. If you have received previous authorization to discharge from your project under the 2008 Construction Stormwater General Permit (CGP) and you wish to obtain coverage under this permit, you must submit an NOI within 90 days of the effective date of this permit for a Large Construction Site. Also, for either a Small Construction Site or a Large Construction Sites, you must update the existing SWPPP within 90 days of the effective date of this permit in accordance with Part II of this permit.”

Response 35:

Part I Section B.6.C, Permitted Ongoing Project, has been deleted, due its being

unnecessary. Part II Section A.1.C gives current permittees 90 days from the effective date of the new permit to update the SWPPP to comply with the new permit requirements.

Comment 36:

Part II, Section A, Paragraph 3- "... at the construction site which has or could have a significant effect...". Recommend removing "or could have" from this sentence. Changes should not be made until proven necessary.

Response 36:

The Department does not concur; the language will stay as it is. This section (Part II Section A.3) was modified based on a comment from EPA. An excerpt from this section is below:

The operator shall amend the SWPPP within seven (7) business days or whenever there is a change in design, construction, operation, or maintenance at the construction site which has or could have a significant effect on the potential for the discharge of pollutants to the Waters of the State that has not been previously addressed in the SWPPP.

The purpose of the BMPs implemented in the SWPPP is to prevent any impacts to water quality in the area of the construction activity. The SWPPP should be updated after a change at the construction site if the change has or could have an effect on the discharge of pollutants, in order to prevent pollution of Waters of the State, rather than only react to damage.

Comment 37:

Part II, Section A, Paragraph 4.C- "The SWPPP must include a narrative description of the nearest receiving water(s)...". We recommend using the term "clear description". We believe that in many cases, a pictorial or graphic description would suffice.

Response 37:

The Department concurs; the permit has been changed as suggested.

Comment 38:

Part II Section A.4.F - Site Map

As described above, linear construction activities subject to the draft permit typically extend for several miles in length. These projects do not permanently alter the topography, grade or surface characteristics of the project area other than limited surface access points (i.e. handholes or manholes). Work prints are developed to demonstrate where important project components are to be installed (or avoided), and in the case of construction Storm Water Pollution Prevention Plans (SWPPPSs), where storm flows consolidate and structural Best Management Practices (BMPs) are to be installed. Projects often involve considerable long runs of buried conduit placement where construction components or structural BMPs are not required. As such, linear

construction project drawings are not typically drafted to a specific scale but rather an approximate scale appropriate to the project. It is however common practice to include with construction drawings, a topographic map which is to scale and reflects the construction route and general topographic features and drainages (which will not be modified).

Comment: DEQ should include language in Part II.A.4.F allowing for multiple maps at a legible approximate scale including a topographic map, if necessary.

Response 38:

The Department concurs; the permit has been updated accordingly. Part II Section A.4.F now states: “The SWPPP must contain a legible site map (or multiple maps, if necessary) complete to scale, showing the entire site, that identifies, at a minimum, the following: [...]”

Comment 39:

Part II Section A.4.F.4 and A.4.H - Construction entrances and exits

In [Linear Construction Projects (LCPs)], construction equipment proceeds along the narrow right-of-way and there is neither a reason nor a feasible method to create stabilized entry or exit points. Doing so typically would be infeasible, because development of such points would require disturbance extending beyond the narrow right-of-way that legally constrains where work can be done.

Even if land were available, development of stabilized entry/exit locations would result in the disturbance of a greater area than is required to perform the work, doing so would be counterproductive for environmental protection. That is because equipment used in LCPs does not repeatedly arrive at or depart from the work site through the same entry and exit points, and the on-road transport vehicles typically do not come in contact with the disturbed portion of the site. Physically creating a formal construction entrance/exit at a point that will be used by vehicles only once or a few times therefore would disturb more area and create more run-off risk than it would prevent.

Comment: DEQ should include language in Part II.A.4.H(2) stating that, for LCPs, stabilization need only occur where there exists an entry or exit point that is used repeatedly during the course of construction such that off-site tracking is present or likely.

Response 39:

The Department understands that linear projects are different with regards to construction entrances and exits, and considers this during the review process. Therefore, the language will stay the same. Incorporating a construction entrance/exit into a linear project should be considered by the permittee on a case-by-case basis. It is up to the permittee to minimize off site tracking by construction vehicles. If trucks entering and exiting the construction project cause disturbance and/or tracking, a stabilized construction entrance should be incorporated into the project.

Comment 40:

Part II Section A.4.G - Perimeter Controls

As written, the Draft Permit would require controls for the entire project perimeter. Perimeter controls are not feasible for all areas of disturbance on LCPs. Disturbance will

consist of several miles of trench, each linear foot of which will be actively subject to trenching activity for only a short time period. Installation and subsequent removal of perimeter controls of the kind listed in this Part will create more land disturbance and sediment loss than would preservation of undisturbed adjacent areas. Moreover, in projects that run parallel to roadways, perimeter BMP installations would need to be placed in roadside ditches, which could adversely impact carefully engineered roadway drainage and also likely would violate access agreements with state and local departments of transportation. For these reasons, LCPs should not be subject to perimeter controls.

Comment: DEQ should include language in Part II.A.4.G indicating that perimeter controls must be installed if warranted or that perimeter controls are not applicable to linear construction.

Response 40:

The Department understands that linear projects are different with regards to construction perimeter controls, and considers this during the review process. Therefore, the language will stay the same. The permit language states that perimeter controls are necessary prior to and during clearing and grubbing of a site and must stay up until the site is stabilized. It is up to the permittee to install perimeter controls prior to clearing and grubbing activities, if they are present at the construction site. If no clearing or grubbing takes place, perimeter controls should be considered on a case-by-case basis by the permittee whether they are a necessary BMP for sediment control.

Comment 41:

This comment is regarding Linear Construction Projects (LCPs).

Area Subject to Inspection [Part II Section A.4.L - Inspections]

The Draft Permit requires inspection of all areas of the site disturbed by construction. The Draft Permit, however, allows the inspection of downstream areas when discharge locations are not accessible. In some cases, LCPs follow cross country routes in which entire areas of disturbance are inaccessible. Accessing recently stabilized off-road areas for the purpose either of monitoring or inspection will inevitably disrupt the very stabilization efforts that the Draft Permit seeks to foster.

Comment: DEQ should include language in Part II.A.4.L indicating that Inspections must include all accessible areas of the site disturbed by construction when accessing these areas will not result in additional disturbance.

Response 41:

The cited section also states, “Where discharge locations are inaccessible, nearby downstream locations must be inspected *to the extent that such inspections are practicable.*” (*emphasis mine*) Therefore, the language will stay the same.

Comment 42:

This comment is regarding Linear Construction Projects (LCPs).

Frequency of Inspections [Part II Section A.4.L - Inspections]

The Draft Permit cites that routine inspections are to be conducted on a weekly or bi-weekly basis. There is no provision in the Draft Permit to alter this schedule implying

that weekly or bi-weekly inspections are required from project initiation until final stabilization is achieved and the permit authorization terminated. In the case long LCPs, portions of the project may be finally stabilized while other portions are currently under construction. Additionally, when construction is complete on a LCP, the site is vacated and returning to an often remote location to establish the progress of revegetation since the last inspection at most two weeks prior is of arguably limited value. AT&T believes the existing and proposed EPA Construction General Permit language allowing a reduction in frequency to monthly inspections of areas where final stabilization has been initiated is adequate and appropriate.

Comment: DEQ should include language in Part II.A.4.L (1) indicating that inspection frequency may be reduced to monthly at areas where final stabilization consisting of revegetation has been initiated.

Response 42:

Inspections on stabilized sections of LCPs are of little value. Prior to full stabilization, regular inspections at the weekly or bi-weekly frequency required by the permit will still need to be performed, but the Department has revised Part II Section A.4.L to allow cessation of inspections of sections of the LCP after stabilization has been achieved. The following language has been added, “In addition, inspections may not be required on a completed section of a linear project if that section has been sufficiently stabilized. Stabilized areas of the project should be indicated in the SWPPP and site map and show what date they were stabilized.”

Comment 43:

Part II Section B.1.B - Retention of Records

The Draft Permit cites that the SWPPP and inspection reports shall be retained at the construction site from the date of project initiation until the date of final stabilization. In the case LCPs, the construction site is vacated upon completion of the project and initiation of final stabilization measures (re-seeding). The project will not meet final stabilization until seeding has germinated all disturbed areas are covered with uniform perennial vegetative cover of 80% native background. This revegetation will not occur immediately and it is not practicable to require record retention at a vacant location.

Comment: DEQ should include language in Part II.B.1.B indicating that upon initiation of final stabilization, records may be retained at a readily available offsite location.

Response 43:

The Department does not concur. The NOC must be posted at the construction site until the permit is terminated. As long as the NOC at the site clearly states the location of the SWPPP and reports, and these records are readily available to ADEQ inspectors, off-site location of the SWPPP is acceptable.

Comment 44:

Emergency Exception for Linear Communications Projects

Finally, [AT&T Services, Inc.] ask[s] that the Agency consider adding a limited exception from the permit’s terms for emergency circumstances. Telecommunications not only are the foundation of our daily transactions and the infrastructure that supports

our nation's economy, but also serve as critical links with life-and-death consequences. Health emergencies, law enforcement emergencies, resource management emergencies, and natural disasters of all kinds convert the telecommunication lines that carry our daily traffic into literal lifelines for those in need. In order to keep their systems operational in anticipation of and during crisis events our members need the ability to respond to service interruptions without delay and without concern that they must choose between providing the critical service and the satisfaction of permit requirements more appropriate to routine installation, maintenance and removal projects.

The complexity of this question is such that it would be irresponsible to attempt in these comments to catalogue all of the potential conditions in which an emergency exception would be warranted. Similarly, it would be irresponsible to seek to enumerate all of the individual obligations under the Draft Permit that could potentially delay timely service restoration. [AT&T Services, Inc. is] prepared, however, to work with the Agency to responsibly identify categories of telecommunications maintenance that reflect legitimate emergency activity, and the limited number of permit terms that would need to be modified or suspended in order to enable those activities to occur in a timely and responsive manner.

Response 44:

Valid emergency situations are considered by the Department.

Comment 45:

The definition of "Grading Activities" is confusing. If rock, soil or other materials are significantly added or removed; it is not a "Grading Activity" and therefore no permit is required?

Response 45:

Operators are not required to obtain coverage under the construction stormwater general permit for grading activities if they are performing maintenance activities, as outlined in Part I Section B.20. For all other grading activities, coverage under the permit would be required.

The permit language in question is as follows (*emphasis mine*):

"Grading Activities" as used in this permit are those actions that disturb the surface layer of the ground to change the contouring, surface drainage pattern, and/or any other slope characteristics of the land *without significantly adding or removing on-site rock, soil, and other materials*. This can include demolition, excavation, and filling.

Comment 46:

Part I, Section B.12.E Prohibited discharges; biodegradable soaps should be permitted.

Response 46:

The Department does not concur. If any chemical is added, then the resulting water will be process water and not stormwater. It would therefore be ineligible for coverage under this general permit.

Comment 47:

The sediment basin design criteria may not give adequate siltation time for some clay soils. This could result in a conflict between the responsible operator and the public perception. The permit will be met but the storm water will still be stained.

Response 47:

The Department acknowledges this comment. It is the responsibility of the permittee to make sure the sediment pond has been properly designed. The guidelines provided are the minimum design criteria. A more stringent design can be implemented by the permittee if the permittee or the Department deems it necessary for water quality.

Comment 48:

Links in the permit are not correct.

Response 48:

Links to the Department's website in the permit have been updated to reflect the current website.

Comment 49:

The acronyms for Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) aren't defined before use in some sections and are spelled out entirely after being defined in others. After defining the acronyms NOI and SWPPP, they should be used consistently in the permit. Also, in Part II.A, why refer to the Stormwater Pollution Prevention as both a SWPPP and the plan? All references should be changed to SWPPP.

Response 49:

The Department concurs and has updated the permit to be consistent with the use of NOI and SWPPP. If the acronyms haven't been defined in a section or on the same page, the terms will be redefined. The Department believes that it is appropriate to use both SWPPP and the plan.

Comment 50:

The terms "natural buffer" and "vegetated buffer" are both used within the permit. Do these terms have the same meaning? If the terms have the same meaning, one term should be used for consistency. If the meanings are different, we request clarification as the intended meaning of each term.

Response 50:

These terms as used in this permit have the same meaning. The permit has been updated to only use the term "natural buffer."

Comment 51:

Various references are incorrect.

Response 51:

There were references in the permit to Part I Section B.12, which in the previous permit was a section on Trench and Groundwater Control. In the current permit, Part I Section B.12 is the Effluent Limitation Guidelines (ELGs) section. One of the ELGs is Dewatering. The references were changed to Part I Section B.12.C to clarify the relevant section.

Other references that were typographical errors were corrected, and all references were checked for accuracy.

Comment 52:

The permit references “you” and “your.” The permit should be corrected to reflect typical Department language with the subject “you” being changed to the permittee/operator, etc.

Response 52:

The permit has been updated to change all references to the permittee to the third person.