

RESPONSE TO PUBLIC COMMENTS

Permit: Arizona Pollutant Discharge Elimination System (AZPDES)
Multi-Sector General Permits (MSGP) for Stormwater Discharges
Associated with Industrial Activities to Protected Surface Waters -
Non-Mineral Industries , AZG2024-001 (“Non-Mining”) and
Mineral Industries, AZG2024-002 (“Mining”)

Permit Action: Final permit decision and response to comments received on the
draft permits public noticed on October 25, 2024. Following is
ADEQ’s response to comments received on the subject draft
permit.

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Summary of Fact Sheet Changes

- Correction of minor grammatical and typographical errors.
- ADEQ added clarifying language to the Non-Mining and Mining Fact Sheets regarding when a No Discharge Certification (NDC) is appropriate for a site.

Summary of Permit Changes

- Correction of minor grammatical and typographical errors.
- ADEQ removed the requirements to post a sign of permit coverage and post a SWPPP online from Part 5.4 of both permits.
- Instead of requiring a Corrective Action Report to be submitted “as soon as possible,” ADEQ changed the requirement in both permits to, “Following a discovery of any condition in Part 3.1.1, the permittee shall submit a Corrective Action Report Form. The form should be submitted as soon as practicable and must be submitted within 30 calendar days following the discovery of any condition in Part 3.1.1.”
- ADEQ increased the timeframe current permittees have to submit a new Notice of Intent (NOI) to maintain permit coverage. Permittees must now submit a new NOI through myDEQ between January 16, 2025 and April 16, 2025.
- ADEQ added language to Footnote 2 to Table 1-2 in both permits to clarify that the latitude/longitude should represent the central location of the facility.
- ADEQ removed the example control measure of developing scenario-based emergency procedures from Part 2.2.1.1 of both permits.
- ADEQ added a definition for “Best Management Practices” to both permits.

- ADEQ has removed the action level for TSS of 100 mg/L from the Mining MSGP from both Sectors G and J, leaving it as a report-only parameter.
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Comments received during the public comment period are summarized below in *italics*. The comments are followed by ADEQ's response. Comments may have been shortened or paraphrased for presentation in this document; a copy of the unabridged comments is available upon written request from the ADEQ Records Center, recordscenter@azdeq.gov.

Comment #1 received from Nancy Allen, City of Phoenix; Steve Trussell, Arizona Mining Association (AMA); and Gregory Czerniski, Waste Management.

COMMENT NO. 1

Both the City of Phoenix, the AMA, and Waste Management expressed opposition to the sign requirement. The City of Phoenix's position is that including the authorization number(s) and stormwater complaint information in the SWPPP satisfies this public notification requirement. The AMA stated the requirement to post a sign creates a regulatory burden with no added benefits and ADEQ should remove the requirement from the Mining MSGP. The AMA also stated, as applied to hard rock mining sites in Arizona, the new requirement is particularly troublesome because of the rural location of such facilities, the danger created to members of the public attempting to read or understand a sign near the main entrance to a mine or from the nearest public road, and the difficulty in maintaining and updating the sign. Similarly, Waste Management stated given the easy access to the internet and sites typically having a unique address posted at the entrance, logging a complaint is already very easy and convenient without the added burden of creating and maintaining an outdoor sign. Given the weather and UV rays, signs typically don't last and require frequent (every other year) replacement/refreshing.

RESPONSE NO. 1

Based on these comments, ADEQ is removing the requirement to post a sign from Section 5.4 of both the Mining and Non-Mining MSGPs.

ADEQ recognizes the concerns from permittees regarding maintenance of the sign and safety. At this time, ADEQ has limited information on the effectiveness of signs as a tool to inform the public. Accordingly, ADEQ will gather information regarding the effectiveness of signs and other communication tools to improve public visibility of stormwater requirements.

Comment #2 received from Nancy Allen, City of Phoenix and Steve Trussell, Arizona Mining Association (AMA).

COMMENT NO. 2

Both the City of Phoenix and the AMA expressed opposition to the requirement for permittees to post a copy of their Stormwater Pollution Prevention Plan (SWPPP) online.

The City of Phoenix's position is that including the authorization number(s) and stormwater complaint information in the SWPPP satisfies this public notification requirement. The AMA stated the proposed language imposes new and burdensome requirements on permittees that are not justifiable or required under the Cleaning Water Act or its implementing regulations. The AMA also stated that requiring posting of SWPPPs to a permittee's website also is a potential deterrent to more comprehensive SWPPP development and discussion.

RESPONSE NO. 2

Based on these comments, ADEQ is removing the requirement to post a copy of the Stormwater Pollution Prevention Plan (SWPPP) on the permittee's website from Section 5.4 of both the Mining and Non-Mining MSGPs.

ADEQ recognizes this requirement poses a burden to permittees. ADEQ will work internally to enhance the visibility of stormwater permitting information on ADEQ's website.

Comment #3 received during November 25, 2024 Public Hearing from Matthew Conway.

COMMENT NO. 3

Could you please explain the reason(s) why the SWPPP needs to be posted on the website in addition to making it available upon request. This appears to be a new requirement. Thank you.

RESPONSE NO. 3

Based on these comments, ADEQ is removing the requirement to post a SWPPP on the permittee's website, see Response #2.

Comment #4 received on November 25, 2024 from Craig Young, Via Firma Environmental Services.

COMMENT NO. 4

In section 5.4 Posting and SWPPP Availability, it states "The permittee shall post an updated SWPPP once per year." Does ADEQ want the permittee to annually update the SWPPP posted online to include sampling data, training documents, inspection records, and any other information that is included in the SWPPP? Or is ADEQ only wanting the main SWPPP to be on the facilities website? Please clarify what ADEQ is requesting by this statement.

RESPONSE NO. 4

Based on these comments, ADEQ is removing the requirement to post a SWPPP on the permittee's website, see Response #2.

Comment #5 received on November 26, 2024 from Todd McOmber, Holcim Group | Holcim - SWR, Inc.

COMMENT NO. 5

Section 5.4 states that permittees must post their LTF number and SWPPP "on their own website or on an associated website, i.e., a relevant and easily discerned website such as a corporate or government website, where the facility submitting the SWPPP is identified on the homepage and facility information is presented on and easily accessed at that website. If a facility does not have an existing website or associated website, the requirement to post the LTF number and SWPPP on a website does not apply. The permittee shall post an updated SWPPP on the website once per year."

Does the posting of a LTF and SWPPP on a website only apply in cases where a website already exists that identifies the permitted site on a "homepage", and the facility information is easily accessed? This requirement of section 5.4 may be subjective and create confusion on what is and is not required for posting of SWPPPs to websites. The deletion of this requirement may create a better path forward and avoid any potential confusion for permittees.

RESPONSE NO. 5

Based on these comments, ADEQ is removing the requirement to post a SWPPP on the permittee's website, see Response #2.

Comments #6-13 received on November 21, 2024 from Jennifer Martin-McLeod, Sierra Club – Grand Canyon Chapter.

COMMENT NO. 6

Increased Monitoring Frequency: The current sampling frequencies are insufficient to detect intermittent or seasonal pollution events. More frequent monitoring—especially during critical storm seasons—would better capture industrial discharge impacts on local waterways.

RESPONSE NO. 6

ADEQ believes the current monitoring frequency is appropriate for capturing representative stormwater data in Arizona. ADEQ has attempted implementing more frequent sampling schedules in the past and found they did not result in significant additional data.

In the 2010 MSGP, ADEQ implemented a sampling schedule for benchmark monitoring (now called routine/general analytical monitoring) which required permittees to sample four times annually (two times per wet season) for the first year of permit coverage. If the data did not exceed the benchmark, no further sampling was required for the permit term. ADEQ found that very few sites were able to collect the required samples because their sites discharged less than four times per year.

ADEQ believes sampling twice per year (once per wet season) throughout the permit term provides the best dataset for Arizona. This sampling frequency results in a similar number of samples as required by other states and U.S. Environmental Protection Agency (EPA) in their stormwater permits. Assuming a facility in Arizona discharges at least once per wet season, Arizona's sampling schedule results in a total of 10 samples during a 5-year permit term. By comparison, EPA's 2021 MSGP requires quarterly monitoring in the 1st and 4th year of permit coverage. Assuming a facility can collect four samples per year, this sample frequency results in a total of 8 samples collected during a 5-year permit term.

COMMENT NO. 7

Enhanced Public Reporting: ADEQ should require all industrial sites to submit all monitoring results to a publicly accessible online database. This level of transparency is essential to allow communities, stakeholders, and environmental organizations to monitor compliance and identify potential pollution hotspots.

RESPONSE NO. 7

ADEQ is committed to transparency with the public, stakeholders, and environmental organizations. While monitoring results are not currently available in a publicly available online database, the results are available through ADEQ's record center. Please see ADEQ's webpage for instructions on submitting a records request: <https://www.azdeq.gov/records>. ADEQ will consider options for making monitoring results available online in the future.

COMMENT NO. 8

Inclusion of Emerging Contaminants in Monitoring: The permit should mandate that industrial facilities test for and report emerging contaminants, such as PFAS (per- and polyfluoroalkyl substances) and microplastics, which are persistent, bioaccumulative, and harmful.

Collaboration on Emerging Contaminant Research: ADEQ should work with research institutions and other stakeholders to collect data and develop policies around emerging contaminants, ensuring Arizona does not lag behind in protecting its water resources.

RESPONSE NO. 8

ADEQ acknowledges the importance of collecting and analyzing data for emerging contaminants, such as PFAS and microplastics. Pursuant to A.R.S. § 49-225, ADEQ is sampling for emerging contaminants as part of our groundwater and surface water monitoring programs. In addition, ADEQ partnered with forty-one treatment works treating domestic sewage in Arizona to test wastewater and biosolids samples for a statewide screening of PFAS in 2022 and 2023 and maintains a publicly available [PFAS map](#) reporting PFAS sampling results from public water systems. ADEQ is closely following EPA's research on microplastics, particularly in the area of developing monitoring methods. Currently, ADEQ has decided not to incorporate microplastics monitoring into AZPDES permits. This decision is due to the lack of EPA-approved

monitoring methods and the absence of surface water quality standards for comparing monitoring results.

ADEQ actively pursues opportunities to work with research institutions and other stakeholders to solve environmental concerns for Arizonans. Current collaborations include a Arizona Board of Regents (ABOR) study to address the [fate and transport of contaminants, potential risks, and data-driven best practices for monitoring and regulating biosolids in Arizona](#).

Through ongoing collaboration with federal and state partners, research institutions, environmental organizations, and the permitted community, ADEQ continues to provide consistent, science-based environmental regulation and equitable engagement to protect and enhance public health and the environment in Arizona.

For additional information regarding PFAS, see Response #16.

COMMENT NO. 9

General BMPs are inadequate to address the unique pollutants and processes associated with different industries. We propose:

a. Sector-Specific BMPs: Requiring tailored BMPs for high-risk sectors—such as chemical manufacturing, mining, and transportation facilities—would address the specific pollution risks these industries pose.

b. Periodic Review and Update of BMPs: BMPs should be reviewed and updated regularly to incorporate the latest technology and research findings, including advanced stormwater treatment technologies and improved containment methods.

RESPONSE NO. 9

ADEQ believes flexibility in selecting control measures, including best management practices (BMPs), is essential. Sites in the same sector may vary widely in terms of size, resources, and activities. Therefore, the permit allows permittees to select the control measures that will be effective at their site rather than requiring certain BMPs. The permit contains requirements for Routine/General Analytical Monitoring, Visual Assessments, and Routine Site Inspections to ensure control measures are working properly.

While the MSGP does not require specific BMPs, the fact sheet includes links to [EPA's Sector-Specific Industrial Stormwater Fact Sheet Series](#), the [National Menu of Stormwater BMPs](#), and the [National Management Measures to Control Nonpoint Source Pollution from Urban Areas](#). These links provide resources for permittees to assess control measures, including BMPs, that generally address stormwater discharges from their specific sectors. ADEQ monitors these resources to ensure the agency is informed on the latest technology and research findings. While ADEQ encourages permittees to consider the latest stormwater technology and research findings when selecting control measures, it is not a requirement.

The Non-Mining and Mining MSGP do require review of control measures, especially when monitoring shows elevated levels of a pollutant. Both the Non-Mining and Mining MSGP require permittees to perform Routine Site Inspections which must include assessing control measures to see if any need maintenance, repairs, or replacement. Following any action level exceedances, the Mining MSGP requires permittees to assess existing control measures to ensure the control measures are properly maintained and appropriate for reducing pollutant discharges. Following an AIM triggering event, the Non-Mining MSGP requires assessment of control measures for AIM Levels 2 and 3, as well as, installation of structural source controls and/or treatment controls.

COMMENT NO. 10

Adaptation-Driven BMPs: ADEQ should require facilities to design stormwater management systems with climate resilience in mind, ensuring systems can handle more intense storm events and prevent overflows.

RESPONSE NO. 10

ADEQ included additional language to Part 2.2.1.1 Control Measure Selection and Design Considerations in the proposed Mining and Non-Mining MSGPs. The new language requires permittees to consider implementing structural improvements, enhanced/resilient pollution prevention measures, and other mitigation measures that can help minimize impacts from stormwater discharges from major storm events such as extreme/heavy precipitation and flood events.

COMMENT NO. 11

Incorporation of Green Infrastructure: The permit should encourage the use of green infrastructure (such as bioswales, rain gardens, and permeable pavements) to mitigate stormwater volume and reduce pollution before it reaches Arizona's waters.

RESPONSE NO. 11

ADEQ agrees that green infrastructure is a useful stormwater management practice, demonstrated with the 2019 MSGP's addition of Part 2.2.1.1 Control Measure Selection and Design Considerations, which encourages the use of green infrastructure. This section of the permit was carried forward into this permit renewal. For example, this part of the permit requires permittees to consider:

- Minimizing impervious areas at the site and infiltrating runoff onsite (including bioretention cells, green roofs, and pervious pavement, among other approaches) can reduce runoff and improve groundwater recharge and stream base flows in local streams, although care must be taken to avoid groundwater contamination.
- Attenuating flow using open vegetated swales and natural depressions can reduce in-stream impacts of erosive flows.
- Using containment to intercept stormwater flows before they leave the site, such as directing flows to non-discharging areas (pits) or installing runoff containment.
- Conserving and/or restoring of riparian buffers help protect streams from stormwater runoff and improve water quality.

COMMENT NO. 12

Implement Regular Audits: Routine, unannounced inspections of industrial sites would help ensure compliance with MSGP requirements and prevent negligent practices.

RESPONSE NO. 12

To ensure MSGP permittees are complying with permit requirements, ADEQ completes routine inspections according to EPA's compliance monitoring strategy, or when a complaint is filed. Inspections include, but are not limited to, examination of outfalls and sampling locations, review of records submitted to ADEQ, and review of on-site files such as the Stormwater Pollution Prevention Plan (SWPPP), Visual Assessment documents, and Routine Site Inspection documents. If any permit conditions are violated, ADEQ will take the appropriate follow-up action to assure the permittee returns to compliance.

COMMENT NO. 13

Escalate Penalties for Non-Compliance: Facilities that repeatedly violate discharge limits should face escalating penalties to deter further non-compliance, creating a more robust accountability framework and encouraging adherence to stringent permit conditions.

RESPONSE NO. 13

Accountability and compliance with permit conditions are high priorities for ADEQ. In the event of noncompliance, ADEQ follows the [Compliance Handbook](#) to take appropriate action. This tiered approach includes the following steps:

- **Compliance Assistance:** ADEQ begins by providing assistance and guidance to regulated entities to help them understand and comply with environmental regulations. This can include providing educational materials, training sessions, and technical assistance.
- **Compliance Monitoring:** ADEQ conducts regular inspections to ensure that Permittees are complying with environmental regulations. This can involve reviewing records, conducting site visits, and collecting samples for analysis.
- **Notice of Opportunity to Correct Deficiencies (NOC):** This action is an informal compliance assurance tool issued by ADEQ in accordance with [A.R.S. Section 41-1009](#)(E) and (K) that provides a Permittee, who is the responsible party, an opportunity to correct a deficiency.
- **Notice of Violation (NOV):** If a violation is identified during monitoring or inspections, ADEQ may issue a Notice of Violation. This formal notice outlines the violation(s) identified, specifies the regulatory requirements that have been violated, and details the corrective actions required.
- **Consent Order:** This is a formal enforcement bilateral administrative order issued with the written agreement of the responsible party and ADEQ. ADEQ has authority within individual programs to issue orders, and a responsible party has the ability to negotiate, consent to the order, and waive their right to appeal the order pursuant to [A.R.S. Section 41-1004](#) and [41-1092.07](#)(F)(5).

- **Compliance Orders:** If the permittee does not address the issues in the Notice of Violation, ADEQ may issue a Compliance Order. This is a formal legal document that requires the responsible party to take specific actions to come into compliance within a certain timeframe.
- **Legal Action:** In cases of serious or repeated violations, ADEQ may pursue legal action, which can include civil litigation or administrative proceedings. This can result in court-ordered penalties, injunctions, or other remedies.

Comments #14-20 received on November 25, 2024 from Peter Kozelka, U.S. Environmental Protection Agency.

COMMENT NO. 14

Additional Implementation Measures

EPA strongly supports the inclusion of Additional Implementation Measures (AIM) provisions in the non-mining general permit and recommends that appropriate AIM provisions be included in the mining general permit too.

Both draft permits rely on various stormwater control measures to control pollutants in stormwater discharges from the facilities covered by the permits. Each facility describes and implements the specific control measures in a stormwater pollution prevention plan (SWPPP). Both draft permits contain sector-specific action levels which are a measure of whether an effective SWPPP is being implemented by a particular facility and therefore the pollutant levels in stormwater discharges from each facility are appropriately protective of applicable water quality standards. In the non-mining draft permit, AIM procedures prescribe detailed and escalating control measures in response to discharges with pollutant levels that repeatedly exceed action levels. The inclusion of AIM procedures will enhance the clarity and effectiveness of the ADEQ non-mining permit in protecting the environment.

EPA recommends that ADEQ include AIM requirements in the final mining MSGP permit, because these additional and cumulative measures will provide more stormwater controls, as necessary, when the initial measures don't adequately reduce pollutants in stormwater discharges and therefore may not protect surface water quality. EPA's 2021 MSGP includes these AIM requirements, and this general permit also covers mining sectors. EPA's MSGP applies in New Mexico and the AIM requirements have been effective in protecting the receiving waters from stormwater discharges from both non-mining and mining entities operating in that neighboring state with a similar arid or semi-arid environment.

RESPONSE NO. 14

ADEQ appreciates EPA's support of Additional Implementation Measures (AIM) in the Non-Mining MSGP.

At this time, ADEQ is not implementing Additional Implementation Measures in the Mining MSGP. ADEQ is implementing action levels in the Mining MSGP, which is a

significant change to the current permit. As EPA points out, AIM is effective at providing additional requirements if initial control measures are ineffective. However, AIM may be unnecessary if permittees are generally complying with all action levels. ADEQ believes Mining MSGP permittees should have time to understand the action levels in the permit and determine if existing control measures are sufficient for meeting those action levels.

COMMENT NO. 15

New Action Levels in the Draft Mining Permit

EPA supports ADEQ's decision to include action levels, such as TSS at 100 mg/L and others, in the draft permits. ADEQ's action levels are similar to the benchmarks in EPA's 2015 MSGP with similar corrective action requirements if exceeded by a permittee. At a minimum, EPA recommends that ADEQ retain these additional more stringent action levels in both final MSGP permits.

RESPONSE NO. 15

ADEQ agrees the action levels in the permit are appropriate, see Responses #32 and 33.

COMMENT NO. 16

Requirements Related to PFAS Compounds

EPA recommends that ADEQ consider adding monitoring requirements for PFAS from industrial sectors for which PFAS in stormwater discharges may be reaching surface waters in Arizona. EPA's 2021 PFAS [Strategic Roadmap](#) (page 14) notes that several industrial sectors regulated under the draft non-mining permit could potentially be sources of concern for PFAS in their discharges. EPA is planning to include PFAS monitoring for certain sectors in its next MSGP. (This information can be found in EPA's presentation for Tribes as part of EPA's current reissuance of the MSGP. See EPA's website for [Tribal consultation](#) on MSGP reissuance.) In January 2024, EPA also provided [guidance on test methods](#) for PFAS that can be used in NPDES permits.

RESPONSE NO. 16

ADEQ shares EPA's concerns regarding emerging contaminants. ADEQ closely monitors EPA's recommendations to decrease point source discharge of PFAS to protected surface water, including the 2021 PFAS Strategic Roadmap, [Pollution Prevention Strategies for Industrial PFAS Discharges](#), and the [Final Recommended PFAS Aquatic Life Criteria and Benchmarks](#). At this time, ADEQ has chosen not to include monitoring requirements for PFAS.

COMMENT NO. 17

No Discharge Certification

EPA recommends that ADEQ provide additional clarification regarding No Discharge Certification provisions (draft permit Part 1. 1 or Part 1.1.1) in each associated draft fact sheet. These draft provisions state that an operator may submit a No Discharge Certification rather than obtain coverage under one of the general permits. One possible interpretation of the draft permit language would be that an operator could submit a No Discharge Certification because all stormwater discharges associated with industrial activity are contained onsite. As a reminder, any discharge of industrial stormwater

would technically need NPDES permit coverage and this could include overflow of an onsite containment structure that may occur in the event of a large storm or series of storms. The fact sheets for the permits should provide additional clarification regarding ADEQ's intent with this provision. Absent further guidance from ADEQ, operators may have questions concerning the No Discharge Certification provision and the need for permit coverage.

RESPONSE NO. 17

As a result of this comment, ADEQ has updated the Non-Mining MSGP Fact Sheet and Mining MSGP Fact Sheet to clarify eligibility for a No Discharge Certificate.

Both fact sheets now state:

Sites obtaining a No Discharge Certificate should meet one of the following eligibility requirements:

1. The site is engineered and constructed to have contained the maximum historic precipitation event (or series of events) using the precipitation data collected from the National Oceanic and Atmospheric Agency's website (or other nearby precipitation data available from other government agencies) so that there will be no discharge of industrial stormwater to a protected surface water; or,
2. The site is located in a basin or other physical location that is not hydrologically connected to a protected surface water.

Operators should be certain no discharge will reach a protected surface water before obtaining a No Discharge Certificate. The federal Clean Water Act (CWA) and Arizona rules specify that it is a violation to discharge industrial stormwater without a permit.

ADEQ notes that an overflow of onsite containment is only a discharge under the Clean Water Act if the discharge reaches a regulated water.

COMMENT NO. 18

Climate Change/Environmental Justice

As a result of several recent Executive Orders (most recently Executive Order 14096 of April 21, 2023) EPA is focusing increased attention on the issues of environmental justice and climate change in all its programs, including the water programs.

With regards to climate change, EPA supports ADEQ's decision to include permit language (section 2.2.1.1) similar to EPA's 2021 MSGP related to extreme weather events, ensuring that stormwater control measures are designed to withstand such extreme weather events. EPA strongly supports retaining such requirements in the final permits.

RESPONSE NO. 18

ADEQ acknowledges EPA's support for these sections of the permit.

COMMENT NO. 19

EPA is also pleased to see both draft ADEQ permits (section 5.4) require that permittees post signs of permit coverage at a publicly accessible location near a facility. This will help to ensure that the neighboring community, including communities with environmental justice concerns, are made aware of the permitted discharges. EPA recommends that ADEQ retain this requirement in the final permits.

RESPONSE NO. 19

Based on multiple comments, which explained the burden this requirement would cause permittees, ADEQ is removing the requirement to post a sign of permit coverage, see Response #1.

COMMENT NO. 20

Minor Clarification in the Public Notice

EPA notes that the public notice for these two draft permits, dated October 25, 2024, includes conflicting information concerning the number of general permits being reissued. The notice mentions the reissuance of both one permit and two permits. There are two MSGP being reissued – one for mining facilities and the other for non-mining facilities.

RESPONSE NO. 20

ADEQ acknowledges there are two separate MSGPs being reissued, one for mining facilities and one for non-mining facilities. ADEQ will make that distinction clearer in future public notices and communications.

Comments #21-24 received on November 25, 2024 from Megan Sheldon, City of Glendale.

COMMENT NO. 21

Suggested edits for several grammatical or typographical errors, including general edits to Sector T and Sector S Requirements.

RESPONSE NO. 21

ADEQ revised the permit to correct these grammatical and typographical errors.

COMMENT NO. 22

Part 8.S.8.1: There is a reference to the "2019 MSGP" in this part. Should this be updated to reference the 2024 MSGP or reference "this permit"?

RESPONSE NO. 22

ADEQ revised Part 8.S.8.1 to state "this permit."

COMMENT NO. 23

Part 8.S.9.3: There is a reference to Part 8.S.8.2, but there is no heading related to 8.S.8.2. Should this be deleted or is this a reference to Table 8.S-2?

RESPONSE NO. 23

ADEQ corrected Part 8.S.9.3 to state “For new and existing airports subject to the effluent limitations in **Part 8.S.9.1 or 8.S.9.2** of this permit, permittees must comply with the applicable monitoring, reporting and recordkeeping requirements outlined in 40 CFR 449.20” [emphasis added].

COMMENT NO. 24

Part 5.4: ADEQ added a requirement in this section of the permit that was not in the 2019 MSGP. The new requirement specifies posting of the SWPPP on the facility's website. Similar to EPA's 2021 MSGP, an exception for making the SWPPP publicly available is needed to protect confidential business information or restricted information.

The City has an existing public records request process that includes redacting information that could jeopardize facility security, such as at an airport facility. In addition, disclosure of information in a SWPPP related to Sector T (treatment works) that meets the definition of "critical infrastructure information" under Arizona Revised Statutes §41-1801 shall not be published or disclosed (ARS §41-1805).

RESPONSE NO. 24

Based on multiple comments, ADEQ is removing the requirement to post a SWPPP on the permittee's website, see Response #2.

Comment #25 received from Megan Sheldon, City of Glendale and from Nancy Allen, City of Phoenix.

COMMENT NO. 25

The City of Phoenix and the City of Glendale commented that ADEQ revised the deadline for submitting a Corrective Action Report (CAR) from “within 30 days” to “as soon as possible,” which is too vague and is not a timeframe that can be accurately determined by the permittee nor regulated by ADEQ. The City of Phoenix recommended the CAR be “due no later than 30 calendar days following the observed release”. The City of Glendale recommended a deadline of “Within 5 calendar days of a discovery of any condition in Part 3.1.1...”

RESPONSE NO. 25

All conditions requiring corrective action have a harmful impact on public health or the environment, such as an exceedance of a surface water quality standard in a protected surface water. Therefore, ADEQ believes it is imperative for permittees to submit a CAR as quickly as possible, so the harmful condition can be corrected. However, ADEQ acknowledges “as soon as possible” is vague and difficult to enforce.

As a result of these comments, ADEQ revised the language in Part 3.2 of both the Non-Mining and Mining MSGP to state, “Following a discovery of any condition in Part 3.1.1, the permittee shall submit a Corrective Action Report Form. The form should be submitted as soon as practicable and must be submitted within 30 calendar days following the discovery of any condition in Part 3.1.1.”

Comments #26-31 received on November 26, 2024 from Nancy Allen, City of Phoenix.

COMMENT NO. 26

Table 1-2, Notice of Intent (NOI) Submittal Deadlines.

The proposed permit Table 1-2 requires that existing dischargers submit a Notice of Intent (NOI) between January 1, 2025, and February 28, 2025. Additionally, the Stormwater Pollution Prevention Plan (SWPPP) must be updated to meet the permit requirements before the NOI submission (see MSGP Section 5.0). The City Aviation Department has approximately 90 co-permittees who will need to submit NOIs. These updates cannot happen until the City updates its associated SWPPP and posts it in myDEQ. Extensive coordination efforts are required. The dates proposed by ADEQ, January 1, 2025 to February 28, 2025, are not practicable. The City requests that ADEQ extend the NOI period or SWPPP submittal by at least one month to March 31, 2025, particularly for permit holders with co-permittees.

RESPONSE NO. 26

Based on this comment, ADEQ is extending the timeframe for current permittees to submit a new NOI. Permittees must now submit a new NOI between January 16, 2025 and April 16, 2025 to maintain permit coverage per Table 1-2 of the Mining and Non-Mining MSGPs.

COMMENT NO. 27

Table 1-2 Footnote 2 specifies that discharges are not authorized if the NOI is inaccurate (incorrect facility name, facility address, or facility latitude/longitude) and requires submittal of a new NOI and a fee for inaccurate NOIs. Some City facilities and operations cover large areas and have multiple entrances. These large facility footprints sometimes make identification of point sources difficult. ADEQ should specify the latitude/longitude for a facility (e.g., main entrance, central location, etc.) or ADEQ should state exactly what latitude/longitude would be most appropriate.

RESPONSE NO. 27

Based on this comment, ADEQ has clarified that the latitude/longitude should represent the central location of the facility in Footnote 2.

COMMENT NO. 28

*Section 1.6.5 Conditional Exclusion for a No Exposure Certificate (NEC)/NEC Timeframes
The NEC is nontransferable and must be renewed with ADEQ every five years from the issuance date. The cost of the NEC fee is a burden to small businesses for an activity that is excluded from requiring MSGP permit coverage. The City requests that the NEC be transferable as a pro-rated business asset if the business is sold or it should be refundable.*

RESPONSE NO. 28

Arizona Administrative Code (A.A.C.) R18-9-C904 regulates change of ownership or operator for a facility operating under an AZPDES general permit. The permitted owner

or operator must submit a Notice of Termination (NOT) within 30 days after the new owner or operator assumes responsibility for the facility. The new owner or operator must obtain permit coverage 30 calendar days before taking over operational control or initiating activities at the site. Therefore, allowing transfer of NECs would require a rule change. ADEQ cannot authorize the transfer of NECs as part of this permit reissuance.

Although ADEQ cannot change the NEC fee or allow transfers of the NEC under this reissuance, ADEQ will continue to evaluate permit fees and listen to feedback from business and the public.

COMMENT NO. 29

Section 2.2.1.1 Control Measure Selection and Design Considerations

The proposed revisions to this section require permittees to implement control measures to help minimize stormwater discharge impacts from major storm events such as extreme/heavy precipitation and flood events by implementing structural improvements, enhanced/resilient pollution prevention measures, and other mitigation measures”.

a) The language in the current MSGP already accounts for permittee selection and implementation of control measures to account for site conditions. The City believes this additional language is redundant and unnecessary. Existing control measures at permitted facilities should already account for site-specific conditions, including potential flooding caused by precipitation, significant run-on from neighboring facilities, or other unique circumstances. The MSGP already requires Corrective Action to modify control measures in the event conditions at a facility may cause stormwater pollution. In addition, most facilities covered by the MSGP have maintained coverage for many years, and already have experience with many types of flooding/drainage conditions.

b) If this language is retained, the City requests that ADEQ:

- 1) Clarify how ADEQ will determine whether emergency procedures for major storms are complementary to routine stormwater pollution prevention planning.*
- 2) Airport Emergency Plans are Security Sensitive information per 49 CFR 1520. The City requests that ADEQ document and acknowledge that an internal emergency plan could contain Security Sensitive Information and could not be available to the public and would not be included in the MSGP Stormwater Pollution Prevention Plan (SWPPP).*

RESPONSE NO. 29

ADEQ recognizes that not all of the considerations listed in Part 2.2.1.1, including the controls for major storm events, will be applicable to every facility nor will they always affect the choice of control measures. ADEQ is not requiring operators to implement additional controls if the operator determines it unnecessary or redundant, but rather to consider the benefit of selecting and designing control measures that reduce risks to their industrial facility and the potential impact of pollutants in stormwater discharges caused by major storm events.

In response to this comment, ADEQ removed the example control measure of developing scenario-based emergency procedures. ADEQ understands that many MSGP

permittees, including airports, maintain Emergency Plans that are confidential. As such, ADEQ has not and will not require submission of Emergency Plans under the MSGP. Given ADEQ's limited expertise to evaluate Emergency Plans under the MSGP, ADEQ believes removal of language referring to Emergency Plans is appropriate.

COMMENT NO. 30

Section 5.6 Additional SWPPP Documentation Requirements

This section requires that the permittee keep certain maintenance, corrective action, inspections, visual assessment results, monitoring, employee training and certification records complete and up-to-date with the site's SWPPP. To make it clear that these records are not to be incorporated into the site's SWPPP, the City recommends inserting the word "filed" after "up-to-date" (to read: "...records complete and up-to-date filed with the site's SWPPP").

RESPONSE NO. 30

In response to this comment, ADEQ added the word "filed" after "up-to-date" in Section 5.6 in both permits.

COMMENT NO. 31

Appendix A – Definitions, Abbreviations, and Acronyms

The term "control measure" is used in the MSGP rather than Best Management Practice (BMP). However, BMP is still used in the definition of "Minimize", and sections 2.2.1.2 and 2.2.1.2.5. Please update the permit to use control measure consistently or include a definition for BMP.

RESPONSE NO. 31

In response to this comment, ADEQ added a definition for Best Management Practices, consistent with A.R.S. § 49-201(3), to both the Mining and Non-Mining MSGP.

Comments #32-41 received on November 26, 2024 from Steve Trussell, Arizona Mining Association (AMA).

COMMENT NO. 32

Action Level for TSS—Parts 6.2.1, 8.G.8.1 (Table 8.G-8.1), 8.G.8.2.1 (Table 8.G.8.2), & 8.J.8 (Table 8.J-8.1)

The AMA commented that the proposed action level for TSS of 100 mg/L should be removed from the mining MSGP from both Sectors G and J, leaving it as a monitor-only parameter. As documented in this comment and in the attached technical memorandum from Benchmark Environmental LLC, which is incorporated into these comments, the TSS action level of 100 mg/L is not justifiable from either a technical or economic perspective as applied to stormwater discharges in arid Arizona.

As an overall observation, there is no surface water quality standard ("SWQS") for TSS in Arizona. The only related SWQS is for suspended sediment, and that standard does not apply: (1) to ephemeral waters, where many mining stormwater outfalls are located; or (2) during or within 48 hours of a local storm event. See A.A.C. R18-11-109(B). As such,

there is no basis in Arizona's SWQS for a TSS action level of any kind, much less at a level of 100 mg/l.

The AMA's reasoning for removing the TSS includes: 1. there is no surface water quality standard ("SWQS") for TSS in Arizona, 2. the 100 mg/L action level in EPA's MSGP is based on the National Urban Runoff Program study ("NURP study"). The AMA cites several concerns with the NURP study including the study intended to support urban planning and did not include industrial sites, the study used a flow-weighted sampling method instead of discrete "first flush" samples, and the lack of data from Arizona and other southwest states. As a result, the NURP study is not representative of industrial sites in semi-arid and arid systems like Arizona.

The submitted technical memorandum (pp. 5-15) includes a summary of a review of scientific literature on TSS concentrations that occur during stormflows in arid streams. The sources reviewed include: (1) Development Document for Final Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory (EPA 2001); (2) Channel Change and Sediment Transport in Two Desert Streams in Central Arizona, 1991-1992 (USGS 1995); and (3) ambient surface water quality data collected by the USGS and ADEQ from reference streams in Arizona. This review supports the following two conclusions: (1) stormwater runoff in undisturbed semiarid and arid streams contain naturally elevated TSS and suspended sediment, with concentrations multiple orders of magnitude above 100 mg/L being common; and (2) elevated TSS and suspended sediment concentrations also occur during non-baseflow conditions in perennial streams used to define reference conditions in Arizona.

For these reasons, the EPA benchmark of 100 mg/l for TSS, and the basis cited by EPA for that benchmark (i.e., the NURP study), do not support adoption of an action level for TSS in stormwater runoff from mining sites in Arizona.

Further, the current version of the mining MSGP (and the proposed version) already require permittees to adopt control measures to specifically address potential pollutants from erosion and sediment.

RESPONSE NO. 32

ADEQ appreciates AMA's comments regarding the TSS action level. ADEQ agrees that the NURP study, which the action level is based on, lacks information about industrial sites, particularly mining sites, and does not adequately account for the unique conditions in Arizona. Further, ADEQ acknowledges Arizona does not have a surface water quality standard for TSS, which creates difficulty in assessing the impact of TSS on human health and the environment.

Accordingly, ADEQ has removed the action level for TSS of 100 mg/L from the Mining MSGP from both Sectors G and J, leaving it as a report-only parameter.

COMMENT NO. 33

Action Levels for Metals—Parts 6.2.1, 8.G.8.1 (Table 8.G-8.1), 8.G.8.2.1 (Table 8.G.8.2), 8.G.8.2.2 (Table 8.G-8.3), Appendix C

AMA opposes ADEQ's unsupported proposal to include action levels and related monitoring requirements for metals in the public notice version of the mining MSGP. The proposal is not scientifically, technically, or legally defensible for the following reasons:

- 1. Natural mineralization: Hard rock mines are located in mineralized areas where elevated levels of metals are expected due to natural background conditions. Action levels for metals set equivalent to default surface water quality standards may often be set below levels that would be seen in naturally occurring runoff from these mineralized areas.*
- 2. Variability of stormwater discharges: ADEQ (and EPA) have long recognized that the nature and variability of stormwater discharges renders the use of numeric pollutant standards impracticable... The variability of stormwater discharges makes application of any numeric criteria to stormwater (whether as a limit or action level) problematic given (a) the unique conditions that occur during episodic storm events, particularly in arid west ephemeral drainages, and (b) such an approach fails to account for the receiving water assimilation of any potential pollutants in stormwater discharges.*

AMA's experience has been that stormwater runoff quality from disturbed and undisturbed areas in the arid west is influenced as much or more by the type and intensity of the storm event, and the time since the last rain event, than by the type of control measures implemented. The quality of storm water discharge has been seen to vary significantly even where there has been no change in control measures.

- 3. Problems with applying Arizona's current surface water quality standards to stormwater discharges: In the 2002 triennial review of Arizona's surface water quality standards, several stakeholders raised the concern that the criteria supporting the current water quality standards, including the adopted standards for ephemeral waters, do not account for the unique conditions that are created by episodic stormwater discharges. The AMA and Asarco commented on the 2002 Triennial Review with suggestions for improving surface water quality standards for ephemeral waters. ADEQ responded to these comments stating that "the development of appropriate water quality standards for ephemeral waters needs further review and discussion." This fact alone supports the position that application of Arizona's default surface water quality standards directly to stormwater discharges as action levels in stormwater permit is fundamentally flawed.*
- 4. Recent NAS Study acknowledged problem with applying water quality standards to stormwater discharges: As noted above, the criteria supporting Arizona's current water quality standards do not account for the unique conditions that are created by episodic and highly variable storm water discharges. This critical issue*

was identified in a 2019 National Academy of Sciences (“NAS”) study: *Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges* (NAS 2019)

(<https://www.nap.edu/catalog/25355/improving-the-epa-multi-sector-general-permit-for-industrial-stormwater-discharges>). The study discusses on page 10 concerns with applying water quality criteria or standards to stormwater discharges:

Most often, [water quality] criteria are pollutant specific and numeric and are designed around a low-flow dry weather condition, with the idea that this condition represents the highest pollutant concentration in a water body. However, stormwater flows will occur during quite different flow and loading conditions than those for which the criteria are typically established. Questions have been raised about the applicability and relevance of these criteria to wet weather conditions, but separate criteria for wet weather allowances have not been developed and implemented for industrial stormwater discharges.

5. *This NAS discussion has particular relevance in Arizona because of (1) ADEQ’s prior acknowledgment of the inapplicability of its surface water quality standards to stormwater discharges, and (2) the acknowledgement of the requirement in ADEQ’s surface water quality standards for ADEQ to use hydrologically based receiving water “low flow” averages when deriving water quality criteria to produce both acute and chronic water quality standards (see A.A.C. R18-11-101(15)).*
6. *Difficulty of developing meaningful action levels: Although there is a stated premise that monitoring for compliance with action levels is intended to evaluate control measures, there is no clear connection between ADEQ’s proposed action levels and control measure effectiveness at mining sites (i.e., there has been no analysis done concluding that a certain degree of pollutant reduction is generally achievable). ADEQ recognized and agreed with this at Part IX.B.1 of the Mining MSGP 2010 Fact Sheet (page 50), stating: “The rationale for this is the fact that mine sites typically disturb vast areas of naturally mineralized land all at the same time; hence, it is difficult to develop meaningful numbers that are useful in measuring control measure effectiveness.” The lack of a clear connection between action levels and control measure effectiveness could lead permittees to have to engage in potentially expensive review and upgrade of control measures even if doing so is not necessary to meet the requirement of not causing or contributing to a violation of applicable water quality standards in the receiving water. Because there is no clear connection between the proposed actions levels and control measure effectiveness, the establishment of action levels becomes an arbitrary and technically unsupportable exercise, with potentially expensive consequences for permittees forced to try and meet these arbitrary criteria.*

RESPONSE NO. 33

ADEQ is retaining action levels for metals in the Mining MSGP. These action levels are scientifically and legally defensible. Although action levels do not consider technology, there is an exception in the permit for any action level exceedances which are not technologically achievable.

ADEQ acknowledges the natural background concentration of some pollutants in mineralized areas may be above surface water quality standards (SWQS). ADEQ has included a natural background exception in the permit, see Response #34 for more information regarding the exception.

ADEQ acknowledges pollutant concentrations in stormwater can be highly variable and SWQS themselves do not account for the variability in stormwater conditions. The Mining MSGP allows the permittee to collect either discrete or flow-weighted composite samples. The use of flow-weighted composite sampling protocols can help account for the pollutant concentration variability in stormwater. Aquatic and Wildlife SWQS are developed based on the maximum amount of the pollutant that organisms can ingest without causing deleterious effects, such as cancer or inhibited reproduction. The general formula is magnitude, duration, and frequency of exposure. Arizona's SWQS apply to all surface waters at all times with the exception of suspended sediment concentration (SSC) or unless specifically modified in the Impaired Waters Identification Rule (IWIR). ADEQ recognizes there is ongoing interest in surface water quality standards that better account for stormwater conditions. However, ADEQ must ensure all AZPDES permits, including stormwater permits, are protective of the current SWQS that are promulgated in rule. Therefore, ADEQ believes it is appropriate to set action levels based on current SWQS for metals to ensure protection of human health and the environment.

ADEQ notes that while the NAS study mentioned the limitations of basing action levels (known as benchmarks in EPA's MSGP) on SWQS, the NAS study ultimately recommends the following: "Benchmarks should be based on the latest toxicity criteria designed to protect aquatic ecosystems from adverse impacts from short-term or intermittent exposures, which to date have generally been acute criteria" (page 43). ADEQ's current approach of applying acute criteria as an action level (and apply chronic criteria if no acute criteria exists) is consistent with the NAS study conclusions.

ADEQ acknowledges that action levels are not based on control measure effectiveness. Action levels are not arbitrary; action levels are based on water quality standards. ADEQ must include any requirements necessary to achieve water quality standards established under section 303 of the Clean Water Act, including State narrative criteria for water quality per 40 CFR 122.44(d)(1). By including water quality-based action levels and analytical monitoring in the permit, ADEQ is ensuring the protection of water quality as required by the CWA. ADEQ notes that while the action levels are not technology-based, there is an exception to action level exceedances if no further pollutant reduction is technologically and economically practicable and achievable in light of industry practice. The AMA also points out a situation where a permittee could install control measures where it is unnecessary because the discharge is not causing or contributing to a

violation of applicable water quality standards in the receiving water. The permit accounts for this situation to ensure permittees are not needlessly adding control measures. Part 6.2.1 of the Mining MSGP lists an exception to action level exceedances if the permittee demonstrates that the discharge does not result in any exceedance of surface water quality standards in the protected surface water.

COMMENT NO. 34

Exceptions for Action Level Exceedances—Part 6.2.1

If action levels are retained notwithstanding the science-based evidence presented in these comments in opposition to action levels, then AMA supports and largely agrees with ADEQ’s language in Part 6.2.1 that creates exceptions from the requirements that would otherwise apply in the case of an action level exceedance.

However, the first exception for natural background pollutant levels appears to be too restrictive and it is unclear what is meant by “solely attributable.” The language in the first exception appears to limit the exception to situations where a stormwater discharge does not contribute any additional pollutants above background or where the controls associated with the discharge clean up stormwater runoff to be less than background. AMA suggests that the language “solely attributable” be removed from the first exception or language added to clarify that the intent of the language is that if natural background alone would cause an exceedance of the action level, then the exception is applicable.

RESPONSE NO. 34

ADEQ acknowledges the support of most exceptions listed in Part 6.2.1.

ADEQ is retaining the “solely attributable” language in the permit. To qualify for the exceptions, permittees must not contribute any additional pollutants above the background concentration or permittees must implement controls measures to clean up the stormwater discharge to be less than or equal to background concentration. ADEQ cannot allow a discharge to cause or contribute to a surface water quality standards exceedance per 40 CFR 122.4. Discharges of stormwater that are above surface water quality standards and are above the natural background concentration of the pollutant contribute to a surface water quality standards exceedance.

COMMENT NO. 35

Exceptions for Action Level Exceedances—Part 6.2.1

AMA also disagrees with the proposal that documentation for the exceptions for action level exceedances must be submitted to ADEQ. This creates an unnecessary burden on both the permittee and ADEQ. The better approach is to require that such documentation be maintained in the SWPPP and made available for review by ADEQ upon request or during compliance inspections.

RESPONSE NO. 35

ADEQ is requiring documentation for exceptions for action level exceedance to be submitted to ADEQ to fulfill our mission of protecting public health and the environment. Action level exceedances indicate possible impacts to public health and the environment, which is why the permit requires follow-up action for any action level exceedances in Part 6.2.1 of the Mining MSGP. ADEQ needs to review the documentation for all exceptions to ensure that an exception is appropriate for each situation and ensure there is no harm to public health or the environment. Submission of the exception documentation within 30 days of receiving laboratory results allows ADEQ to review this information in a timely manner.

COMMENT NO. 36

Enhanced Controls for Stormwater Discharges from Major Storm Events—Part 2.2.1.1
AMA disagrees with the proposed new control measure and design selection criteria added to Part 2.2.1.1 for minimizing impacts from “major storm events,” and requests that the new language be removed. The proposed language raises significant questions regarding how ADEQ will interpret “major storm events” and “extreme/heavy precipitation and flood events” and how some of the “additional” control measures listed in the proposed language would be applied to large outdoor operations. It is not appropriate to require evaluation of stormwater control based on undefined terms that could be interpreted broadly. The mining MSGP already adequately addresses the possibility of major storm events through all the other requirements outlined in the MSGPs. There is no justification for the proposed additional control measure and design selection criteria, and they should be deleted from the mining MSGP.

RESPONSE NO. 36

For information about Enhanced Controls for Stormwater Discharges from Major Storm Events, see Responses #29 and 42.

COMMENT NO. 37

Stormwater Discharges Authorized by Mining MSGP—Parts 1.1.1 & 8.G.1
Consistent with the definition of “stormwater discharge associated with industrial activity” in 40 C.F.R. § 122.26(b)(14), AMA supports the changes ADEQ made to Parts 1.1.1 and 8.G.1 of the Mining MSGP that recognize that the permit authorizes “discharges” of stormwater associated with industrial activity, and not sites, facilities, or mining operations more generally. Such changes avoid inappropriate applications of Clean Water Act permits, such as the issue that arose in a recent Ninth Circuit decision in a case originating in the state of Washington.⁴ In that case, the Ninth Circuit held that based on the way the state MSGP was drafted (and not the requirements of the CWA), runoff from portions of a site required permit authorization even though the activities at that portion of the site: (1) did not fall within the SIC codes that required the rest of the site to obtain MSGP coverage; and (2) were physically distinct from the areas within the covered SIC code. Although Arizona’s AZPDES statute arguably may prevent such an interpretation (see A.R.S. § 49-255.01(B)), ADEQ’s changes to Parts 1.1.1 and 8.G.1 make it clear that, consistent with the CWA, the permit authorizes actual point source discharges associated with industrial activity rather than sites, facilities, or mining operations.

RESPONSE NO. 37

ADEQ acknowledges AMA's support for these portions of the permit.

COMMENT NO. 38

Surface Water Quality Standards in Protected Surface Waters—Parts 1.1.4.5, 1.1.4.6, & 3.1.1 (second bullet)

AMA supports the change made by ADEQ in Parts 1.1.4.5, 1.1.4.6, and 3.1.1 (second bullet) to add a reference to protected surface water when referring to exceedances of surface water quality standards. Such changes are necessary to make the permit internally consistent (see the first sentence to Part 2.1.1 (Water Quality Standards)) and to clarify that surface water quality standards only apply to protected surface waters consistent with A.A.C. Title 18, Chapter 11, Articles 1 and 2.

RESPONSE NO. 38

ADEQ acknowledges AMA's support for these portions of the permit.

COMMENT NO. 39

Corrective Action—Part 3.1.1 (first bullet)

AMA supports the change made to the first bullet of Part 3.1.1 to clarify that only unauthorized discharges discovered during testing or evaluation of stormwater outfalls for the required certification of discharge testing under the mining MSGP trigger corrective action under the mining MSGP. Ultimately, only unauthorized discharges associated with the failure of stormwater controls should trigger corrective action. If, for example, a truck damages a pipeline and causes a discharge to a WOTUS or other protected surface water, there is no need to address that issue under the MSGP, as that permit is only designed to address stormwater discharges and associated stormwater control measures.

RESPONSE NO. 39

ADEQ acknowledges AMA's support for this portion of the permit.

COMMENT NO. 40

Additional Implementation Measures ("AIMs")—Part 6.3

AMA has substantial concerns with ADEQ's proposal to incorporate EPA's AIMs approach for addressing exceedances of actions levels into the non-mining MSGP. One of the primary concerns is that the action levels found in the non-mining permits are flawed for many of the same reasons set forth above with respect to action levels for metals in the mining MSGP (see also discussion above regarding the lack of connection between ADEQ's action levels and control measure effectiveness and whether compliance with the action levels is even technically achievable). Therefore, the proposal to escalate and complicate responses to action level exceedances using the AIMs approach in the non-mining MSGP is likewise substantially flawed and ADEQ should remove it from the final reissued version of the permit.

AMA believes that the combination of flawed action levels and escalated and complicated AIMs responses will increase overall costs, burdens, and confusion for non-mining MSGP permittees with no corresponding environmental benefit. The AIMs approach appears to fundamentally change the historic role of benchmark sampling by creating a punitive response to action level exceedances while ignoring all of the other aspects of MSGP compliance, such as visual discharge assessments, routine facility inspections, development and implementation of a SWPPP, corrective action, compliance with numerous non-numeric effluent limits, and implementation of stormwater control measures. Also, given the natural variability of stormwater discharges, it is feasible that an existing facility with years of no exceedances could experience two or three exceedances in close proximity. Under the AIMs approach, the facility would face a rapid escalation of AIMs responses, potentially costing the facility substantial time and money to implement new stormwater control measures that may be entirely unnecessary.

Another flaw with the AIMs approach is the erroneous assumption that stormwater control measures can produce stormwater discharges below action levels. This flaw is heightened by the existing disconnect between stormwater control measure performance and action levels that are (1) based on surface water quality standards or (2) not appropriately applied to stormwater runoff conditions in Arizona (such as the 100 mg/L TSS action level). The AIMs approach also erroneously assumes that stormwater control measures should be regulated like how treatment is evaluated in individual NPDES permit for industrial wastewater discharges. However, as noted above, stormwater discharge quality is much more difficult to control than industrial wastewater discharge quality due to the vast differences between highly variable, periodic storm events occurring in a dynamic outdoor setting and controlled industrial wastewater flows.

RESPONSE NO. 40

AIM provides clear, escalating responses for Non-Mining MSGP permittees to take in response to continued action level exceedances. ADEQ expects most action level exceedances to be resolved in AIM level 1, which is nearly identical to the process in the current Non-Mining MSGP. ADEQ expects only a small number of Non-Mining MSGP would progress to AIM levels 2 or 3. The Non-Mining MSGP also contains a number of exceptions to avoid unfairly burdening permittees with AIM requirements.

ADEQ acknowledges there are many other important aspects of the MSGP beyond analytical monitoring requirements. ADEQ values all MSGP requirements including visual assessments, routine site inspections, development and implementation of a SWPPP, corrective action, compliance with numerous non-numeric effluent limits, and implementation of stormwater control measures. ADEQ is not substituting analytical monitoring for any permit requirements; analytical monitoring serves as a supplement to these requirements. For example, visual assessments are useful for evaluating the water quality of the discharge. However, there may be pollutants present in the discharge that are not visible to the human eye. Analytical monitoring and visual assessments both provide useful information for assessing stormwater quality.

ADEQ believes that the action levels in the Mining and Non-Mining MSGPs are appropriate, see Response #33. ADEQ acknowledges that stormwater discharges can be highly variable. One way this is acknowledged in the Non-Mining MSGP is by using the annual average rather than individual sample results to determine if any AIM triggering events have occurred. Another option available to Non-Mining permittees is the abnormal event exception which allows the permittee to avoid an AIM trigger event if an abnormal event caused the exceedance.

While ADEQ acknowledges the difficulties of managing stormwater quality, ADEQ must implement permit conditions to protect public health and the environment and to comply with the Clean Water Act. Industrial stormwater discharges are explicitly required to meet all provisions of Clean Water Act section 301, including applicable water quality standards (Clean Water Act §402(p)(3)(A)).

COMMENT NO. 41

Additional Implementation Measures (“AIMs”)—Part 6.3

Beyond the substantial concerns with the AIMs approach as outlined above, AMA also has numerous concerns with the AIMs exceptions. The exceptions are narrowly drafted and have limited utility. For instance, the natural background exception requires detailed documentation to establish what is narrowly defined as natural background pollutants, and then limits discharges covered under the exception to concentrations equal to or less than background. In other words, to use the background exception, a stormwater discharge must either not contribute any additional pollutants above background or somehow clean up stormwater runoff to be less than background. The exception for demonstrations that discharges do not result in any exceedance of surface water quality standards in downgradient receiving waters is likewise unworkable because it requires “full-storm composite” samples to be collected within short timeframes and ignores other methods of establishing that stormwater discharges will not impact the quality of downgradient surface water unique to Arizona.

RESPONSE NO. 41

Based on informal comments received on the draft Mining MSGP, prior to public notice, ADEQ removed from the Non-Mining MSGP the requirement for a full-storm composite sample and simplified the data required for the natural background exception and the exception for demonstrations that discharges do not result in any exceedance of surface water quality standards in the downgradient protected surface water.

ADEQ believes the existing language for the natural background exception is appropriate. ADEQ believes that for a discharge to qualify for the exception, the discharge must be equal to or less than the background concentration as explained in Response 34.

Comments #42-44 received on November 26, 2024 from Gregory Czerniski, Waste Management.

COMMENT NO. 42

Is there a definition for "major storm events," other than extreme/heavy precipitation and flood events (i.e.: a specific measurable event)?

RESPONSE NO. 42

ADEQ intentionally chose not to state a specific definition for major storm events. Precipitation patterns vary across the state and by season. What may be a small storm for one site could be a major storm for another. ADEQ is giving permittees the flexibility to determine what is considered a major storm event for their site.

If permittees find it useful, they may choose to incorporate a site-specific definition into their SWPPP, such as a 100-year, 24-hour storm event or a set amount of precipitation over time, such as 2 or more inches of rain in 12 hours.

COMMENT NO. 43

Is there a resource and/or website that illustrates the following: "waters on the protected surface water list, which includes waters of the U.S. (WOTUS) and non-WOTUS protected surface waters, either directly or by means of a conveyance."

RESPONSE NO. 43

The Protected Surface Waters List is found in [Arizona Administrative Code Title 18, Chapter 11 \(R18-11\), Article 2 in Tables A, B, and C](#). ADEQ maintains a map of WOTUS protected surface waters and non-WOTUS protected surface waters. The map can be viewed [here](#). For more information, please see ADEQ's [Protected Surface Waters List web page](#).

COMMENT NO. 44

If a site does not conduct industrial activities, is it exempt from permit eligibility? Specifically, as it applies to the following operations:

(1) Transfer Stations, or U.S. EPA defined Convenience Centers, that only receive solid waste and/or recyclable materials from residents for accumulation for <30 days before taking to a landfill and/or recycling facility. These are typically smaller operations.

(2) Transfer Stations that accept solid waste and/or recyclable materials from commercial and residential customers for accumulation for a short period (<72 hours) of time before taking to a landfill and/or recycling facility. These operations do not share the site with Sector P - Motor Freight Transportation (fleet maintenance).

RESPONSE NO. 44

To be eligible for permit coverage under the MSGP, discharges must be associated with regulated industrial activities. If discharges are not associated with regulated industrial activities, the discharge is not eligible for permit coverage under the MSGP. Any point source discharge of pollutants requires an AZPDES permit prior to discharge. If a discharge is not eligible for coverage under the MSGP, an individual AZPDES permit or other general AZPDES permit may be appropriate. For AZPDES permitting options, see [ADEQ's Surface Water Protection Permitting Unit webpage](#).

A transfer station may be required to obtain MSGP coverage depending on the activities that occur at the transfer station. Permit eligibility is based on the activities conducted on site and does not depend on the timeframe of how long the materials are stored.

A transfer station most commonly requires permit coverage because the transfer station is involved in local collecting and transporting of garbage and refuse, which is covered by Sector P, SIC 4214, Local Trucking Without Storage. If the transfer station handles hazardous waste, the transfer station would require coverage under Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities. A transfer station that does not engage in any activities that would fall under Sector P, Sector K, or any other regulated sectors by the MSGP would not be eligible for MSGP coverage.

If there are specific questions about applicability of the MSGP, please contact ADEQ as 602-771-1440 or azpdes@azdeq.gov.

Everyone who commented during the public comment period has the right to file an appeal and request a hearing on the final decision as an appealable agency action under A.R.S. § 41-1092.03 by filing a written Request for Hearing or Notice of Appeal within 30 days of receipt of this notice. A Request for Hearing or Notice of Appeal is filed when it is received by ADEQ's Hearing Administrator as follows:

Hearing Administrator
Office of Administrative Counsel
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

The Request for Hearing or Notice of Appeal shall identify the party, the party's address, the agency and the action being appealed and shall contain a concise statement of the reasons for the appeal. Upon proper filing of a Request for Hearing or Notice of Appeal, ADEQ will serve a Notice of Hearing on all parties to the appeal. If you file a timely Request for Hearing or Notice of Appeal you have a right to request an informal settlement conference with ADEQ under A.R.S. § 41-1092.06. This request must be made in writing no later than 20 days before a scheduled hearing and must be filed with the Hearing Administrator at the above address.