

RESPONSE TO PUBLIC COMMENTS

Arizona Pollutant Discharge Elimination System Program General Permit to Discharge Stormwater from Small Municipal Separate Storm Sewer Systems to Waters of the United States

Permit Number: AZG2016-002

Permit Action: Final Permit decision and response to comments received on the draft Small Municipal Separate Storm Sewer System General Permit for Discharge to Waters of the U.S. public noticed on December 4, 2015

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ADMINISTRATIVE RECORD

The Arizona Department of Environmental Quality (ADEQ) is reissuing the Arizona Pollutant Discharge Elimination System (AZPDES) permit for stormwater discharges from Small Municipal Separate Storm Sewer Systems (Small MS4s) to Waters of the United States by eligible MS4 operators.

This general permit is reissued by ADEQ pursuant to Arizona Administrative Code (A.A.C.), Title 18, Article 9, Parts A and C.

Prior to reissuing this AZPDES permit, existing Small MS4 operators were discharging under ADEQ's 2002 permit. The former permit expired in 2007 and was administratively continued pursuant to A.A.C. R18-9-C903(B).

As part of the process for re-issuing Arizona's Small MS4 general permit, ADEQ implemented a stakeholder process that included a series of meetings to discuss modification to the proposed permit, opportunity for informal comment, as well as a public hearing. The stakeholder process included the following activities:

Meeting with STORM Group

- May 21, 2014

2014 Stakeholder Meetings:

- July 10, 2014
- July 24, 2014
- August 14, 2014
- August 28, 2014
- September 11, 2014
- September 25, 2014

Stakeholder Informal Review and Comment Period

- December 19, 2014 through February 6, 2015

First Public Notice in Arizona Administrative Register

- July 17, 2015 (A.A.R. Volume 21 / Issue 29)

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2015 Stakeholder Meeting

- October 15, 2015

Formal Public Hearing

- January 20, 2016

Second Public Notice in Arizona Administrative Register

- December 4, 2015 (A.A.R. Volume 21 / Issue 49)

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Pursuant to A.A.C. R18-9-A908(E)(1), the following is ADEQ’s response to significant comments received in response to the December 4, 2015 Public Notice of the draft permit. The “comment” column includes a narrative of the comment received, the applicable permit part, and the person(s) who submitted the comment. The “response” column includes ADEQ’s response to the comment and whether or not a change was made to the permit.

COMMENT	RESPONSE
<p>General Comment 1:</p> <p><i>Various commenters expressed their concern that various conditions, limitations, and requirements included in draft permit exceeds ADEQ’s authority under the Clean Water Act and the Arizona Limiting Statutes (A.R.S. 49-104.A.17 and 49-255.01.B.).</i></p> <p><i>Commenters further suggest that the 6 minimum control measures established in 40 CFR 122.34 are, in effect, the permit and that any condition, limitation, or requirement included in the draft permit for the 6 minimum control measures is an exceedance of ADEQ’s authority.</i></p> <p>-Gust Rosenfeld, PLC -Dickinson Wright, PLLC -City of Chandler -Mohave County -Pima County</p>	<p>EPA clarified that the Small MS4 program is not a “permit by rule.” EPA notes that “Under this approach, a rule would spell out the specific requirements for discharges and impose those restrictions and conditions that would otherwise be contained in a NPDES permit.”</p> <p>Rather, EPA established the Small MS4 permitting framework within the context of the NPDES regulations by establishing the six minimum control measures for Small MS4s and that the permitting authority is to establish conditions, compliance schedules, requirements, and limitations in the permit.</p> <p>EPA further clarified that “In issuing the general permit, the NPDES permitting authority will establish requirements for each of the minimum control measures.”</p> <p>ADEQ maintains the draft permit is consistent with the regulatory framework by including permit limitations, requirements,</p>

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	<p>and conditions for each of the six minimum control measures, and that the Small MS4 operator will identify BMPs and measurable goals in their Notice of Intent (NOI) for ADEQ to review and evaluate.</p> <p>(Federal Register, Vol. 64, No. 235, Wednesday, December 8, 1999)</p> <p>ADEQ also notes that Small MS4 operators have an alternative to seeking coverage under the general permit. Alternatively, regulated Small MS4s may choose to apply for an individual municipal stormwater permit that ADEQ would evaluate and, if appropriate, develop and issue specifically to the Small MS4 operator (see 40 CFR 122.33(b)(2)).</p>
<p>General Comment 2:</p> <p>The city of Chandler made several comments throughout the draft permit regarding language specifying the requirement to reduce the discharge of pollutants <i>from</i> the MS4. For example, the city of Chandler references permit parts 3.1, 5.0, 6.0, 6.1, 6.2, 6.3, 6.4.1, 6.4.3, 6.4.3.1, 6.4.3.4, 7.1.1. Example language cited by the city of Chandler is as follows:</p> <p><i>“The permittee shall develop, implement, and enforce a SWMP that is designed to reduce the discharge of pollutants <u>from</u> the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The program shall be documented and available for review by ADEQ, U.S. EPA, and interested persons.”</i></p> <p><i>40 CFR §122.34 only references discharges <u>into</u> the MS4.</i></p> <p><i>All references within this section and the entire permit draft referring to sources and discharges <u>from</u> its MS4</i></p>	<p>No changes were made to the permit in response to this comment.</p> <p>The Small MS4 general permit authorizes persons meeting eligibility requirements to discharge pollutants <i>from</i> its storm sewer system, when done in compliance with permit conditions.</p> <p>Pursuant to 40 CFR 122.34(a), operators of regulated small MS4s must “...reduce the discharge of pollutants <i>from</i> your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.”</p> <p>The Small MS4 operator must fully implement permit conditions, including the six minimum control measures in part 6, including prohibiting illicit discharges <i>into</i> the storm sewer system.</p>

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<p><i>should be removed, so as to not be more stringent than the federal requirements.</i></p> <p>-City of Chandler</p>	
<p>General Comment 3:</p> <p>During the January 20, 2016 Public Hearing held in the matter of ADEQ’s draft Small MS4 general permit, two parties made the following comments:</p> <p><i>Parts of the permit are not consistent with state law and, therefore, commenters cannot recommend to supervisors that the MS4 sign on to the permit if issued in its current draft.</i></p> <p><i>Commenters also expressed their voices were not heard throughout the draft permit development process.</i></p> <p><i>The draft permit includes conditions and requirements that are not consistent with the Clean Water Act.</i></p> <p>-David West, Mohave County -Elise Moore, Pinal County</p>	<p>Although not required by the Clean Water Act or state or federal rule, ADEQ invited stakeholders to participate in the process to reissue ADEQ’s Small MS4 general permit.</p> <p>As part of this interactive process ADEQ held several meetings over the course of nearly two years.</p> <p>ADEQ also provided various opportunities for stakeholders to submit formal and informal written comments. As a result of the stakeholder process, the draft permit was modified throughout the process to address stakeholder concerns and still maintain environmental protection.</p> <p>ADEQ disagrees with commenters that the draft permit is more stringent than the Clean Water Act and exceeds ADEQ’s regulatory authority.</p> <p>The Clean Water Act, the NPDES regulations, as well as state rules specify that AZPDES “...general permits shall contain...The appropriate permit requirements, permit conditions, and best management practices, and measurable goals for MS4 general permits....”</p> <p>See also response to General Comment 1, above.</p>

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<p>General Comment 4:</p> <p>Subpart 10.35 – Receiving water is not defined in 40 CFR § 122.2. ADEQ should refrain from using terms such as “receiving waters” and “surface waters.” The appropriate term is “Waters of the U.S.”</p> <ul style="list-style-type: none"> - Gust Rosenfeld, PLC - Dickinson Wright, PLLC 	<p>Permit part 10 revised to clarify “receiving water” means “waters of the U.S.”</p> <p>The terms “receiving water” and “surface water” are used to mean “waters of the U.S.” in both state and federal rules to promote readable regulations.</p>
<p>General Comment 5:</p> <p>Some commenters suggest that ADEQ is delegating regulatory functions to Small MS4 operators that would be more appropriately performed by ADEQ personnel. For example:</p> <p><i>Non-Delegation of Regulatory Functions to Town – On a functional level, the purpose and necessary effect of the Permit and some of its sections (including Section 6.4.3.11) appears to be to effectively delegate to personnel of the Town the responsibility to perform certain regulatory functions that would be more properly performed by ADEQ personnel and to impose this burden without compensation to the Town. Such an uncompensated mandate or delegation is prohibited by statute.</i></p> <p><i>A.R.S. § 49-107 places clear statutory limits on the authority of ADEQ to delegate functions to a municipality or other local environmental agency. Specifically, the “director may delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers or duties which the director believes can be competently, efficiently and properly performed by the local agency <u>if the local agency accepts the delegation and agrees to perform the delegated functions, powers and duties according to the standards of performance required by law and prescribed by the director.</u>” (Emphasis supplied.) (See A.R.S. § 49-107.A.) Absent such acceptance by</i></p>	<p>No changes were made to the permit.</p> <p>Small MS4 operators have a regulatory requirement under the Clean Water Act to <u>develop, implement, and enforce</u> a stormwater management program designed to reduce the discharge of pollutants <u>from</u> its MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate requirements of the CWA.</p> <p>It is ADEQ’s statutory duty to administer the AZPDES program consistent with state and federal law, including issuing and enforcing Clean Water Act permits. The draft permit does not delegate ADEQ legal authority or responsibility to persons seeking coverage under the permit. Rather, it affirms permittees legal requirement to develop, implement, and enforce a program to detect and eliminate illicit discharges into the permittees small MS4.</p>

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<p><i>the local agency of the delegation, delegation by ADEQ is not authorized.</i></p> <p>- Dickinson Wright, PLLC</p>	
<p>General Comment 6:</p> <p><i>On January 6, 2016 (81 FR 415), EPA provided notice of proposed revisions to the small MS4 regulations related to permitting authority review of BMPs proposed by a permittee to comply with a general permit and opportunities for public review of such BMPs; the proposal is in response to a 2003 Ninth Circuit decision. Although EPA’s January 2016 notice is just a proposal, it provides some useful insights into this matter, and the ADEQ permit and fact sheet for small MS4s need to address the fundamental issues. In 2004 EPA also provided a guidance memorandum (which is available at: http://www3.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf) concerning how to respond to the 2003 decision.</i></p> <p><i>Section C.2 of the fact sheet indicates that ADEQ will make NOIs available for public review and comment on the ADEQ website. The fact sheet should also clarify what sort of review/approval ADEQ intends for the NOIs and the BMPs that are submitted with the NOIs. The 2004 EPA memo also stresses the importance of providing an opportunity for a public hearing when requested, and ADEQ should ensure that this is addressed as well.</i></p> <p>- U.S. EPA, R9</p>	<p>ADEQ will post NOIs and the BMPs included in the NOIs on its website. Once EPA’s rules are final ADEQ will update Arizona Public comment and hearing rules accordingly for small MS4s.</p>
<p>General Comment 7:</p> <p><i>EPA Region 9 recommends that ADEQ consider adding requirements addressing the following two emerging Region 9 priorities for the stormwater program and for NPDES permits in general – requirements for a trash management plan and an</i></p>	<p>The fact sheet was revised to include a discussion regarding trash and the requirement to address trash as a pollutant.</p>

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<p><i>asset management plan. We did not find any such requirements in the latest draft permit, and we reiterate our recommendation. Additional discussion of this matter, and our reasons for the recommendation can be found in our letter of August 13, 2015.</i></p> <p>- U.S. EPA, R9</p>	<p>Permittees are required by the permit to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and satisfy the appropriate requirements of the Clean Water Act.</p> <p>The term “pollutant” includes solid waste, garbage, and any solid substance (trash, litter, etc.).</p>
<p>1.1 Permit Area</p> <p><i>The descriptions of the categories of permittees in Part 1.1 of the latest draft permit do not fully encompass the list of small MS4s found in the fact sheet. For example, the fact sheet indicates that cities such as Sedona, Camp Verde and Fountain Hills would be covered by the permit, but these cities are not in urbanized areas and do not fall within any of the categories included in the permit. Similarly, Part 1.1.c of the draft permit suggests that non-traditional MS4s (such as the University of Arizona) would only be covered if they were designated by the director after the permit is issued, rather than being covered as an existing MS4 on the permit effective date (which we believe is your intent). As such, the descriptions of the categories of small MS4s in Part 1.1 should be revised to fully and accurately describe the universe of MS4s that ADEQ intends to be covered by the permit.</i></p> <p>- U.S. EPA, R9</p>	<p>All existing permittees (including non-traditional and previously designated Small MS4s) are covered under the reissued permit without additional designation by the director.</p>
<p>2.1.1</p> <p><i>In our earlier comments, we had recommended that the fact sheet identify all TMDLs, if any, with wasteload allocations (WLAs) applicable to the permittees covered by the permit. If there are no applicable WLAs at this time, the fact sheet should so state.</i></p>	<p>The permit was revised to require operators submitting a Notice of Intent to include information on impaired waters and waste load allocations, if applicable.</p>

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<p><i>Although the most recent fact sheet does not provide such a list, the NOI requirements of the latest draft permit do require the identification of any impaired waters that receive discharges from a given MS4. We recommend that the NOI also require information concerning WLAs (if any) applicable to the MS4, as well as information describing the BMPs the permittee would implement to comply with the WLAs. Similar information is already required concerning BMPs proposed to comply with the minimum control measures in Part 6.4 of the permit.</i></p> <p align="center">- U.S. EPA, R9</p>	<p>Identifying TMDLs and WLAs in the permit is potentially problematic as these listings can be updated during the permit term. Permittees must annually evaluate their stormwater management program, including the status of receiving waters and modify their program accordingly. Including compliance with approved TMDLs and WLAs.</p>
<p>2.1.1.i.</p> <p><i>40 CFR 122.34(b)(3)(ii)(A) does not require the latitude and longitude of outfalls, only that a map be developed and implemented that shows the location of outfalls and the names and locations of all waters of the United States (currently defined as waters listed at A.A.C. R18-11, Appendix B), that receive discharges from those outfalls. While it is possible to obtain the latitude and longitude of outfalls, this requirement imposes unnecessary work effort on our already limited resources.</i></p> <p align="center">- City of Peoria</p>	<p>The requirement to include the latitude and longitude associated with outfalls that discharge to a receiving water listed in A.A.C. R18-11, Appendix B, was revised as follows:</p> <p><i>Outfall name or identification of outfalls identified in “i,” above</i></p>
<p>2.1.2 Obtaining Permit Coverage</p> <p><i>This subpart requires existing MS4s who wish to maintain coverage under the new Permit to submit a new NOI within 90 days. In order to meet federal requirements an NOI must include a list of the BMPs to be implemented and measurable goals for each control measure. Development of BMPs and measurable goals is a significant undertaking, requiring the investment of resources, including personnel and financial. The MS4s are requesting 180 days for submittal of the new NOI. This will allow the MS4 time to identify and plan for the</i></p>	<p>The permit was revised to specify existing and new permittees must submit a complete and accurate Notice of Intent within 180 days of effective date of the permit.</p> <p>This change resulted in revisions to timeframes throughout the permit that are tied to the NOI submission deadline.</p>

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<p><i>resources needed to satisfy this subpart. While ADEQ extended the submittal by an additional 15 days, from 45 days in the July 2015 draft permit to 90 days in the current draft, the additional 15 days is still wholly insufficient and as such, constitutes a hardship on the MS4. The requested 180 days is reasonable and will allow sufficient time for the Permittees to plan for and implement the requirements of this subpart.</i></p> <ul style="list-style-type: none"> - Gust Rosenfeld - Dickinson Wright 	<p>Additionally, to minimize confusion regarding timeframes associated with “permit issuance” and “effective date of permit,” references to “permit issuance” were deleted and revised to “effective date of permit” throughout the permit.</p>
<p>3.1 Establish Legal Authority</p> <p><i>City staff are concerned that a total of 24 months does not provide sufficient time to review, revise, adopt and implement City ordinances and other regulatory mechanisms.</i></p> <p><i>This section establishes a time frame of six months to focus solely on establishing a schedule for revising relevant ordinances and other regulatory mechanisms.</i></p> <p><i>The City suggests that the deadline for reviewing, revising, adopting and implementing City ordinances and regulatory mechanisms be extended to 30 months from the effective date of the permit instead of the 24 months detailed in the draft permit. The additional six months will provide Small MS4s with sufficient time to focus on preparing a schedule that outlines the review and establishment of a schedule of relevant ordinances and regulatory mechanisms, followed by 24 months to complete the additions and revisions of relevant ordinances and regulatory mechanisms.</i></p> <ul style="list-style-type: none"> - Gust Rosenfeld - Dickinson Wright 	<p>Part 3 of the permit was renamed “Stormwater Program Enforcement.” The compliance timeframes were modified based on the 180 day timeframe to submit a complete and accurate Notice of Intent, but do not extend timeframes from the 2015 draft.</p> <p>The draft permit included in the July 2015 Public Notice established a timeframe of 18 months. The October 2015 draft permit extended the timeframe to 24 months. Establishing ordinances and other regulatory mechanisms are key components to the MS4’s ability to successfully implement requirements of some of the six minimum control measures. For example, the illicit discharge detection and elimination measure requires the MS4 to establish legal authority to prohibit illicit discharges to the storm sewer system, which can be difficult if relevant codes/ordinances or other mechanisms are not in place to support the program.</p> <p>The requested 30 months (2.5 years) to adopt and implement codes/ordinances or other mechanisms to prohibit illicit discharges is over half of the 5 year permit</p>

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	<p>term and impacts the MS4’s ability to regulate (prohibit) illicit discharges to the storm sewer system.</p> <p>Additionally, pursuant to permit part V.B of ADEQ’s 2002 Small MS4 permit, existing permittees were required to establish legal authority. The reissued permit is consistent with federal rules and ADEQ’s 2002 Small MS4 general permit regarding requirements for establish legal authority. The reissued permit requires existing permittees to evaluate their existing legal authority to identify any gaps that may exist, and revise as necessary.</p> <p>See also responses to 6.4.3.8, 6.4.3.11, 6.4.4.1</p>
<p>3.2 Legal Authority</p> <p>Military bases are unique from traditional municipalities and do not have all the same legal authorities held by traditional municipalities. The DoD requests the word “federal” be inserted into subparts 3.2g (Monetary Penalties), 3.2h (Civil/Criminal Penalties), and 3.2i (Injunctive Relief).</p> <p>- Department of Defense</p>	<p>This permit part was revised as suggested.</p> <p>Additional, due to other modifications to the list in Part 3.2, the numbering in the list shifted.</p>
<p>3.2(e) Legal Authority Requirements</p> <p><i>If not already developed, the permittee must establish and exercise legal authority to comply with this permit. To be considered adequate, this legal authority must, at a minimum, address the following:</i></p> <p><i>(e) Authority to Inspect – To the extent allowed under State and local law, the permittee must have the authority to enter private property for the purpose of</i></p>	<p>This permit provision was revised as follow:</p> <p>a. To the extent allowed under State law, the permittee must have methods to enter private property for the purpose of inspecting at reasonable times any facilities, equipment, practices, or operations related to stormwater discharges to determine whether there is compliance with local stormwater control</p>

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<p><i>inspecting at reasonable times any facilities, equipment, practices, or operations related to stormwater discharges to determine whether there is compliance with local stormwater control ordinances/standards or requirements in this Permit;</i></p> <p><i>This provision is problematic for multiple reasons. As a threshold matter, the language purporting to require the permittee to “develop legal authority” is unreasonably vague (and essentially unintelligible). The notion that a municipality, the legal authority of which is limited as a matter of law to authority granted expressly or by necessary implication by statute, can somehow “establish” legal authority to act appears to reflect a fundamental misconception about the nature of municipal permittees and the scope of matters that such a permittee has the power to accomplish. ADEQ, in any case, has no legal authority to effectuate any expansion of municipal jurisdiction, as that function is reserved for the Legislature.</i></p> <p><i>In any event, this provision, at least as drafted, suffers from additional shortcomings: (i) it internally contradicts itself and (ii) the scope of this provision is more stringent than the corresponding federal regulation and exceeds what is required under the Clean Water Act.</i></p> <p><i>The permittee would purportedly be required by the provision to have certain “authority” but only “to the extent allowed under State and local law....” If the permittee is a municipal corporation (as many MS4s are), the already-existing ordinances of the municipal corporation are themselves law. The “authority to inspect” is thus limited to those types of inspections permitted by the municipal corporation’s own local laws, and no provision requires a change in these laws. The provision also does not resolve the question of what must be done if the permittee’s own laws do not allow the full breadth of the “authority to inspect” anticipated by the provision.</i></p>	<p>ordinances/standards</p> <p>Cities generally have legal authority granted to them in their municipal charter. Small MS4 counties were given statutory authority to implement the MS4 program (see A.R.S. §49-371 and 372).</p>
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<p><i>The provision also violates A.R.S. § 49-255.01, which prohibits ADEQ from adopting requirements that are more stringent than or conflict with the Clean Water Act and regulations enacted pursuant thereto. The requirements for the “authority to inspect” exceed the requirements of permittees found in the federal rules and statutes, including without limitation 40 CFR 122, et seq. and 33 U.S.C. 1342 (requiring that authorized state programs, and not permittees, have the same authority to inspect, monitor, enter, and require reports as section 308 of the Act).</i></p> <p>- Gust Rosenfeld</p>	
<p>3.3 Enforcement Response Plan</p> <p><i>This section currently requires that an Enforcement Response Plan (ERP) be developed and implemented within 18 months of obtaining permit coverage.</i></p> <p><i>The City feels that the deadline for developing and implementing the Enforcement Response Plan (ERP) should be extended to 30 months from the effective date of the permit to coincide with the requested deadline for revisions to relevant ordinances or regulatory mechanisms in Section 3.1, which is currently 24 months of the effective date of the permit. The ERP cannot be developed, completed and implemented prior to the requirement in Section 3.1.</i></p> <p><i>An alternate time frame for implementation of the ERP could be established following completion (adoption) of the additions and revisions to relevant ordinances and regulatory mechanisms. Example: The ERP must be developed and implemented within 24 months following the completion of the requirements detailed in Section 3.1, related to additions or revisions to relevant ordinances or regulatory mechanisms.</i></p> <p>- City of Chandler</p>	<p>Part 3.3 of the permit was revised to specify the Enforcement Response Plan (ERP) be completed within 24 months to align with the requirement in Part 3.1 to have codes, ordinance, or other mechanism adopted and implemented within 24 months.</p> <p>To successfully implement and enforce codes, ordinances, or other mechanisms, the regulated small MS4 must have standard work (ERP) to enforce local regulations/prohibitions for such things as illicit discharges. The ERP provides the MS4 and those who are responsible for inspection/enforcement a clear process to efficiently eliminate illicit discharges.</p> <p>The requested 24 months after the completion of requirements in Section 3.1 potentially delays development and implementation of the ERP to year 4 of the 5 year permit term. The adoption of codes, ordinances, or other mechanisms and the development and implementation of the ERP should be concurrent to maximize effectiveness.</p>

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<p>4.2 Storm Sewer System Mapping – Existing Permittees</p> <p><i>Twelve (12) months should be allowed for storm sewer system mapping updating to include areas added as a result of the most recent Decennial Census. The previous census resulted in almost doubling the jurisdictional area of some Permittees, such as Maricopa County. Should this occur again, six months is not a reasonable time frame for adequate system mapping.</i></p> <ul style="list-style-type: none"> - Gust Rosenfeld 	<p>Part 4.2 of the draft permit was revised to allow up to 12 months to complete mapping in new areas (annexed, resulting from more recent census, etc.).</p>
<p>5.1(a) Stormwater Management Program</p> <p><i>Subpart 5.1(a) requires the location of outfalls that discharge to Waters of the U.S. It is not possible to provide this information until after the mapping function has been completed. This requirement should be revised so that the submission of the outfall location(s) is not required until the mapping is completed.</i></p> <ul style="list-style-type: none"> - Gust Rosenfeld - Dickinson Wright 	<p>No changes were made to the permit in response to this comment.</p> <p>The draft permit requires only those outfalls that discharge to a water listed in Arizona Administrative Code, Title 18, Chapter 11, Appendix B, to be included on the NOI. New permittees are given additional time to map all additional outfalls.</p>
<p>Part 5.1(g)</p> <p><i>Limit Analytical Monitoring to Section 7.0. Analytical Monitoring should only be required when an MS4 discharges to impaired waters. ADEQ should not require Analytical Monitoring of outfalls that are properly maintained and where no impairment is recorded or documented. Conducting Analytical Monitoring on outfalls that discharge to non-impaired waters is a poor use of the Permittees’ limited resources.</i></p> <ul style="list-style-type: none"> - Gust Rosenfeld, PLC - Dickinson Wright, PLLC 	<p>Permit part 5.1(g) was revised to clarify that the analytical monitoring program is primarily associated with impaired waters, not-attaining waters, and Outstanding Arizona Waters. A Sampling and Analyses plan is required to be included with the SWMP if the permittee discharges to any of these waters.</p> <p>ADEQ disagrees, however, that analytical monitoring should be limited to discharges to impaired waters. As specified in part 7.0, ADEQ may notify permittees on a case-by-case basis if analytical monitoring is</p>

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	<p>required for discharges other than to an impaired water or Outstanding Arizona Water. In the event ADEQ determines analytical monitoring is required, ADEQ will notify the permittee in writing and include the reason(s), parameters, frequency, and related criteria.</p>
<p>Part 5.1.g.</p> <p><i>Clarify “the monitoring for illicit discharges” initially refers to visual observation, not necessarily analytical monitoring. The permittee’s response would be to determine and eliminate the source of the discharge. Analytical monitoring would only be employed, if deemed necessary by the permittee, to assist in identifying the source.</i></p> <p align="center">- City of Peoria</p>	<p>Part 5.1(g) was revised to clarify that analytical monitoring is not necessarily required for all illicit discharges. Permittees should have a sampling and analysis plan in place to aid in decision making as to when analytical monitoring will be conducted as well as what parameters would be included in the event analytical monitoring is determined to be appropriate or necessary.</p>
<p>6.1 Water Quality Based Effluent Limitations</p> <p><i>This subpart includes provisions to ensure that discharges from a permittee’s small MS4 does not cause or contribute to an exceedance of surface water quality standards, in addition to requirements to reduce the discharge of pollutants to the maximum extent practicable. While Section 402(p)(3)(iii) of the Clean Water Act does allow for the imposition of additional measures to protect water quality any such measures should be the result of an assessment based on TMDL or equivalent analysis that determines sources and pollutants of concern. 40 CFR 122.34, Notice of Final Rule 64 FR 68753 December 8, 1999. The statement in subpart 6.1 contains no such limitation and should be clarified.</i></p> <p>- Gust Rosenfeld, PLC - Dickinson Wright, PLLC</p>	<p>No changes were made to the permit in response to this comment.</p> <p>ADEQ disagrees with commenter’s suggestion that additional measures to protect water quality should be limited solely as a result of an assessment of a TMDL or equivalent analysis.</p> <p>As described in 40 CFR 122.34, Notice of Final Rule 64 FR 68753, “...small MS4 permittees should modify their programs if and when available information indicates that water quality considerations warrant greater attention or prescriptiveness in specific components of the municipal program. If the program is inadequate to protect water quality, including water quality standards....”</p>

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**6.1 Water Quality Based Effluent Limitations, and
6.2 Surface Water Quality Standards**

Combining subparts 6.1 and 6.2 would clarify the requirement that additional provisions may be required based on water quality concerns. It should be stated explicitly in the Permit that the Maximum Extent Practicable (“MEP”) is sufficient to meet water quality standards and is met by the BMPs. Putting it in the fact sheet is not sufficient and might be the basis for litigation against the municipalities that apply for coverage under the Permit. Language should be added back (from AZG2002-002) into subpart 6.2 that lists requirements that ADEQ had to consider to determine if a discharge from an MS4 was significant and “significant contributor” language should be reverted to 40 CFR 122.36(b)(3)(iii). The following language should be added to subpart 6.2

“When making the determination if a discharge from the MS4 is a significant contributor, the director (ADEQ or EPA) shall consider:

- i. The location of the discharge with respect to waters of the United States,*
- ii. The size of the discharge,*
- iii. The quantity and nature of the pollutant discharged to waters of the United States,*
- iv. And any other relevant factor.”*

In this added language from AZG2002-002, clarification is needed as to the size of the discharge and the quantity of the pollutants.

**- Gust Rosenfeld, PLC
- Dickinson Wright, PLLC**

No changes were made to the permit in response to this comment.

The referenced rule citation, 40 CFR 122.36 (b)(3)(iii) [*sic*], addresses discharges “...into your Small MS4.” This rule requirement requires small MS4 operators to prohibit non-stormwater discharge *into* the storm sewer system, but provides flexibility to operators to allow certain non-stormwater discharges, provided they are not a significant contributor or pollutants.

Parts 6.1 and 6.2 address discharges *from* the storm sewer system. The Small MS4 operators must “...develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate requirements of the Clean Water Act.”

6.2 Surface Water Quality Standards

This section states “If the permittee discovers, or is otherwise notified by ADEQ or U.S. EPA, that a discharge from the MS4 is causing or contributing to

No changes were made to the permit in response to this comment.

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<p><i>an exceedance of an applicable surface water quality standard, the permittee shall expand or better tailor its BMPs within the scope of the six (6) minimum control measures in Part 6.4 to achieve progress toward attainment of surface water quality standards.”</i></p> <p><i>To assure compliance with permit limitation, ADEQ may require the permittee to conduct analytical monitoring and will provide notice to the permittee in writing (see also Part 5.1(g)).</i> <i>40 CFR §122.34 only references discharges <u>into</u> the MS4.</i></p> <p><i>All references within this section and the entire permit draft referring to sources and discharges <u>from</u> its MS4 should be removed, so as to not be more stringent than the federal requirements.</i></p> <p align="center">- City of Chandler</p>	<p>Pursuant to 40 CFR 122.34(a), Small MS4 operators must “...develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants <u>from</u> your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.”</p>
<p>6.2 Surface Water Quality Standards</p> <p><i>Limit Analytical Monitoring to Section 7.0. Analytical Monitoring should only be required when an MS4 discharges to impaired waters. ADEQ should not require Analytical Monitoring of outfalls that are properly maintained and where no impairment is recorded or documented. Conducting Analytical Monitoring on outfalls that discharge to non-impaired waters is a poor use of Permittees’ limited resources.</i></p> <p>- Gust Rosenfeld, PLC - Dickinson Wright, PLLC</p>	<p>No changes were made to the permit.</p> <p>ADEQ disagrees that analytical monitoring should be limited to discharges to impaired waters. As specified in part 7.0, ADEQ may notify permittees on a case-by-case basis if analytical monitoring is required. In the event ADEQ determines analytical monitoring is required, ADEQ will notify the permittee of the reason/need for analytical monitoring, the parameter(s), frequency, reporting, and related requirements.</p> <p>Conditions in which ADEQ may require a Small MS4 permittee to conduct analytical monitoring might include evidence of pollutants in municipal stormwater discharges above applicable water quality standards, illicit discharges from the MS4,</p>

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	<p>and other conditions that have the potential to adversely impact human health or the environment.</p>
<p>6.4.3 Illicit Discharge Detection and Elimination (IDDE) Program</p> <p><i>The permittee shall implement an IDDE program to systematically find and eliminate sources of non-stormwater to and from its municipal separate storm sewer system and to implement procedures to prevent illicit connections and discharges. The IDDE program shall be recorded in a written document. The IDDE program shall include each of the elements described in subpart 6.4.3.8 (a through c), unless the permittee provides a written explanation within the IDDE program as to why a particular element is not applicable to the permittee. For existing permittees, the written IDDE program shall be completed within six (6) months of the effective date of this permit. For new permittees, the written IDDE program shall be completed within one (1) year of the effective date of the permit. The permittee shall implement the IDDE program in accordance with the goals and milestones set forth in Parts 5.0 and 6.4.3.</i></p> <p><i>This provision focuses on enacting new requirements regulating illicit discharges from the MS4. This is both more stringent than and inconsistent with the federal rule that seeks to stop illicit discharges to the MS4. See 40 CFR 122, et seq.; 40 CFR 122.26; 40 CFR § 122.34(b)(3)(ii) (requiring only that that the operator of the MS4 develop and implement a plan to detect and address non-storm water discharges to the MS4). The provision as drafted violates A.R.S. § 49-255.01, which prohibits ADEQ from adopting requirements that are more stringent than or conflict with the Clean Water Act and regulations enacted pursuant thereto. Inclusion of such a provision in the proposed general permit would exceed the lawful authority of ADEQ.</i></p> <p>- City of Chandler</p>	<p>The term “from” was removed from part 6.4.3 to read consistent with the illicit discharge detection and elimination minimum control measures rule requirement.</p>

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<p>- City of Prescott - Gust Rosenfeld, PLC - Dickinson Wright, PLLC</p>	
<p>6.4.3.5 Eliminating Illicit Discharges</p> <p><i>Paragraph 3: The permittee shall include in the annual report the following information: the location of the illicit discharge and its source(s), when known; a description of the discharge; <u>estimated illicit discharge duration</u>; the method of discovery; date of discovery; date of elimination; mitigation or enforcement action; responsible person (if known); and <u>estimated volume</u>.</i></p> <p><i>Determining the estimated duration and volume of a discharge is very difficult to establish and not necessary. Such information does not assist in eliminating the discharge.</i></p> <p><i>40 CFR §122.34(3) does not reference or require the estimated duration or volume of a discharge. References to the estimation of duration and volume should be removed from the draft permit, so as to not be more stringent than the federal requirements.</i></p> <p><i>The goal of this control measure is to detect and eliminate discharges.</i></p> <p>- City of Chandler</p>	<p>No changes were made to the permit in response to this comment.</p> <p>Estimated illicit discharge duration and estimated volume are key metrics when assessing an illicit discharge and potential environmental and human health impacts downstream. ADEQ appreciates that it may be difficult to accurately determine duration and volume, particularly with intermittent illicit discharges. To that end, the permit specifies that the Small MS4 operator <i>estimate</i> the duration and volume.</p> <p>ADEQ maintains the draft permit is consistent with the regulatory framework by including permit limitations, requirements, and conditions for each of the six minimum control measures, and that the Small MS4 operator will identify BMPs and measurable goals in their Notice of Intent (NOI) for ADEQ to review and evaluate.</p> <p>(Federal Register, Vol. 64, No. 235, Wednesday, December 8, 1999)</p> <p>ADEQ also notes that Small MS4 operators have an alternative to seeking coverage under the general permit. Alternatively, regulated Small MS4s may choose to apply for an individual municipal stormwater permit that ADEQ would evaluate and, if appropriate, develop and issue specifically to the Small MS4 operator (see 40 CFR 122.33(b)(2)).</p>

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<p>6.4.3.6 Non-Stormwater Discharges</p> <p><i>This section states that “The non-stormwater discharges identified in Part 1.3.2 do not need to be addressed as an illicit discharge unless it is determined by the permittee that any of these sources is a significant contributor of pollutants. Non-stormwater discharges <u>from</u> the MS4 that cause or contribute to a violation of a surface water quality standard where the permittee fails to take action to eliminate the discharge of pollutants constitutes a permit violation.”</i></p> <p><i>40 CFR §122.34 only references discharges <u>into</u> the MS4.</i></p> <p><i>All references within this section and the entire permit draft referring to sources and discharges <u>from</u> its MS4 should be removed, so as to not be more stringent than the federal requirements.</i></p> <p>- City of Chandler</p>	<p>No changes were made to the permit.</p> <p>Pursuant to 40 CFR 122.34(a), Small MS4 operators must “...develop, implement, and enforce a storm water management program to reduce the discharge of pollutants <u>from</u> your MS4 to the maximum extent practicable....”</p> <p>The illicit discharge detection and elimination minimum control measure requires MS4 operators to effectively prohibit unpermitted non-stormwater discharges <u>to</u> its storm sewer system.</p>
<p>6.4.3.8 Visual Outfall Monitoring</p> <p><i>This section states that “The permittee shall develop, implement, and maintain dry and <u>wet</u> weather outfall screening programs to identify, monitor and eliminate illicit discharges; and to assure compliance with effluent limitations in this permit.”</i></p> <p><i>Conducting wet weather outfall screening will more often than not create a hazardous condition for MS4 staff, including slips, falls and vehicular traffic hazards. The majority of the outfalls are located within the Arizona Department of Transportation (ADOT) jurisdiction and are not accessible to City staff. We currently conduct most of our dry weather field screening inspections at the closest City owned structure upstream of the ADOT outfalls. The majority of such structures are located within or in very close proximity to arterial streets which creates an unsafe condition for staff during precipitation events. Additionally, such activity will require</i></p>	<p>The term “wet weather monitoring” was replaced with “visual stormwater discharge monitoring” throughout the permit to better reflect the monitoring requirements.</p> <p>Additionally, the permit was revised to specify that permittees identify a minimum of five (5) outfalls to be included in the visual stormwater discharge monitoring program, rather than requiring selection based on substantially identical outfalls.</p> <p>The five (5) outfalls must be representative of the Small MS4’s stormwater discharge and, to the extent applicable, include various land use categories (industrial, residential, commercial, etc.).</p> <p>Small MS4s that have less than five (5) outfalls must include all outfalls in their</p>

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response by at least two employees due to the perceived hazard, which will take them away from their assigned duties, which will ultimately result in a financial burden in terms of loss of production and corresponding reassignment of staff.

40 CFR §122.34(3) does not reference or require wet weather outfall screening. References to wet weather outfall screening should be removed from the draft permit, so as to not be more stringent than the federal requirements.

40 CFR § 122.34(b)(3)(iv) states “EPA recommends that the plan to detect and address illicit discharges include the following four components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and assessment. EPA recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize, and facilitate public reporting of illicit connections or discharges, and distribution of outreach materials.”

- **Dickinson Wright, PLLC**
- **City of Chandler**
- **City of Peoria**
- **City of Prescott**

visual stormwater discharge monitoring program.

A key requirement to all NPDES/AZPDES permits is monitoring to ensure effluent limitations are being met.

In the case of municipal stormwater discharges, Small MS4 permittees must “...develop, implement, and enforce a stormwater management program to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate requirements of the Clean Water Act.”

To reduce the burden on permittees and still satisfy the regulatory requirement for monitoring, ADEQ incorporated visual stormwater discharge monitoring as the threshold level for most permittees. Only those permittees that discharge to an impaired water or outstanding Arizona water are automatically required to conduct analytical monitoring.

The purpose of requiring visual stormwater discharge monitoring and dry weather discharge monitoring is to 1) identify illicit discharges, 2) assess compliance with permit conditions, and 3) provide information to the MS4 operator about the effectiveness of BMPs.

Throughout the draft permit development process, ADEQ listened to stakeholder’s concerns regarding potential hazards with wet weather visual monitoring and included provisions to address personnel safety. ADEQ does not require or expect Small MS4 operators to put personnel into unsafe conditions (permit part 6.4.3.8(b)).

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	<p>The permit provides permittees with the option to propose an alternative to visual stormwater discharge monitoring (permit part 6.4.3.8(b)). If a permittee elects to propose an alternative (e.g., analytical monitoring), they must do so and provide a description of the alternative in their Notice of Intent. An example of an alternative to visual monitoring might consist of analytical monitoring.</p> <p>As mentioned previously, ADEQ maintains the draft permit is consistent with the NPDES permitting regulatory framework. Further ADEQ reminds Small MS4 operators that they have an alternative to seeking coverage under the general permit by applying for an individual municipal stormwater permit.</p>
<p>Part 6.4.3.8 Visual Outfall Monitoring</p> <p><i>Are “representative outfalls” equivalent to “substantially identical outfalls” as defined in Permit Section 7.1.2? If so, please revise sections so that language is consistent or define “representative outfalls.”</i></p> <p>- City of Prescott</p>	<p>Permit part 6.4.3.8 was revised to specify that each permittee must identify a minimum of five (5) outfalls to conduct visual stormwater discharge monitoring. Permit parts 7.1.1 – 7.1.3, which largely addressed the issue of substantially identical outfalls, were deleted from the permit in response to this permit change.</p>
<p>6.4.3.11 Unpermitted (Illicit) Discharges to the MS4</p> <p><i>This subpart requires that the Permittee actively identify facilities and activities (e.g. industrial facilities, construction activities etc.) that discharge or have the potential to discharge to the MS4 without an appropriate AZPDES/NPDES permit to discharge. In addition, this subpart requires that the Permittee report the number of such facilities contacted by the MS4 each year. As discussed more fully below, this requirement is more stringent than or is inconsistent with the applicable federal regulations and, therefore, is invalid.</i></p>	<p>Unlike other components of the NPDES program, such as wastewater treatment facilities, that require treatment prior to discharge, the municipal stormwater program relies on preventing pollutants from entering the storm sewer system. As such, having a program to identify and eliminate illicit discharge is critical to preventing pollutants from discharging <u>into</u></p>

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The requirement is well beyond the requirement to establish Best Management Practices for illicit discharge elimination. The provisions of subpart 6.4.3.11 of the Permit would require a Permittee to make legal judgment about whether certain businesses located within the MS4 are subject to the identified Permit programs, which are implemented by ADEQ, not the Permittee. In addition to making the above legal judgments, subpart 6.4.3.11 of the Permit would also require the Permittee to make legal judgments about whether the above businesses “have coverage” – that is, are in compliance with the above permit programs.

Under regulations promulgated by the EPA, the Permittee is required to “develop, implement and enforce a program to detect and eliminate illicit discharges ... into your small MS4.” (See 40 CFR § 122.34(b)(3)(i).) Under the applicable EPA regulation, “Illicit discharge” means “any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES Permit . . . and discharges resulting from fire-fighting activities.” (See 40 CFR § 122.26(b)(2).)

*In addition to other requirements, in order to detect and eliminate illicit discharges, under the above regulations the MS4 is required to “effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges” into the storm sewer system and implement appropriate enforcement procedures and actions. (See 40 CFR § 122.34(b)(3)(ii).) The description offered by EPA of a Permittee’s plan to detect and address illicit discharges, however, does **not** include the provisions currently required under subpart 6.4.3.11 of the Permit with regard to “Non-Filers.” Therefore, the provisions of subpart 6.4.3.11 are more stringent than or are inconsistent with the applicable EPA regulations and are, therefore, invalid. (See 40 CFR § 122.34(b)(3)(iv).)*

Even assuming, for the sake of argument, that the requirements in subpart 6.4.3.11 is within ADEQ’s

the municipal storm sewer system, and thereby discharging to a waters of the U.S.

Earlier versions of the draft permit referred to a portion of the illicit discharge detection requirement for unpermitted discharges as “non-filers.” Based on stakeholder concerns this portion of the draft permit was revised to refer to “unpermitted discharges,” meaning those facilities and activities discharging into the MS4 without a NPDES (AZPDES) permit (refer to regulatory definition of *illicit discharge*).

The regulatory framework of the stormwater program is to prevent pollutants from entering the municipal storm sewer system and discharging to a Waters of the U.S.

The draft permit clarifies the Small MS4s regulatory requirement to identify and eliminate illicit discharges into its storm sewer system, but does not specify the measurable goals. In the context of an individual permit, ADEQ would specify those measurable goals. However, under the framework of a general permit, each Small MS4 will identify their measurable goals in the NOI. As described in the Small MS4 preamble “Upon receipt of the NOI from a small MS4 operator, (ADEQ) will have the opportunity to review the NOI that the identified BMPs and measurable goals are consistent with the requirement to reduce the discharge of pollutants under the MEP standard, to protect water quality, and to satisfy the requirements of the Clean Water Act. If necessary, (ADEQ) may ask the permittee to revise their mix of BMPs, for example, to better reflect the MEP pollution reduction requirement.”

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<p><i>authority it is unreasonably vague and does not allow Permittees reasonable notice of what is required. The requirement for reporting contacts with facilities each year implies that Permittees are required to contact facilities on some unspecified interval. The language of the subpart is unreasonably vague. What will ADEQ consider “actively identifying”? Are regular contacts with facilities required and if so at what interval? In addition, the language of 6.4.3.11 to actively identify facilities requiring a state permit is different than the language in 6.4.3 to systematically find and eliminate sources of non-stormwater to and from the MS4. Neither “actively” nor systematically are defined leading to further confusion regarding exactly what permittees are required to do.</i></p> <ul style="list-style-type: none"> - City of Chandler - City of Peoria - City of Prescott - Gust Rosenfeld, PLC - Dickinson Wright, PLLC 	<p>The term “appropriate” was removed from this part of the permit.</p> <p>See also response to General Comment 1.</p>
<p>Part 6.4.4.1 - Construction Activity Stormwater Runoff Implementation</p> <p><i>Requirement to assure compliance with permit within one (1) year of submitting NOI is in conflict with Section 3.1 which allows permittees to establish a timeframe for revising relevant ordinances and regulatory mechanisms within six (6) months and be fully adopted and implemented within 24 months. Please be consistent in timeframes referenced throughout permit.</i></p> <ul style="list-style-type: none"> - City of Prescott 	<p>Permit part 6.4.4.1 was revised to align with the schedule for compliance specified in part 3.1. ADEQ notes that the timeframes established in the reissued permit are not an extension for existing permittees who were required to establish legal authority under ADEQ’s 2002 Small MS4 permit.</p>
<p>6.4.4 Construction Activity Stormwater Runoff Control 6.4.4.2(b) Construction Activity Stormwater Runoff Program Components</p>	<p>Permit revised to include “that will disturb one (1) or more acres.”</p>

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<p><i>There appears to be language missing from this subpart. The following underlined language is missing and should be added so that this subpart is consistent with the federal standard:</i></p> <p style="padding-left: 40px;"><i>The permittee must develop, implement, maintain, and enforce a construction activity stormwater runoff control program to minimize or eliminate pollutant discharges to the MS4s from construction activities that disturb one (1) or more acres of land, including sites less than one (1) acre that are part of a common plan of development or sale <u>that will disturb one (1) or more acres.</u></i></p> <ul style="list-style-type: none"> - Gust Rosenfeld, PLC - Dickinson Wright, PLLC 	
<p>6.4.4.2(b) - Construction Activity Stormwater Runoff Program Components</p> <p><i>Please include full definition of construction activity as defined by federal code.</i></p> <ul style="list-style-type: none"> - City of Prescott 	<p>The regulatory definition of construction activity was included in permit part 10, Definitions. Using the full definition, as suggested, throughout the permit is unnecessary and makes the permit unnecessarily difficult to read.</p>
<p>6.4.4.2(b) Construction Activity Stormwater Runoff Program Components</p> <p><i>40 CFR § 122.34(4) does not require that an <u>inventory</u> of all construction activities that disturb or will disturb one (1) or more acres within the permitted area, including those that are less than one (1) acre but are part of a larger common plan of development. The inventory requirement does not appear to be detailed as a requirement and should be removed from the draft permit, so as to not be more stringent than the federal requirements.</i></p>	<p>No changes were made to the permit in response to this comment.</p> <p>Having an up-to-date inventory of active construction activities within the MS4's permitted area is a critical component to having an effective program to reduce pollutants in stormwater runoff from construction activities into the MS4. The inventory should be used to schedule and track inspections for compliance with local erosion and sediment control ordinance or</p>

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<p><i>The MS4s should have the flexibility to inspect construction sites per their respective written inspection procedures.</i></p> <p align="center">- City of Chandler</p>	<p>other regulatory mechanism, enforcement tracking, inspection frequency and history, and other activities.</p> <p>See also response to General Comment 1.</p>
<p>6.4.4.2h Construction Activity Stormwater Runoff Program Components</p> <p><i>This section states that “Written procedures for site plan review. If not already existing, the procedures for site plan review which incorporate consideration of <u>potential</u> water quality impacts shall be completed within one (1) year from date the NOI is submitted to ADEQ. Site plan review shall include: a review by the permittee of the site design; the planned operations at the location of the construction activity; planned stormwater controls during the construction phase; and the planned controls to be used to manage runoff created after development (see 6.4.5).”</i></p> <p><i>40 CFR § 122.34(b)(3) does not reference the term or phrase “<u>potential</u> water quality impacts” or “have the potential to discharge to the MS4”. This reference within the draft permit should be removed, so as to not be more stringent than the federal requirements.</i></p> <p align="center">- City of Chandler</p>	<p>No changes were made to the permit in response to this comment.</p> <p>Pursuant to 40 CFR 122.43(b)(4)(ii)(D), the Small MS4 operator “...must include the development and implementation of, at a minimum: Procedures for site plan review which incorporates consideration of potential water quality impacts.”</p> <p>The regulatory wording includes the phrase “...<i>potential</i> water quality impacts.”</p>
<p>6.4.4.2(e) - Construction Activity Stormwater Runoff Program Components</p> <p><i>Language about activity “prioritization” is in conflict with the Section above (6.4.4.2.d) from which the term “prioritization” has been removed.</i></p> <p align="center">- City of Prescott</p>	<p>The referenced permit part was revised to delete the term “prioritization.”</p>

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<p>6.4.4.3 – Staff Training</p> <p><i>The staff training requirements outlined in Section 6.4.4.3 will place an undue burden on permittees depending on their staffing levels and/or resources.</i></p> <ul style="list-style-type: none"> - City of Prescott 	<p>This permit part was revised to specify that personnel who are involved with construction activity inspections, plan reviews, and other aspects of the Construction Activity Stormwater Runoff Control, Minimum Control Measure, must have the knowledge, skills, and abilities (KSAs) to carry out their duties.</p> <p>The KSAs may be in the form of relevant training, experience, workshops, self-study, and other formats.</p>
<p>6.4.4.4 Construction Activity Operator Education and Public Involvement</p> <p><i>40 CFR § 122.34(4) does not require that MS4s provide education to construction activity operators on stormwater requirements. This education requirement does not appear to be detailed as a requirement and should be removed from the draft permit, so as to not be more stringent than the federal requirements.</i></p> <p><i>EPA guidance encourages MS4s “to provide appropriate educational and training measures for construction site operators.”</i></p> <p><i>This activity should be conducted by ADEQ, which has the authority to develop, issue and enforce the Construction General Permit.</i></p> <p><i>The City would be happy to distribute educational brochures paid for or produced by ADEQ to construction activity operators located in our MS4.</i></p> <p><i>In addition, the second part of this provision, . . . and provide the public with an opportunity to participate and provide feedback on construction within the MS4 (see Part 6.4.2), is vague and overly broad, and the reference to Part 6.4.2 is not instructive. This could be</i></p>	<p>This part was revised to specify Small MS4 operators must include procedures for receipt and consideration of information submitted by the public regarding construction activities within the regulated MS4.</p> <p>To clarify requirements, the permit was revised to specify education/outreach for construction activity operators include “...erosion and sediment control best management practices requirements...” These requirements are established at the local level, pursuant to 40 CFR 122.34(b)(4)(ii).</p> <p>ADEQ does not expect, nor does the draft permit require Small MS4 operator to enforce ADEQ’s CGP, that authority was granted to ADEQ by U.S. EPA. The Small MS4 must, however, develop, implement, and enforce (including sanctions to ensure</p>

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<p><i>construed to require the Permittee to notify the public when a project is planned for development within the MS4, and to allow the public to have input in authorizing the project. The following changes to this subpart are recommended:</i></p> <p><i>The permittee must develop and implement a program to provide education information to construction activity operators on stormwater requirements and provide the public with information on how to report stormwater concerns associated with construction activities an opportunity to participate and provide feedback on construction within the MS4 (see Part 6.4.2).</i></p> <ul style="list-style-type: none">- City of Chandler- City of Prescott- Gust Rosenfeld, PLC- Dickinson Wright, PLLC	<p>compliance), its local erosion and sediment control ordinance or other regulatory mechanism.</p>
<p>Subpart 6.4.5.2</p> <p><i>This subpart appears to require multiple departments or divisions of a Permittee be involved in post-construction site plan review. While some MS4s may have multiple divisions or departments involved in the process; the internal structure of the Permittee is beyond the scope of the storm water requirements in the Clean Water Act. The parenthetical (as necessary) may be to address this; however, the requirement as stated may lead to confusion.</i></p> <p><i>Requiring Permittees to obtain as built drawings to assure structural post-construction controls are built as designed unnecessarily limits flexibility as there are other means to make such as determination, including inspections during construction.</i></p> <ul style="list-style-type: none">- City of Prescott- Gust Rosenfeld, PLC- Dickinson Wright, PLLC	<p>This permit part was revised to remove the reference to inter-departmental consultation.</p> <p>Additionally, the second paragraph in this subpart requiring construction activity operators to submit post-construction stormwater control as-built drawings upon project completion was stricken.</p>

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<p>6.4.5.3 Inspection and Recordkeeping</p> <p><i>40 CFR § 122.34(5) does not appear to require an inspection program. The inspection requirement does not appear to be detailed as a requirement and should be removed from the draft permit, so as to not be more stringent than the federal requirements.</i></p> <p><i>This subpart imposes a general obligation on Permittees to inspect private property stormwater structures. Although the relevant federal regulations require that a procedure be in place for inspections of construction sites and provides “guidance” recommending, among other things, “post construction maintenance,” they do not require or justify entry onto private property to inspect private property stormwater structures in the absence of construction activities. (See, 40 CFR § 122.34(b)(4)(5).) Absent the presence of such construction activities, a Permittee’s authority to inspect private stormwater structures arises only if such a structure allows a discharge into the MS4, but not before. In addition, requiring the Permittee to inspect post-construction stormwater controls that “have the potential to discharge” is overly broad and outside the scope of the federal regulation.</i></p> <p><i>The MS4s should have the flexibility to conduct inspections of post-construction stormwater controls per their respective written inspection procedures.</i></p> <p>-City of Chandler -Gust Rosenfeld, PLC -Dickinson Wright, PLLC</p>	<p>This permit subpart was removed from the permit. Part 6.4.5.1 (Post-Construction Stormwater Management in New Development and Redevelopment) was revised to clarify relevant program and record keeping requirements.</p> <p>See also response to General Comment 1.</p>
<p>6.4.5.3 Inspection and Recordkeeping</p> <p><i>40 CFR § 122.34(5) does not reference the term or phrase “or have the <u>potential</u> to discharge to the MS4.” This reference within the draft permit should be removed, so as to not be more stringent than the federal requirements.</i></p> <p>- City of Chandler</p>	<p>This permit subpart was stricken from the permit. Part 6.4.5.1 was revised to specify relevant program and record keeping requirements (see also permit Part 8.2, which was revised to clarify enforcement records are also required to be maintained).</p>

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	See also response to General Comment 1.
<p>6.4.5.4 Post-Construction Stormwater Control Inventory</p> <p><i>The implementation of an inventory system of all post-construction structural stormwater control measures installed and implemented at new development and redeveloped sites, including both public and private sector sites located within the permit area will be burdensome in regards to both staff time and financial resources.</i></p> <p><i>There is no federal requirement for the creation of a post-construction control inventory. 40 CFR § 122.34 (b)(5)(i)(ii) only requires that the MS4 develop and implement strategies which include a combination of structural and/or non-structural BMPs,</i></p> <p><i>40 CFR § 122.34(b)(5) makes no reference to the implementation of an <u>inventory</u> system for purposes of post-construction control measures. Additionally, many stormwater control structures located on or within privately owned property are isolated from the MS4 (on-site retention), with very little to no capability of contributing runoff to the MS4.</i></p> <p><i>This reference within the draft permit should be removed, so as to not be more stringent than the federal requirements.</i></p> <ul style="list-style-type: none"> - City of Chandler - City of Prescott - Dickinson Wright, PLLC 	<p>This permit part was renumbered to 6.4.5.3.</p> <p>The federal regulation specifies the MS4 operator must ensure long-term operation and maintenance of post construction stormwater controls for new and redeveloped facilities that discharge <u>into</u> the MS4. A key component to satisfying this regulatory requirement is to have an inventory of the post construction stormwater controls.</p> <p>Absent an inventory of post-construction stormwater controls that discharge to the MS4, the operator would be unable to identify or locate such controls to ensure long-term operation and maintenance.</p> <p>As mentioned previously, ADEQ maintains the draft permit is consistent with the NPDES permitting regulatory framework. Further ADEQ reminds Small MS4 operators that they have an alternative to seeking coverage under the general permit by applying for an individual municipal stormwater permit.</p>
<p>6.4.5.4 Post-Construction Stormwater Control Inventory</p> <p><i>40 CFR § 122.34(5) does not reference the term “or have the <u>potential</u> to discharge to the MS4.” This reference within the draft permit should be removed, so as to not be more stringent than the federal requirements.</i></p>	<p>This permit part was renumbered to 6.4.5.3.</p> <p>The term “potential” was removed from the permit to now read “...discharges into the MS4....”</p>

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<ul style="list-style-type: none"> - City of Chandler - City of Prescott - Dickinson Wright, PLLC 	
<p>6.4.5.5 Post-Construction Stormwater Runoff Control Assessment</p> <p><i>40 CFR § 122.34(5) appears to focus on controls that would prevent or minimize water quality impacts and does not appear to include specific requirements to assess the <u>quantity and/or velocity</u>. This reference within the draft permit should be removed, so as to not be more stringent than the federal requirements.</i></p> <ul style="list-style-type: none"> - Gust Rosenfeld, PLC - Dickinson Wright, PLLC - City of Chandler - City of Prescott 	<p>Part 6.4.5.5 renumbered to 6.4.5.4 and was renamed “Operation and Maintenance of Post-Construction BMPs” and was revised to specify that:</p> <p><i>The permittee shall establish processes, procedures, and other such provisions necessary to ensure the long-term operation and maintenance of post-construction stormwater BMPs.</i></p> <p>This permit part was revised to clarify the regulatory requirement to prevent or minimize water quality impacts. ADEQ notes, however, that as described by EPA the Small MS4 operator must consider impacts from stormwater runoff, which includes velocity and volume.</p>

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<p>6.4.6a Pollution Prevention and Good Housekeeping for Municipal Operations</p> <p><i>This section states that “Develop an inventory of municipally-owned or operated facilities and activities that have the <u>potential</u> to discharge pollutants in stormwater runoff;”</i></p> <p><i>This reference within the draft permit should be removed, so as to not be more stringent than the federal requirements.</i></p> <p>-City of Chandler</p>	<p>This permit part was revised to read “Develop an inventory of municipal operations that discharge.”</p>
<p>7.0 Analytical Monitoring</p> <p><i>For this subpart to be consistent with and no more stringent than the federal regulation, the following revision is required:</i></p> <p><i>“ADEQ may notify the permittee in writing of additional discharge monitoring requirements to ensure protection of receiving water quality. Additional monitoring will be required if there is evidence ... based on an approved total maximum daily load or equivalent analysis that such limitations are needed to protect water quality...” 40 § CFR 122.34(e)(1)</i></p> <ul style="list-style-type: none">- Gust Rosenfeld, PLC- Dickinson Wright, PLLC	<p>No changes were made in response to this comment.</p> <p>The regulatory citation referenced by commenters (40 CFR 122.34(e)(1)) relates to additional effluent limitations necessary to comply with a TMDL or equivalent analysis to protect water quality and is typically accomplished by modifying existing BMPs and/or adding new BMPs. The regulatory citation does not prohibit or otherwise limit ADEQ’s authority to require analytical monitoring.</p> <p>Monitoring is a legal requirement to all NPDES/AZPDES permits to ensure permit compliance. Rather than requiring analytical monitoring for all permittees, the permit provides a tiered structure including visual stormwater discharge monitoring, analytical monitoring associated with impaired/non-attaining waters and Outstanding Arizona Waters, as well as additional monitoring on a case-by-case basis (as necessary to assess permit compliance and protect water quality).</p>

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<p>7.1</p> <p><i>The previous draft permit did not require the sampling and analysis that is mentioned in the fact sheet when dry weather flows are observed; the permit should be revised to be consistent with the fact sheet on this matter.</i></p> <p><i>Also Part 7.1 seems unclear concerning which permittees would be required to conduct analytical monitoring. We suggest that Part 7.1 simply point out that the necessary clarifying information can be found in Parts 7.2 and 7.3 of the permit.</i></p> <p>- U.S. EPA, R9</p>	<p>The permit was modified as necessary to clarify which permittees must conduct analytical monitoring. Analytical monitoring is specifically required by all permittees who discharge to an impaired water, a not-attaining water, and/or an Outstanding Arizona Water. Permittees should have procedures in place for contingency monitoring when appropriate or necessary, such as maybe necessary to investigate an illicit discharge.</p> <p>Additionally, based on the final issuance date of the permit, 7.1(d) was revised to specify that existing permittees must have their analytical monitoring program fully implemented by June 1, 2017. As specified in the December 2015 draft permit, it would have allowed one month to have the monitoring program implemented.</p> <p>The final permit was also revised to give new permittees until November 1, 2017 to have their analytical monitoring program developed and implemented.</p>
<p>7.1.1 Outfall Monitoring</p> <p><i>This section states that “The permittee is required to monitor stormwater discharges from the MS4 to an impaired or OAW”.</i></p> <p><i>40 CFR §122.34 only reference discharges into the MS4.</i></p> <p><i>All references within this section and the entire permit draft referring to sources and discharges from its MS4 should be removed, so as to not be more stringent than the federal requirements.</i></p> <p>- City of Chandler</p>	<p>Permit parts 7.1.1 through 7.1.3 were deleted in response to revision of the permit removing “substantially identical outfalls” and replacing with visual stormwater discharge monitoring of five (5) outfalls.</p> <p>The fact sheet was also revised and reference to rotating outfalls for monitoring was replaced to include guidance on selecting outfalls or screening points for monitoring.</p>

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<p>Section 7.1.2. <i>states that “rationale and justification for substantially identical outfalls” should be documented in the SWMP, inferring that this task must be completed within 6 months in order to be included in the SWMP. For MS4s with a significant number of outfalls, identifying substantially identical outfalls is a significant component of developing a monitoring program. This task alone may require additional data collection and compilation. Six months does not allow sufficient time for this task. Directly state the timeframe for this task as 6 months is an inference.</i></p> <p align="center">- City of Prescott</p>	<p>Permit parts 7.1.1 through 7.1.3 were deleted in response to revision of the permit removing “substantially identical outfalls” and replacing with visual stormwater discharge monitoring of five (5) outfalls.</p> <p>The fact sheet was also revised and reference to rotating outfalls for monitoring was replaced to include direction on selecting outfalls or screening points for monitoring.</p>
<p>7.2 Discharges to Impaired Waters</p> <p><i>Although Suspended Sediment Concentration is a viable method to determine water quality, turbidity through the nephelometric turbidity unit (ntu) is also a recognizable method, and much less resource dependent (staff time and analysis costs). The commenter requests that the State allow the Permittee and the TMDL or similar study, determine the method of measurement that will be used.</i></p> <p align="center">- Gust Rosenfeld, PLC - Dickinson Wright, PLLC</p>	<p>No changes were made to the permit.</p> <p>ADEQ agrees that once a TMDL has been developed and approved, it establishes what parameter(s) must be analyzed for in order to comply with the assigned Waste Load Allocation (WLA). Discharges lasting longer than 48 hours after a storm event where excess sediment is a concern, the appropriate analyte is Suspended Sediment Concentration (SSC). Analytical SSC results can be compared to the applicable surface water quality standard (R18-11-109 (D)) to determine if the discharge is causing or contributing to an exceedance.</p> <p>Although measuring turbidity is a valid method for determining the effectiveness of Best Management Practices (BMPs), there is no applicable surface water quality turbidity standard to compare results against, as such it is not an appropriate or acceptable method for assessing compliance with surface water quality standards.</p>

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<p>8.1.4 Program Evaluation</p> <p><i>This section states that “ADEQ may require the permittee to add, modify, repair, replace or change BMPs or other measures described in the annual reports to address the following:</i></p> <p><i>a. Impacts to receiving water quality caused or contributed to by discharges <u>from</u> the MS4;</i></p> <p><i>b. To satisfy conditions of this permit;</i></p> <p><i>c. To include more stringent requirements necessary to comply with new state or federal legal requirements;</i></p> <p><i>or</i></p> <p><i>d. Attainment of surface water quality standards.”</i></p> <p><i>40 CFR §122.34 only reference discharges into the MS4.</i></p> <p><i>All references within this section and the entire permit draft referring to sources and discharges <u>from</u> its MS4 should be removed, so as to not be more stringent than the federal requirements.</i></p> <p><i>Incorporation of the new requirements detailed within the draft permit as it currently stands will require additional resources and staff.</i></p> <p>-City of Chandler</p>	<p>No Changes were made to the permit.</p> <p>ADEQ notes that this draft permit is for discharge to Waters of the U.S. <u>from</u> the MS4 and is analogous to other NPDES/AZPDES permits such as for a wastewater treatment facility to discharge treated effluent to Waters of the U.S., in compliance with state and federal laws and conditions of the permit.</p>
<p>8.3 and 8.4 - Reporting</p> <p><i>EPA’s final e-reporting rule (80 FR 64064, October 22, 2015) become effective on December 21, 2015. These new regulations at 40 CFR 127.26(f) require that NPDES permits that become effective after December 21, 2015 include electronic reporting requirements consistent with the new rule. As such, ADEQ’s 2016 general permit for small MS4s will need to include appropriate permit language to implement this new rule.</i></p> <p>- U.S. EPA, R9</p>	<p>ADEQ is in the process of assessing EPA’s final electronic reporting rule as well as options for implementation and compliance with the rule. However, the final strategy for implementation is not fully established.</p> <p>While the final permit does not provide the final method for electronic reporting for permittees under the Small MS4 general permit, permit parts 8.3 and 8.4 include language to address EPA’s electronic reporting rule and its implementation during the permit term.</p>

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8.5 Fourth Year Annual Report

The reporting requirements for small municipal storm sewer systems are set forth in 40 CFR 122.34(g)(3). The regulation specifies what is required in an annual report which is what is required by subpart 8.4 of the Permit. There is no authority in either the Clean Water Act or federal regulations for the additional reporting required by subpart 8.5. Further, the review required by subpart 6.4.5.5 and the corresponding reporting in subpart 8.5 is independent of any indication of an inadequacy of the existing SWMP. This requirement is in addition to the requirements of subparts 6.4.3.2 and 6.4.4.1 to have adequate legal authority to prohibit and stop illicit discharges. Any ordinances or rules relied on as part of the SWMP are already subject to review under subpart 8.4. Requiring Permittees to review ordinances and rules unrelated to the SWMP every 4 years is an unnecessary and unproductive use of the limited resources available for storm water management.

- **Gust Rosenfeld, PLC**
- **Dickinson Wright, PLLC**

Permit part 8.5, Fourth Year Annual Report, was removed from the permit.