

Response to Public Comments

Permit: Arizona Pollutant Discharge Elimination System (AZPDES) De Minimis General Permit 5-year Reissuance

Permit Action: Final issuance and response to comments received on the draft DMGP publicly noticed from June 26 - July 27, 2026. The following pages contain ADEQ's response to comments received on the second public notice of the draft DMGP.

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Summary of changes to the 2026 De Minimis General Permit:

- Direct discharges to Outstanding Arizona Waters are prohibited to be consistent with other Surface Water Protection general permits and be protective of the environment.
- The term "surface water" has been replaced with "Waters of the United States (WOTUS) Protected Surface Water", as referenced in Arizona Administrative Code (A.A.C.) R18-11, Tables B and C.
- References to effluent limitation guidelines (ELGs) have been removed throughout the permit. Discharges to WOTUS Protected Surface Waters are subject to surface water quality standards.
- Clarified that allowable discharges are restricted to Class A+, A, B+, and B reclaimed waters, subject to permit requirements.
- Corrected minor typographical and formatting errors in both the permit and fact sheet to improve readability.
- Removed Part IV. Special Conditions, subpart B.3, "discharges that cause or contribute to..." language.

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.

Comments received from Steve Trussell, The Arizona Mining Association

COMMENT NO. 1

The Arizona Mining Association (AMA) submitted comments directly within the permit and fact sheet drafts. Most comments requested minor wording adjustments, such as specifying "WOTUS" within "Protected Surface Water" and clarifying the distinction between WOTUS and non-WOTUS waters.

RESPONSE NO. 1

Changes were made to the De Minimis General Permit (DMGP) based on these comments.

ADEQ reviewed the AMA's comments, agreeing with their suggested language to add clarity to the existing permit language. Examples include:

Part I.B.5, adding the phrase "ephemeral waters that qualify as non-WOTUS Protected Surface Waters" to ensure ephemeral segments of the state's 8 major river systems are considered regulated;

Part I.C.1, adding the Antidegradation Rule language, "new or expanded point source discharges directly to WOTUS Protected Surface Waters classified as OAWs";

Part II.B.3, the phrase "all discharges to non-WOTUS Protected Surface Waters should be included," was removed from the permit as the section is related to modifications and not new NOI submissions;

Part III.A.1 Deadlines for Notification - reworded for clarity, adding subpart c: "The permittee remains covered under, and must continue to comply with the terms and conditions of, the expired 2021 permit until ADEQ issues a new Certificate of Authorization under the 2026 permit;" and

Part III.A.1, removal of subpart d related to terminating existing coverage if no longer discharging prior to the issuance of the 2026 DMGP as duplicative of termination language in the 2021 permit.

COMMENT NO. 2

Additionally, the AMA suggested that in Part IV.B Discharge Prohibitions, subparts 3-8 which address narrative water quality criteria should be removed as they appear to be "end use" conditions that the Supreme Court ruled impermissible, citing City and County of San Francisco v. EPA, 604 U.S. 334 (2025).

RESPONSE NO. 2

Changes were made to the DMGP permit based on these comments.

AZPDES permits must protect the designated uses of receiving waters based on applicable numeric and narrative water quality standards, pursuant to A.A.C. R18-9-A905(A)(3)(d), which incorporates 40 CFR 122.44(d) by reference. Accordingly, the DMGP ensures protection of the narrative standards outlined in A.A.C. R18-11-108 by requiring point source discharges to meet these criteria. Establishing clear discharge requirements to achieve permit compliance aligns with the City and County of San Francisco v. EPA (2025) decision.

To ensure permit requirements are prescriptive of the discharge, ADEQ removed the phrase in subpart 3, "discharges that cause or contribute to an exceedance [...]," and revised subparts 6 and 7 to replace the phrase "[...] a WOTUS Protected Surface Water shall not contain[...]," with "[...] discharges that contain[...]."