

Major Proposed Changes to 2014 OKR04

Summary of changes in the draft
OKR04 sent to EPA and in EPA's
comments on the draft.

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EPA 2002 Memorandum

From EPA Memorandum, November 22, 2002, “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs”

“EPA expects that most [water quality-based effluent limits] ... will be in the form of BMPs, and that numeric limits will be used only in rare instances.”

“EPA’s policy recognizes that ...storm water discharges are ... not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges.”

EPA 2010 Memorandum

- “Since 2002, States and EPA have obtained considerable experience in developing TMDLs and WLAs The technical capacity to monitor stormwater and its impacts ...has increased.”
- Where discharges have the reasonable potential to cause water quality problems, permits should contain numeric effluent limitations.
- Measurable Goals should be enforceable provisions.
- PAs should consider BMP numeric benchmarks and monitoring for estimating BMP effectiveness.

This controversial memo was pulled for further consideration.

	Regulated Small MS4s		Regulated Small MS4s
1	Altus	27	Mustang
2	Arkoma *	28	Moore
3	Bartlesville	29	Muskogee
4	Bethany	30	Nichols Hills
5	Bixby	31	Nicoma Park
6	Broken Arrow	32	Noble
7	Catoosa	33	Norman
8	Choctaw	34	Oklahoma County
9	Claremore	35	Oklahoma Dept. of Transportation
10	Comanche County	36	Oklahoma Turnpike Authority
11	Coweta	37	Okmulgee
12	Creek County	38	Owasso
13	Del City	39	Ponca City
14	Edmond	40	Rogers County *
15	Fort Sill Army Base	41	Sand Springs
16	Glenpool *	42	Sapulpa
17	Guymon *	43	Spencer
18	Harrah *	44	Stillwater
19	Jenks	45	Tahlequah
20	Jones *	46	Tinker Air Force Base
21	Logan County *	47	The Village
22	Kiefer *	48	Tulsa County
23	Lawton	49	University of Oklahoma
24	McAlester	50	Wagoner County
25	Miami	51	Warr Acres
26	Midwest City	52	Yukon

Phase II Permittees Under 2005 and 2014 OKR04 Permit

Blue shaded with asterisks are potential new permittees proposed for coverage in 2014.

Once permitted, always permitted.

Latest OKR04 Timeline

This timeline
may change.

July 2014: Draft OKR04 is finalized.

July 2014: ODEQ letters to permittees: 90 days to submit NOIs. New permittees have 180 days.

October 2014: NOI deadline to ODEQ by existing permittees.

Aug - Nov 2014: ODEQ issues Discharge Authorizations to existing permittees.

January 2015: NOI deadline to ODEQ by new permittees.

Aug 2014 – Feb 2015: ODEQ issues Discharge Authorizations to new permittees.

Requirements for New Permittees

- New Permittees will likely be given some latitude , perhaps not as much as original permittees in 2005.
- However, in 2005 ODEQ did not have:
 - *Formal and complex Audit Procedures,*
 - *Well-defined post-construction concepts,*
 - *Abundance of training and resources.*
- Expect less latitude, less flexibility, more scrutiny, but still easier than second-round permittees.
- New permittee SWMPs will be different than second round permittee SWMPs.

Requirements for New Permittees

- Notice of Intent (NOI) Form submittal.
- Decide about 7th MCM option.
- Map of MS4 areas, 303(d), A.R.C., O.R.W., Waters of the State, municipal facilities, etc.
- Certifications and lists of BMPs to protect 303(d), A.R.C. and O.R.W.
- Stormwater Management Program (SWMP) document:
 - *BMPs by MCM and scheduled annually over 5 years (tables).*
 - *Measurable Goals.*
 - *Responsible parties and contact info.*

ODEQ Proposed Major Changes

For the following slides, words in black text are INCOG comments, while words in red are quotes from the new text proposed by ODEQ.

Reasonable Potential to Cause...

I.C.5

SWMP must describe “all necessary” BMPs and other measures that address discharges “or future discharges” that will not cause “or have the reasonable potential to cause” or contribute to exceedance...

Clarifies circumstances to which SWMP applies. Adds a new level of applicability: “reasonable potential”. It is not yet known how this new stipulation will affect MS4 permittees.

Summary Status (Report)

II.A.1.a

Deletes “as an operator of a regulated Small MS4” leaving “you”. Adds: “a summary status of current [SWMP] within the previous permit term” and “an updated” description of your “current [SWMP]”. Also adds: “Authorization under the 2005 Permit will be administratively extended for a period not to exceed 90 days from the effective date of” this permit. See NOI Item #4 below for more details under Part II.A.1.a-b.

The June 2009 draft required a “Final Annual Report”. This “summary status” apparently replaces this earlier “Final Annual Report” requirement. Part II.A.1.a and b describe details of what should be submitted with NOI.

Permit Covers Entire City

II.B.2.b

Added: “For those MS4 cities not located entirely within an UA, your jurisdiction shall cover the entire area within the corporate boundaries of the municipality.”

ODEQ told INCOG that they made this city-wide provision (not just within the city’s UA) to aid in future TMDL implementation. Counties are still UA only, this applies only to cities.

WLAs Become Measurable Goals

III.B

Several changes to the TMDL section: Inserted “or watershed plan in lieu of a TMDL”; “your discharges must meet **any limitations, conditions, or other** requirements of the **wasteload allocation (WLA), load allocation** and/or **TMDL’s** associated implementation plan...” The most significant new requirement is: “You must adopt any WLAs assigned to your discharges specified in the TMDL as measurable goals within the permit.”

The Measurable Goal addition expands the penetration of a TMDL’s calculations into the OKR04 compliance by making TMDL calculations for individual MS4s (if any) become MGs. It is not yet known how this will affect individual MS4 permittees.

Recommendations Not Mandatory

IV.C

“...You are encouraged to consider the information included in “Recommendations” and incorporate them as appropriate, but “Recommendations” are not permit requirements. “

The passage: “Recommendations are not permit requirements” is very important. Part of ODEQ’s reworking of OKR04 was to delete all of the sub-headings called “Rationale” and turned much of those passages into Recommendations. Other “Rationale” passages were made mandatory in the new OKR04.

Priority Areas Now Mandatory

IV.C.3

The new requirement clarification on Dry Weather Field Screening (DWFS) now requires identifying procedures “for locating priority areas” or conducting “ambient sampling to locate impacted reaches.”

Both the priority area text and the ambient sampling alternative were in the 2005 as Rationale. Likewise for several other “Rationale” passages that are now permit requirements.

Verify Compliance and Efforts Made

IV.C.3.a.9

Expanded the IDDE passage on MG evaluation: “Evaluate the appropriateness of your identified BMPs for this minimum control measure. Your evaluation shall verify compliance with permit requirements and more importantly, document that tangible efforts have been made towards achieving your identified measurable goals and reducing the impacts of stormwater runoff from the small MS4. Document the evaluation of your illicit discharge detection elimination program annually as required by Part V.C of this Permit.”

It is not known what ODEQ means to “...verify compliance with permit requirements...” or to “...document that tangible efforts have been made towards... reducing the impacts of stormwater runoff...” The “verify compliance” requirement appears in OKR04 for all 6 MCMs.

Removing LID Barriers

IV.C.5.a.3

Adds a new requirement: “Review local ordinances and regulations, and identify any legal / regulatory barriers to Low Impact Development (LID). Develop a schedule to remove those barriers that prohibit LID practices selected by the MS4, or provide a justification for each barrier not removed.”

ODEQ stated in an OKR04 Work Group meeting 4 years ago that if a local city wanted to retain such things as wider streets, curb and gutters and/or sidewalks for, say public safety or economic reasons, that would be fine, just prepare a written justification for rejecting the LID practice.

Long-Term LID Maintenance and Inspection

IV.C.5.a.4

Modifies existing requirement under 2005's a.4: **“Implement procedures to ensure adequate long-term operation and maintenance of BMPs that are put in place after the completion of a construction project, including inspections of each BMP.”**

This change beefs up local requirements concerning post-construction BMPs including ongoing inspections. Presumably most of these BMPs would be LID.

Educate Developers About LID

IV.C.5.a.5

Added this new requirement: “Participate in an education program for developers and the public about project designs that minimize water quality impacts, including LID strategies. This would coordinate with your public education minimum control measure and your pollution prevention and good housekeeping minimum control measure programs.”

GCSA members can meet most / all of this requirement by virtue of GCSA membership which takes advantage of all of the LID education and outreach activities INCOG does on behalf of its GCSA members.

Various Non-Structural LID Practices

IV.C.5.b

Some new recommendations: These include **promoting BMPs appropriate for the local community** (b.1), **directing growth to protect sensitive areas** (b.2 and same text as 2005 OKR04), **consider adopting LID using local ordinances** (b.3), **creating an inventory of impervious areas** and other hydraulic features, and determine which areas can be retrofitted (b.4), **develop long-term O&M of BMPs** including verification of as-builts and inspection and maintenance (b.7), and **use incentives to encourage interest in LID** (b.8)

These “recommendations” are approximately the same changes that were first proposed by ODEQ in the 2009 OKR04 draft. Most of these reflect ODEQ and EPA emphasis on LID.

Misc. Good Housekeeping Recommendations

IV.C.6.b

There are new Recommendations to develop Spill Response and Prevention Plans; procedures for vehicle and equipment storage; procedures for catch basin inspection, cleaning and repairs; and for sweeping streets, sidewalks and parking lots.

These reflect ODEQ's desire for increasing sophistication of MS4 Good Housekeeping programs.

Definition Changes and Additions

VII.

Definitions have some changes: expands definition for “Construction Site Operator”; adds “Impaired Water”; adds “LID”; adds “Newly Regulated Small MS4”; adds “Outstanding Resource Waters”; adds “Small MS4 Newly Designated after the Date of Permit Issuance”; adds “Stabilization” (both temporary and final); and adds “TMDL”.

These definition expansions reflect the increasing emphasis on addressing TMDLs and 303(d) impairments, and also the dichotomy of having new and existing permittees.

Summary of EPA Comments

Draft OKR04 was sent to EPA October 29, 2013.

EPA comments received January 31, 2014.

EPA's main concerns:

- *Schedules, milestones, documentation, procedures.*
- *TMDL implementation & WLA_MS4's as Measurable Goals.*
- *Bacteria TMDLs: special conditions and BMPs.*
- *SWMP: annual, detailed, procedural, TMDLs, 303(d) / ORW / ARC.*
- *Priority Areas: controls, plans, inspections, in SWMP.*

ODEQ: OKR04 is expected to be final July 2014.

EPA Comments on TMDLs

To ensure compliance with 40 CFR 122.34(e)(1) and 122.44(d)(1)(vii)(B), language at Parts III.B.1 and III.B.2 needs to be modified to or equivalent to "...You **must adopt any WLAs assigned to your discharges specified in the TMDL, or similar targets in the watershed plan,** as measurable goals within the your permit SWMP. The **SWMP must be modified to implement the TMDL within 6 months of the TMDL's approval** or as otherwise specified in the TMDL or watershed plan. " Additionally, to ensure consistency with requirements of 40 CFR 122.34(g)(1), language at Parts III.B.1 and III.B.2 needs to be modified to include "Evaluate the appropriateness of your identified controls for WLA measurable goals annually. Your evaluation shall verify compliance with permit requirements and more importantly document that tangible efforts have been made towards achieving your identified measurable goals and reducing the impacts of stormwater runoff from the small MS4. Document in your SMWP the evaluation of your...program annually (as required by Part V.C of this Permit)."

EPA Comments on Bacteria TMDLs

The BMPs shall, as appropriate, address the following:

1. Sanitary Sewer Systems

- a. Make improvements to sanitary sewers;
- b. Address lift station inadequacies;
- c. Improve reporting of violations; and
- d. Strengthen controls.

“If the pollutant of concern is bacteria, the permittee shall include focused BMPs addressing the below areas, as applicable, in the SWMP and implement as appropriate.”

2. On-site Sewage Facilities (for entities with appropriate jurisdiction)

- a. Identify and address failing systems; and
- b. Address inadequate maintenance of On-Site Sewage Facilities (OSSFs).

3. Illicit Discharges and Dumping

Place additional effort to reduce waste sources of bacteria; for example, from septic systems, grease traps, and grit traps.

EPA Comments on Bacteria TMDLs

4. Animal Sources

Expand existing management programs to identify and target animal sources such as zoos, pet waste, and horse stables.

5. Residential Education

Increase focus to educate residents on:

- a. Bacteria discharging from a residential site either during runoff events or directly;
- b. Fats, oils, and grease clogging sanitary sewer lines and resulting overflows;
- c. Decorative ponds; and
- d. Pet waste.

Bacteria TMDLs were singled out for detailed and specific treatment; not so for other parameters.

New EPA Rulemaking

NRC Stormwater Program Report to EPA

- the current regulatory framework ...has suffered from poor accountability and uncertainty
- EPA's current approach is not likely to produce an accurate picture ..., nor is it likely to control stormwater's contribution to impairing water quality.
- EPA should adopt a watershed-based permitting system that would encompass all discharges -- including stormwater and wastewater.
- watershed-based permits should be centralized with a lead municipality

NRC Report to EPA (cont. 1)

- bringing construction and industrial sites under the jurisdiction of their associated municipalities, (referred to as "integration").
- allow operators of municipal storm sewer systems to act as the first tier of control.
- stormwater management will be ineffective without also considering land use management.
- permit programs could be predicated on rigorous projections of future growth and changes in impervious cover.
- focus less on chemical pollutants and more on the increased volume of water.

NRC Report to EPA (cont. 2)

- The volume of discharges is generally not regulated at all by EPA.
- little account is given to the cumulative contributions of multiple sources and pollutants in the same watershed.
- conserving natural areas, reducing hard surface cover such as roads and parking lots that channel stormwater into waterways, and retrofitting urban areas with features that hold and treat stormwater.

The NRC Report apparently has great influence over EPA's push to develop its new stormwater rules.

EPA's New Stormwater Rule Concepts

More permittees, larger areas covered by permits.

Create federal LID and GI requirements for new development and redevelopment.

Same requirements for all MS4s; no more Phase I or II rules. [No longer being considered?]

Retrofitting storm systems and drainage areas to reduce runoff. [No longer being considered?]

Special stormwater provisions to protect sensitive areas.

From EPA's Stormwater Rule Website

Red text are INCOG Notes and new EPA text.

Rulemaking Considerations

The proposed national rulemaking is considering the following key rulemaking actions:

- Develop performance standards for newly developed and redeveloped sites to better address stormwater management as projects are built **and when it is most cost effective; [added]**
- Explore options for expanding the protections of the municipal separate storm sewer systems (MS4) program; **[no change]** and
- Evaluate additional provisions specific to the Chesapeake Bay watershed. **[no change]**

More EPA Website Text...

Numerous flexibilities are being considered for the implementation of the proposed performance standards and to allow sites to meet the new proposed requirements. Additional information on these flexibilities and the revisions under consideration are provided in the following [presentation \(PDF\)](#) (17 pp, 3.5MB). **[added]**

While EPA still states its intention to publish draft new stormwater rules “soon”, many speculate that they may not do so at all, or the draft rules will be published no sooner than 2015 or beyond. There is pressure from Congress to ensure that the new rules are absolutely necessary and are not unduly burdensome.

More EPA Website Text...

[What was **deleted**]

- Evaluate options for establishing and implementing a municipal program to reduce discharges from existing development; **[this passage was what probably would have triggered “retrofits”]**.
- Evaluate establishing a single set of minimum measures requirements for regulated MS4s. However, industrial requirements may only apply to regulated MS4s serving populations of 100,000 or more; **[no more Phase I or II rules]**.
- Explore options for establishing specific requirements for transportation facilities; and

EPA Concepts to Reduce Flow Volume

1. Removing impervious cover,
2. Disconnecting impervious cover,
3. Increase use of porous surfaces,
4. Attenuate impervious cover using flow-based LID.

EPA's LID and GI approach.