

**RESPONSE TO COMMENTS  
FINAL PERMIT DECISION**

This is in response to comments received on the subject draft permit in accordance with regulations promulgated at 40 CFR Part 124.17.

Permit No. : ARR150000

Applicant : Construction Stormwater General Permit

Prepared by : Jennifer Harmon, E.I.

Permit Action : Arkansas Department of Environmental Quality (ADEQ) has made a decision to issue the NPDES Construction Stormwater General Permit, ARR150000. The draft permit was sent to public notice August 29, 2008. The deadline for submittal of comments on the permit was September 29, 2008.

Date Prepared : October 24, 2008

The following comments have been received on the draft permit.

**Danny Carder with the City of Hot Springs has commented (Issues #1-2):**

ISSUE #1

It would be beneficial for us to stay consistent with all of our sites within our MS4 if you could state that all sites regardless of size must meet and follow all the QLP stormwater requirements and forms of the QLP including SWPPP template and inspection reports. We will adjust our SWPPP template and inspection report to cover all ADEQ requirements.

RESPONSE #1

The Department made a decision to remove the requirements for a large site operating within a QLP. The large QLP requirements will be reviewed the next renewal of the permit. The QLP language has been revised to indicate that QLPs only apply for small sites. Additional language has been added to Part I.B.5 to clarify that if the Department approves a QLP, then the QLP requirements must at the minimum meet the Department's requirements. This would include all templates and forms.

ISSUE #2

We are in a unique situation with Lake Hamilton and Lake Catherine, we have many homes and multi-unit dwellings that build seawalls along the lakes. Some houses and multi-dwelling units then build a few feet from the seawall. How would the 25' to 50' buffer area work in those situations? Could we state in the new permit that all new construction activities within a QLP jurisdiction must comply to the QLP buffer area requirements if that QLP has a buffer area requirement?

RESPONSE #2

The Department concurs. If the Department recognizes that a QLP meets the Department's minimum requirements, then the QLP program will meet or supersede the Department's stormwater program. This language will remain as proposed (Part I.B.5.D.) but has been moved to Part I.B.6.C.

**Arkansas General Contractors has commented the following (Issues #3-12):**

ISSUE #3

**Part I. B. 6. C. Large Construction Sites within a Qualifying Local Program**

Coverage and ability to commence construction should be effective upon postmark of the submission of the NOI and the permit fee to the state. It seems un-necessary to wait to receive Notice of Coverage from the QLP and then have to wait again two weeks for the ADEQ. This could add two weeks of additional wait time within a QLP. An NOC from the QLP should be sufficient to start construction for up to a month until ADEQ issues a NOC to replace QLP NOC.

RESPONSE #3

Please see response #1. The language in Part I.B.6 has been indicated that QLPs are only for small construction sites. Large sites, regardless of location within the state, must obtain and follow the ADEQ Construction Stormwater General Permit, ARR150000.

ISSUE #4

“Part I. B. 13. Buffer Zones

Most projects have unnamed streams, creeks, rivers, lakes, or other water bodies associated with them. Most projects involve filling these entities, constructing pipe culverts in these entities, constructing box culverts in these entities and constructing bridges across these entities or completely re-routing these entities. All of the above constructions require operation within the stream banks for extended periods of time without a buffer. While these buffers may be considered a BMP for short periods of time in the clearing operation, construction of structures in and across these entities is ultimately necessary and usually one of the first activities on a site. Individual evaluation by the Department of linear projects and review of justification for example “construction a box culvert in a stream” seems unnecessary.

It has been stated that ADEQ does not approve SWPPP, but merely reviews them. It seems contradictory that the ADEQ is “approving” construction in streams. Buffer zones are a great BMP, but it should be left up to the operator to ensure that run-off does not impair the water quality of the stream.”

RESPONSE #4

Part I.B.13 of the final permit has been revised to allow for exemptions to the buffer zone requirements. The language reads as follows: “An undisturbed buffer zone as stated below shall be maintained at all times. Exceptions from this requirement for areas, such as water crossings, limited water access, and restoration of the buffer are allowed if the permittee fully documents in the SWPPP the circumstances and reasons for the buffer zone encroachment. Additionally, this requirement is not intended to interfere with any other ordinance, rule or regulation, statute or other provision of law...”

ISSUE #5

Part I. B. 16. Notice of Termination (NOT)

The requirement that there be a thirty (30) day period after 100% completion for the permit to be terminated is excessive. This requirement has the potential to delay payment to the contractor substantially. It is quite possible that the site would be stabilized while minor “punch list” work is being performed on the job that does not affect the stabilization of the site. Thus, it is felt that the permit should be terminated once the site is stabilized (80% of natural vegetative cover).

RESPONSE #5

The Department concurs. The thirty (30) day requirement has been removed and permit can be terminated when the site reaches 100 % stabilization with 80% density per Part I.B.16.

ISSUE #6

Part II. A. Introduction-Could you please provide clarification if one is required to use the ADEQ SWPPP template or if one can use their own SWPPP template if it meets all of the required criteria?

RESPONSE #6

Language has been added to clarify Part II.A. The Department has determined that the Stormwater Pollution Prevention Plan (SWPPP) must either use the provided template or follow the outline set forth in Part II.A.4-7. Other SWPPP formats may be used, at the discretion of the Director, if they include all of the requirements set forth in Part II.A.4-7 and have been approved by the Department prior to implementation or use of the template. Part II.A.7 (Plan Certification) has been added to the requirements of the SWPPP.

ISSUE #7

Part II. A. 4. M. Inspections-If it is not raining, then why require weekly inspections of the site. Increasing the inspection period in the absence of 0.5” rainfall events from 14 to 7 days seems to only serve the purpose of increasing our potential to make a mistake by missing an inspection. We think the site inspector’s duties would be better served by installing controls for the next phase or maintaining the existing controls in preparation for the next rainfall event as opposed to filling out another inspection report during a rare 14 day dry period.

RESPONSE #7

Upon further review the Department has decided to change the inspection frequency in Part II.A.4.M to match EPA’s NPDES Stormwater Construction General Permit for discharges from construction activities as follows:

**“Inspection Frequency.** Inspections must be conducted in accordance with one of the following schedules listed below. The schedule **must be specified** in the Stormwater Pollution Prevention Plan (SWPPP).

- a. At least once every 7 calendar days, or
- b. At least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5inches or greater (a rain gauge must be maintained on-site).”

ISSUE #8

Concerns about the requirement of including fuel storage, truck wash, concrete washout, temporary sanitary facilities, and waste facilities having to be identified prior to the construction beginning and being updated on a daily basis for some items have been raised.

RESPONSE #8

The locations of fuel storage, sanitary facilities, trash dumpsters, and truck washing operations have been removed from the site map requirements in Part II.A.4.G.8. Included in Part II.A.4.I of the draft permit, were written requirements for trash dumpsters and sanitary facilities. New requirements for fuel storage and truck washing have been added to Part II.A.4.I. However, the Department believes that concrete washout areas should be provided on the site map. This requirement will remain in Part II.A.4.G.7 and can be modified as necessary on the site map.

ISSUE #9

Part II. A. 4. H. 3. a.(1). – Sediment Basins

The parameters are provided on how to provide a sediment basin. Thus, it is felt that it should not be necessary that all sediment basins be designed by a registered professional engineer or another acceptable environmental professional.

RESPONSE #9

The Department concurs. The requirement that the sediment basin be designed by either a professional engineer or other acceptable environmental professional has been removed from Part II.A.4.H.3a.(1). The Department will review the Stormwater Pollution Prevention Plan (SWPPP) to determine if the basin has been designed to meet the minimum permit requirements.

ISSUE #10

Part II. A.4.M.2. - Inspections

It is felt that non-ADEQ inspection form templates, that meet the requirements, should be allowed to be used.

RESPONSE #10

Other inspection forms may be used, provided that they include the minimum requirements of the Department's inspection form and have been submitted to the Department for review prior to use. As identified in Part II.A.4.M.1.

ISSUE #11

Part II.A.4.M.2. [Part II.A.4.N] – Maintenance

It is felt that all repairs that are needed based on an inspection shall be completed within three (3) working days instead of seventy-two (72) hours.

RESPONSE #11

The Department concurs. Part II.A.4.N of the final permit has been revised to allow the permittee three (3) business days for any repairs needed as the result of an inspection.

ISSUE #12

Part II.A.6. – Inspectors-We respectfully request that ADEQ provide regularly scheduled SWPPP Inspector Certification training that allows all contractors an opportunity to educate and train employees to be competent SWPPP inspectors. This would not only serve as a benefit to the individual contractor, but would also benefit ADEQ and the state's water quality. Only through training and education provided by ADEQ, can contractors truly [sic] meet the intent of the proposed certification required by the revised General Permit. Otherwise it is an issue of "the blind leading the blind", with contractors guessing at the requirements for a competent inspector.

RESPONSE #12

The Department acknowledges this comment and is considering a program that would help train the public on the correct procedures for inspecting stormwater sites.

**Ronette Bachert with Benton County has commented the following (Issue #13):**

ISSUE #13

“Although I agree with you that Buffer Zones should be required – under what legal authority do we request a 25’ or 50’ buffer on private property. As an example, we can request compliance with Flowage Easements (an Army Corps of Engineer deeded/recorded easement) on private property. Does ADEQ possess an easement or a legal right to require these buffer areas?”

Does the state of Arkansas or Army Corps of Engineers have an established legal easement of 50’ from all bodies of water?”

RESPONSE #13

In accordance with 40 CFR Part 122.26(a)(1)(ii), the ADEQ is authorized to issue permits that will protect waters of the State. Based on this authority, the Department believes that buffer zones are a necessary Best Management Practice (BMP) to minimize a construction sites impact on water quality. Buffer zones are only required until the site has reached final stabilization as defined in Part I.A.21 of the final permit.

**The following people have commented on one or more of the following issues: Thia Foley, Chris Jackson, Roger Maler, Robert Bowker, Clay Parton, Drew Kelso, J.C. Crouse, Paul Craig, Fred Bach, April Ambrose, Zachary Hoyt, James R. Clayton, Barbara Carlson, Brad Colvard, Rueben Kyle, Alice B. Andrews, Nathan Blair, Henry Seay, Steve N. Wilson, Frank Dawson, Jim Clemons, Art and Van Jones, Dorothy F. Bailey, Alena Ostergrant, Linda S. Agnew, Doff Severn, Don Adams, Gail TR Tornquist, Carol Ann Coward, Gary Woodard, Carol Short, Betty Poole, James H. Lillis, Bill Pettit, Annette Pettit, Fred Bach, Dick Heydinger, Debbie Doss and Gerald Weber (Issues #14-21).**

ISSUE #14

“An ADEQ inspector should be required to visit each proposed site for rural areas prior to processing an application for a stormwater permit. Accurate assessment of proposed stormwater containment devices or structures cannot be done solely through the use of maps, Google Earth images, or other remote technologies.”

RESPONSE #14

The Department believes that inspections of proposed site are not necessary prior to processing an application. However, there could be situations where the Department would conduct a site visit prior to permit issuance if the submitted information does not provide adequate site information.

ISSUE #15

“ADEQ should require submission of photographs of the proposed site along with the other application information required. Photographs would provide ADEQ a reference for the type of vegetative coverage that existed over the site prior to any clearing/construction activities, and would relate to the preexisting stability of the site. This will be critical to ADEQ specifying the operator-required stabilizing strategies for approval at the project termination.”

RESPONSE #15

The Department acknowledges this comment. However, at this time the submittal of photographs with the NOI is recommended but not required by the Department. The Department prefers that the site be stabilized using native vegetation cover in accordance with the definition of Final Stabilization in Part I.A. However, this is not always feasible and the permittee is allowed to use an alternative stabilization measure.

ISSUE #16

“Permit application fees should be sufficient for ADEQ to recover its costs associated with ADEQ SWPPP application reviews and approvals, and ADEQ cost of visits to the site (prior to application approval, at least once every six months during the construction phase, and after completion of the required site stabilization).”

RESPONSE #16

The Department acknowledges the comment. Application fees are outside the scope of this permit.

ISSUE #17

“The regulations should be changed to prohibit work beginning until ADEQ has issued an approved permit, rather than allowing work to begin two weeks after the NOI has been submitted. This will prevent unnecessary damage from occurring prior to ADEQ assessment of the adequacy of containment measures.”

RESPONSE #17

Per the permit, operators are authorized to commence construction activities two weeks after the date the NOI is deemed complete by the Department. It is the Department’s belief that a full review and permitting decision (i.e. complete or incomplete Stormwater Pollution Prevention Plan (SWPPP)) should be completed within ten (10) business days of receipt by the Department. If it is determined that the SWPPP is incomplete then the engineer will respond through a letter, email or phone to inform the applicant that the permitting time frame will not begin until a complete SWPPP has been received and reviewed by the Department. A site can not begin construction until a permit has been issued for the specific project.

ISSUE #18

“Because ADEQ does not have sufficient personnel to conduct regular inspections of all permitted sites, assistance by the public is invaluable. ADEQ should post all applications, approvals and site reports to its website (in PDF format) weekly. In addition, all records associated with the site should be contained at a place near the project, where the public has physical access to the project documentation.”

RESPONSE #18

A copy of all records associated with a project, such as an authorization letter, SWPPP, NOI and other related information can be located on: <http://www.adeg.state.ar.us/home/pdssql/pds.asp>, typically within 48 hours of Notice of Coverage (NOC). The Notice of Coverage must be posted in a location visible to the public per Part II.A.2.E. All records should be maintained on-site. The operator is not required to keep records where the public has physical access to them, nor can the Department make such a requirement.

ISSUE #19

“ADEQ should require site-specific stabilization techniques, depending upon slope, soil types, etc. Further, ADEQ follow-up actions should assure the long term stability of a site. It may be necessary to utilize the public and/or local officials to assist in this particular effort. (Example: months or years after project completion, a developer with unsold lots may have essentially abandoned the site, and during heavy rain events, heavy erosion carries extensive silt into tributary streams.)”

RESPONSE #19

The permit does not “require” site-specific stabilization techniques. However, the Department does have the authority to require additional measures for a site, if it is determined during the SWPPP review that the proposed measures would not be sufficient.

ISSUE #20

“[1] I support proposed buffer zone. However, the buffer zone distance itself should not be uniform statewide, but instead be location-specific, and ADEQ-determined based on the geology of the area, and the grade leading away from a waterway or the construction site. [2] Implementation of this concept would require an ADEQ inspector (preferably a geologist) to visit the site prior to approving the permit -- which I believe is essential for other reasons.”

RESPONSE #20

- 1) The Department does not concur. The Department believes the requirements in Part I.B.13 of the final permit provides consistent standards throughout the state.
- 2) The Department believes that inspections of proposed site are not necessary prior to processing an application. However, there could be situations where the Department would conduct a site visit prior to permit issuance if the submitted information does not provide adequate site information.

ISSUE #21

“ADEQ should maintain an internet-accessible map of Arkansas (e.g. Google Maps) which shows all of the application, permitted and completed or terminated sites. With this tool, the public [will be able] to see which sites ADEQ has permitted and reduce the ADEQ load of complaints which simply question whether a site has an application on record, or is permitted. Additionally, if the application and SWPPP are kept at a publicly accessible place (in perhaps a large mailbox) rather than onsite (which could be posted no trespassing), the public could easily see if the paperwork was being maintained by the operator. This could help eliminate erroneous complaints.”

RESPONSE #21

The Department will look into the feasibility and cost for an internet-accessible map and determine if the associated costs would benefit the environment. A copy of all records such as an authorization letter, SWPPP, NOI and other project related information could be found at: <http://www.adeg.state.ar.us/home/pdssql/pds.asp>. The Notice of Coverage must be posted in a location visible to the public. All records should be maintained on-site in accordance with Part II.A.2.B. However, the operator does not have to keep records where the public has physical access to them. The Department does not have the legal authority to allow trespassing on private property.

**Carol Short has commented the following (Issues #22-25):**

ISSUE #22

“ADEQ should also require that the person responsible for project inspection and oversight be qualified and knowledgeable about stormwater management strategies. While the owner should be the responsible party, if he is not knowledgeable [sic] he can not be an adequate inspector/manager.”

RESPONSE #22

The Department concurs. The permit requires the qualified personnel conducting inspections are knowledgeable in erosion and sediment control.

ISSUE #23

“ADEQ should require that violations be addressed and corrected. If project work records do not show that this has been done, each day since the notice of violation should be considered a separate violation for fine purposes whether or not an ADEQ inspector has made a site visit to document the inaction. If no work has been done, then obviously the violation continues.”

RESPONSE #23

Part II.A.4.N of the final permit has been revised to allow the permittee three (3) business days for any repairs needed as the result of an inspection. Violation of the permit conditions are addressed in Part II, Section B.3 and in Arkansas Code Annotated Title 8, Chapter 4, subchapter 103.b.4.

ISSUE #24

“I would like to see more clarification of when a permit is needed. E.g., if "clearing" is done by hand, the dirt is not disturbed. If a bulldozer is used, the dirt can't help but be disturbed.”

RESPONSE #24

The permit states that a construction permit is needed for: clearing, grading, excavation, road building; construction of residential, commercial, and industrial buildings; installation of pipelines, cable lines, and phone lines; demolition and/or any surface disturbances that potentially create stormwater discharges from construction activity.” A rule of thumb is that if the soil is exposed to the elements, then a construction permit is necessary. If there are any questionable circumstances, contact the Department.

ISSUE #25

“Perhaps additional clarification is needed about when permits are needed for lots which are part of a larger project. The example is a man who cleared city lots with a bulldozer. He said it was not in a "subdivision" even though the legal description specifically says "lots X and Y, block Z" of the original plat for the city. He did not consider that a "subdivision".”

RESPONSE #25

In general terms, if the total of the disturbed area is greater than or equal to one (1) acre, then the operator must be covered under the Construction Stormwater General Permit. If the total of the disturbed area is less than one (1) acre then the operator may be part of a larger common plan and need permit coverage. If no other construction has occurred within the larger common plan for more than twenty-four (24) months and the disturbance is less than one (1) acre, then it is not considered to be part of a larger common plan and would not require permit coverage. If other construction has occurred within the larger common plan during the past twenty-four (24) months, then the disturbance is requires permit coverage as part of a larger common plan.

**Alan Kays with Flynco, Inc. has commented the following (Issues #26-28):**

ISSUE #26

“Inspector’s Certification: This ‘system’ seems to be somewhat arbitrary in nature. We are not aware of any certification process or criteria which identifies an inspector as being “qualified”. Furthermore, there are no known prerequisites or minimum guidelines in qualifications or experience for inspectors. Therefore, who will “certify” the inspectors by issuing a signed certification, as outlined in the presentation? What will be the minimum requirements pertaining to qualifications and experience?”

RESPONSE #26

Inspector’s certification has been removed. Selection of the inspector should be responsibility of the operator. All documents and reports must be signed and certified by the operator or representative of the operator. Inspections should be conducted by qualified personnel (provided by the operator). As defined in the permit, **Qualified personnel** is a person knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction site that could impact stormwater quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of stormwater discharges from the construction activity. Additionally, Part II.4.M (Inspections) has been revised to remove "qualified personnel have the authority to make changes to the Storm Water Pollution Prevention Plan (SWPPP) and the erosion and sediment controls.”

ISSUE #27

“It is our understanding that all projects currently under construction will be required to comply with the new guidelines within 90 days of the changes being accepted. This means that all paperwork, currently approved and on file, will have to be resubmitted for approval? This does not seem like a practical solution, especially for projects that may be in the “interior finish out” stage with all earthwork, grading and drainage work complete. We would certainly hope that some latitude may be given on a case-by-case basis.”

RESPONSE #27

For existing permittees, only a new Notice of Intent (NOI) must be submitted to the Department within 60 days of the effective date of this permit. An updated SWPPP that must comply with Part II.A.4-7 of the final permit does not have to be submitted to the Department at the time of permit renewal. The SWPPP does not have to be re-written to meet the requirements of the SWPPP template or form.

ISSUE #28

“It was mentioned that off-site material storage areas must be included in SWPPP. A specific example of a borrow pit was referenced. We would like some clarification on what is considered “off-site material storage areas”. Also, in the case of the borrow pit example, the borrow pit is an on-going operation which may be utilized for several projects, so how can it be tied to one specific SWPPP? Shouldn’t it fall under the “Larger Common Plan” and have SWPPP maintained separate from any one specific project?”

RESPONSE #28

Part II.A.4.H.1.g of the permit states that the area must be used solely by the permitted project. If the area is being used for multiple projects, then that area should be permitted separately. For this area to be covered under this permit, it must be operated solely by the permitted projects operator. If there are two different entities, one operating the project and one operating the off-site area, then there should be a separate permit for both the project and the off-site area.

**Carl Yates with McGoodwin, Williams and Yates has commented the following (Issues #29-36):**

ISSUE #29

‘Draft Permit Conflicts with Standard Contract Provisions. The draft permit would require the Owner to provide "qualified personnel" to "inspect" the Contractors compliance with the permit, and would require that "qualified personnel" have the authority to make changes to the Storm Water Pollution Prevention Plan (SWPPP) and the erosion and sediment controls. This provision would, in effect, require the Owner to supervise the work of the Contractor and to devise the means, techniques, and methods that the Contractor is to use in complying with the permit. As described in greater detail below, neither the Owner nor the Engineer (as the Owner's representative), has legal or actual authority to supervise or direct the work of the Contractor.

The construction contract between an Owner and a third party contractor is governed by a document called the Standard General Conditions of the Construction Contract, which was developed by the Engineers Joint Contract Documents Committee (EJCDC) of the consortium comprised of the Professional Engineers in Private Practice (a practice division of the National Society of Professional Engineers, the American Consulting Engineers Council, the American Society of Civil Engineers, and

the Construction Specifications Institute. The Standard General Conditions (SGC) document has been approved and endorsed by The Associated General Contractors of America.

Article 8 of the Standard General Conditions describes the Owner's responsibilities vis-[a]-vis the Contractor. More specifically, Article 8.9, which limits the Owner's authority to control the work of the Contractor, reads as follows:

"[t]he owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the work. Owner will not be responsible for Contractor's failure to perform or furnish the work in accordance with the contract documents."

It is apparent, therefore, that the Owner cannot comply with the draft permit's requirement to provide "qualified personnel" to direct the Contractor's compliance with the storm water requirements.

Nor can it be argued that the Engineer, as the Owner's representative on site, could serve as the "qualified personnel." Although the Engineer makes visits to the site at various stages of construction, and might even appoint someone from the engineering firm to serve as a resident project observer, the visits and observations are merely for the purpose of tracking the progress of the work and the quality of the Contractor's executed work. Article 9.2 of the Standard General Conditions states in relevant part

"Engineer's visits and on-site observations are subject to all the limitations on Engineer's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of Engineer's on-site visits or observations of Contractor's work, Engineer *will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the work,*" *(Emphasis added)*.

Article 9.13 referenced above describes in greater detail the limitations on Engineer's authority and responsibility vis-a-vis the Contractor. In particular:

"9.13.2 Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the Work. Engineer will not be responsible for Contractor's failure to perform or furnish the work in accordance with the contract documents.

"9.13.3. Engineer will not be responsible for the acts or omissions of Contractor or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work.

"9.13.4 Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests [tests], and approvals and other documentation required to be delivered.. will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspection, tests, and approvals, that the results certified indicate compliance with the contract documents."

## RESPONSE #29

The permittee, as defined by the permit and APCEC Reg. No. 6, is the operator (owner) of the project. The operator is responsible for ensuring compliance with all applicable environmental regulations and conditions. The Department believes that it is the operator's responsibility to hire individuals that will meet the requirements of the permit. If the operator wants to hire an individual recommended by the engineer, the responsibility of ensuring the project is in permit compliance will still remain with the operator. The consulting engineers are not held liable by the Department based on Part II.B.9.

Part II.4.M (Inspections) has been revised to remove "qualified personnel have the authority to make changes to the Storm Water Pollution Prevention Plan (SWPPP) and the erosion and sediment controls."

ISSUE #30

"A Different Regulatory Model Exists to Accomplish the ADEQ's Goals. We understand that the goal of the ADEQ in including the inspection provisions in the draft permit is to establish a mechanism for policing the contractor's compliance with the storm water requirements. As described above, neither the Owner nor the Engineer are legally able to perform this policing role. Other regulatory agencies that have faced the same issues and the same legal and contractual obstacles have established a different regulatory model for dealing with the need to ensure compliance with their requirements. In the context of water and wastewater improvements funded by the Arkansas Natural Resources Commission (ANRC) pursuant to the State Revolving Loan Fund, the ANRC requires that the construction contract obligate the Contractor to comply with Arkansas' Trenching and Excavation provisions, Ark. Code §§ 22-9-202 through 22-9-204, and the Occupational Safety and Health Administration's trench safety regulations, 29 C.F.R. §1926.650 et seq. The state and federal provisions require the Contractor to have at the work site a 'competent person' who is "capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous." The competent person is tasked with all duties of monitoring and inspecting the work site, designing means of access and egress to excavations, and examining safety equipment and materials. The competent person's determination that an unsafe condition exists, or that equipment or materials are not safe for use is sufficient grounds for removing the contractor's employees from the work area or removing the equipment or material from further use.

The OSHA regulatory model would be equally effective in the context of ensuring compliance with the permit conditions. MWY [McGoodwin, William & Yates] requests that the draft permit be rewritten to require the Contractor to provide the "qualified personnel" who are to perform the necessary inspections and other duties stated in the permit. If there is any reluctance about the Contractor's ability to effectively police its own operations, it should be borne in mind that OSHA has found it sufficient to entrust workers' lives to such a regulatory mechanism.'

RESPONSE #30

Please see responses #26 and 29.

ISSUE #31

Page 6, Part I, Section A, Definition of Qualified Personnel and Page 28, Part 11. Item M Inspections. The SWPPP is required as a condition of the storm water permit, which is obtained by the Owner and implemented by the Contractor. The comments made in Item 1 and 2 above [Issues #29 & 30] describe the problems caused by use of the term "qualified personnel" as someone provided by the Owner. We reiterate that the ADEQ's goals in requiring that a qualified person be in charge of compliance with the SWPPP and the permit are best met by requiring the Contractor-not the Owner or the Engineer-to provide the "qualified personnel." Furthermore, the ADEQ already requires the Contractor to certify in the SWPPP that it is familiar with the requirements of the storm water general permit.

RESPONSE #31

Please see response #26.

ISSUE #32

Page 13, Part I, Item 11 E, Exclusions from Coverage - Discharges into Receiving Waters with an Approved TMDL. Does the exclusion from coverage under Item 11 E extend to small sites that would otherwise be eligible for automatic coverage? Does this provision mean that the operator of a small site discharging into a receiving water with an approved TMDL would have to proceed as if it were the operator of a large site? Would the operator of a small site discharging into a receiving water with an approved TMDL have to submit a Notice of Intent and submit its SWPPP for review and approval by the Department? Please clarify the extent of this exclusion and the requirements for small sites that discharge into waters with an approved TMDL. MWY [McGoodwin, Williams & Yates] requests that the ADEQ clarify the provisions of Part I, Item 11.E Exclusions from Coverage" so as to answer the questions posed above.

RESPONSE #32

Language has been added to Part I.B.11.D to clarify that a site that is automatically covered (i.e. a small site or a site that is less than an acre but part of a larger common plan) does not have to submit a Notice of Intent or Stormwater Pollution Prevention Plan (SWPPP) to the Department. Additionally, Part I.B.14 has been revised to include a waiver for 303(d) and TMDL requirements for small construction sites. The operator must select, install, implement and maintain control measures at the construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards or TMDL.

ISSUE #33

Page 13, Part I, Item 11 F, Exclusions from Coverage--Discharges into Impaired Receiving Waters (303(d) List." Under other parts of the draft permit, only small sites are automatically eligible to discharge under the permit. MWY [McGoodwin, William & Yates] understands the Exclusion from Coverage under Item 11 F to mean that the operator of a small site (that would otherwise be eligible for automatic coverage) would have to proceed as if it were operating a large site if the discharge would be into waters listed as impaired for turbidity and or oil and grease. If MWY's interpretation is correct, would a small site discharging into a 303(d) listed water be required to submit a Notice of Intent (NOI) and SWPPP plan to the Department for review and approval? Would all other requirements applicable to large sites also apply to small sites that discharge into 303(d) listed waters? MWY requests that in issuing a final permit the ADEQ clarify the requirements applicable to small sites that are discharging into waters listed as impaired for turbidity and/or oil and grease.

RESPONSE #33

Part I.B.14 of the final permit has been revised to include a waiver for the 303(d) and TMDL requirements for sites with automatic coverage (i.e. a small site or a site that is less than an acre but part of a larger common plan). Based on this waiver, a site with automatic coverage does not have to submit a Notice of Intent or Stormwater Pollution Prevention Plan (SWPPP) to the Department. However, the operator must select, install, implement and maintain control measures at the construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards.

ISSUE #34

Page 18, Part I, Item 23, Non-Attainment of Water Quality Standards after Authorization. Some of

the engineering design work that MWY [McGoodwin, Williams & Yates] performs for its municipal clients may include utility line construction or relocation and construction or improvements to bridge structures. Work on utility lines that cross a stream, or on a bridge or other structure that spans a stream may, by its very nature, entail an unavoidable exceedance of the water quality standards for turbidity. APCEC Regulation No. 2 allows the Director of the Department of Environmental Quality to issue short-term authorizations of activities that result in violations of the Arkansas State Water Quality Standards. In light of the authority granted to ADEQ pursuant to Regulation 2, it would appear that Item 23 should be reworded to reflect an obligation to obtain a short-term authorization before construction begins, if the construction activity is likely to result in a temporary and unavoidable exceedance of the applicable water quality standards. MWY would suggest the following wording for this portion of Item 23: 'Before seeking coverage under this permit, an operator whose construction activities shall cause or contribute, or have the reasonable potential to cause or contribute, to a violation of a water quality standard for turbidity and/or oil and grease, shall apply to the Department pursuant to APCEC Regulation 2 for a short-term authorization for the activity that shall cause or contribute, or has the potential to cause or contribute, to a violation of a water quality standard. If an operator determines, after coverage under this permit has been obtained, that its construction activities shall cause or contribute, or have the reasonable potential to cause or contribute, to a violation of a water quality standard for turbidity and/or oil and grease, the operator shall apply to the Department pursuant to APCEC Regulation 2 for a short term authorization.'

#### RESPONSE #34

The Department acknowledges this comment. As stated in Part I.B.9 of the final permit, the operator must comply with all Federal, State and local requirements. In this case, the permittee may request a Short Term Activity Authorization (STAA) by contacting the Planning Section of the Water Division for those activities listed in Reg. 2.305. Inclusion of the requested language may indicate to an applicant that a STAA is authorized under this permit and therefore not necessary.

#### ISSUE #35

Page 22, Part 11, Item 4B, Responsible Parties. Depending on the size and scope of the project, some of the services may be provided by a subcontractor retained by the General Contractor, and the name of the subcontractor will not be known until the project reaches the stage where that particular service is required. Therefore, the SWPPP as initially written cannot identify that particular party name. The same would be true of the persons identified by ADEQ as 'Inspectors.' The regulation should be revised to clarify that the SWPPP needs only to "identify the parties" in a generic fashion, e.g., "The General Contractor shall be responsible for elements A, B, and C of the SWPPP; elements D, E, F, and G of the SWPPP would be implemented by landscaper (or any other subcontractor called on to perform services on the project)."

#### RESPONSE #35

Language has been added to Part II.A.5 & 6 (contractor and inspector certifications), stating that if a party is not known at the time of the SWPPP development, a statement that the party will sign the certification prior to beginning work on the project will suffice. Additionally, the SWPPP is a "living document" and should be updated as necessary.

#### ISSUE #36

"The regulated community will be best served by prompt promulgation of a new General NPDES Storm Water Permit. MWY [McGoodwin, Williams & Yates] understands that if the current general

permit expires before the new permit is promulgated, the ADEQ will be unable to authorize storm water discharges from construction activity except through the individual permit process. An Owner's inability to obtain the prompt and sure coverage available under a general permit would effectively stall construction of much needed water and wastewater treatment facilities. If water and wastewater treatment facilities are delayed because of the lack of a new general permit, public health and welfare, as well as the environment, will suffer a substantial setback. If an Owner is forced to wait for a new general permit to be promulgated before it may proceed with construction, the delays and uncertainty will cause the cost of construction to increase, as Contractors will build in expensive contingencies to cover unknown future regulatory requirements. **MWY** urges the ADEQ to address the comments raised in the public comment period in a timely manner and to promulgate a permit that takes into account the concerns raised by the regulated community.”

RESPONSE #36

The Department acknowledges this comment.

**David Hall with American Electric Power has commented the following (Issues #37-40):**

ISSUE #37

Page 19 of Part I Section B.11.G. Applying for clearance by the USFWS [United States Fish and Wildlife Service] is not required by the ESA [Endangered Species Act]. The ESA is a federal regulation that is to be followed regardless of what is included in the ADEQ's Stormwater Construction General Permit ARR150000. It should be the applicant's responsibility to be in compliance with the ESA. The clearance process has posed critical time issues on past projects. There is no time period set for the USFWS to return the clearance and the delay may impose significant budget and time constraints on projects. We suggest that the Endangered and Threatened Species and Critical Habitat Protection be taken out or allow process to proceed if USFWS certification has not been received within thirty days of submittal.

RESPONSE #37

The SWPPP must include documentation supporting a determination of permit eligibility with regard to Endangered Species. Language has been added to Part I.B.11.F that allows the permittee to submit either the clearance checklist page or the letter submitted to the USFWS for clearance to the Department to satisfy the Endangered Species requirements.

ISSUE #38

We suggest that the requirements listed in the above section [Part II.A.4.G-Site Map Requirements] be considered as updates and not be required in the initial SWPPP that is submitted to the ADEQ for review. Generally this required information is unknown until just prior to the commencement of construction.

RESPONSE #38

Please see response #8.

ISSUE #39

“Page 28 of Part II Section 4.M: Inspections: Comment: AEP considers this frequency to be

excessive. EPA's NPDES General Permit for stormwater discharges from construction activities states:

*"A. **Inspection Frequency:** You must conduct inspections in accordance with one of the two schedules listed below. You must specify in your SWPPP which schedule you will be following.*

*1. At least once every 7 calendar days,*

*OR*

*2. At least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5inches or greater. "*

We suggest using the same inspection frequency requirements as the EPA."

#### RESPONSE #39

Please see response #7.

#### ISSUE #40

"Page 30 of Part II Section A.6: [Inspector Certification]. This statement implies that the inspector is "certified" to conduct construction stormwater inspections. Due to the fact that there are no criteria or certification process for a construction stormwater inspector provided by the ADEQ we recommend that the certification statement be taken out. AEP requires employees responsible for conducting stormwater inspections to complete an internal training course, and the inspector qualifications are noted in the SWPPP. We believe that inspectors should be instructed and qualified to conduct the inspections, but due to the fact that there is no certification process in the state, there is no way to claim that an inspector is certified. The statement holds the inspector liable *"under the penalty of law that he/she is knowledgeable of the principles of erosion and sediment controls, and that he/she possesses the skills to evaluate conditions that could impact stormwater quality."* The *"knowledge"* and *"principles"* of erosion and sediments controls is not defined and can be interpreted differently."

#### RESPONSE #40

Please see responses #12 & 26.

**Jim Phillips with Deltic Timber Corporation has commented the following (Issues #41-51):**

#### ISSUE #41

"The requirements of Part I, Section B 17 regarding termination of permit coverage for the Operator of a Larger Common Plan of Development for a Subdivision are unreasonable and should be rewritten. As currently worded, the provisions require the subdivision developer to be responsible for the actions of others within the development after such time as purchase of the lots and ownership transfer. In addition it makes the developer responsible for runoff problems resulting from private property within the development over which the developer has no regulatory authority. It also places requirements on the operator regarding notification of storm water regulations which in our opinion is the responsibility of the ADEQ."

#### RESPONSE #41

The Department does not hold the operator of a Larger Common Plan of Development responsible for lots once they have been sold. The permit contains a "Lot Owner Certification" that is to be signed by the new lot owners. The operator of the overall project must obtain a signed certification by each

person that purchases lot(s) of a larger common plan. The certification states that the new operator of the site understands that there are stormwater requirements that must be met for the site.

ISSUE #42

“Part I, Section B 16 contains new Notice of Termination requirements including a 80% final cover density requirement. What is the rationale for increasing this percentage from 70% as is contained in the current permit?”

RESPONSE #42

The Department believes as part of better BMP (Control Measure) that the higher density is necessary for final site stabilization and protection of the environment.

ISSUE #43

“Part I, Section B 6 contains requirements for the submittal of the Stormwater Pollution Prevention Plan (SWPPP) for all sites of 5 acres or more prior to permit coverage places an undue administrative requirement on the operator. We recommend that the current administrative process regarding the development of SWPPP's be retained.

RESPONSE #43

According the Construction Stormwater General Permit, a SWPPP must be developed for all sites larger than one (1) acre and less than 1 acre that are part of a Larger Common Plan of Development. In order to reduce confusion, the Department has simplified the permitting process by removing medium sites. The submittal of the SWPPP will not create undue administrative requirements. The draft permit contained language that allowed the Notice of Intent and SWPPP to be submitted by either hard copy or electronically. The language will remain as proposed.

ISSUE #44

“We recommend that the Part I Section B 9 requirement for forwarding the NOI to a municipal storm sewer system operator (if one exists) be eliminated as there is no regulatory issue regarding the discharge of stormwater to a to municipal storm sewer system, which are not considered to be waters of the state. In addition it is unclear whether the SWPPP would be required to be submitted to that entity as part of a "completed" NOI and we do not feel it is appropriate to have such a requirement in the final permit.”

RESPONSE #44

Part I.B.9. requirements has been revised to “ the operator must ensure that the stormwater controls implemented at the site are consistent with all applicable federal, state, or local requirements.”

ISSUE #45

“The Part I, Section B 7 requirement for a permittee to identify any 303d list waterbodies which could receive stormwater discharges is beyond the expertise of most operators and represents an administrative requirement with no direct environmental benefits. We recommend that be deleted from the final permit.”

RESPONSE #45

The Department concurs.

ISSUE #46

“For sites of five acres or larger, the Part II A4 B requirement to develop the SWPPP as part of the NOI presents timing issues regarding the implementation of the plan. On the front end it is not always feasible for the operator to be able to identify "all parties including General Contractors, Landscapers, Project Designers and Inspectors responsible for particular services they provide to the operator to comply with the requirements of the SWPPP". We would recommend that the final permit require documentation in the plan providing information identifying those involved in those roles as they occur. In that manner the operator will have the flexibility to accommodate changes which occur during the course of construction regarding the involved parties.”

RESPONSE #46

The Department agrees. Please see response #35.

ISSUE #47

“The 303d List and TMDL documentation required in the SWPPP is beyond the expertise of many operators to obtain without significant time and effort. We recommend that the provisions of Section A 4 (D) be deleted from the final permit.”

RESPONSE #47

The Department partially concurs with this comment. The Department does believe that this condition could be outside the expertise of applicants. However, language has been added to Part II.A.4.D to indicate that if the reviewing engineer determines during the review process that the stormwater discharges into a water body that is on the most recent 303(d) list or with an approved TMDL, then additional controls will be required in the SWPPP.

ISSUE #48

“The purpose of Part II Section A 4 (E) is unclear as it appears to summarize existing ADEQ enforcement authorities which are independent of NPDES discharge permits and does not seem to describe a requirement related to the documentation for inclusion in a SWPPP. W [we] recommend that this section be deleted from the final permit.”

RESPONSE #48

The Department disagrees. The referenced section does not summarize existing ADEQ enforcement authorities. The purpose of this section is for the ADEQ to require the permittee to update the Stormwater Pollution Prevention Plan (SWPPP) and site to include additional controls if it is determined that the project is exceeding water quality standards. The language will remain as proposed.

ISSUE #49

“The requirements of Part II Section A 4 (F) require documentation concerning threatened and endangered species which is beyond the expertise of many operators to obtain without significant time and effort. The coordination required with the USF&W will add approximately a month to the time of development of the NOI for those required to submit the SWPPP on the front end. We recommend that the provisions of this section be deleted from the final permit.”

RESPONSE #49

Please see response #37.

ISSUE #50

“Under the current permit inspections are currently required every 14 days or within 24 hours of a 0.5 inch rainfall. Part II Section A 4 M of the draft permit requires inspections once every 7 days and within 24 hrs of a 0.5 inch rainfall. In our opinion the current frequency is appropriate and we recommended that it be utilized in the final permit.”

RESPONSE #50

Please see response #7.

ISSUE #51

“Part I, Section B 13 and Part II Section A H 2 b of the draft permit contain buffer zone requirements including those mandating that the SWPPP contain a description of how the site will maintain compliance with required buffer zones, which are to be established between top of the stream bank and the disturbed area. The buffer zones are to be 25 feet from any named or unnamed streams, creeks, rivers, lakes or other waterbodies and 50 feet from any TMDL or 303 (d) list waterbodies, Extraordinary Resource Water (ERW) Waterbodies, drinking water sources or cold water fisheries. Part II then goes on to state that if the site buffer zones must be disturbed it is authorized under certain conditions. We recommend that these provisions be deleted from the final permit as they constitute a restriction on the development of private property and are written in an unclear manner with contradictory provisions. In addition, these provisions have a tenuous regulatory basis as some of the categories of waterbodies listed are not recognized under the Arkansas Water Quality Standards (e.g. cold water fisheries) and its antidegradation policy. The determination that private property uses are to be restricted on the basis of a 303d listing or the development of a TMDL has no regulatory basis to our knowledge.”

RESPONSE #51

Please see response #4.

**Jeff Spillyards with Entergy Arkansas, Inc. (EAI) has commented the following (Issues #52-68):**

ISSUE #52

"Best Management Practices (BMPs)": “Definition appears to be boilerplate language describing BMPs associated with industrial site activities (such as for materials management) rather than construction, with the exception of the sentence pertaining to hay bales.

Suggestion: Revise/expand definition to reflect description of BMPs associated with siltation/erosion control as well as those for materials management.”

RESPONSE #52

The language will remain as proposed. The Department believes that by listing certain BMPs, permittees will use only those BMPs. The purpose of the construction stormwater general permit is to eliminate or reduce to the maximum extent practicable the pollution runoff from construction activities.

ISSUE #53

"Commencement of Construction": “other construction activities” is an extremely subjective phrase that could be interpreted to include a site survey, environmental property assessments, or the mere placement of building materials or construction equipment onsite.  
Suggestion: Omit from definition.

RESPONSE #53

Staff does not agree. If any of these activities would result in the ground being disturbed, then they fall under the requirements of this permit. If there is an activity that is questionable, please contact the Department for clarification. The definition will remain as proposed in the draft permit.

ISSUE #54

“Contaminated” means the presence of or entry into the MS4, Waters of the State, or Waters of the United States of any substance which may be harmful to the public health and/or the quality of the water. “harmful . . . to quality of water” is subjective.  
Suggestion: replace with “a substance the entry of which into the MS4, Waters of the State, or Waters of the United States may cause or contribute to a violation of Arkansas water quality standards” in order to be consistent with the NPDES permitting regulations.

RESPONSE #54

The Department concurs. The definition of contaminated has been changed to the suggested language.

ISSUE #55

“Disturbs”: “Disturbs” is a verb. The definition given in the proposed rule is that of a noun, which makes the definition incoherent as used within the draft document. This is especially true because “disturbs” is not used elsewhere in the draft permit. The words “disturbance” and “disturbing” are used. Those terms are used in phrases that are themselves subjective and confusing, such as in the definition of “commencement of construction” noted above. The phrase “any construction activity is expected to disturb the ground surface” is subjective. Utilizing above grade vegetation removal practices; such as bush-hogging or flail-type vegetation mulching, while not nearly as intrusive as removing vegetation by clearing and grubbing, may disturb the ground surface to some extent through soil compression and denuding of herbaceous vegetation. Typical ingress/egress access to a linear project is accomplished by moving vehicles, materials and equipment down the project right-of-way. While an actual road is not necessarily constructed, movement of the equipment and vehicles does result in a limited ground surface “disturbance”, again through compression of soil and denuding of

herbaceous vegetation by action of vehicle tires or tracks. Defining this activity as constituting construction of a haul road or otherwise being within the realm of activities to which the general permit is intended to apply would be extremely problematic for several reasons. Since the areas on a transmission line construction project requiring construction vehicle or equipment access can literally be anywhere within the boundaries of the line right-of-way, the construction foot-print would be calculated based upon the entire width and length of the project right rather than where line support structure excavations are required or where temporary fill is utilized for temporary culvert installation over drainage courses. EAI's typical standard construction practices following tree removal and completion of construction activities are to revegetate line construction rights-of-way with a grass seed mixture and allow emergent native vegetation to re-grow but manage vegetation height by above grade trimming to ensure appropriate electrical safety clearances. Following completion of construction activities, the utility line rights-of-way are oftentimes used as all-terrain vehicle access paths or trails by hunters, fishermen and other "off-roaders". Consequently, what would be considered final stabilization by revegetation is prevented from occurring due to the unrestricted access to the line rights-of-way. Consequently, submittal of the notice of termination of the general permit could technically never occur due to ongoing use by the public. Please note that EAI line rights-of-way are secured by easement or servitude agreement, not by land acquisition. Consequently, EAI cannot control or restrict access. Suggestion: "Disturbs" definition should be dropped from the permit or should be modified to define "disturbance" and "disturbing." These definitions should be limited to soil movement caused by clearing, grading, or excavating activities."

#### RESPONSE #55

The Department partially concurs. The word "disturbs" has been replaced by the words "disturbed area" in Part I.A.17. However, the definitions are not limited to soil movement caused by clearing, grading, or excavating activities. The permit is required by any activity that causes or has potential to cause erosion of the soil by disturbing the vegetative cover.

#### ISSUE #56

"Final Stabilization": See above [Issue #55] discussion pertaining to "Disturbs" definition. Also, the definition should be written as a definition by stating "means that" Suggestion: Replace "disturbing" with "excavation".

#### RESPONSE #56

The Department does not concur. The word "that" has been removed from the front of the definition for "Final Stabilization". The reference to riparian strips has been removed from the example.

#### ISSUE #57

"Harmful quantity": The definition is overly subjective and broad. Suggestion: Definition should be consistent with or merely reference the definition of "pollution" at Ark. Code Ann. § 8-4-102(6)."

#### RESPONSE #57

This definition has been removed from the final permit due to the wording "harmful quantity" only being used in the definition of "uncontaminated". The definition of "uncontaminated" has been changed to read "can not exceed the water quality standards as set forth in APCEC Regulation 2."

ISSUE #58

“Requirements for Qualifying Local Program (QLP): Combining operator requirements for projects within the jurisdiction of a QLP with the ADEQ QLP approval process is confusing. Suggestion: Move operator requirements for projects within jurisdiction of a QLP to Section B (6)(C).”

RESPONSE #58

The Department concurs. Parts I.B.5.A-D of the draft permit have been moved to Part I.B.6.C of the final permit to clarify exactly what an operator within a QLP must do to be covered under this general permit.

ISSUE #59

“Allowable Non-Stormwater Discharges: Please see subsections A.8 and A.9, which refer the reader to “Part I.B.11.k of this permit.” There is no Part I.B.11.k in the draft permit. Suggestion: Revise the reference or delete if necessary.

RESPONSE #59

The Department concurs. This reference has been corrected to Part I.B.12 of the final permit.

ISSUE #60

Buffer Zones: “Clearing” should be better defined. Suggestion: Exclude land clearing activities that employ only above-grade vegetation removal practices that have minimal disturbance of soil (i.e., those not disturbing of tree root masses) from the buffer zone requirements on linear utility line construction projects. Examples of above-grade clearing include, but are not limited to bush hogging, flail-type mulchers, chain saw, hydro ax, etc.”

RESPONSE #60

Any soil disturbing activity is subject to the requirements of this permit. However, language has been added to Part II.A.4.H.2.b to clarify that if above-grade vegetation removal practices do not disturb the soil then they do not require permit coverage.

ISSUE #61

“Notice of Termination (NOT): the definition provided for “disturbs” is broad and subjective; see comments on that definition above [Issue #55]. Suggestion: revise to read, “...100% of all excavation (cut, fill and grading) activities are complete...”.

RESPONSE #61

The Department does not agree. The definition of NOT has been modified (Please see response #5.) The requirement of 100% of all soil disturbing activities being complete has not been removed from the definition.

ISSUE #62

“Non-Attainment of Water Quality Standards after Authorization: Regulation No. 2 establishes discharge criteria for turbidity as:

Reg. 2.503 Turbidity

There shall be no distinctly visible increase in turbidity of receiving waters attributable to municipal, industrial, agricultural, other waste discharges or instream activities. Specifically, in no case shall any such waste discharge or instream activity cause turbidity values to exceed the base flows values listed below. Additionally, the non-point source runoff shall not result in the exceedance of the in stream all flows values in more than 20% of the ADEQ ambient monitoring network samples taken in not less than 24 monthly samples.

<b>Waterbodies</b>	<b>Base Flows Values (NTU)</b>	<b>All Flows Values (NTU)</b>
Ozark Highlands	10	17
Boston Mountains	10	19
Arkansas River Valley	21	40
Ouachita Mountains	10	18
Springwater-influenced Gulf Coastal	21	32
Typical Gulf Coastal	21	32
Least-Altered Delta	45	84
Channel-Altered Delta	75	250
Arkansas River	50	52
Mississippi River	50	75
Red River	50	150
St. Francis River	75	100
Trout	10	15
<b>Lakes and Reservoirs</b>	25	45

While it is acknowledged that turbidity is an obvious direct measure of the effectiveness of siltation/erosion control BMP’s, very often the point of discharge from a construction site is into a sheet run-off drainage course that may or may not be classified as a jurisdictional water of the US or State of Arkansas. Consequently, determining receiving stream of the storm water discharge can be a difficult and subjective determination without additional guidance from the Department. The significance of operator confusion over the receiving stream would likely lead to measurement of turbidity of the discharge at inappropriate locations with no allowance for mixing zone dilution. For example, measurement and recording of the turbidity values at points where the storm water flow exits the construction site rather than at a receiving stream would likely result in readings that far exceed the above standards due to no allowance for mixing zone sampling.

Suggestion: To simplify field measurements, it is recommended that the Department consider using settleable [sic] solid measurements taken at the point of storm water flow leaving the construction site as the appropriate monitoring criteria to determine effectiveness of the siltation/erosion control BMPs. If the Department retains turbidity as a measure, it is suggested that alternative theoretical values based upon prevailing soil conditions within the above watersheds be calculated and an alternative construction discharge standard developed using an assumed mixing zone dilution. Such an alternative standard would allow direct measure of the turbidity at the point the storm water exits the construction site.”

RESPONSE #62

Staff does not agree. APCEC Regulation No. 2 does not list a water quality standard for settable solids. However, the operator could use settable solid measurements taken at the point of stormwater flow leaving the construction site as the appropriate monitoring criteria to determine effectiveness of the siltation/erosion control BMPs.

ISSUE #63

“Contents of the Stormwater Pollution Prevention Plan. [Part II.A.4.A.4 and Part II.A.4.G]  
EAI Comment: “Off-site borrow and fill areas” could be construed to be commercially operated borrow and fill operations (gravel mines or fill-dirt pits) that are not under the control of the operator. Suggestion: clarify that the Site Description should include only areas under the control of the operator and for which the operator is requesting general permit coverage.”

RESPONSE #63

Please see response #28.

ISSUE #64

“Attainment of Water Quality Standards After Authorization. [Part II.A.4.E]: See comment and suggestion in response to Part I (B)(23) above [Issue #62]. It is unclear where measurement of runoff should occur in order to demonstrate compliance with this condition of the general permit.”

RESPONSE #64

Please see response #34.

ISSUE # 65

Stormwater Controls [Part II.A.4.H.3)a] Stabilization practices Structural Practices-Sediment Basins: Requirement for a sediment basin appears to be tied to size of watershed rather than size of the construction project. Suggestion: revert to language in existing general permit.

RESPONSE # 65

The Department does not concur with the suggestion. The permit does allow the sediment pond to be designed using the 10-year 24-hour storm event calculations. This calculation will allow the pond size to take into account the runoff coefficients from the area draining to the pond. The Department has found that just taking into account the disturbed areas runoff is not sufficient when sizing a sediment basin. An area is not being disturbed does not mean that there is not going to be any runoff effect from the area. This is due to runoff from the watershed may go into the sediment basin and therefore must be taken into account when sizing the sediment basin to ensure a proper settling time.

ISSUE # 66

Stormwater Controls [Part II.A.4.H.3)a(1)] Stabilization practices Structural Practices-Sediment Basins: “Acceptable environmental professional” is vague. Suggestion: “Acceptable environmental professional” should be defined or deleted.

RESPONSE # 66

Please see response #9.

ISSUE # 67

Signatory Requirements.

A. All Notices of Intent shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For purposes of this section, a responsible corporate officer means:

...”b. The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures....”

EAI Comments: Reference to “manufacturing, production or operating facilities” is irrelevant to management of construction projects or for a manager of a corporate environmental compliance organization charged with responsibility of ensuring compliance on construction projects.

Suggestion: Revise to reflect that manager with delegated authority would have responsibility of ensuring compliance with applicable environmental regulations pertaining to construction activities on a project.

RESPONSE # 67

The Department does not concur. The above language is based on 40 CFR 122.22. Part II.B.9.A.1.b of the draft permit states that “...the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.” This language will remain as proposed.

**Debbie Doss with the Arkansas Canoe Club has commented the following (Issues #68-70):**

ISSUE # 68

We strongly support all of the following proposed additions to permit regulations.

Inclusion of specific requirements for sites which would discharge into an “impaired” stream. Many of our streams are already impaired.

Added requirements for discharge of non storm water (i.e. groundwater)

Added Buffer Zone requirements

Notice of Termination updated to specify

30 days after all construction has been completed and final stabilization is reached

Added new operator responsibilities which must be met before a large “common plan” can be considered as “terminated” -- i.e. finished

Added requirements for the contingency that a specific discharge might cause a violation of a federal or state water quality standard  
Added new storm water controls for larger developments/sites  
Added construction site entrance/exit stabilization and concrete washout requirements  
Added requirements for onsite rain guage and inspection intervals  
Added new inspector certification requirements  
Require new ADEQ inspection templates by inspectors

RESPONSE # 68

The Department acknowledges this comment.

ISSUE # 69

“In addition, we would like to suggest buffer zones which are specific to the location. Buffer zones need to be suitable to the slope and geology of the area, and the grade leading away from a waterway or the construction site.”

RESPONSE # 69

Please see response #4.

ISSUE # 70

“We also believe that it would be extremely beneficial to have an ADEQ inspector on site to make recommendations and document existing conditions before work begins. Documenting baseline conditions would be valuable throughout the life of the project and in mitigating any damage remaining after its completion.”

RESPONSE # 70

Please see response #14. Additionally, ideas may be discussed but at no time is an ADEQ employee endorsing a particular Best Management Practice for stormwater compliance. Nor does an ADEQ inspector have the authority to make recommendations.

**Thomas W Dupree has commented the following (Issue #71):**

ISSUE # 71

“We would like to object to the new rules and regulations that are scheduled to be put into effect next month. There are too many regulations now and new ones will create a burden on the system. With the economy in a crisis state, according to our president and other government financial officials, this is not the time for more regulations that may hinder any business recovery.”

RESPONSE # 71

Please note that is permit is not changing any regulations of the Arkansas Pollution Control and Ecology Commission. This is a renewal of the existing Construction Stormwater General Permit. It is only allowing for the continuation of the Construction Stormwater General Permit with more clarification.

**Colene Gaston with Beaver Water District (BWD) has commented the following (Issues #72-90):**

ISSUE # 72

“Draft Permit, Page i, Table of Contents: Section I.B. 12, "Trench and Ground Water Control," and Section I.B.13, "Buffer Zones," were left out of the Table of Contents. No section numbers were included in the Table of Contents; it would be helpful to have the section numbers included.”

RESPONSE # 72

The first table of contents in the draft permit was removed due to each part having it’s own table of contents. At this time section numbers have not been added to the table of contents.

ISSUE # 73

“Draft Permit, Part I.A, Pages 2-7, Definitions: With so many definitions, it would be helpful to have them numbered.”

RESPONSE # 73

The Department concurs. The definitions have been numbered.

ISSUE # 74

“Draft Permit, Part I.A, Pages 3-4, Definition of "Final Stabilization": Something is missing between the words "Final Stabilization" and "that." Presumably, it is the word "means." Also, section (iv) [note that this is an instance where the general pattern for numbering the sections is not followed] includes the sentence: "Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "water of the United States," and areas which are not being returned to their pre-construction agricultural use must meet the final stabilization criteria in (i), (ii), or (iii) above [emphasis added]." The example of riparian buffer strips as "areas disturbed that were not previously used for agricultural activities," seems to conflict with the requirements regarding buffer zones at Part I.B. 13. At the very least, this provision is confusing. We suggest that the buffer strip example be deleted.”

RESPONSE # 74

The Department concurs. The word “that” has been removed from the definition of Final Stabilization to conform with the other definitions. The outline format has also been changed for the definitions to avoid confusion with the numbering structure found in other sections. The example of riparian strips has been deleted from the definition.

ISSUE # 75

“Draft Permit, Part I.A, Pages 4-5, and 7, Definitions of "Large Construction Site," "Larger Common Plan of Development," and "Small Construction Site": These definitions are the first of several instances in the draft permit where the language regarding large versus small construction sites and common plans of development does not track the language of 40 C.F.R.§§ 122.26(b)(14)(x) and 122.26(b)(15), which are incorporated verbatim by reference in Arkansas Pollution Control and

Ecology Commission (APCEC) Regulation (hereinafter "Reg.") 6.104(A)(3). The definition of Large Construction Site should include not only construction sites greater than or equal to five acres but also construction sites less than five acres that are part of a larger common plan of development or sale that will ultimately disturb five acres or more (see 40 C.F.R. § 122.26(b)(14)(x)). The Draft Permit's definition of Small Construction Site includes the requirement from 40 C.F.R. § 122.26(b)(15) related to larger common plans, but the definition does not accurately track the regulation. Shown below is the Draft Permit language with suggested changes (additions are underlined and deletions are struck-through):

"Small Construction Site" any construction site that will result in the disturbance of equal to or greater than one (1) acre and less than five (5) acres of total land area or less than one (1) 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 equal to or greater than one (1) and less than five (5) acres ~~or more~~. Since the definition of Small Construction Site includes sites that are part of a larger common plan that will ultimately disturb equal to or greater than one and less than five acres, the "Note" that follows the definition is incorrect in part and should be deleted. Similarly, the last two sentences under the definition of Larger Common Plan of Development are somewhat out of place, incorrect in part, and should be deleted. The information in these sentences and in the Note could be combined and corrected to read as follows and placed more appropriately under Part I.B.6, "Requirements for Coverage":

Under the regulations, stormwater discharges from construction sites greater than or equal to five acres ~~or~~ from construction sites less than five acres that are part of a larger common plan of development or sale that will ultimately disturb five acres or more are classified as stormwater discharges associated with industrial activity. Pursuant to 40 C.F.R. § 122.2(b)(2)(v), as incorporated by reference in Reg. 6.104(A)(3), stormwater discharges associated with industrial activity are not authorized to discharge under a general permit without submitting a Notice of Intent (NOI). On the other hand, pursuant to 40 C.F.R. § 122.28(b)(2)(v), stormwater discharges from small construction sites (those equal to or greater than one acre and less than five acres of total land area or from construction sites less than one acre that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres) are automatically covered under ARR150000 without submitting an NOI."

#### RESPONSE # 75

The definitions for small and large sites have been changed. A definition for automatic coverage has been added to the permit. 40 C.F.R. § 122.28(b)(2)(v) allows an industrial activity to be covered under a general permit without the submittal of a NOI at the discretion of the Director (Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate.) The Director has determined that a site that is less than five (5) acres can be covered under this general permit without the submittal of a NOI.

#### ISSUE # 76

"Draft Permit, Part I.A, Page 5, Definitions: We suggest adding "NOC" Notice of Coverage to the definitions since this term and acronym is used in the permit."

RESPONSE # 76

The Department concurs. A definition of Notice of Coverage has been added to Part I.A.

ISSUE # 77

“Draft Permit, Part I.B.1, Page 8, Permit Area: This provision is somewhat unclear and potentially conflicts with Draft Permit Part I.B.13 as to buffer zones. Is the provision about permit "areas" or "activities"? Also, it might be advisable to change the introductory phrase from "Under this permit" to "Subject to the conditions of this permit.”

RESPONSE # 77

The Department concurs. Part I.B.1 has been revised to read “If a large or small construction activity is located within the State of Arkansas, the operator may be eligible to obtain coverage under this permit.”

ISSUE # 78

“Draft Permit, Parts I.B.5, Pages 8-9, Requirements for Qualifying Local Program (QLP): This provision contains multiple references to "40 CFR 122.45(s)," which does not exist. We believe the correct reference is 40 C.F.R. §122.44(s).”

RESPONSE # 78

The Department concurs. This typographical error has been corrected.

ISSUE # 79

“Draft Permit, Part I.B.6, Pages 9-10, Requirements for Coverage: This provision contains inaccuracies that are in conflict with the regulations, and it should be revised. See Comment 4 [Issue #75] above.”

RESPONSE # 79

Please see response #75 above.

ISSUE # 80

“Draft Permit, Part I.B.7, Pages 10-11, Notice of Intent (NOI) Requirements:[1] [Note, this provision is another example where the usual pattern for numbering the sections is not followed]. [2] First, the word "Large" needs to be inserted in front of "Construction Site operators" at the beginning of Part I.B.7.A. See Comment 4 above. [3] Second, the discharge information required by Part I.B.7.B.6 should include information on whether the discharge is to a drinking water source or to a tributary of a drinking water source. BWD is willing to work with ADEQ on the implementation of such a requirement. [4]Third, Part I.B.7.C, Coverage, states that "dischargers" who submit an NOI are authorized to discharge "two weeks after the date the NOI is deemed complete." It's unclear how operators will know that the NOI is "deemed complete." [5] In addition, the front page of the NOI conflicts with this provision and states that dischargers who submit a complete NOI are authorized to discharge "two weeks after the date the NOI is postmarked.”

### RESPONSE # 80

- 1) The numbering for the permit has been corrected to ensure consistency throughout the entire permit.
- 2) The word "Large" has been inserted in front of "Construction Site operators".
- 3) According to Regulation 2.302(G), domestic water supply is listed as a designated use for all waters within the State of Arkansas. Due to security reasons, the public may not know the current drinking water sources or their tributaries, therefore the Department believes that adding this requirement to the NOI is unnecessary. The Department's review of the Stormwater Pollution Prevention Plan (SWPPP) is to ensure that all designated uses are protected.
- 4) Please see response #17.
- 5) The NOI has been corrected to state that the two week time frame does not begin until the Department has deemed the NOI complete. If the Department determines that the SWPPP is deficient, then the two week timeframe will not begin until a complete SWPPP has received and reviewed.

### ISSUE # 81

Draft Permit, Part I.B.8, Pages 11-12, Posting Requirements (Notice of Coverage): [1][Note, again, the usual pattern for numbering the sections is not followed in this provision]. [2]First, Part I.B.8.A. provides that the NOC "posting for large construction sites shall be obtained from the Department," but it is unclear how the NOC is "obtained." [3]The same is true for Part I.B.8.D regarding Large Construction Sites within a QLP. [4]Second, Part I.B.8.B regarding "Automatic Coverage Sites," is contrary to 40 C.F.R. § 122.26(b)(14)(x) and 122.28(b)(2)(v). Therefore, the following incorrect language should be deleted from the first sentence in Part I.B.8.B: "and a single site less than 5 acres but part of a larger common plan." See Comment 4 above. [5]Third, the last sentence in Part I.B.8.C. (regarding the permit not providing a right to trespass or to public access) is out of place and perhaps needs to be a separate section.

### RESPONSE # 81

- 1) See response #80-1
- 2) The NOC is sent to the permittee once the permit tracking number has been assigned by the Department. This language has been included with the NOI to alleviate any confusion.
- 3) See response #1.
- 4) Concerning the automatic coverage, the Department worked with EPA to ensure that the permit coverage for part of a larger common plan was in line with 40 CFR 122.26(b)(14)(x) and 122.28(b)(2)(v). The language will remain as proposed in the draft permit.
- 5) The last sentence in Part I.B.8.C has been moved to Part I.B.8.

### ISSUE # 82

"Draft Permit, Part I.B.9, Page 12, Notification to Receiving Local Authorities: BWD requests that, in addition to the notification to local authorities already specified in this provision [Part I.B.9], either ADEQ or the operators of Large Construction Sites with the potential to discharge to a drinking water source or its tributaries be required to send a copy of the complete NOI to any drinking water suppliers who utilize that raw water source. BWD is willing to work with ADEQ on the implementation of such a requirement."

RESPONSE # 82

Please see response #80-3.

ISSUE # 83

“Draft Permit, Part I.B.10.A, Page 12, Allowable Non-Stormwater Discharges: First, the list of allowable non-stormwater discharges includes "Irrigation drainage (no run-off)." This is unclear; if there's "no run-off," how is there a discharge? Second, this provision contains references to Part I.B. 11 .K of the permit. No such section exists.”

RESPONSE # 83

The Department concurs. The word “(no run-off)” has been removed from Irrigation drainage.

ISSUE # 84

“Draft Permit, Part I.B.13, Page 14, Buffer Zones: [1]First, BWD supports this buffer zone provision. Buffer zones are a well-documented means of water quality protection. See, for example, attached article entitled "Design Recommendations for Riparian Corridors and Vegetated Buffer Strips." [2]Second, we request that tributaries of drinking water sources be added to Part I.B.13.B (fifty foot buffer zone). Again, BWD is willing to work with ADEQ on the implementation of this requirement. [3]Third, in Part I.B.13.D, it's unclear to what the phrase "as stated above" refers. Should this phrase be deleted?”

RESPONSE # 84

The Department acknowledges this comment.

- 1) Please see response #4.
- 2) According to Regulation 2.303.G, domestic water is listed as a designated use for all waters within the State of Arkansas. Due to security reasons, the public may not know the current drinking water sources or their tributaries, therefore the Department believes that adding this requirement to is unnecessary. The Department’s review of the Stormwater Pollution Prevention Plan (SWPPP) is to ensure that all designated uses are protected.
- 3) The Department concurs. Part I.B.13 has been revised for clarification.

ISSUE # 85

“Draft Permit, Part I.B.15, Page 14-15, Reaffirmation of Permit Coverage: This provision is a bit unclear. [1] Do the references to "renewal general permit" and "new or different general permit" mean the same thing or something different? [2] Also, the word "date" seems to be missing after the phrase "within 60 days after the effective. . . ." [3] Part I.B.15 needs to be consistent with Part II.B.4, Continuance of Expired General Permit, and perhaps should contain a reference to that part.”

RESPONSE # 85

Part I.B.15 has been revised to clarify this issue.

ISSUE # 86

“Draft Permit, Part I.B.17, Pages 15-17, Responsibilities of the Operator of a Larger Common Plan:

This provision also is a bit unclear, in part because of the way the sections are numbered (perhaps Part I.B.17.B.3 should be designated as Part I.B.17.c and Part I.B.17.C should become Part I.B. 17.d). The example given at Part I.B. 17.D.5 appears to be contrary to the requirements at Part I.B. 17.B.”

RESPONSE # 86

Part I.B.17.B.3 has been included in Part I.B.17.C. The Department has removed the example in Part I.B.17.D.5.

ISSUE #87

“Draft Permit, Part I.B.23, Page 18, Non-Attainment of Water Quality Standards after Authorization: This provision should apply to a violation of all applicable water quality standards under APCEC Regulation No. 2, not just to the standards for turbidity and oil and grease.”

RESPONSE # 87

The Department concurs. Part I.B.23 of the final permit has been revised to include other pollutants at the discretion of the Director.

ISSUE # 88

“Draft Permit, Part II.A.4, Page 21-22, Contents of the Stormwater Pollution Prevention Plan: [1]First, Part II.A.4.C, Receiving Waters, should require that the SWPPP state if the discharge is to a drinking water source or to a tributary of a drinking water source. BWD is willing to work with ADEQ on the implementation of such a requirement. [2] Second, Part II.A.4.D needs to be structured more clearly and checked for consistency with Parts I.B.11.E and I.B.11.F on page 13. [3] Also, items 1 and 2 in Part II.A.4.D are essentially identical.”

RESPONSE # 88

- 1) See response #80-3 above.
- 2) Part II.A.4.D has been reworked to clarify the two options for ensuring that the project will not contribute to an impaired water body.
- 3) Part II.A.4.D has been reworked to provide more clarification on what a site should do if it discharges to a site that is on the 303(d) list or to a water body that has an established Total Maximum Daily Load (TMDL).

ISSUE # 89

“Fact Sheet, pages 4 and 6: The discussions under "Notice of Intent" regarding Large and Small Construction Sites and under "Eligibility and Authorization" are inaccurate. See Comment 4 above [Issue #75].”

RESPONSE # 89

Please see response #75.

ISSUE # 90

“Notice of Intent [NOI]: [1]First, the NOI available on ADEQs website with the Draft Permit and its associated documents may not have been updated. Its cover page and fourth page incorrectly provide that the NOI is for Discharges of Stormwater Associated with Medium or Large Construction Activity. The NOI also incorrectly references the permit's NOI requirements as being at Part I.B.6.a (they are at Part I.B.7 of the Draft Permit). [2] Second, BWD requests that the NOI requirement be revised to require the applicant to include information on whether the discharge is to a drinking water source or to a tributary of a drinking water source. See Comments 9 and 11 above [Issues #82 & 84].”

RESPONSE # 90

- 1) The NOI has been corrected.
- 2) See response #80-3 above.

**Gerald Weber with Friends of the North Fork and White River has commented the following (Issues #91-111):**

ISSUE # 91

“To make the best of this situation, *Friends* and the public need to have access to and know sufficient information at the site to determine if permittees are in compliance. We believe ADEQ also needs to specifically know what the site looks like before, during and after site work. Photographic images are priceless in these instances. Prompt posting of information accessible by the public at the site is also absolutely necessary or the public cannot determine if the permittee is in compliance with the process without contacting you or the developer. This wastes your time, our time and the operator’s time. The “box” is at least one of the places where this information should be stored and updated.”

RESPONSE # 91

Please see responses #15 and #18.

ISSUE # 92

“We also ask that you identify locations when NOI’s are filed until development is complete on a Google Map. A location can be added in about 5 minutes. A public accessible map will allow citizens to easily locate areas of development sites in their area. Transparency and timeliness of information is crucial.”

RESPONSE # 92

Please see response #21.

ISSUE # 93

“We have also learned that steep slope gradients and proximity to riparian areas are the riskiest areas. We have seen over and over where developers “gesture” at protective activities which are useless during real storms which are inevitable. And, with the increasing clearing of land for the development of residential and commercial properties, we can expect more stormwater runoff and more frequent high water events. These are forces of nature that do not give us a break if we choose to ignore them. We urge you to focus on these areas with a “stop it at the source” mindset. While

this may be more expensive for developers on the front end, it is far cheaper in the long run for us all. Extensive efforts to stabilize Overlook Estates failed even with your engineers involved.”

RESPONSE # 93

The Department acknowledges this comment and will continue to work with permittees in the use of erosion control (“stop it at the source”) versus sediment control when applicable.

ISSUE # 94

“We want to be good partners with our “do the right thing” developers, but we do think the cost of BMP development should be incurred by the developers, not the public nor by the degradation of our streams. We urge you to adopt such attitudes and are pleased to see you moving in that general direction. Keep moving!”

RESPONSE # 94

The Department acknowledges this comment.

ISSUE # 95

“We also support increasing the fines for violations, especially with respect to repeat offenders which we believe would go a long way to discouraging unscrupulous operators who put profit before the protection of our environment. The fines assessed for not obtaining a stormwater permit are so low as to have no incentive for an operator to bother and *Friends* has been informed that it is standard practice to not apply for a permit because the chance of being caught are nil and even if caught the fine is immaterial. We also believe that a large increase in fines would force developers into compliance. If fines are such that they would really affect a developer’s bottom line, they would be leery of getting into situations where penalties would add up or even cost them their ability to apply for future permits.”

RESPONSE # 95

The Department acknowledges this comment.

ISSUE # 96

“*Friends* believes that in the overwhelming majority of applications it should be mandatory for construction/developments proposed for rural areas that an ADEQ inspector visit the site prior to approving a stormwater permit. We believe it is well nigh impossible to assess the potential effectiveness of the various stormwater containment devices proposed for a specific site by looking at USGS topographical maps sometimes decades old, or Google Earth images which can be a couple of years old. And, there is no assurance that the operator submitted site map will be a true representation of the grades unless the survey was performed by a licensed surveyor. USGS gradients although generally representative of the overall grade, cannot be relied on specifically especially along creek and river banks which change with time. Google Earth images reflect the vegetation at the time the image was taken, and any clearing/growth between then and currently would not reflect vegetation growth, clearing or grading which may have been done by owners in the interim.”

RESPONSE # 96

The Department believes that inspections of proposed site are not necessary prior to processing an application. However, there could be situations where the Department would conduct a site visit prior to permit issuance if the submitted information does not provide adequate site information.

ISSUE # 97

“*Friends* also believes that it would be of great benefit to ADEQ to require photographs of the proposed site prior to beginning any site work to be submitted with the other required information for the application. These photos would provide ADEQ a reference for the type of vegetative coverage that existed over the site prior to any clearing/construction activities and would relate to the preexisting stability of the site we feel critical to assessing the degree of stabilizing required to approve the termination of the project. Photos are required as part of the Completion process. (Part 1, par. 16). Photos before clearing begins will give a “before and after” perspective which will provide concrete evidence in cases where permittees might claim the site was already eroding before they began.”

RESPONSE # 97

Please see response #15.

ISSUE # 98

“Regarding NOI; *Friends* believes that it would be prudent to change the regulation such that no work can begin on the site until ADEQ has approved the permit and SWPPP, rather than allowing work to begin two weeks after the NOI has been submitted and ADEQ indicates that all the required information necessary for them to evaluate the application and SWPPP has been received. Too often, an operator will begin clearing operations assuming the SWPPP submitted will fulfill the requirements regarding containment and discharge and will even begin clearing prior to installation of the controlling devices. Thus damage to the environment can occur prior to ADEQ making changes to the original submittal. It would appear that a slight delay in the operator beginning construction/development should not override the potential for environmental damage.”

RESPONSE # 98

Please see response #17.

ISSUE # 99

“Regarding the SWPPP; although the SWPPP is to be posted on the site, there seems to be no requirement that it or other stormwater reports required during operations are accessible by the public. If only ADEQ personnel can legally go onto the site posted w/no trespassing signs, and everyone knows ADEQ does not have the personnel resources to verify compliance with record keeping regarding rain events, weekly inspections, stormwater containment device maintenance, then there will in reality be no oversight of the project with respect to stormwater regulations. ADEQ is already dependent on the public for reporting suspected violations and these reports are always after suspected or real damage has occurred. With no oversight, one can be assured that pollution of the site and neighboring properties/waterways will occur. The solution might be to require any SWPPP construction site operator to submit the required .pdf documentation to ADEQ on a monthly basis and require ADEQ inspection on a regularly defined basis dependent on the estimated length of the

operations.”

RESPONSE # 99

Please see response #18. The Department will not at this time require a monthly submittal of the SWPPP. All records are required to be available for an ADEQ inspector during normal business hours as stated in Part II.A.2.A.

ISSUE # 100

“Regarding the [NOT]: How stabilized does a site need to be before an NOT can be filed and wouldn’t stabilization for steep slopes be different than that required for essentially level sites? What actions does ADEQ take to assure the long term stability of a site, i.e., after the NOC has been filed and months or years later after the developer has essentially abandoned the site? There are many “housing developments” where the original or subsequent owners are not assuring site stabilization and during heavy rain events, erosion has taken silt into tributary creeks. There is little if no ADEQ monitoring of sites after the NOT has been approved and the site was first checked by ADEQ. Again the public is essentially the only ongoing monitor of these developments with many lots still unsold.”

RESPONSE # 100

The Department acknowledges this comment. The draft permit contained language that stated the permittee must submit photographs of the site with the NOT to show 100% stabilization and 80% density. If the Department does not believe the site is stabilized the NOT is not processed and the permittee is informed that additional stabilization is required. As for abandoned sites, the Department maintains that the permit holder is responsible for fulfilling the requirements of the permit. Larger Common Plans cannot terminate the permit unless all the lots are sold or the site has been stabilized. In either case, individual lots would still require permit coverage. The addition of requiring photographs should decrease the number of sites being terminated prior to final stabilization.

ISSUE # 101

“Regarding Buffer Zones:*Friends* believes the 25/50 foot buffer zones for waterways/drainage ditches is inadequate to protect waterways from pollution in all but perhaps single story home construction cases on small sites and even then it would be dependent on the site grade. In multiple home developments/business construction projects, delivery and heavy construction equipment lengths would preclude operating outside this 25 foot proposed buffer zone. Extended cab pickup trucks can have up to 50 foot turning radii and semi, concrete and dump trucks and cranes require even more maneuverability space. So, it would be difficult for construction equipment to stay out of the buffer zone dependent on just how close to a drainage way the construction is to take place. *Friends* suggests that a variable buffer zone be established for each development/construction site that is dependent on the slope of the site so that for steep sites the setback would be greater. Consideration would still need to be given to the construction equipment operations so that erosion is not aggravated by vehicular operations.”

RESPONSE # 101

Please see response #20.

ISSUE # 102

“Regarding an Unaddressed Issue of Repeat/Habitual offenders: *Friends* suggests that a regulation be added that addresses developers, miners, builders, construction businesses (“Operators” per the proposed regulation changes) who habitually fail to obtain permits, fail to follow the stormwater control regulations, and fail to follow their approved SWPPPs as approved or modified as permitted, or fail to assure the long term stability of the developed site after the NOT, has been filed. In the past, failure to apply for a permit or failure to prevent runoff from a previous development/construction/mining site appears to have had little or no bearing on the submittal of an application for another operation. *Friends* suggests that ADEQ ask the legislature to establish limits on the combined number of violations any person/company/business may accumulate which would then preclude them from ever obtaining another permit in Arkansas. This should include any corporation or business in which a legal partner was named in another business that had multiple violations.”

RESPONSE # 102

The Department acknowledges this comment.

ISSUE # 103

“*Friends* also suggest that ADEQ begin a national data base in cooperation with other states which lists the names of these habitual offenders so States, Counties and Municipalities can be aware of offenders in consideration of business applications and permits in their states. This could be similar to the sex offenders lists now available in some if not most states where persons with a record of illegal behaviors are tagged.”

RESPONSE # 103

The Department acknowledges this comment.

ISSUE # 104

“Regarding Part 1, paragraph 22(2) : The written description of the release should be posted on site as well. If they don’t do this, then the public won’t know if they have reported a release within 5 days as required.”

RESPONSE # 104

Federal regulations do not require the permittee to notify the public regarding violations. If the public wishes, they may request any information concerning a release that has been submitted to the Department through a Freedom of Information Act (FOI) request.

ISSUE # 105

“Regarding Part 2: Section A2n-It is not clear in this section that the plan and NOC [Notice of Coverage] are posted in a public place. Only the NOC is posted...is that right? Maybe this is OK since we can get the plan on line and these plans may be very large. Also, NOC is not listed in the definitions Section.”

RESPONSE # 105

Please see responses #18 & #76.

ISSUE # 106

“4A – Site description. This should include photographs of areas to be disturbed and areas of potential discharge sufficient to adequately reflect the condition of the property prior to disturbance activities. Digital photos should be required for filing purposes.”

RESPONSE # 106

Please see response #15.

ISSUE # 107

“4C – Should include a statement as to whether the receiving waters are a cold water fishery or a drinking water source for purposes of the buffer zone provision.”

RESPONSE # 107

The Department does not concur. Please see response # 1. Upon review of the Stormwater Pollution Prevention Plans (SWPPP) the Department will determine if buffer zones should be used as a Best Management Practice (BMP) in order to protect a water body’s designated use. Although the Department only reviews SWPPPs, additional BMPs may be required.

ISSUE # 108

“4G – might include the photographic requirements here.”

RESPONSE # 108

Please see response # 15.

ISSUE # 109

“H2 – Stabilization practices. We are not pleased that buffer zones can be disturbed without more specificity as to what can take place that will assure we don’t have to rip-rap the bank. For instance, in many areas along the White, there is no way the banks will ever be stabilized if you even mow the grass and cane, even if you leave the trees. We have all observed long stretches of the White and Norfolk that are rip-rapped. As soon as you rip-rap one area, erosion intensifies immediately downstream until that area must be rip-rapped as well. Why should one person be allowed to destroy the banks of the downstream landowner? We are confident there are ways to accomplish development goals and save our riparian areas and we urge more work in this area in particular.

Before and after photographs should be taken if any disturbance is allowed in the buffer zones.”

RESPONSE # 109

Please see responses #4 and #15. In addition, if the Department finds that a Best Management Practice (BMP) is not effective, then additional BMPs may be required at the site.

ISSUE # 110

“5m4 – Winter conditions – Did you mean for the second sentence to read “This **exception** is...?”

RESPONSE # 110

This sentence has been deleted.

ISSUE # 111

“Regarding Part II, Section B: Standard Permit Conditions

Although penalties and civil penalties of \$10,000 per day are possible, it is impossible for ADEQ to monitor a site daily so to see if these penalties should be imposed. Therefore the penalty structure should be reexamined so that fines can be applied without an ADEQ inspector having to camp on site to assure violations are not occurring daily.”

RESPONSE # 111

Please see response #23.

**Bruce Shackelford with the Arkansas Environmental Federation (AEF) has commented the following (Issues #112-122):**

ISSUE # 112

Item 6.A. Page 9 of Part I “Requirements for Coverage” This item refers to “*Automatic Coverage*” where *an operator of a small construction site or a single site less than 5 acres but part of a larger common plan, as defined in Part I.A, may discharge under this general permit without submitting a NOI, SWPPP and fee (Automatic coverage).*

Under the Part I.A. the definition of “*Larger Common Plan of Development*” is a *contiguous (sharing a boundary or edge; adjacent; touching) area where multiple and distinct construction activities may be taking place at different times on different schedules under one plan. Such a plan might consist of many small projects (e.g. a common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development.) All these areas would remain part of the common plan of development or sale.*

Comment/Question #1: It is apparent that this language was developed to address commercial and residential developments, but it “assumes” that lots (and disturbances) of less than five acres will individually occur, and does not specifically exclude a common plan of development this is not of residential or commercial in nature, nor does it specifically exclude a common plan of development that is not for sale. In a scenario where a municipality has a multi-contract sewer improvement project, there may be several line work contracts, and several lift station contracts. In a hypothetical scenario, as follows, each small contract involves less than 5.0 acres of disturbance, but the cumulative total exceeds 5.0 acres of surface disturbance.

Contract #1 - Interceptor Sewer– 2.25 acres

Contract #2 - Force Main – 2.75 acres

Contract #3 - Lift Station – 0.85 acres

Total = 5.85 acres

Since each contract is less than 5.0 acres, they are contiguous, and take place at different times on different schedules under one plan, do they not meet the definition of “*less than 5 acres but part of a larger common plan*” and qualify for the NOI, permit fee, and SWPPP submittal exemption and be eligible for “Automatic Coverage”?

RESPONSE # 112

In this case the overall project acreage would be considered (5.85 acres). So yes it would meet the definition of a larger common plan. Each contractor is qualifying for the NOI, permit fee, and SWPPP submittal exemption and be eligible for “Automatic Coverage. However, if all lots belong to one contractor then a large permit is required. Part I.B.14.E has been added for clarification.

ISSUE # 113

Comment/Question #2: In the next scenario, a homebuilder buys a row of six (6) lots from a developer, with the intent of building and selling homes. The builder enters agreements with buyers and begins grading each lot and building homes. The surface disturbance on each lot is less than 5.0 acres, but the cumulative total exceeds 5.0 acres of surface disturbance.

Lot #1 – 0.85 acres  
Lot #2 - 1.0 acres  
Lot #3 – 0.75 acres  
Lot #4 – 0.9 acres  
Lot #5 – 0.85 acres  
Lot #6 – 0.85 acres  
Total = 5.2 acres

Since the disturbance on each lot is less than 5.0 acres, they are contiguous, and take place at different times on different schedules under one plan, do they not meet the definition of “*less than 5 acres but part of a larger common plan*” and qualify for the NOI, permit fee, and SWPPP submittal exemption and be eligible for “Automatic Coverage”? This should be clarified within the general permit to avoid misconceptions brought about by use of the term “*less than 5 acres but part of a larger common plan*” in conjunction with “Automatic Coverage”.

RESPONSE # 113

Please see response #112. The language in the definition of a large site has been clarified to indicate that if more than five acres are owned by one person, even inside a larger common plan, then that person would need to obtain a large permit for their lots. This case would not be eligible for automatic coverage.

ISSUE # 114

Page 11 of Part I: Item 7.C. “Coverage” of the draft permit states:

*“Unless notified by the Director to the contrary, dischargers who submit a NOI in accordance with the requirements of this permit are authorized to discharge stormwater from construction sites under the terms and conditions of this permit two weeks after the date the NOI is deemed complete*

Comment/question: With the elimination of “medium” construction sites from the general permit, and

the fact that the revised > 5.0 acre criteria now defines “large” construction sites for all geographical regions of the State, there is an increased potential for the Water Division to receive many more SWPPPs to review. In the past, the NOC for any given project was [not] issued until both the NOI and the SWPPP are “deemed complete”. Does the Water Division have the personnel to handle the workload of reviewing every SWPPP for all sites exceeding 5.0 acres in the State of Arkansas? Will this potentially delay the process for the permittee’s receipt of an NOC? The Department should consider continuing with the language within the existing permit, which is *two weeks after the NOI is postmarked*.

RESPONSE # 114

The Department believes that by requiring the use of a SWPPP template, the process for reviewing for administrative completeness will be much quicker. In addition, the template will keep permittees from leaving out certain requirements. See response #6.

ISSUE # 115

Page 13 of Part I: Item 11.F. “Discharges into Impaired Receiving Waters (303(d) List)” states that *“An operator is not automatically eligible to discharge under this permit if the site is discharging into receiving waters listed as impaired for Turbidity and/or Oil & Grease under Section 303(d) of the Clean Water Act.”*

The general permit has other references to “automatic coverage” for small sites, whereby *the operator of a small site may discharge under this general permit without submittal of a NOI, SWPPP, and permit fee.*

Comment/question: Does Item 11.F. apply small construction sites? This should be addressed within the permit.

RESPONSE # 115

See response #33.

ISSUE # 116

Page 23 of Part II: Item 2.c. states: *At any time after authorization, the Department may determine that the stormwater discharges may cause, have reasonable potential to cause, or contribute to an excursion above any applicable water quality standard. If such a determination is made, the Department will require the permittee to:*

*c. Cease discharges of pollutants from construction activity and submit an individual permit application.*

**Comment:** A large majority of linear projects (i.e. roads, bridges, water lines, sewer lines) often cross streams and/or rivers, and are issued 401 Water Quality Certification to accompany the project Section 404 permit. As written, the language essentially means that every project with a 404 permit will have to apply for an individual NPDES permit. The language should be revised to allow for projects that are eligible for a short-term activity authorization as provided in 2.305 of the Regulations 2 Arkansas Water Quality Standards. As provided in this Section, ADEQ may authorize short-term activities that might cause a violation of the Arkansas Water Quality Standards. This authorization is subject to the provisions that such activity is essential to the protection or promotion of the public interest and that no permanent or long-term impairment of beneficial uses is likely to

result from such activity. Among the activities eligible for short-term authorization are:

- Wastewater treatment facility maintenance;
- Construction activities;
- Activities, which result in overall enhancement or maintenance of beneficial uses.

These provisions should be incorporated into the general permit. Many individuals in the construction industry are not aware of this provision within Regulation No. 2. Such an authorization, issued by the Department, typically sets a schedule for the work to be completed, and special requirements for implementation of BMPs. Perhaps making others aware of this authorization will actually serve to aid in protecting water quality. I concur with the suggested language submitted by McGoodwin, Williams, and Yates Consulting Engineers.

RESPONSE # 116

Please see response #34.

ISSUE # 117

Page 22 of Part II: Under Item 4. B. Contents of SWPPP, the permit requires all parties to be identified, including landscapers and inspectors.

Comment: Depending upon the project, landscapers may act as a subcontractor, and it may not be known who the landscaper will be until the project matures and those services are needed. In terms of “inspectors” (understanding the intent of the permit) the inspector is typically an employee of the designer (or the contractor) and they may not be individually identified until immediately before construction activities commence. Therefore, it is not practicable to require specific names of inspectors and landscapers to be identified in order for the SWPPP to be “deemed complete” followed by issuance of the NOC.

RESPONSE # 117

Please see response #35.

ISSUE # 118

Page 28 of Part II: Item M. “Inspections.” states: *Qualified personnel (provided by the operator) shall inspect disturbed areas of the construction site.....*

Comment: Under the definitions (Page 6 of Part I) “Qualified Personnel” refers to *“someone on the construction site who is familiar with the Construction Stormwater General permit, ARR150000, the Stormwater Pollution Prevention Plan (SWPPP) and the erosion and sediment controls required by the SWPPP. This person should also have the authority to make changes to the SWPPP and erosion and sediment controls.*

In a hypothetical scenario, whereby the owner contracts an engineering firm or an environmental consulting firm to develop a SWPPP for a project, the owner decides that the contractor will conduct inspections required by the general permit. The contractor subsequently provides the Qualified Personnel to perform the inspections. As defined by the draft permit, the contractor’s inspector has the authority to modify the SWPPP developed by the engineering, or environmental consulting firm. This creates an increased potential for a conflict of interest and liabilities for the owner, the contractor, and the engineer/environmental consultant. The engineer/environmental consultant who

developed the SWPPP have a legal responsibility and ownership of the document they prepared. Having this language in the permit is synonymous with allowing a contractor to make design changes to engineering specifications.

In another scenario, the owner hires an engineering firm to develop the design and provide the so-called “inspection” services, and an environmental consultant to develop the SWPPP. As most engineers would not authorize another party to modify their design, few of them would take the liberty (and assume the liabilities) to modify a SWPPP developed by another party.

The sentence “*This person should also have the authority to make changes to the SWPPP and erosion and sediment controls.*” should be stricken from the draft permit. It limits the flexibility in how a project may be organized, creates unnecessary liabilities, and disregards professional courtesy, with no benefit to the environment.

#### RESPONSE # 118

The Department agrees to remove “.*This person should also have the authority to make changes to the SWPPP and erosion and sediment controls*” See response #26. However, as note, the SWPPP is a living document and must be revised to adapt to the site changes. The operator can give anyone the delegation to modify the Stormwater Pollution Prevention Plan (SWPPP) as needed but the operator is ultimate responsible person. This delegation should be noted in the SWPPP.

#### ISSUE # 119

Page 28 of Part II: Under Item M. “Inspections” Qualified personnel (**provided** by the operator) shall “inspect”....

Comment: The Department should be aware that for engineering and environmental professionals must carry several million dollars of professional liability/errors and omissions insurance. Our insurance carriers discourage the use of, or our involvement in, the term “inspect” or “inspector” because it has a legal connotation that is not covered by the policy, and is not intended to be within the scope of the designer or environmental consultant. Most engineering firms that I work with refer to their onsite personnel as “resident project representative”, not inspector. Although the term “inspect” has been used in the general permit for years, the issue (and our avoidance of use of the term in our documents) is very much a part of minimizing liabilities for designers and environmental consultants. This is also related to Page 29 of Part II, as described below.

#### RESPONSE # 119

The Department disagrees. See responses #26 & 30. The Stormwater Pollution Prevention Plan (SWPPP) is a living document and must be revised to adapt to the site changes. The operator can give anyone the delegation to modify the Stormwater Pollution Prevention Plan (SWPPP) as needed. This delegation should be noted in the SWPPP.

#### ISSUE # 120

Page 29 of Part II: ...which requires the use of the ADEQ *inspection* form also has its inherent liabilities for engineers and environmental professionals. Our use of a document having the word “inspect” on it, may insinuate a service that is not within our intended scope and create liabilities. Therefore, many designers and environmental professionals will be unable to use the form and will no longer conduct their “site evaluations”. I am certainly aware that the Department has experienced

many shortfalls in completion of “inspections” at construction sites. However, this will only reduce the field of qualified individuals who conduct “site evaluations” and will not be able to use the Department’s “inspection” form. Requiring the “inspection” form will not provide any remedy for the problem. There will always be those individuals who do not adequately perform “inspections” whether or not the ADEQ form is required.

This language should be stricken from the draft permit. There are many of us who, throughout 15 years of construction permit work, have developed our own site “observation” form that works well. This should be allowable. We have always included them in every SWPPP submitted to the Department, and have never received any comments or suggestions. Perhaps the language could be changed to use ADEQ’s form, “*or other form accepted by the Department*”. Our form includes items, such as “site posting/rain gauge”, “proper sanitary facilities maintained”, “non-stormwater discharges observed”, “proper trench/pit dewatering”, “proper concrete truck washout”, spills observed”, “appropriate chemical storage/spill prevention”, and “solid waste receptacles”. The form prepared by the Department has none of these items. Although our form does not include the word “inspection” it is more focused on pollution prevention and not just to identify existing problems. I have attached the form developed by ECO, Inc. in the early 1990’s. You are welcome to use it should you so desire.

In summary, the terms “inspect” and “inspection”, as used in the construction industry, refer to a detailed comprehensive examination of the work in progress. It is a common misconception, however, that the purpose of a consultant’s project visit is to “inspect” the contractor’s work to uncover any code violations or construction defects. Because the terms *inspection* and *construction observation* have been widely used to describe the same function, they are often confused. Misuse of the word inspect may imply that an *inspector* should uncover each and every defect, unsafe condition, and violation of the law, and that the inspector is legally responsible for any defects not discovered. This is why the word inspect is a red flag word that most consultants specifically exclude from their scope of services.

#### RESPONSE # 120

See response #10. However, the terms “inspect” and “inspection” will remain in the permit.

#### ISSUE # 121

Page 30 of Part II: Under the Item 5 Contractor Certification, the certification statement reads,

*“Furthermore, I understand that the ADEQ and/or the operator may require me to obtain my own permit coverage for the construction site and that there would be penalties for failure to comply with my permit.”*

Comment/question: If a contractor no longer meets the definition of “operator” how can the Department require them to get their own permit? If there is no legal basis for this language, it should be stricken from the permit, or otherwise clarified.

#### RESPONSE # 121

The Department concurs. This requirement has been removed.

ISSUE # 122

Expediting the Permit Effective Date: Item 12. “Reaffirmation of Permit Coverage” of the Fact Sheet states: *Large Sites: Any permittee with coverage under this general permit at the time of expiration will continue to have coverage until a renewal general permit is effective. A tracking number can not be issued after the expiration date to new discharges. Therefore, the Department urges new dischargers to submit a complete application as soon as possible, but no later than 2 weeks prior to the expiration date of this permit.*

Comment: With our nation’s economy in potential peril and the dramatic slowdown in new construction starts, many municipalities are now in the “infrastructure catch-up” dilemma, constructing sewer and water improvements, building new roads, and expanding existing roads. In today’s world of construction, “time is money” as even minor delays can have a large effect upon fuel and materials costs that continue to sky-rocket at a rate never before seen. With today’s focus upon sustainability, it is vital for municipalities to be able to move forward with infrastructure improvements in order to maintain the quality of life for the citizenry, which includes protection of the environment. We encourage the Department to expeditiously move forward with the effective date of the renewed ARR150000.

RESPONSE #122

The Department acknowledges this comment.

**Scott E. Bennett with the Arkansas State Highway and Transportation Department (AHTD) has commented the following (Issues #123-139):**

ISSUE # 123

Notice of Intent (NOI):

- a. The NOI cover letter and the NOI footer both reference “medium” sites which will not exist under this permit.
- b. Part I, 7.B.5 of the permit shows “estimated construction start date and completion date”. Since the exact start and completion dates of projects normally are not known when the NOI is submitted, would it be possible to change the NOI, Section III, to read “Estimated Project Start Date” and “Estimated Project End Date”?
- c. Part I, 7.B.5 of the permit says linear projects should enter the latitude and longitude of the endpoints of the project in Section III of the NOI, yet the NOI is not arranged to accommodate coordinates for two geographical positions. Could the NOI be changed or would it be permissible to use the mid-point of a linear project?

RESPONSE # 123

- a. The NOI form has been corrected.
- b. Section III of the NOI has been changed to indicate estimated dates.
- c. The NOI has been changed to include a starting and ending point for linear projects.

ISSUE # 124

“Part I, Section B, 5. Requirements for Qualified Local Program (QLP):

Because the Arkansas State Highway Commission (AHC) and the AHTD have the exclusive authority over the state highway system (See Ark. Code Ann. § 27-67-101, et al), no local agencies would have authority or jurisdiction over the lands owned, controlled and maintained by the AHTD. The AHTD requests additional language clarifying that local agency authority will not be extended to the state highway system or to any AHTD construction activities occurring within the right of way of AHTD.”

RESPONSE # 124

The Department believes that this issue is outside the scope of this general permit and should be resolved between the AHTD and the local agencies, not included in the general permit.

ISSUE # 125

“Part I, Section B, 5. A. Full Permit Applicability: This section requires an operator “within the jurisdiction of a Qualifying Local Program” to comply with the requirements of this permit as well as those local storm water management requirements, policies, or guidelines. No state highway construction job will fall within the jurisdiction of one of these programs as the jurisdiction over the roadway and right of way is reserved solely by the AHC and the AHTD. Further, the AHTD is a constitutional state agency and an independent MS4 under the NPDES program. The AHTD is regulated by those requirements set forth in the individual MS4 permit within the areas of its jurisdiction. No other municipality, city, drainage district or other local agency will have the authority to impose additional restrictions or requirements upon the State in violation of sovereign immunity. Local agencies, cities and municipalities are political subdivisions that are given limited powers by the legislature. These powers do not include the regulating of a state agency. The AHTD has not waived its sovereign immunity and has not agreed to be placed under the jurisdiction of one of these local bodies. The AHTD requests additional language be added excluding all highway construction projects from the qualifying local permit program.”

RESPONSE # 125

Please see response #124.

ISSUE # 126

“Part I, Section B, 11. F. Discharges into Impaired Receiving Waters (303d) List: This section states, “To receive permit coverage, the NOI and SWPPP shall be submitted to the Department for review...” Does this mean SWPPPs for small sites should be submitted for review if they discharge into impaired waters? If so, it might be helpful to add language to make this clear.”

RESPONSE # 126

Please see response #33.

ISSUE # 127

“Part I, Section B, 13. Buffer Zones and Part II, Section A, 4.H.2.b. Description of buffer areas: There appears to be a conflict between the wordings defining the beginning point of a buffer zone in these two sections. We request that this be clarified.”

RESPONSE # 127

Please see response #4.

ISSUE # 128

“Part I, Section B, 13. Buffer Zones:

- a. On most if not all highway construction jobs over or adjacent to water bodies, it will not be possible to comply with the buffer zone requirement in this paragraph. The permit recognizes this by allowing linear projects to be evaluated individually by ADEQ to determine buffer zone setbacks. Please confirm this evaluation will be accomplished through the normal ADEQ SWPPP approval process for large sites.
- b. Many of the Department’s bridge or culvert jobs are small sites which normally would not require the submission of an NOI or SWPPP. Please clarify the process for buffer zone waivers on small sites.”

RESPONSE # 128

Please see response #4.

- a. The Department will continue looking at linear projects in the same way as the previous SWPPP reviews.
- b. Even if a site is covered automatically all permit requirements must be met.

ISSUE # 129

“Part II, Section A, 4.H.2.b. Description of Buffer Zones: While the AHTD stabilizes disturbed areas adjacent to water bodies as soon as possible, stabilizing an area within a buffer zone with rip-rap, matting or sod within 48 hours of disturbance will be impossible for many highway construction jobs. For such activities as bridge and culvert construction or shoulder construction adjacent to a stream, machinery would normally be used daily on or near the stream bank for a period of up to several weeks. Any of the listed stabilization options would be damaged or destroyed by the machinery. The AHTD uses BMPs such as diversion ditches/berms, sediment basins and silt fences to protect the water body in these instances. We request that requirement to use rip-rap, matting or sod be waived in such cases.”

RESPONSE # 129

If the activity might cause a violation of Arkansas Water Quality Standards, the permittee may apply for a Short Term Activity Authorization from the Department.

ISSUE # 130

“Part II, Section A, 1.C. Existing Permittees: Please confirm that the SWPPP updates for existing jobs required by this paragraph will not require SWPPPs to be re-accomplished using the SWPPP Template.”

RESPONSE # 130

Please see response #27.

ISSUE # 131

“Part II, Section A, 4. D: This paragraph requires permittees to make a determination if their storm water discharges enter a water body on the “...most recent 303 (d) list”. Could ADEQ provide a link on their web site to the most recent 303 (d) list which is clearly labeled as such?”

RESPONSE # 131

The requirement that the permittee has to verify the 303 (d) list and TMDLs has been removed. The Department will be reviewing this information. If it is determined that the project will discharge to an impaired water body or a TMDL, then the Department may require additional BMPs to ensure that the project does not damage the water body. The Arkansas 2008 303(d) report and TMDLs can be found at: [http://www.adeg.state.ar.us/water/reports\\_data.htm](http://www.adeg.state.ar.us/water/reports_data.htm) .

ISSUE # 132

“Part II, Section A, 4. D. 1. & 2: The first two subparagraphs in this section are confusing. As we understand the intent, if the construction site discharge does not enter a water body on the most recent 303(d) list or with an approved TMDL, this is entered in the SWPPP and nothing else is required. If this is true, the statement in subparagraph 2 should not be needed, yet the two statements are connected by “and”, as if the second statement always follows the first. Please clarify this.”

RESPONSE # 132

Please see response #88-2 & 3.

ISSUE # 133

“Part II, Section A, 4. D. 5. & 6: These paragraphs mention “assumptions and allocations” for both the 303 (d) list or for the TMDL. The AHTD understands that only TMDL documents contain assumptions and allocations, not the 303 (d) list. Please clarify this.”

RESPONSE # 133

Please see response #88-2 & 3.

ISSUE # 134

“Part II, Section A, 4. G. Site Map: The location of several required items on the site map such as construction exits, concrete wash-out areas and waste containers are not normally determined until the SWPPP has been reviewed by ADEQ. Please confirm that the planned location of these items does not have to be on the site map when the SWPPP is initially sent to ADEQ for review as long as the map is updated before construction begins.”

RESPONSE #134

Please see response #8.

ISSUE # 135

“Part II, Section A, 4. H.1.g: Off-site material storage areas (also including overburden and stockpiles of dirt, borrow areas, etc.) used solely by the permitted project are considered a part of the project and shall be addressed in the SWPPP:

On AHTD jobs, contractors are required to obtain their own NPDES permit for off-site areas. Since these areas are normally “used solely by the permitted project”, but the site has a different operator and is already covered under a separate permit, please confirm the requirement to address this in the AHTD SWPPP would not apply in these cases.”

RESPONSE #135

Please see response #28.

ISSUE # 136

“Part II, Section A, 4. M. 2. The ADEQ inspection form is to be used for all inspections: The proposed ADEQ inspection form is not designed to accommodate the unique requirements of linear projects such as highway construction. The AHTD has provided a copy of a proposed inspection report form to ADEQ for review and requests the form be approved for use on AHTD highway construction jobs.”

RESPONSE #136

Please see response #10.

ISSUE # 137

“Part II, Section A, 4. N. Maintenance: The AHTD believes the requirement to complete BMP repairs within 72 hours of discovery after an inspection places an unrealistic burden on permittees, especially those who use subcontractors to perform BMP maintenance. For instance, if an inspection falls on Thursday or Friday, the repairs would likely have to be done over the weekend when subcontractors may not be available. We request this deadline be reconsidered and as a minimum, be changed to three work days.”

RESPONSE #137

Please see response #11.

ISSUE # 138

“Storm Water Pollution Prevention Plan Template

- a. The AHTD understands as long as the general format and order of the SWPPP template is used, permittees may add additional information under the existing subheadings.
- b. Page 2, Location of Surface Water on Construction Site:  
Since the SWPPP requires the submission of a topographical map of the site which will show the surface waters, listing the surface waters in this location seems redundant.”

RESPONSE #138

- a. Please see response #6. If additional information is need that is not included with the SWPPP template, then it should be added as additional information at the back of the SWPPP.
- b. Staff does not agree. SWPPP must list the surface waters to make sure matching with map of the site.

ISSUE # 139

“Attachment F, BMP Consideration Checklist:

- a. The column labeled “considered for project” seems superfluous since the instructions say the listed BMPs should be considered for every project. The next two columns “check if used” and “check if not used” should suffice since one or the other must be checked for each listed BMP. By deciding to use the BMP or not, the BMP has already been considered. We request that consideration be given to eliminating this part of the checklist.
- b. The last column labeled “if not used, state reason” seems unnecessary for many of the listed BMPs. For example, the choice of silt fence as a sediment control item should not require an explanation of why fiber rolls, straw bale barriers, gravel bag berms, or sand bag barriers were not used, since each can be equally effective if properly installed. The same applies to the choice of hydraulic mulch, straw mulch, wood mulch, hydroseeding, or geotextiles. Any of the items, properly installed, would work well for erosion control. Please consider eliminating this portion of the checklist.
- c. The “Wind Erosion Control BMP, WE-1”, is not mentioned in the Permit and seems to be intended for areas with arid climates. Except in unusually dry conditions, wind erosion is not normally a problem in Arkansas and this item seems out of place in a storm water permit. We request this BMP be eliminated.
- d. The “Non-Storm Water Management BMPs” and “Waste Management and Materials Pollution Control BMPs” lists contain many items which are unfamiliar to the AHTD. Many of the items appear to not be BMPs but activities which may require the use of BMPs and it is unclear what the intent is. Does ADEQ intend to publish the specific requirements and objectives of the items on the lists so permittees will know what is expected?”

RESPONSE #139

The Department concurs. Attachment F has been removed from the SWPPP submittal requirement. Attachment F may be used by a permittee to determine which BMPs would fit their project.