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RE: Response to Comments Regarding the Proposed Draft Industrial Storm Water General Permit; Received During Public Hearing; February 22, 2011

This document was prepared in order to address comments received during the public hearing, held February 22, 2011 at 2:30 pm, at the Nebraska State Office Building, 301 Centennial Mall South, Room A/Lower Level, Lincoln, NE. Some of the comments received from different individuals may be condensed into one response.

1) Concerns that NDEQ Requirements are More Stringent than USEPA

The NDEQ Draft Industrial Storm Water General Permit mirrors the USEPA's latest Multi-sector General Permit issued in 2008 (MSGP), including monitoring, self inspection, and frequency of monitoring. USEPA's MSGP can be found at www.EPA.gov.

2) Comments on Monitoring Frequency and Options if Benchmarks are not Attainable

Monitoring Frequency:

Benchmark monitoring does not apply to all permittees, but to a subset of sectors and subsectors. For those permittees required to conduct benchmark monitoring, requirements are not in effect until the second year of the permit, beginning one full year after the issuance of the General Permit. The frequency is set as quarterly for four successive quarters. Samples are required to be collected and analyzed for the parameter identified within the sector specific requirements once each quarter. Options have been made available for facilities to modify the monitoring periods within the SWPPP. Monitoring results from four successive monitoring periods are to be averaged and the average is to be compared to the benchmark value. Any value less than the detection limit for an analysis is to be set at zero. Any value less than the quantitation limit but higher than the detection limit is to be set as halfway between the quantitation limits and zero. Both of these procedures are favorable to the facility.

- **After the collection of four samples, if the average of the four results is less than the benchmark value for that specific parameter, the permittee has fulfilled the benchmark monitoring requirements for the permit term and may cease benchmark monitoring.**

Options If Benchmarks are Unattainable

There are three options available:

A. If the value is higher than the benchmark value, the facility must re-evaluate the SWPPP (review the selection, design, installation, and implementation of control

measures/determine if modifications are necessary), and make the necessary modifications and continue quarterly monitoring for an additional four quarters. Facilities which statistically exceed the benchmark value with less than four samples (ex. One sample with TSS exceeding 500 mg/L statistically exceeds the benchmark value of 100 mg/L as 3 additional samples of 0 mg/L would not reduce the average to below the benchmark value) may stop monitoring, re-evaluate the SWPPP, initiate necessary changes, and then recommence monitoring.

B. Facilities which exceed successive benchmark comparisons may evaluate two other options made available to permittees. Facilities may determine that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice, and develop a rational for determining such, and notify the Department.

C. Natural Background Pollutant Levels may also be used as a justification to cease monitoring.

3) Comments Regarding the Inclusion of the Benchmark Value for Iron, Sector E: for Glass, Clay, Cement, Concrete, and Gypsum Products

The benchmark value for Sector E is set at 1 mg/L. This is not an effluent limitation. Exceeding this level is **not** a permit violation. This is an action level that indicates further action must be taken by the facility or a determination that further reduction efforts due to reasons noted in response 2) A., B, or C is not possible.

Iron is a potential pollutant present at Sector E facilities through a variety of sources which include fly ash, Portland cement, scrap piles, boiler discharges, as well as others. Iron may also be deposited on the surface of the land through the use of ground water for dust suppression. A facility which was able to determine that benchmark exceedance is related to the use of groundwater as dust suppression may qualify as natural background and cease monitoring (See 2. above). In order to determine this, the facility would need to evaluate for the presence of other sources of the pollutant and eliminate and or minimize non-allowable sources.

Benchmarks are intended to be used as a means to evaluate overall facility discharges. Benchmark parameters should not be construed to be the only pollutants of concern, but rather surrogates for pollutants. Expense of monitoring prevents the monitoring of all pollutant parameters which may be discharged from a facility. A wide variety of pollutants may be present on every industrial site.

A designation as Impaired is a serious distinction for a waterbody and the lack of impairment should not be construed to mean pollutants would not be monitored or regulated. The goal of the Clean Water Act is to prevent impairments from occurring, and where they do exist, address them through a variety of means to improve water quality.

4) Comparison of NDEQ Proposed Draft General Permit to Surrounding States:

Comments were received regarding the difference in regulatory requirements between businesses located within the State of Nebraska and those located in surrounding states. Storm water requirements should not be compared on a requirement by requirement basis as this may be very misleading. Instead, the entirety of the program should be compared.

The State of Missouri does not have a benchmark requirement for Iron within the sand and gravel subsector, and this is consistent with the proposed NDEQ Draft which also does not include a benchmark for Iron for the sand and gravel subsector. It should also be clarified that the Missouri General Permit for the 'discharge of wash water or storm water from sand and/or gravel mining, washing, sorting, or storage facilities' does contain effluent limits for multiple parameters. The effluent limits contained within the Missouri permit are enforceable limits, exceedance of which would be considered a violation. In addition, the State of Missouri has a long list of site specific industrial storm water permits with effluent limits and monitoring

Both Iowa and Kansas will be reviewed for consistency with Federal requirements through EPA Region VII in Kansas City.

The general permit for Iowa will be expiring shortly and these questions will likely be discussed during that process. The program run by the IDNR varies considerably from that of the Department's, namely: $175.00 annual fee, permittees are required to public notice their intent to seek coverage under the general permit; general permits are issued by rule and therefore more stringent than the typical NPDES process, among others.

The general permit for Kansas will be expiring shortly and these questions will likely be discussed during that process. The program run by the KDHE varies considerably from that of the Department's, namely: $60.00 annual fee, storm water requirements are routinely included within individual NPDES permit which are inspected on a routine basis, Inspections are conducted by District offices which are distributed throughout the state and staffed by individuals working only in those regions, among others.

5) Comments Concerning the Applicability of the Industrial Storm Water General Permit Related to 404 Permitting Requirements:

Permitting under Section 404 is managed by the US Army Corps of Engineers. The NPDES program, under which the storm water permits are administered are not part of this program. Having a 404 permit in no way eliminates the need for a NPDES storm water permit.

6) Comments Requesting the use of Turbidity Testing versus Total Suspended Solids (TSS)

The relationship between TSS and turbidity must be correlated between differing sources. The correlation is not uniform between all sources or different outfalls. TSS is a simple test that provides accurate information to determine if changes are needed to the facility SWPPP.

Construction activities are **not** included in this permit and therefore, the NDEQ Draft Industrial Storm Water General Permit is **not** subject to proposed or promulgated effluent limitations for turbidity.

7) Comments and Concerns about Time Allotted for Reapplication and Storm Water Pollution Prevention Plan (SWPPP) Review/Preparation:

NDEQ's draft Industrial Storm Water General Permit is tentatively scheduled for issuance on **July 1, 2011**. If this occurs the following deadlines will be in place:

- Deadline for Submission of Notices of Intent (NOI) for existing facilities:
  January 1, 2012 (6 months after issuance)

- Commencement of benchmark monitoring for all permittees:
  July 1, 2012 (1 year after issuance)

The proposed permit's SWPPP requirements vary little from previous permits and new monitoring requirements do not commence for one year after issuance, allowing adequate time to develop monitoring plans. No changes have been made to applicability requirements. The same industries established in the first industrial storm water permit in Nebraska issued in 1992 are still subject to the proposed industrial storm water permit.

The Department does recognize a need for training materials and guidance documents to assist the regulated community. One of the Departments goals in developing a permit which mirrors the USEPA MSGP is to allow for the use of guidance materials developed by the USEPA. These are available at www.epa.gov.

8) Requests for Composite Samples vs. Grab Samples

The decision to require grab samples was made for two reasons; the costs associated with collecting a grab sample are lower and therefore less burdensome for industry, and given the nature of the discharge a grab sample will better characterize the first flush of pollutants discharging from a site for the majority of pollutants. In order to accurately reflect the total amount of pollutants discharged from a site, composite samples as well as flow monitoring would be required. The majority of facilities are not equipped to monitor variable flow as from a storm event discharge.

9) Requests for Reduced Requirements for Existing Sites

Facilities exceeding benchmark values have two opportunities to reduce monitoring requirements based either on natural background pollutant levels, or by determining that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice. See response to #2.

10) Requests for Additional Guidance Materials

The Department recognizes a need for training materials and guidance documents to assist the regulated community. One of the Departments goals in developing a permit which is similar to the USEPA MSGP is to allow for the use of guidance materials developed by the USEPA. These are available at www.epa.gov. The Department intends to review existing EPA guidance and provide clarification when EPA guidance varies significantly from that of the State.

11) Explanation of Controlled Discharge Structures

Controlled discharge structures are structures which do not passively discharge, and may not discharge in direct response to a rain event. Examples of controlled discharge structures would be detention ponds with controlled outlets, possibly utilizing pumps or valves; and secondary containment structures which must be actively dewatered. Many of these controlled discharges are monitored and regulated in the facility's wastewater NPDES permit or other NPDES general permits. If all of the requirements for industrial storm water are contained in a site specific NPDES permit including SWPPP development, implementation, monitoring, self inspection, and frequency of monitoring no further coverage under the general permit is required.

12) Questions About the Applicability of Standard Conditions, Appendix B and the definition of "threaten waters of the State."

The conditions located in Appendix B are standard conditions and are required for all NPDES permits. This requirement is based on 40 CFR 122.41 and Title 119, Chapter 14.

Spill regulatory requirements are found in NDEQ's Title 126, Chapter 18 which is quoted within the Appendix of all NPDES permits.

13) Comments About the 2010 EPA TMDL Memo

Regarding the recent Memo issued by USEPA, individual permittees will be notified if any additional requirements for individual facilities are required due to Total Maximum Daily Load (TMDL) development. In many situations, Best Management Practices (BMPs) may be more appropriate than effluent limitations. This memo should not be construed to mean that all storm water sources will receive limits in the event of TMDL development for a facility's receiving water(s).

Regarding comments received about benchmark values being translated into Water Quality Based Effluent Limitations (WQBELs), the benchmark parameters are not site specific. A WQBEL is site specific and therefore would be issued through a site specific NPDES permit, not a general permit. A WQBEL would be an enforceable limit and therefore would likely be higher than the benchmark value for most parameters. The benchmarks contained within this permit were not derived using the same procedures which would be utilized to develop a WQBEL.

14) Regarding Parts 2.2.2.1 & 2.2.2.2 and Notification of Additional Requirements due to an Established (Total Maximum Daily Load) TMDL

The Department is not aware of any TMDLs which will require the use of these provisions. These provisions have been included to assure that options are available to the Department should they be required in the future. To date, the Department has not issued a TMDL with a significant Industrial Storm Water component to the reductions sought.

15) Comments on how Different Industrial Activities are monitored when Co-Located

Facilities with more than one co-located activity have the ability to develop activity specific BMPs appropriate to the activity being addressed during the development of the SWPPP and through subsequent review and modification. Sector specific benchmark monitoring associated with a co-located industry is only required for those outfalls discharging storm water associated with the activity (sector).

16) Addressing Sheet Flow Discharges, Small Gulley (Rill) Formation

Sheet flow discharges have been excluded from the definition of Monitored Outfalls, eliminating the need for facilities to concentrate flows in order to sample. Permittees are cautioned within the permit that *"…what begins as "sheet flow" has a tendency to concentrate and form gullies, which would then be considered a discrete conveyance"* and require monitoring. As long as the discharge remains sheet flow, no monitoring is required.

17) Regarding part 1.1.4.5 and Questions About Threatened and Endangered Species

The Department has determined that only new and expanding dischargers are required to use the procedures outlined within the permit, however, this permit would not authorize any discharges which do impact Threatened and Endangered species.

18) Regarding Part 2.1.2.3 about Maintenance and Regular Inspections.

Part 2.1.2.3 goes further than Part 4.1.1, which requires routine inspections. Part 2.1.2.3 requires the facility to maintain *industrial equipment* to avoid leaks, spills, and other releases. This section also addresses situations such as a control measure which requires maintenance at an interval more frequent than quarterly. For instance, a bag house which requires filter maintenance monthly. Without this section, permittees may feel as though maintenance can be delayed until quarterly inspections identify necessary maintenance. The Department included a statement within 4.1.1 which states *"Only those inspections conducted for compliance of this permit must conform (i.e. weekly inspections of a high risk portion of the facility need not include all areas of the facility or comply with the documentation requirements)."* This statement was intended to clarify that a facility is not required to conduct a full routine inspection, including documentation, simply because an employee checks to see if one particular control is properly maintained, i.e. a spill kit is properly stocked.

19) Regarding Part 3.4 and Corrective Action Report Requirements for Control Measures that are not Properly Operated or Maintained

This refers to only control measures that are part of the SWPPP. This requirement increases the impetus for the development of passive controls which are likely to function effectively without frequent maintenance.

20) Regarding Part 6.1.4 and concern that some outfalls do not have discharges within 30 minutes of a measurable storm event and may require a longer time.

The sample should be collected within the first 30 minutes of the measurable storm event. Provisions are included in 6.1.4 for the permittee to sample and document if anything prevents you from sampling within 30 minutes.

21) Regarding Part 6.1.7 and the timing of monitoring periods.

This section applies to existing facilities as well as future dischargers. Dischargers receiving authorization prior to January 1, 2012, are required to begin monitoring July 1, 2012. Dischargers receiving permit authorization **after** July 1, 2012 (or one year after issuance) are required to begin monitoring in the first full quarter after coverage is obtained.

22) Polluted Run-On

The proposed draft general permit does not make allowances for facilities to adjust monitoring results based on pollutant values within run-on from adjacent lands. In order to properly account for this, a facility would likely need to know the amount of run-on (volume) as well as the pollutant concentration of the parameter within the run-on. The facility would also need to monitor the volume of storm water discharged from the site. This procedure would not be as simple as subtracting the upstream concentration from the downstream concentration as this would assume that volumes have remained constant.

A key aspect to preventing the detachment and transport of pollutants from an industrial site is to reduce the volume and velocity of run-off exposed to industrial materials. A key way of addressing this is to minimize the amount of water flowing through a site, thereby preventing this water from becoming contaminated. Facilities concerned with the pollutant loading of run-on coming onto the permitted facility should first evaluate if the run-on is actually within an established drainage channel, or other surface water (intermittent drainage way as identified on a USGS topo map, drainage ditch, creek, slough, city street etc.). Industrial activities should not be occurring within these run-on areas. Appropriate controls for these areas would include buffers. The permitted facility may be able to determine that this drainage is the discharge point from the facility. In this case, the facility would establish monitoring points prior to the discharge of storm water to this drainage.

All facilities should evaluate drainage patterns within the industrial site, as well as the drainage patterns for land surrounding the industrial site. Facilities should consider the use of diversions in order to minimize the volume of water associated with (exposed to) industrial activity.

23) Facility Size and Corporation Size as Related to Permit Requirements

Comments were received regarding variation between production levels, facility size, and reduced permit requirements. Requests were made to reduce permit requirements for: facilities with low production levels, facilities with minimal space available for the installation of control measures. Comments were also received regarding corporations with multiple locations throughout the state.

The proposed general permit was written to allow for flexibility for the permittee. Requirements were established for individual facilities. Also the proposed permit contains allowances for inactive and unstaffed sites. Sites which qualify as inactive and unstaffed may qualify for reduced inspection frequencies, reduced requirements regarding quarterly visual assessment requirements, and benchmark monitoring. See also Point 9 regarding existing facilities.

Based on the testimony received, it would appear as though an inverse relationship exists between a facilities production levels and the availability of land for the installation of controls (rural, small community facilities). Low production facilities within rural areas are less likely to have complicating factors such as storm sewers which provide\ unchecked conduits to surface waters.

Though the availability of land for the installation of control measures may be considered when determining what is technologically available and economically practicable and achievable in light of best industry practice, the conditions of this permit were prepared in consideration of the protection of Waters of the State. Though well designed and maintained detention basins are a valuable tool for the protection of surface waters, this permit does not mandate the use of such structures, which is not without precedent when evaluating other state programs. Therefore, the permittee has retained a large amount of flexibility in regard to the selection, design, and installation of control measure. The Department routinely recommends the use of preventative control measures, which may not require the use of any additional real estate, and instead focuses on facility procedures and policies, material storage practices, waste handling procedures, among others. These types of non-structural controls can be more effective than installing a treatment device on the end of the discharge. In addition permittees always have the option to request an individual NPDES storm water permit that is tailored to their site and situations.

24) Costs Associated with this Action

The USEPA prepared detailed cost analyses associated with the issuance of the 2008 MSGP. Those analyses are available at http://www.regulations.gov, Docket ID No. OW-2005-0007. The Department will not attempt to reproduce or modify these estimates due to the similarity of the two permits. The differences between the EPA MSGP and the Department's proposed draft should further reduce these estimates. See Question #26.

25) Were there any changes made as the result of public participation prior to the public hearing?

These changes were included to provide additional allowances for Nebraska's industry and our state that USEPA does not provide. These were in response to public participation comments.

- The Department made allowances for portable sources while removing benchmark monitoring for portable sources,
- eliminated the requirement to monitor diffuse discharges leaving the facility as sheet flow,
- eliminated the annual reporting requirement,
- extended the timeline for the initiation of monitoring,
- streamlined the threatened and endangered species review process while removing these requirements from existing sources,
- removed one benchmark parameter from the Sector J facilities.
- Ethanol facilities have been categorized in Sector C

In addition, the Department made positive changes from the previous Industrial Storm Water Permit.

- The Department is removing the eligibility criteria from the No-Exposure Conditional Exemption from Storm Water Permitting, allowing all facilities to qualify if the conditions of No-Exposure are maintained.
- The Department is allowing for records to be maintained in electronic format, so long as records can be made available.
- The Department removed the requirement to maintain a copy of the permit onsite, so long as an electronic copy is available to pertinent staff.
- The proposed general permit provides greater clarity to Industry on what is required.

Sincerely,

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