

ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT FOR DE MINIMIS DISCHARGES TO WATERS OF THE U.S.

Permit No. AZG2021-001

RESPONSE TO COMMENTS

(A.A.C. R18-9-A908(E)(3))

Administrative Record

The accompanying Fact Sheet sets forth the basis for issuance of the 2021 Arizona National Pollutant Discharge Elimination System (AZPDES) De Minimis General Permit (DMGP), No. AZG2021-001, by the Arizona Department of Environmental Quality (ADEQ). The DMGP is intended to provide permit coverage for point source discharges to Waters of the United States that meet the applicable surface water quality standards; that are low-flow and/or low-frequency, or otherwise determined by ADEQ to be appropriate for DMGP coverage; that are conducted with appropriate best management practices; and that do not last continuously for longer than thirty (30) days unless otherwise approved in advance by ADEQ. The DMGP is applicable within the State of Arizona, except for Indian Country.

The previous DMGP, AZG2016-001, expired on May 31, 2021, but will remain administratively continued until the effective date of the 2021 DMGP.

Prior to ADEQ preparing the draft permit and providing public notice, one Voice-of-Customer (VOC) was held on March 24, 2021. Stakeholders were invited to submit input on the resulting draft permit and fact sheet during an informal comment period, April 2 through April 16, 2021. Representatives of two municipalities and the EPA submitted comments during that period, and ADEQ revised the permit in response.

The public notice (PN) for the draft DMGP was published in the Arizona Administrative Register on April 16, 2021 (Notice of Public Information No. M21-21). The above-referenced Fact Sheet includes a list of substantive changes that were made in the PN draft permit from the 2016 DMGP. Public comments were accepted by the Department through May 24, 2021. Representatives of two municipalities, one mining company and two individuals submitted comments during the PN period.

SUMMARY OF CHANGES from draft permit to final permit

ADEQ has revised the permit in response to comments received during the PN period, and in consideration of Federal regulatory requirements. The following is a summary of significant changes between the PN draft and final permit, with references to further information in this document or in the accompanying AZPDES Fact Sheet. Additional information and minor changes are addressed in the comments and responses which follow this summary.

1. **Duty to Reapply.** The term “renew” was changed to “reapply” to reflect A.A.C. R18-9-C903(B), that describes the Duty to Reapply, for coverage under the new 2021 DMGP.
2. **24-hour reporting number change.** The twenty-four-hour reporting phone number in Part IV.E.2.c has changed to (602) 771-1440.

3. **Multiple sections: remove mailing address and replaced with an email address for general reporting.** The mailing address for reports has been removed from the permit Part IV.E.2.c and d. Reports are to be emailed to: stormwatercompliance@azdeq.gov.
4. **Add receiving water to NOI contents.** Part III.B.5, add receiving water as a selection needed to complete the NOI.

Subsequent changes from the draft to final permit are described in the Response to Comments, Part A through F below.

A. Tucson Water emailed comments on May 4, 2021

Comment A1

Page 5, Part I.B.3.d.(1) please clarify if 72 hours is continuous or non-continuous. Please clarify if the flow is non-continuous does the clock restart in counting hours whenever discharge stops and restarts.

Response A1

Part I.B.3.d.(1), the word “continuous” had been added for clarity. The clock would restart when the well/ aquifer pump test begins.

Comment A2

Page 5, Parts I.B. 4.e. and 5., please define ‘short-term’. On page 6, Part I.B.7., ‘short-term’ is noted as generally less than 30 days. Does this short-term note apply to all areas of the permit, and if so, recommend noting it as such at first use in the permit or defining it in the definition section of the permit.

Response A2

The term “short-term” applies to permit areas where this term is used. The description “generally less than 30 days” was moved to Part I.4.e., when the wording short-term is first used in the permit.

Comment A3

Page 8, Part II. 3. ‘Timing of authorization’ sub-sections (a.) and (b.): the sub-sections no longer have a different duration (7 calendar days or 30 days) that separate them. This area can be reworded and consolidated. Same comment for Page 9, Part II. Items 8. And 9.

Response A3

Part II. 3, and 8, the ‘Timing of authorization’ sub-sections (a.) and (b.) were combined. Part II.9 was not changed as the Certificate of Authorization may include additional special provisions for certain discharge conditions.

Comment A4

Page 8, same section as above: initially in this section and mentioned in several instances within the permit, a ¼ mile distance is used as the referenced distance from Outstanding Arizona Waters (OAW), impaired waters, perennial or intermittent, and effluent-dependent waters. Please explain or justify ¼ mile distance determination versus a shorter/longer distance. In addition, please clarify if the ¼ mile distance from the riverbanks or from the river centerline? It would be a nice feature if the ¼ mile buffer was shown in the ADEQ eMAPs around the specific river types so a permittee can quickly identify if a discharge is within that distance.

Response A4

ADEQ recognizes that in some cases discharges within ¼ mile may not reach a unique waterbody. There may also be discharges greater than ¼ mile from a perennial water that do reach it based on factors such as volume of discharge, stream bed slope, and soil permeability. ADEQ has chosen a cut-off of ¼ mile that we believe is protective in the majority of cases. Monitoring in areas within ¼ mile of unique waters will be reviewed on a case-by-case basis. ADEQ recommends using the river bank, a point at which the discharge could potentially impact the water body.

The myDEQ system does identify waters by name within a ¼ mile distance from the outfall when completing the NOI. Future myDEQ enhancements, could include a visual depiction using a map features to identify those water bodies within a ¼ mile.

Comment A5

Page 9, Part II.A.6., second paragraph references 'II.B.5.a., II.B.6.'. These sections do not exist in the permit.

Response A5:

Correction made. The reference to II.B.5.a. and II.B.6 has been removed.

Comment A6

Page 10, Part II.A.10. second paragraph first sentence should include the words 'when applicable'. The majority of the MS4 areas are in ephemeral wash areas, therefore, most discharges will have no discharge authorization to forward to the MS4 operator. However, in working with MS4 operators, they typically have their own conditions as to when to be notified of discharges. Should the language in the permit be changed in light of the removal of ephemeral areas from the DMGP and that MS4 permittees potentially having their own specific requirements?

Response A6

The municipal separate storm sewer permit (MS4) authorizes the discharge of stormwater to Waters of the U.S (WOTUS). The definition of MS4 is a municipality owned or operated storm system that discharges to a WOTUS. Based on the new Navigable Waters Protection Rule (NWPR), which became effective June 22, 2020, ephemerals are no longer WOTUS, however, if an MS4 maintains their permit coverage after the new rule because they discharge stormwater to a WOTUS or the discharge has the potential to reach a WOTUS, the DMGP permittee should notify the regulated MS4. If the discharge is to a non-regulated municipality, or the storm sewer system no longer requires permit coverage because of the new NPRW rule, notification would not be required by the permit. The language was not changed.

Comment A7

Page 13, Part III.B.: in the first paragraph reference to 'Part II.A.1.' as an exception no longer applies, a NOI is required.

Response A7

The Part III.B is included to describe situations that require ADEQ review and specific approval for certain types of discharges. This may include reviewing a justification for a discharge longer than 30 continuous days, or contacting the local Tribe prior to issuing authorization. The 2016 DMGP (up until June 2018 when myDEQ became available to DMGP customers) processed paper applications and issued written letters for approval. This section remained in the 2021 DMGP to describe specific situations that may require additional ADEQ review

and describes (in the electronic world), when a discharge for specific discharge situations is authorized (upon receiving the Certificate of Authorization from myDEQ). The language was not changed.

Comment A8

Page 13, Part III. B. 4.: is first instance of permit referencing a 'Table 2', but there is no Table 2 in the permit. If this is a 'Table 2' part of an NOI, does that 'Table 2' still exist in the MyDEQ system?

Response A8

The reference to Table 2 has been removed. Table 2 was located on the paper NOI Form for obtaining coverage under the 2016 DMGP. The information that was requested on Table 2, has been incorporated into the electronic NOI application in myDEQ, where applicable.

Comment A9

Recommending defining the items being referenced as 'Table 2' within the permit. Other instances that Table 2 reference is used are located at: Part III. B. 5. and .12.

Response A9

Reference to Table 2 was removed, as the table was part of the paper NOI application that is no longer accepted.

Comment A10

Page 19-20, Part IV.E.2.c.i.: For the 24 hour notification and general reporting not applicable to MyDEQ, is there an available general, such as stormwater@azdeq.gov, email account that can be noted here and the below section d?

Response A10

The 24-hour notification phone number has changed to: (602) 771-1440. General reporting, including the 5-Day Written Report shall no longer be sent to a mailing address, rather those reports shall be emailed to: stormwatercompliance@azdeq.gov. Part IV.E.2.c.i and d have been updated to reflect this change. If reporting becomes available using myDEQ, permittees will be notified of the change.

Comment A11

Page 24, Part V. K. 4. Last sentence of the certification statement should reference 'AZG2021-001' instead of AZG2016-001.

Response A11

Correction made.

Comment A12

Pages 28-30, Definitions: The De Minimis permit should specify the GIS layer names of the mapping interpretations of all the different streams covered under this permit that will be maintained in relationship to this permit. Those GIS layer names should be specified with the different stream definitions. This clarification is necessary as there are currently several GIS layers available and it is unclear which are the proper layers to reference. For example, both intermittent and perennial waters are defined as based on their flow type and then within the same definitions it states these waters generally have aquatic and wildlife water (A&Ww) and wildlife cold water (A&Wc) uses. Based on these stream definitions in the de minimis permit, two GIS layers could be referenced: R-18-11 Appendix B Streams (highlighting AWC and AWW streams) or Flow-Regimes – Perennial Intermittent Ephemeral Streams (highlighting perennial and intermittent stream flows). Although the appropriate

streams will be provided within the MyDEQ process, having the GIS layer(s) streams available and identified will allow permittees to produce maps with assets and develop protocols in advance of discharges. After requesting de minimis permit associated stream GIS layers to gis@azdeq.gov, ADEQ provided five GIS layers: 1. Appendix B Waters (Lakes & Streams); 2. Assessed Waters (Lakes & Streams for 2018/2020); 3. OAWs (Outstanding Arizona Waters); 4. Flow Regimes "PIE" – (waters with a defined flow regime); and 5. Flow Regimes "unknown" (waters that we have not data on or no sufficient flow regime analysis). Please clarify in the permit which GIS layers are associated with each of the different stream types in the de minimis permit.

In addition, recommend for distribution emails be sent to all permittees when the associated GIS layers have been modified or updated.

Response A12

ADEQ is updating GIS layers on a monthly basis, including adding, removing and changing identification of receiving waters, updated flow regimes, and assessments. Because the GIS layers are updated on a regular basis, the GIS layers associated with each stream type cannot be defined with complete accuracy at this time. The definitions for those water bodies types will be consistent with those found in current rule A.A.C. R18-11-101, if and when revised. No change was made to the permit. ADEQ is working on providing more accurate maps and will notify all affected permittees when the GIS layers are updated and finalized.

Comment A13

Page 32, Appendix A, A.2.b.: second and third sentences discuss reporting, not monitoring. Should these sentences be moved to Appendix B, B.2., and be revised based on reporting requirements used in myDEQ?

Response A13

In Appendix A, A.2.b., the second and third sentences were removed. The language is no longer relevant as electronic DMRs cannot use a "less-than" symbol or report "non-detect" as a result. Electronic DMRs implement the use No Data Indicator (NODI) codes to indicate why a sample value is not reported on a DMR. If the sample result is non-detect, permittees should use NODI Code B: Below Detection Limit/No Detection on the DMR. The information was not added to Appendix B, B.2, as specific details related to reporting and the use certain of NODI codes would best be addressed on the DMGP webpage, in case e-reporting rules are updated or changed. Please Note: changes to DMGP DMR NODI codes will occur mid-2021. ADEQ will communicate these updates in your myDEQ notifications and on the DMGP website.

Comment A14

Page 33, Appendix A, A.3.b.: Grammatical typo, second sentence ends in a comma, should be a period or the capital W should be lower-cased.

Response A14

Correction made.

Comment A15

Page 33, Appendix A, A.4.: References Tables A through D. D should be changed to C. In the same sentence it states that monitoring will be specified by ADEQ in a De Minimis discharge authorization letter. With the myDEQ process, is this still considered correct?

Response A15

Table D was removed and changed to Table C. Monitoring will be specified in the Certificate of Authorization sent through myDEQ.

Comment A16

Page 34, Appendix A, A.6.: With the increased use of technology including in the field, can this paragraph be expanded to allow the use of an electronic field log?

Response A16

Appendix A, A.6 has been expanded to include an electronic filed log.

Comment A17

Page 35, Appendix A, B.1.b.: Mentions exact dates of January 1, 2020 and February 28, 2020 twice. However, should these dates not include an exact year, but reference general terms like 'annually conducted prior to January 1.' Or 'results shall be submitted to ADEQ annually no later than February 28,'?

Response A17

The dates have been corrected to January 1, 2025 and February 28, 2025 respectively. Appendix A, Part B.1., indicates discharge monitoring reports are required to be submitted with the NOT for certain discharges. Long-term permittees that may never submit NOTs, and have a single due date (February 28, 2025) to submit the DMR. Additionally, Federal rules governing the AZPDES program require reporting instances of noncompliance at least annually (40 CFR §122.44(i)(5)). However, long-term permittees may never need to submit NOTs, and they may have only a single due date (February 28) for submitting discharge monitoring reports. For conformance with the Federal rules, ADEQ the permit requires reporting by February 28 each year for any such noncompliance that occurred during the previous calendar year.

B. Tucson Water emailed comments on May 13, 2021

Comment B1

Yesterday, May 12, 2021, ADEQ sent a notification that the flow regimes had been updated (email below). Focusing in the Tucson area streams such as the Pantano Wash, Rillito Creek, and Canada del Oro are now classified as intermittent. However, these new flow regimes classifications are in conflict with the Arizona Administrative Code (A.A.C.) Title 18-11, Appendix B which indicate each of these as A&We (aquatic and wildlife ephemeral). In addition, on pages 28-29 of draft redline version of the de minimis general permit definitions support and reference that ephemeral waters are defined by the A.A.C. as (A&We) and that those typically defined as Aquatic and Wildlife (cold water) are generally perennial or intermittent waters at elevations above 5,000 feet. Generally, these washes (Pantano Wash, Rillito Creek, Canada del Oro, and two others, Arcadia and Arroyo Chico) in the Tucson valley at an elevation of ~2,390 feet are observed dry year round except during precipitation events. ADEQ should ensure and confirm with scientific data and field observations that these washes meet the definition of an intermittent flow regime when changing a wash classification. Intermittent water is defined as: means a stream or reach that flows continuously only at certain times of the year, as when it receives water from a spring or from another source, such as melting snow (A.A.C. R18-11-101(25)). Intermittent waters generally have aquatic and wildlife (warm water) (A&Ww) or aquatic and wildlife (cold water) (A&Wc) uses along with other protected uses as listed in 18 A.A.C. 11, Article 1, Appendix A.

The future DMGP should be clear on which streams are subject to the proposed Tables A-C of the permit. With the conflicts between the DMGP definitions, A.A.C., and the GIS Flow Regimes updates by ADEQ, it is unclear.

Prior to this recent flow regime update, the Tucson valley stream flow regimes were similar as presented in the DMGP and A.A.C.

Changing stream designations from being currently classified as A&We in the A.A.C. to the higher requirements imposed by the A&Ww and A&Wc classifications, ADEQ should ensure these changes are fully supported by scientific data, and the Arizona Administrative Code should be revised to reflect those changes.

Response B1

A.A.C. R18-11, Appendix B is not the current list of WOTUS in Arizona since the Navigable Waters Protection Rule (NWPR) changed jurisdiction subsequent to the promulgation of Appendix B. ADEQ is working to map waters with unknown flow regimes to help define which waters are WOTUS and help permittees know if they have to apply for a permit. Currently, approximately 80% of state waters flow regimes are unknown.

ADEQ flow regime maps do not directly relate to this permit. The flow regime maps are the most up-to-date information ADEQ has regarding the flow regime of Arizona's waters. If an organization or applicant has additional information to help inform the flow regime of a specific water body, ADEQ would appreciate submittal of that information to help improve our maps. It should be noted, that the designated uses for a water body are established in rule and have to be updated through a rule making process. That rule making will be informed by ADEQ's flow regime map.

ADEQ is willing to work with any organization or applicant to help determine if a water is a WOTUS and to determine which standards apply to those water bodies.

No change was made to the permit.

C. City of Phoenix emailed comments on May 19, 2021

Comment C1

ADEQ has removed timeframes for department issuance of discharge authorizations in DMGP Part II A.3, A.8 and C.2 and replaced with the language "upon receipt of the Certificate of Authorization from myDEQ assigning an authorization number and approval date." Please add language to these sections to specify maximum ADEQ timeframes for issuing discharge authorizations. These timeframes should be no longer than those listed in the 2016 DMGP.

Response C1

The language regarding timeframes for issuing discharge authorizations was removed from the permit language. The permit language reflects conditions, requirements and compliance conditions for the person obtaining the authorization, not for the permit issuer. Language has been added to the to the Fact Sheet that describes that the Certification of Authorization is issued immediately in myDEQ for certain NOIs, but that other types (within a ¼ mile upstream from OAW/Impaired, Specific Approvals, discharges lasting longer than 30 continuous days, a discharge reaching Indian Country, etc.) require more time for ADEQ to review.

Comment C2

The City is concerned about the uncertainty associated with the discharge risk assessment approach to permit decisions. Although ADEQ has provided a risk-based screening toolkit, there is not clear or sufficient guidance for the permittee to determine the likelihood of a discharge reaching a surface water, thereby requiring permit coverage. For example, the ADEQ flow regime map that is part of the risk assessment is not complete, resulting

in uncertainty regarding which washes ADEQ believes are intermittent (and therefore potentially WOTUS) and which are ephemeral.

Response C2

ADEQ concurs that there is uncertainty after EPA's promulgation of the Navigable Waters Protection Rule. As mentioned above, ADEQ is working to map flow regimes to give clarity on whether a water is a WOTUS. Where it still is not clear if a discharge would reach a WOTUS, the facility should evaluate its risk and determine if permit coverage is prudent. Whenever a facility requests permit coverage ADEQ will grant coverage, unless it is factually impossible for that facility to discharge.

Comment C3

Related to the prior comment, because ADEQ is placing the responsibility to make an assessment of the risk of an indirect discharge making it to a WOTUS on the discharger, who can choose what level of risk to accept for permitting decisions, it is important for the myDEQ page to acknowledge this approach. The closest downstream WOTUS for many of the City's ephemeral discharge points would be the Salt River. These discharge points into presumed ephemeral washes may be many miles and several ephemeral tributaries away from the connection with WOTUS, yet the City may still choose to permit the discharge to be conservative on risk. Because ADEQ is not providing firm guidance on when this type of indirect discharge requires a permit, the myDEQ page should have an option to check or text box to add an explanation that the discharge is being permitted based on the permittee's self-risk assessment and does not represent a direct discharge into a WOTUS. This is critical for accuracy and documentation of the actual circumstances of a discharge. Without this option, it may appear that many direct discharges to the Salt River occurred, when in fact those discharges may never have made it to the Salt River at all. That would result in misleading documentation of frequency/quantity of discharge in a WOTUS that is not representative of actual events.

Response C3

myDEQ currently reflects the risk-based approach when applying for a DMGP. The selection includes "Yes, it might/will reach water of the U.S.". If there is a possibility that the discharge will reach a WOTUS, then a permit should be obtained. The tool-kit is a resource to assist customers when a discharge is not directly to a WOTUS, and helps locate the nearest jurisdictional water. The permittee should evaluate that risk, and apply for coverage, accordingly.

Comment C4

Part II.C Modification of Coverage. It will be difficult for permittees to submit modified Notice of Intent (NOIs) in a timely manner because ADEQ is continually updating the flow regime eMap but is only sending out monthly updates. In addition, the Arizona Administrative Code (AAC) (Title 18, Chapter 11, Article 1, Appendix B) has not been revised to reflect the flow regime eMap changes. Waters on the flow regime eMap may be listed as intermittent, but still ephemeral in the AAC. The City suggests that ADEQ provides dischargers 60 days to submit a modified NOI with no fee if a water is added as a Water of the U.S./surface water based on changes to the flow regime eMap. Permittees require clarity on what waters will be considered a Waters of the U.S./ surface water that require NOI submittal under this permit due to the inconsistencies between the eMap and the AAC.

Response C4

Currently there is no specified timeframes to complete modifications to the NOI. When a permittee identifies a change that may affect the NOI, the permit should modify the information. Information that can be modified include the following; contact information for BMPP, name and location at point of discharge into a WOTUS (unless single source that discharged), receiving water information, and MS4 name. Currently, there is not a fee

to modify the NOI. The exception to that would include: if the permittee selected an optional BMPP review during the NOI modification or if the modification included a change that prompted a new review of BMPP (such as add a discharge location to Impaired Water).

Comment C5

Fact Sheet: Part I.C.4, page 8 “in the 2 DMGP”; this phrase is missing the year.

Response C5

ADEQ removed the reference to the year, as the exception was added into the 2016 DMGP. There is no change to this section from the 2016 DMGP to the new 2021 DMGP.

Comment C6

Fact Sheet: Part II.A.2, page 10 “1/4 mile stream”; this phrase is missing “upstream”.

Response C6

Correction made.

Comment C7

Fact Sheet: Part III.A, page 12 states that the Best Management Practice Plan (BMPP) update is required “within 120 days”. The permit Part III.A.1 does not clearly specify a timeframe for BMPP update. Please modify the permit to indicate that the BMPP must be updated within 120 days as stated in the Fact Sheet.

Response C7

This language has been added to Part III.A.1.

Comment C8

Permit: Part II.A.4, page 8 “1/4 mile”; this phrase is missing “upstream”.

Response C8

Correction made.

D. Robert A. Hollander, P.E. emailed comments on May 20, 2021

Comment D1

Appendix A, Tables (p. 3 of 44). While most Arizona ephemeral waters are no longer regulated under the AZPDES Permit Program, ephemeral reaches of specific major rivers are still included on the State Protected Surface Waters List. Should there not be a table that addresses these ephemeral waters? If yes, I recommend using the conditions that appear in the existing Table A for Ephemeral Waters and Non-Domestic Water Source Use Canals. This comment also goes to all places in the proposed permit where the word “ephemeral” or phrase “ephemeral waters” is crossed out.

Response D1

ADEQ will reissue the DMGP to account for the new State Surface Water Program when the laws authorizing that new program are effective. Comment noted.

Comment D2

Part III.A.2.a (p. 12 of 44). How can an applicant account for the time it takes for ADEQ to issue a Certificate of Authorization from myDEQ? The existing permit includes specific timeframes within which certification is assured. Applicants have no control over this time.

Response D2

The language regarding timeframes for issuing discharge authorizations was removed from the permit language. The permit language reflects conditions, requirements and compliance conditions for the person obtaining the authorization, not for the permit issuer. Language has been added to the to the Fact Sheet that describes that the Certification of Authorization is issued immediately in myDEQ for certain NOIs, but that other types (within a ¼ mile upstream from OAW/Impaired, Specific Approvals, discharges lasting longer than 30 continuous days, a discharge reaching Indian Country, etc.) require more time for ADEQ to review.

E. Lavinia Wright emailed comments on May 24, 2021**Comment E1**

Change of permit wording from “within ¼ mile” to “¼ mile upstream” (see Fact Sheet, page 3): It makes sense to add the word “upstream” in these cases, since a downstream discharge would not affect a given stream segment. But the phrase should still include the word “within” – i.e., “within ¼ mile upstream” of impaired, not attaining, or OAW. The draft permit language now reads (for example), “A person who submits an NOI for a discharge point 1/4 mile upstream of an OAW or impaired water...” This seems to refer only to discharge points that are exactly ¼ mile from the water of concern. What if the discharge point is closer than ¼ mile? Reinstating the word “within” would address this issue.

Response E1

ADEQ has inserted the word "within a" 1/4 mile upstream", to provide clarity for certain permit conditions.

Comment E2

Change to text in Appendix A, Tables A-B (see Fact Sheet, pages 4 and 16): In the 2016 DMGP, this text said permittees were responsible for ensuring that covered discharges met the water quality limitations and action levels (ALs) for the parameters listed in the tables, even if monitoring/sampling was not specifically required for all of them. (Meeting discharge limitations is a basic requirement of the DMGP.) In the draft 2021 permit, the phrase “when required to sample” that is now at the end of the sentence, seems to imply that meeting the limits/ALs for a parameter is required only when sampling for it is required. That would not be correct, in light of numerous other DMGP provisions that require compliance with applicable limits/ALs. Suggestion for addressing the above: In Appendix A, Tables A and B of the draft permit, and on page 16 of the Fact Sheet, consider deleting the entire sentence beginning, “However, the permittee is responsible for ensuring...” It didn’t really add anything substantive to the 2016 DMGP, and the revised version in the draft permit is potentially misleading.

Response E2

ADEQ has removed the sentence “However, the permittee is responsible for ensuring that these limits/ALs are met, when required to sample.” ADEQ concurs the language was not clear and that there are other permit limitations that that have to be met, even if sampling is not required.

Comment E3

Timing of Authorization” sections in Part II.A.3., II.A.4., II.A.8., and II.B. Some observations about these sections: In the draft permit, the authorization timing given for all the different categories of NOIs is effectively the same,

i.e., upon receipt of a Certification of Authorization from myDEQ. In the 2016 DMGP, the timing scenarios in the different sections were needed because that permit provided time frames for automatic authorization for certain discharges, but not for others which required ADEQ's written authorization. Since there are no "automatic" authorizations under the draft permit, it seems redundant to call out the categories separately.

In Part II.A.8., regarding Areawides (etc.), items "a." and "b." now state the same timing (receipt of Certification) both for discharges that are not ¼ mile upstream of an OAW or impaired water, and for those that are such. Since the latter may take more time for ADEQ review, would an Areawide applicant get two Certifications, if they had both types of discharges? If not, there's no need to have the 2 separate items (a. and b.). Part II.B. is titled "EXCEPTIONS to Timing of Authorizations...", but they are not really "exceptions" like they were in the 2016 permit. (As with all the others, authorization requires receipt of a Certification.)

Suggestion for addressing the above: Consider consolidating the "Timing of authorization" sections into one item, stating that discharge authorization occurs if and when a Certification of Authorization is received. This might fit within the existing Part II.A.9., regarding Certification issuance. To provide more guidance on timing, this section could also state that the Certification is issued immediately in myDEQ for certain NOIs, but that other types may require more time for ADEQ review (¼ mile upstream from OAW/Impaired, Specific Approvals, etc.).

Also: is authorization to discharge always effective the same date the permittee receives the Certification from myDEQ? Or are some of them issued with an effective date in the future (to allow time for ADEQ review)? If the latter, the language regarding Certifications should be revised to reference "effective date" rather than "approval date".

Response E3

Part II. 3, and 8, the Timing of authorization sub-sections (a.) and (b.) were combined. Part II.9 was not changed as the Certificate of Authorization may include additional special provisions for certain discharge conditions. The "exceptions" in Part II.B, was changed to "other" and the content was left in to identify which types of discharges may require additional ADEQ review, with the caveat that those discharges are authorized upon receipt of the Certificate of Authorization. Language has been added to the Fact Sheet that describes that the Certification of Authorization is issued immediately for certain NOIs in myDEQ (some single source discharges not within 1/4 mile upstream of OAW), but that other NOI types (discharges within a ¼ mile upstream from OAW/Impaired, Specific Approvals, discharges lasting longer than 30 continuous days, a discharge reaching Indian Country, etc.) require more time for ADEQ to review. ADEQ added language to the Permit and Fact Sheet to clarify that when an additional review is needed, the authorization will specify its effective (issue) date and any special conditions applicable to the discharge in addition to those specified in this permit. ADEQ has also changed the word "approval date" when describing NOI timeframes, to "issue date", to reflect the terminology on the Certificate of Authorization.

F. Arizona Minerals emailed comments on May 24, 2021

Comment F1

AMI supports reissuance of the general permit, and requests the maximum approval timeline listed in the 2016 permit (e.g. "30 calendar days after the NOI is received by the Department") be retained in the 2021 permit unless ADEQ is proposing a more consolidated timeline for applicants to receive the Certification of Authorization from myDEQ. It would also be helpful to understand if the certification will be virtually automatic as it is for most the stormwater permits. This information would be very helpful to be included in the permit and fact sheet to provide clarity to applicants for planning purposes regarding the time that may be needed to secure permit authorization.

Response F2

The language regarding timeframes for issuing discharge authorizations was removed from the permit language. The permit language reflects conditions, requirements and compliance conditions for the person obtaining the authorization, not for the permit issuer. Language has been added to the to the Fact Sheet that describes that the Certification of Authorization is issued immediately in myDEQ for certain NOIs, but that other types (within a ¼ mile upstream from OAW/Impaired, Specific Approvals, discharges lasting longer than 30 continuous days, a discharge reaching Indian Country, etc.) require more time for ADEQ to review.

Comment F2

In addition, it may be advisable to retain language on discharges to ephemeral waters in the event that, due to litigation or rulemaking, ephemeral waters (or a subset of those waters) once again become jurisdictional Waters of the US. Absent such language, the permit would have to be revised, following public notice and comment, in order to allow de minimis discharges to such waters. This would put potential applicants in a difficult position, possibly having to seek individual permit authorization for a de minimis discharge.

Response F2

Changes to federal law have removed Clean Water Act protections for some waters, including ephemeral washes. ADEQ's programs align with the Clean Water Act and do not have the authority to regulate discharges to ephemeral washes. ADEQ will modify the DMGP to account for any future changes in the definition of waters of the US when those changes occur. In addition, ADEQ will update the DMGP to account for the new State Surface Water Program when the laws authorizing that new program are effective.