

**ARIZONA MULTISECTOR GENERAL PERMIT (MSGP)
RESPONSE TO COMMENTS
(A.A.C. R18-9-A908(E)(2))
December 20, 2010**

Administrative Record

ADEQ has had authority for implementation, compliance and enforcement of EPA's Multi-Sector General Permit (MSGP) 2000 since accepting delegation of the NPDES permitting program from EPA on December 5, 2002. This permit authorized the discharge of stormwater associated with industrial activity. The MSGP 2000 expired on October 30, 2005 but was administratively continued for facilities that were covered under the permit at the time it expired. ADEQ first presented a completed draft of a new MSGP for stakeholder discussion in January 2005, but was later withdrawn in anticipation of EPA finalizing its renewed permit known as the MSGP 2008. EPA issued the MSGP 2008 on September 28, 2008. On April 20, 2009 ADEQ proposed a new, more comprehensive draft patterned after EPA's MSGP 2008 for stakeholder review and discussion. The Department conducted an extensive informal stakeholder review process during the summer and fall of 2009 on roughly a bi-weekly schedule.

On September 24, 2010, the public notice for MSGP AZG2010-001 and 002 was published in the Arizona Administrative Register. The Public Comment period closed on October 25, 2010.

The MSGP 2000 is replaced by two MSGP 2010 permits to cover stormwater discharges associated with industrial activity: a mining version and non-mining version. Together, these permits authorize stormwater discharges associated with industrial activity from a total of 29 industrial (25 non-mining and four mining (Sectors G, H, I, and J)) sectors to surface waters.

The Fact Sheet (the supporting document that lays out the permit's scope and rationale for coverage) sets forth the basis for permit conditions to be applied statewide through issuance of the new Arizona Pollutant Discharge Elimination System (AZPDES) general permit for stormwater discharges associated with industrial activities or Multi-sector General Permit – MSGP.

Comments were received on the public noticed draft permits from Gila River Power, L.P. and the Arizona Mining Association (AMA).

In addition to changes to the permit made in response to the comments, the Arizona Department of Environmental Quality (ADEQ or Department) has made several other changes to the permit in consideration of public comments. Finally, several minor corrections to the permit, fact sheet and appendices were made pertaining to formatting, punctuation, spelling and cross-references.

COMMENT FROM GILA RIVER POWER, L.P.:

Gila River Power station in Gila Bend is a combined cycle, single fuel (natural gas) generation facility. No supplemental is or could be burned for power generation.

Section 8.O.3.2.2 of the draft permit exempts such facilities from the coverage of this permit.

However, the MSGP 2010 non-mining fact sheet has contradictory information. In XI.H, Sector O Steam Electric Generating Facilities, pages 72 – 74, the fact sheet defines combined cycle generation. Gila River Power Station meets that definition. The paragraph then states, "This type of facility produces only electric power and needs permit coverage."

Below this section, the fact sheet [states] "combined-cycle generation facilities are also not covered by stormwater permitting requirements, provided no supplemental fuel oil is burned in the HRSG and the facility is not otherwise a dual-fuel facility which uses steam."

It is logical that combined cycle plants fueled by natural gas do not create stormwater pollution. It is our opinion that the fact sheet for the permit must be modified to be consistent with itself and the permit.

RESPONSE

Section XI.H of the Fact Sheet was taken directly from EPA's MSGP 2008 Fact Sheet. The language in the introductory paragraph of this section (p. 72) has been improved to clarify that a combined cycle, single fuel generation facility, using natural gas, does not need coverage under the MSGP 2010. The contradictory sentence cited by the commenter in the third paragraph of p. 73 has been deleted.

The following comments were received on October 25, 2010 from the AMA. The comments are grouped, followed by responses, using AMA's format/ subject headings. ADEQ responses follow this organization.

INDIVIDUAL RESPONSES TO AMA COMMENTS:

AMA COMMENTS ON PROPOSED MINING MSGP

COMMENT #1:

Discharges to Impaired Waters (Part 1.1.4.5(1)(c)(i)): The proposed mining MSGP requires that new dischargers to impaired waters with no TMDL meet the applicable water quality standard(s) for the pollutant(s) causing the impairment at the point of discharge. This language is more stringent than required under 40 C.F.R. § 122.4(i). 40 C.F.R. § 122.4(i) provides that no permit may be issued "to a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards." This language does not require that the discharge "meet" water quality standards, only that it not cause or contribute to a violation of water quality standards in the receiving water. A new discharger should be able to satisfy the demonstration that it does not cause or contribute to exceedances of water quality standards by showing in its SWPPP that its discharges will not aggravate the receiving water's impairment. We have included language to that effect in the attached redline.

AMA's proposed revisions to Part 1.1.4.5(1)(c)(i) also are consistent with EPA's position in its brief submitted to the U.S. Supreme Court in September 2008 on the then-pending petition for a writ of certiorari in the matter of Carlota Copper Company v. Friends of Pinto Creek. EPA stated on page 20 of its brief that the phrase "cause or contribute to the violation of water quality standards" is subject to more than one reasonable interpretation. For instance, EPA stated that this phrase could be interpreted to allow for the consideration of offsets or of net effects on pollution in determining whether a discharge would "cause or contribute to the violation of water quality standards" for purposes of 40 C.F.R. § 122.4(i).

RESPONSE

AMA's proposed language is not consistent with 40 C.F.R. § 122.4(i) and would not be enforceable, due to its vagueness. EPA's position in the brief cited by the commenter was struck down by the 9th Circuit Court of Appeals in its decision. The court stated EPA's interpretation did not agree with the intent of 40 C.F.R. § 122.4(i). An impaired water is already exceeding a standard, so there is no assimilative capacity in the water for that pollutant. Therefore, any discharge that exceeds the applicable standard for that pollutant is contributing to the exceedance. New dischargers to impaired waters must meet water quality standards for any pollutant for which the water is impaired, at the "end of pipe," or as it leaves the facility.

No change has been made to the permit.

COMMENT #2

New Dischargers to Sediment – Impaired Waters (Part 1.1.4.5(1)(c)): In discussing how Part 1.1.4.5 would apply to new dischargers to sediment impaired waters in light of the fact that there is no applicable surface water quality standard for sediment within 48 hours of a local storm event (see A.A.C. 18-11-109(D)(2)), ADEQ explained at the stakeholder meetings that a discharger could demonstrate compliance with Part 1.1.4.5(1)(c) if it did not discharge once 48 hours had elapsed after a local storm event. AMA suggested including an explanatory note stating this in the permit itself. No such note is included in the proposed mining MSGP, but ADEQ did include explanatory language to this effect on page 11 of the proposed fact sheet. AMA continues to believe that leaving this language out of the permit itself could confuse future permit applicants who may read the permit but not the fact sheet. Therefore, AMA suggests that an explanatory note reflecting the language on page 11 of the proposed fact sheet be included in the permit itself, at the end of Part 1.1.4.5(1)(c).

RESPONSE

Although ADEQ finds A.A.C. R 18-11-109(D)(2) is clear on when the standard applies, ADEQ added a note to the permit to for additional clarity. Language from the second paragraph under “New Dischargers to Water Quality Impaired Waters” on page 11 of the fact sheet was revised and included as an explanatory note under Part 1.1.4.5(1)(c)(i) in both permits. The revised language also remains in both fact sheets.

COMMENT #3

Notices of Termination (Part 1.4): The AMA has two comments on the proposed language.

First, the mandatory requirement to file a notice of termination (“NOT”) within 30 calendar days should be limited to the situation where a new owner or operator assumes control over a facility. In this case, it is important that permit obligations promptly be transferred to the new owner or operator. However, the other listed bases for filing NOTs should not require filing within 30 days of the event occurring. For example, if a permittee has met the applicable termination requirements, there is certainly no harm if the NOT is filed more than 30 days from the point at which the termination provisions were satisfied. In such a case, if the permittee were to elect to keep the permit in place for more than 30 days, that decision should not potentially constitute a permit violation (which would be the case if the current language were retained).

Second, AMA continues to believe that an additional basis for filing a NOT should be recognized: where there is no longer any reasonable possibility of discharges of stormwater associated with industrial activity, based on increased containment or other changed circumstances. For example, if a mining site installs diversions that would divert all the stormwater to a pit, it should not be required to maintain a permit even if it has not completed reclamation obligations as necessary to trigger the termination requirements of Part 8.G.9. In such circumstances, AMA does not believe that the Clean Water Act or Arizona statutes require that a permit be maintained because there is no longer a point source discharge to a water of the United States. However, it does not appear that the NOT provisions in the permit would recognize this as a basis for terminating permit coverage, and presumably there will be no box on the NOT form itself recognizing such a basis for termination. Therefore, it is not clear if ADEQ will process a NOT in these circumstances, even though there is no longer a requirement under the CWA to have a permit.

RESPONSE

Both permits were revised (and the fact sheets accordingly) to reflect only two scenarios in which ADEQ would require an NOT to be filed:

1. When there is a change of ownership at a mining or non-mining facility. The permittee shall submit an NOT within 30 calendar days after a new owner or operator assumes ownership of or has taken over responsibility for the facility.
2. When activities at the site have changed such that there are no longer any industrial activities at the site that are covered by the permit. This scenario would only apply to non-mining facilities that are no longer eligible for coverage under the MSGP 2010 or to mining facilities that satisfy the applicable termination requirements described in Part 8.G.9 or Part 8.J.10.

In response to the suggestion that an additional basis for filing an NOT is where there is no longer any possibility of discharges based on increased containment or other changed circumstances, if the permittee makes changes to the mining facility such that all stormwater discharges are eliminated, permit coverage is no longer needed and the permittee may file an NOT provided all other permit termination requirements are met. However, if the facility has a discharge of stormwater associated with industrial activity after terminating coverage, the permittee could be cited by ADEQ for discharging without a permit.

All mining and non-mining permittees are reminded that, as stated in Part 1.4 of the permit, they remain responsible for the facility’s coverage under the MSGP 2010 until the permittee files an NOT and the Department terminates the authorization to discharge. For the future, this will also mean the permittee must pay the applicable annual permit fee until coverage is terminated. The fact sheets have also been revised to reflect these changes.

COMMENT #4

Inactive and Unstaffed Sites (Parts 1.5 and 4.4): ADEQ has provided a conditional exemption from general analytical monitoring and certain inspection requirements for inactive and unstaffed sites, consistent with EPA's MSGP 1995 and 2000. AMA appreciates ADEQ's recognition of this reasonable, limited exemption. However, the exemption should extend to potentially applicable impaired waters monitoring requirements under Part 6.2.3. The underlying concern justifying the inactive and unstaffed site conditional exclusion is the difficulty in collecting storm water discharge samples when a qualifying storm event occurs.

This difficulty is particularly applicable to mining sites in the arid southwest, and is no less applicable to collecting impaired waters samples than it is for collecting general analytical samples. If the latter are conditionally excluded, so should be the former. AMA notes that ADEQ nonetheless would retain the ability to still require either type of monitoring by inactive and unstaffed sites in appropriate circumstances under Part 6.2.4.

The attached redline contains proposed revisions to Parts 1.5 and 4.4 as well as a new subpart to Part 6.2.3 to clarify that the conditional exemption for inactive and unstaffed sites applies to the impaired waters monitoring requirements in Part 6.2.3.

RESPONSE

The Department recognizes that inactive and unstaffed mine sites present limited opportunities to collect samples during storm events, but because of the special status of impaired waters, ADEQ will still require monitoring for the pollutant for which the water is impaired. Unless the pollutant is not expected to be present in the discharge or monitoring results of the first 4 samples indicate it is not present in the discharge (per Part 6.2.3.2), ADEQ has reduced the required monitoring from twice per wet season to once per year. The permittee may choose which wet season to monitor each year. As a result, a new Part 6.2.3.3 in the mine permit describes the limited exception for monitoring at inactive/ unstaffed sites that discharge to impaired waters.

A sentence was added to Part 4.4 to capture this same requirement:

"Although stormwater monitoring is not waived for inactive and unstaffed mining sites that discharge to impaired waters, the monitoring frequency is reduced in accordance with Part 6.2.3.3."

In addition, the new Part 6.2.3.3 reads as follows:

"6.2.3.3 Exception for Inactive and Unstaffed Mine sites.

"The requirement for impaired waters monitoring at a facility that is inactive and unstaffed is reduced to once per year, if the requirements of Part 1.5 are met. "

COMMENT #5

Language to Clarify Select References to "Effluent Limitations" (Parts 2.1.1.3, 3.2 and 4.0): The proposed Mining MSGP distinguishes between numeric effluent limitations (Part 2.2.1), which are applied directly to certain discharges, and water quality-based requirements (Part 2.2.2), which apply to all discharges and prohibit such discharges from causing or contributing to exceedances of applicable water quality standards. At several points in the permit, however, there are generic references to "effluent limitations" in situations where it appears that the intent is not simply to reference the numeric effluent limitations of Part 2.2.1. In addition to being confusing, this could create the mistaken impression that every single permit term (e.g., inspection frequency, recordkeeping, etc.) constitutes an "effluent limitation" under the Clean Water Act. To provide greater clarity, the attached redline includes revised language in Parts 2.1.1.3 (maintenance), 3.2 (corrective action deadlines) and 4.0 (inspections). The revised language references both the applicable numeric effluent limitations and broader water quality-based requirements, and mirrors language already used elsewhere in the permit (e.g., Section 2.0).

RESPONSE

ADEQ agrees that the proposed redline language in Parts 2.1.1.3, 3.2 and 4.0 helps clarify the distinction between technology based effluent limitations and water quality based limitations. It does not change the

fact that Part 2.2.2 requires that the discharge “not cause or contribute to an exceedance of an applicable water quality standard.” This permit requirement is in effect a water quality based limitation.

COMMENT #6

Employee Training (Part 2.1.1.9): In response to prior AMA comments, ADEQ clarified in the proposed fact sheet (page 22) that training and monitoring, inspection, planning, reporting and documentation requirements of the Mining MSGP need only be provided to those who actually would be performing those duties. (This is in contrast to training on general control measures, which must be provided to all employees who work in areas where industrial materials or activities are exposed to stormwater.) AMA appreciates this clarification. As with the clarification regarding new dischargers to sediment-impaired waters, however, AMA believes that this language should also be reflected in the permit itself, to ensure that all permittees are aware of it.

RESPONSE

ADEQ agrees the proposed redline language clarifies who will be involved in specific training.

The language has been added to Part 2.1.1.9:

“Training must cover both the specific control measures used to achieve the requirements in Part 2.2 and (for those who will be involved in these activities) the monitoring, inspection, planning, reporting, and documentation requirements in other parts of this permit.”

COMMENT #7

Litter, Garbage and Floatable Debris (Part 2.1.1.11): As noted at several stakeholder meetings, mines in certain portions of the state face challenges posed by trespassing illegal immigrants, who often leave behind litter that may find its way into washes, particularly on remote and unoccupied areas of a large site. AMA's position has been that if such trash does not emanate from a permittee's industrial activities, its presence in a wash would not constitute a violation of the Mining MSGP. We believe that the language in the proposed Mining MSGP referring to "exposed areas" properly limits the scope of the control measure to the permittee's industrial activities and not the actions of trespassers. Therefore, we support the language as proposed and recommend that it be further clarified by adding additional language to clarify that the requirement only applies to trash from the permittee's activities.

RESPONSE

As acknowledged by the commenter, there was extensive discussion on this subject in the stakeholder meetings. ADEQ believes the results of those discussions are adequately reflected in the existing language in the permit, as well as the fact sheet. The fact sheet acknowledges that litter and trash from trespassers and off-site sources is a serious problem for the mining industry in the desert southwest. As a result of the stakeholder process the language was changed to require that “exposed areas” (meaning areas where stormwater is exposed to industrial activities) are to be kept free of garbage or litter. This eliminates the concern that the mine is responsible for searching out and removing litter left in remote areas of the site. The proposed language is therefore not needed and would add confusion since the source of garbage may not be known. In ADEQ's view, not only are Sector G and J permittees expected to remove garbage, etc. generated by its own activities, but also any such materials that are carried onto active areas of the site... When this concern was raised at the stakeholders meetings, the Department reminded participants of the need to be responsible environmental stewards as well as good corporate citizens. As previously discussed in the stakeholder meetings, the Department will exercise generous enforcement discretion when considering a violation of this provision of the permit.

Revisions were made to the fact sheet to further clarify the intention of Part 2.1.1.11. No change was made to either permit.

COMMENT #8

Water Quality Standards (Part 2.2.2): The core requirement of the permit is that discharges not cause or contribute to an exceedance of applicable water quality standards. AMA's understanding is that this refers to exceedances of standards in the receiving surface water, not in the discharge itself. Such an interpretation is consistent with the fact that none of EPA's stormwater general permits require discharges to meet water quality standards (except in cases where numeric technology-based effluent limitations have been established), due to the difficulty in controlling stormwater due to the variable nature of its quantity and quality. The only enforceable numeric limits imposed directly on stormwater discharges are technology-based effluent limitations (found in Part 2.2.1 of the proposed Mining MSGP).

The comparable provision in EPA's 2008 MSGP (Part 2.2.1) provides that discharges must "be controlled as necessary to meet applicable water quality standards." On its face, this language arguably could be read as requiring the discharge itself to meet water quality standards. However, in the Fact Sheet accompanying issuance of the 2008 MSGP, EPA makes clear that the intent of this requirement is to: "Control the discharge as necessary to meet applicable water quality standards in the receiving waterbody (see Part 2.2.1)" (emphasis added). AMA believes that the language contained in Part 2.2.2, as interpreted above, is appropriate for inclusion in the mining MSGP.

RESPONSE

The Department agrees with the concept presented here and has added it to the fact sheet. The change in language from "water quality-based limitations" to "water quality-based requirements" has been made for clarity as noted in response to Comment #5. However, it is important to clarify that the permit requirement to not cause or contribute to a water quality standard exceedance is a water quality-based limitation (WQBEL). If the discharge of a pollutant can cause, contribute to, or has the reasonable potential to cause or contribute to an exceedance of a water quality standard, the Department may impose additional water quality-based limitations.

COMMENT #9

Unauthorized Discharge as a Corrective Action Trigger (Parts 3.1.1 & 5.1.3.4): As drafted, any unauthorized discharge to a water of the U.S. would trigger corrective action under the Mining MSGP. However, if the discharge does not result from a storm event and/or a failure of stormwater control measures, it should not trigger MSGP corrective action. For example, a pipeline break that results in a discharge of non-stormwater to a water of the United States in dry weather likely represents an unauthorized discharge, but it is not tied in any way to development and maintenance of appropriate stormwater control measures. It therefore should not trigger corrective action under the SWPPP, since the appropriate response will not be to upgrade or improve stormwater control measures. The sort of spill described above might qualify as a significant spill that should be noted in the SWPPP pursuant to Part 5.1.3.3, but it should not trigger the full range of corrective action requirements (SWPPP modification, corrective action report) because it does not consist of stormwater and is not intended to be controlled by stormwater control measures.

Therefore, AMA recommends that the language regarding unauthorized discharges in Part 3.1.1, as well as similar language in Part 5.1.3.4, be limited to unauthorized discharges occurring during storm events.

RESPONSE

Recognizing the foundation of the MSGP is the use of control measures to manage stormwater from industrial facilities, ADEQ inserted "resulting in or from a failure of a control measure" in the first line of Part 3.1.1, the introduction to conditions that may trigger corrective action. ADEQ did not insert "during a storm event" in the first bullet under Part 3.1.1 because unauthorized discharges are not permitted at any time and cannot be covered by this permit.

COMMENT #10

SWPPP Modifications (Part 5.2): As part of the approach suggested by AMA for addressing ongoing land disturbance activities at active mining sites, discussed below, AMA proposes adding language to Part 5.2 to specify that permittees should modify the SWPPP as needed to reflect new or modified control measures

that will be implemented as mining activities expand into previously undisturbed areas. We believe this requirement was implicit elsewhere in the permit, and reflects how mining operators have managed expansion in the past, but believe making the requirement explicit provides helpful clarification to permittees.

RESPONSE

The proposed language changes have been included in the permit. The new permit language is as follows:

“In addition, the permittee shall modify the SWPPP to reflect new or modified control measures (see Parts 2.1 and 4.0), including measures implemented at active mining operations as mining activities expand into previously undisturbed areas see part 8.G.5.2).”

COMMENT #11

SWPPP Availability (Part 5.3): The requirement to make a SWPPP immediately available to federal, state or local agencies other than EPA and ADEQ should be limited to such agencies with authority to approve stormwater management plans. Such a limitation was included in the immediately prior draft version of the Mining MSGP. AMA had suggested deleting reference to any agency other than ADEQ or EPA, but ADEQ simply deleted the qualifying language "approving stormwater management plans" after the reference to "other agencies." This makes the language even more broad and vague than it was before. AMA therefore suggests that the phrase "approving stormwater management plans" be added back to Part 5.3.

RESPONSE

ADEQ agrees that a permittee must respond to a request for a copy of the SWPPP by any political or regulatory entities that have either stormwater program authority (e.g., regulated MS4) or the authority to approve stormwater management plans, which is limited to EPA and ADEQ. A regulated municipal separate storm sewer system (MS4) is required by their AZPDES permit to implement a stormwater program. Language in both permits was changed to reflect this distinction.

COMMENT #12

Hardness of Receiving Water (Part 6.2.1.1): The proposed mining MSGP requires that where discharges occur to perennial or intermittent waters, permittees must analyze the hardness of the receiving water. No explanation is provided in the proposed permit or fact sheet for how this is to be done. Must the receiving water be sampled during every discharge event? Can a permittee rely on past data that it has collected regarding hardness of the receiving water? Can it rely on data collected by others (and, if so, in what circumstances)? AMA believes that the best approach would be to allow a permittee to use any available data on receiving water hardness, and not to require that a sample of the receiving water be collected during every discharge event.

RESPONSE

ADEQ has revised the language in Parts 6.2.1.1 and 8.G.8.2.1 to indicate that stormwater discharges, and in the case of discharges to perennial or intermittent waters, the receiving water must be analyzed for hardness.

For discharges to ephemeral waters, the permittee must collect a sample of the discharge leaving the facility and analyze it for hardness in addition to the other parameters in Part 8.G.8.

Where discharges are to perennial waters, the hardness of the receiving water must also be characterized. While collection of a sample during wet weather is more representative of conditions during stormwater discharges, ADEQ recognizes that in-stream sampling during storm events may be impractical and/or present safety issues. That said, ADEQ does not support the use of "any available data on receiving water hardness". Hardness characterization of the receiving water shall include analysis of samples from the surface water receiving the discharge or surface water data collected by a third party provided the data is credible, scientifically defensible and is representative of current conditions. The data and the methodology for determining the hardness values must be submitted to ADEQ in the first year of permit coverage to allow ADEQ to compare monitoring results with applicable water quality standards.

COMMENT #13

Discharges to Impaired Waters with an ADEQ Approved TMDL (Part 6.2.3.2): In the first sentence, the clause “or that are otherwise referenced in an approved TMDL” is confusing, and arguably broadens the applicability of this provision beyond dischargers who discharge to the impaired water at issue. AMA does not understand that this is ADEQ’s intent but rather that the impaired water provisions are triggered by discharges directly to impaired waters. To reduce ambiguity, and make this section consistent with Part 6.2.3.1 (“If a facility discharges to an impaired water....”), AMA requests that this clause be deleted. Again, AMA notes that ADEQ retains discretion under Part 6.2.4 to require additional monitoring by facilities outside the scope of this provision in appropriate circumstances.

RESPONSE

ADEQ agrees the original language was inexact and has modified the first sentence under “Discharges to impaired waters with an ADEQ approved TMDL” to address this comment. The revised permit language is:

“For stormwater discharges assigned a WLA in an approved TMDL, the facility shall monitor for the pollutant for which the TMDL was written.”

COMMENT #14

Additional Monitoring Required by ADEQ (Part 6.2.4): Under the proposed Mining MSGP, ADEQ may require additional discharge monitoring to ensure protection of receiving water quality. AMA is not opposed to ADEQ having authority to require additional monitoring in appropriate circumstances, but believes that such authority should exist only where there is evidence suggesting both that a pollutant not already being monitored for is being discharged from the facility, and that the pollutant is causing or contributing to a water quality standards exceedance.

RESPONSE

ADEQ agrees with the proposed language but clarifies that the monitoring referred to is that being conducted by the permittee.

“ADEQ may notify the permittee, in writing, of additional discharge monitoring required to ensure protection of receiving water quality in cases where there is evidence that a pollutant is being monitored for, by the permittee, and that the pollutant is causing or contributing to exceedances of a water quality standard.”

COMMENT #15

Follow-up Actions if Discharge Exceeds a Numeric Effluent Limit or a Water Quality Standard (Parts 6.3 and 6.3.2): As discussed above, the core permit requirement of the Mining MSGP, consistent with current and previous EPA versions of the MSGP, is that discharges not cause or contribute to an exceedance of a water quality standard in the receiving water. Furthermore, ADEQ has agreed to remove numeric benchmarks from the mining MSGP, given the variability and quality of these discharges and the difficulty of controlling that quality. However, Part 6.3, as drafted, requires additional monitoring and submission of an exceedance report in the event that a discharge exceeds a water quality standard. This is inconsistent with the aforementioned portions of the permit. The scope of this provision should be limited to exceedances of numeric effluent limits specified in Table 8.J-2 (Part 8.J.9). At the very least, if the language referring to water quality standards is not removed, it should be modified by including a reference to Part 2.2 to clarify that potential follow-up actions related to water quality standards are triggered only if the permitted discharges cause or contribute to an exceedance of an applicable water quality standard in the receiving water.

RESPONSE

ADEQ added a reference to Part 2.2.2 in Part 6.3. Parts 2.2.2 and 3 both state that corrective actions are only required if the discharge “causes or contributes” to a water quality standard violation. However, as part of an overall facility discharge management strategy, ADEQ would advise comparison of the discharge

concentrations to the water quality standards and a review of applicable control measures if standards are not met in the discharge.

COMMENT #16

Exceedance Reports (Part 7.3): For the reasons articulated in the previous paragraph, exceedance reports under Part 7.3 should be limited to cases where discharges exceed a numeric effluent limit specified in Table 8.J-2 (Part 8.J.9).

RESPONSE

For the reasons noted in response to Comment #15, the permit requires the permittee to report on both an exceedance of water quality standards and an exceedance of effluent limitations. Note that Part 7.3 refers to an exceedance under Part 6.3. The changes made to 6.3 in response to Comment #15, clarifies that the exceedances referred to are in the receiving water. No change has been made to either permit.

COMMENT #17

Reportable Quantity Spills (Part 7.4): Part 7.4 requires that "where applicable," various reports are to be submitted to ADEQ. For the most part, the reports listed are required to be submitted to ADEQ by other sections of the permit; Part 7.4 simply compiles these obligations into a single location. However, one of the reports listed is for reportable quantity spills. Pursuant to Part 2.1.1.4, as well as other governing law, reportable quantity spills must be reported orally to ADEQ and others. However, there generally is no requirement that a written report be submitted to ADEQ. Arguably, however, Part 7.4 could be read to require such a written report, although the "where applicable" makes this unclear. AMA suggests removing reportable quantity spills from the list contained in Part 7.4 because written reports are not elsewhere required for these spills.

RESPONSE

ADEQ has clarified in both permits the "other reporting" requirements in Part 7.4 that reportable quantity spills (see Part 2.1.1.4) do not require a written report, only a verbal one via the ADEQ Emergency Response line. However, to remove any uncertainty, the bullets under the two paragraphs are combined and the text following them revised to indicate that the permittee must only verbally report reportable quantity spills. The requirement remains in both permits, however, because it is part of the summary of other reporting requirements.

COMMENT #18

Exploration and Construction Phase (Parts 8.G.3, 8.G.4 and 8.G.5): Under the 2000 MSGP, once a metal mining operation was in the active phase, any subsequent mine enlargement or expansion was covered under the 2000 MSGP. See 65 Fed. Reg. 64786 (first column) (Oct. 30, 2000). There were no additional control measures, SWPPP requirements, or enhanced inspection requirements. The 2000 MSGP covered potential discharges from such activities through requiring the design and implementation of appropriate stormwater control measures if the activities occurred in areas outside of previously disturbed areas and pre-existing stormwater controls (see 2000 MSGP Parts 4.2.7 and 6.G.6.1.6).

In contrast, the proposed mining MSGP creates a bifurcated approach to stormwater permit coverage for active metal mining operations. On the one hand, active metal mining operations will be subject to the required control measures (including erosion and sediment control requirements) for mining contained in Parts 2.1 and 8.G.5 as well as all of the other numerous applicable requirements of the mining MSGP, including the protection of applicable water quality standards in the receiving water in accordance with Part 2.2.2. On the other hand, certain mine expansion activities at active metal mining operations will be subject to all of these requirements plus the additional control measures, SWPPP, site map, and inspection requirements contained in Parts 8.G.4.1, 8.G.4.2, and 8.G.4.3.

AMA believes that the proposed bifurcated approach is unworkable and will be very difficult to implement. Therefore, we have suggested revisions to Parts 8.G.3 and 8.G.4 of the proposed mining MSGP that would clarify that the additional control measure, SWPPP, and inspection requirements apply only to exploration and construction activities occurring at new metal mining sites. Once the active phase commences, the exploration and construction control measures would not longer apply at any portion of the site. Alternatively, we have proposed language to the definition of the “construction phase” that would clarify that the additional control measure, SWPPP, and inspection requirements apply to activities at active operations only if the activities occur on previously undisturbed areas of the existing mine property and if stormwater discharges are not managed by previously existing or permanent control measures.

Although we believe that the existing language in the proposed mining MSGP adequately addresses the design and appropriate implementation of control measures for expansion activities at active metal mining operations (see in particular the third sentence in Part 2.1), we have proposed language in Parts 5.2 and 8.G.5.2 (discussed above) to address the concerns that ADEQ expressed regarding the implementation of appropriate control measures for expansion activities in locations outside of previously disturbed areas at active metal mining operations.

RESPONSE

ADEQ agrees that once a metal mining operation was in the active phase, any subsequent mine enlargement or expansion was covered under the 2000 MSGP. The MSGP 2000 *did not* cover exploration or initial construction activities for mining. EPA’s rationale for this was: “EPA believes the appropriate level of environmental protection for initial land-disturbing mining activities is a construction permit. SWPPP requirements under a construction permit are more effective for the often temporary conditions found during the initial phase versus that which would be appropriate for a more permanent mining operation. Many of the BMPs and other SWPPP requirements of the Construction General Permit could be incorporated in the MSGP-2000 SWPPP, thereby minimizing any duplicative efforts.” (MSGP-2000 fact sheet).

ADEQ’s permit continues the pattern and rationale established by EPA in the 2000 MSGP. ADEQ has included Part 8.G.4 in the permit to better define the “BMPs and other SWPPP requirements” that are to be included in the SWPPP when initial construction activities are occurring at a new or an active mine site.

In response to the above discussion, the following changes were made in the Mining MSGP:

- Part 8.G.3.3 and 8.J.3.3, Mining MSGP – ADEQ further defined “construction phase” in the Mining MSGP by adding language in both sectors about the use of pre-existing or permanent control measures. In revising Parts 8.G.3.3 and 8.J.3.3, ADEQ is clarifying that expansion of the footprint of an existing operation must be considered part of construction unless pre-existing or permanent structural control measures are already in place to manage increased runoff of pollutants from newly disturbed land. Stated another way: any subsequent construction activity on undisturbed areas of an existing mine property is also considered part of the construction phase if stormwater discharges are not managed by previously existing or permanent control measures.

The permit language in these two sections was revised as follows:

Construction phase – Includes the initial building of site access roads and initial removal of overburden and waste rock to expose mineable minerals at a mining site. In addition, any subsequent construction activity on undisturbed areas of an existing mine property is also considered part of the construction phase if stormwater discharges are not managed by pre-existing or permanent control measures.

- Part 8.G.4.2 and 8.J.4.2 – revised first sentence to clarify the applicability of the additional SWPPP requirements are to exploration and construction activities which are defined in Part 8.G.3 and 8.J.3.
- Part 8.G.4.2.2 and 8.J.4.2.2 – Recognizing the temporary and transitory nature of this phase of mining, ADEQ reduced the additional requirements that had been proposed for the SWPPP such as site description and site map during the construction phase.
- Part 8.G.4.3.1 and 8.J.4.3.1 – Recognizing the temporary and transitory nature of this phase of mining, the inspection schedule has been reduced during the construction phase to once every 30 calendar days and within 24 hours of the end of each measurable storm event.

The following changes were not made to the Mining MSGP:

- Part 8.G.3.2 and 8.J.3.2, Mining MSGP – commenter's insertion of "new" was not accepted in the definition of "Exploration phase".
- Part 8.G.4 and 8.J.4 – the proposed insertion of "new" was not accepted in the first and second introductory paragraphs. ADEQ also removed language in the second paragraph that allowed previously installed control measures to substitute for the additional control measures in Part 8.G.4.1 and 8.J.4.1;

COMMENT #19

Exploration and Construction Control Measures (Part 8.4): AMA has four comments on the specific control measures proposed in this section.

First, mining permittees should have flexibility to implement erosion control or sediment control measures, as appropriate at a given site. Containment is often the method chosen for stormwater control at mine sites, and if adequate containment is provided, it should not be necessary to require significant expenditure of resources on erosion control. Given that land disturbance is the essence of mining, erosion control may be incompatible with efficient mining operations. So long as appropriate sediment control measures are in place, stringent erosion control measures should not be mandatory. (Part 8.G.4.1.1). This same comment also applies to Section 8.G.5.2 (addressing sediment and erosion control in the active phase (see the enclosed AMA redlined mining MSGP)).

Second, AMA believes that the site description and site map requirements for exploration and construction are duplicative of requirements found elsewhere in the proposed mining MSGP. AMA suggests streamlining the site description requirement and deleting the site map requirement. (Part 8.G.4.2.2)

Third, the proposed standard inspection schedule for exploration and construction activities is too frequent and should be revised to once every 30 days and also by the next working day after the end of each measurable storm event to account for the possibility of measurable storm events occurring on weekends or holidays. Based on this comment, the proposed reduced inspection schedule option should be removed since it would be redundant with the standard inspection schedule. If the reduced inspection schedule option is kept because a more frequent standard schedule is retained, then the language requiring an inspection "prior to an anticipated rain event" should be removed from the reduced inspection schedule language.

Finally, the requirement to conduct inspections for exploration and construction activities every 7 days for sites within 2.5 miles of an impaired or outstanding Arizona water should be removed since the requirement has no relation to the actual pollutant or reason for which the water may be impaired or the reasons for which the water has been identified as an outstanding Arizona water. (Part 8.G.4.3.1)

Fourth, the monitoring and reporting requirements for discharges to impaired waters and OAWs are confusing. The language refers to monitoring and reporting "as required in this subpart," but there does not appear to be any such reporting required in the subpart. It is impossible for permittees to discern the intent of this provision, and it should therefore be deleted. (Part 8.G.4.4)

RESPONSE

ADEQ made several changes to Part 8.G.4 and 8.J.4 of the Mining MSGP, all pertaining to exploration and construction at hard rock and non-metallic mine sites. See response to Comment #18 for details that address the first part of Comment # 19.

Specific to the comment on erosion and sediment control measures, the Department recognizes AMA's rationale that if a slope (of say, a tailings dam) erodes in the construction phase, the discharge of sediment (i.e., "capture sediment to the extent practicable") can be prevented. Erosion control (keeping the dirt in place) is unnecessary for the same reason that temporary BMPs are; mine operators are constantly traversing/ disturbing the area and only upon reclamation would erosion control be effective. Therefore, "and/or" was added to Parts 8.G.4.1.1 and 8.J.4.1.1.

Regarding the comment on inspections (third part), ADEQ only partially agrees with the commenter's point. As noted above, recognizing the temporary and transitory nature of this phase of mining, the inspection schedule has been reduced during the construction phase to once every 30 calendar days and within 24 hours of the end of each measurable storm event. The option for a reduced inspection schedule has been

removed. The commenter's request that the qualifier "by the next working day" be inserted for inspections following a measureable storm event is addressed by the 'Note' at the end of 8.G.4.3.1 which allows for a storm event occurring on non-work days. However, the frequency of inspections for OAWs and impaired waters remains unchanged from the 7 day frequency, because of the special status of these waters.

In response to the fourth part of this comment ADEQ has replaced "this subpart" with "Part 8.G.4.3.1.b".

COMMENT #20

Sediment and Erosion Control at Active Sites (Part 8.G.5.2): Consistent with AMA's position regarding exploration and construction activities (as articulated above), AMA has proposed a new paragraph requiring implementation of erosion and/or sediment controls when clearing, grading or excavation activities occur in previously undisturbed areas at active mining sites. Such measures are to be implemented before major land disturbance activities commence.

RESPONSE

ADEQ generally accepts the suggested redline language for Part 8.G.5.2 and 8.J.5.2 with some minor clarifications. ADEQ revised this redline language to include the phrase "pre-existing or permanent control measures". This phrase was also inserted in the definition of "Construction phase" in Part 8.G.3 and 8.J.3. This is consistent with the discussion in response to Comment #18. The requirements of 8.G.4 apply when temporary control measures are required by construction in previously undisturbed areas.

The permit language for both sectors was revised as follows:

"8.G.5.2 Sediment and Erosion Control. At sites where the active phase has commenced, in addition to measures evaluated pursuant to Part 2.1.1.5, the permittee shall implement appropriate erosion and/or sediment controls, in accordance with part 8.G.4, when clearing, grading, or excavation activities occur in previously undisturbed areas where discharges are not controlled by pre-existing or permanent control measures. The purpose of these sediment and/or control measures is to minimize the discharge of sediment from the newly disturbed areas. where structural control measures are used for sediment control, such measures shall be installed prior to major land disturbance activities commencing. "

COMMENT #21

Non-Structural Control Measures at Inactive and Unstaffed Sites (Proposed New Part 8.G.5.4): Non-structural control measures (e.g., good housekeeping, maintenance, spill prevention and response, training) outlined in Part 2.1.1 should not apply at inactive and unstaffed mining sites. Such an approach would be consistent with the approach in the 2000 EPA MSGP, under which mining operations in Arizona are currently operating. See Part 6.G.6.2 (65 Fed. Reg. at 64826) (no non-structural control measures applicable at inactive metal mining facilities). Given the absence of on-site staff, there is no reason that these sorts of measures should apply at inactive and unstaffed sites.

RESPONSE

As discussed extensively in the stakeholder meetings, all permit holders, mining and non-mining alike, are expected to implement only those control measures that are 'appropriate' for the individual site. See Part 2.1, second line of the first paragraph. Furthermore, the second paragraph of Part 2.1 begins with, "The permittee shall consider all of the control measures listed below for implementation at the facility and select those that the permittee determines are appropriate, given the nature of the site ..." This language is the direct result of the stakeholder discussions with the Department about previous language in the permit that suggested all control measures must be installed at every site. Through the revised language in the final permit, the permittee is given great latitude in selecting and implementing control measures that make sense for use at an individual site. In the case of an inactive, unstaffed mine, this means that certain 'non-structural' control measures will be unnecessary, or even inappropriate, such as good housekeeping, ongoing training, or spill prevention and response.

No changes have been made to either permit.

COMMENT #22

Additional SWPPP Requirements for Mining Operations (Part 8.G.6): AMA has two comments on this section.

First, the additional SWPP requirements of this part, which closely track Part 8.G.6 in the 2008 EPA MSGP, should not apply to inactive and unstaffed sites. In a letter to the National Mining Association, EPA clarified that it did not intend these requirements to apply at inactive and unstaffed sites, and that it inadvertently omitted language from the 2008 MSGP that would have exempted inactive and unstaffed sites from complying with this section of the EPA permit. See letter from Benjamin Grumbles, Assistant Administrator, to Karen Bennett, NMA (January 12, 2009) (copy attached). ADEQ should not perpetuate EPA's admitted mistake in the Mining MSGP.

Second, in Part 8.G.6.2 (additional site map requirements), the obligation to identify the location of mine drainage, dewatering or other processed water is overbroad. This could require the site map to identify every pipeline on the property, which would impose a significant burden on permittees and clutter up the map with information not relevant to stormwater control measures. Unless this requirement can be limited in some reasonable fashion, it should be eliminated.

RESPONSE

ADEQ added language to Parts 8.G.6 and 8.J.6 to specify that the additional SWPPP requirements of the section do not apply to inactive and unstaffed sites. The fact sheet was also revised to be consistent with the revised permit.

Second, the requirement to identify the locations of "mine drainage, dewatering and other process water" is limited to where "they are located such that they will contribute to discharge from a stormwater outfall covered by this permit." Therefore, the requirement does not include every pipeline. It is appropriate for the locations of mine drainage, dewatering and other process water that may discharge be identified in the SWPPP so that appropriate controls are in place and inspections conducted.

COMMENT #23

Additional Inspection Requirements for the Active Mining Phase (Part 8.G.7): This section requires sites discharging to impaired waters or OAWs to inspect on a monthly basis. AMA continues to believe that if a site prevents discharge for an extended period (e.g., 12 consecutive months), monthly inspections are excessive. In such cases, quarterly inspections should be sufficient.

RESPONSE

ADEQ agrees that if control measures are adequate to eliminate discharges for up to 12 months, the inspection schedule can be reduced. ADEQ has revised the permit as follows:

"Unless otherwise approved by ADEQ, active sites which discharge to waters designated as OAWs or waters which are impaired for sediment must be inspected monthly. The permittee may submit a request to the Department to reduce the inspection frequency to quarterly at one or more outfalls to an OAW or a water impaired for sediment. The request must be based on the frequencies of discharges and the performance of the control measure(s)."

COMMENT #24

Status of Guidance Document: The proposed monitoring guidance document is an important document. AMA submitted extensive comments on the initial version of this guidance. We have heard no reaction to those comments. We believe that if there is going to be a separate monitoring guidance document, then it should be developed with the final mining MSGP. We look forward to working with ADEQ to finalize that document.

RESPONSE

The “Stormwater Monitoring Guidance Document for the Mineral Industry MSGP” as it is known in draft form, remains a work in progress. ADEQ invited stakeholders to provide input to an early draft, but the document is only guidance for stormwater sampling in the Mining MSGP and was not part of the public notice for the two MSGP permits. Once the MSGP is finalized, ADEQ will revise the Guidance Document based on comments and stakeholders will have another opportunity to review and comment on it before it is finalized.

AMA COMMENTS ON PROPOSED MINING MSGP FACT SHEET

COMMENT #25

Section I (Introduction): The language suggesting that corrective action is triggered if the permittee determines that the control measures at the facility are not adequately reducing pollutants in the discharge is not consistent with the language in the proposed Mining MSGP (see Part 3.1.1). This language should be removed from the fact sheet.

RESPONSE

ADEQ has revised the fact sheet to refer to the conditions in Part 3.1.1 that require corrective action. This reflects changes made to what requires corrective action under Part 3 of the permit during the stakeholder process.

COMMENT #26

Language to Clarify References to “Effluent Limits” or “Effluent Limitations”: As noted above, the proposed Mining MSGP distinguishes between numeric effluent limitations (Part 2.2.1), which are applied directly to certain discharges, and water quality-based requirements (Part 2.2.2), which apply to all discharges and prohibit such discharges from causing or contributing to exceedances of applicable water quality standards in the receiving water. At several locations in the proposed fact sheet (see Sections II.A, II.B, IV.A.3, IV.B, V.A, V.A.1, V.A.2, V.B, V.B.1, V.C, VII, VII.A, VII.C, VIII, VIII.A, VIII.A.1, VIII.A.2, VIII.A.3, VIII.A.4, VIII.A.5, VIII.B, IX, IX.B.2, IX.B.3.c, IX.C, X.B, X.C), however, there are generic references to “effluent limits” or “effluent limitations” in situations where it appears that the intent is not simply to reference the numeric effluent limitations of Part 2.2.1 of the proposed Mining MSGP. In addition to being confusing, this could create the mistaken impression that every single permit term (e.g., inspection frequency, recordkeeping, etc.) constitutes an “effluent limitation” or “effluent limit” under the Clean Water Act. To provide greater clarity, the attached redline of the draft fact sheet attempts to avoid these confusing references by in some instances referencing the requirements in Part 2.2 in lieu of the generic reference to “effluent limits” or “effluent limitations.”. In addition, when it is appropriate to refer to effluent limitations in the fact sheet, the redline consistently uses the term “effluent limitation” in lieu of the term “effluent limit” to avoid further confusion.

RESPONSE

Changes were made to the permit to change water quality-based limits and or limitations were changed to water quality-based requirements. See comment #5.

COMMENT #27

Section II.B (Summary of Major Changes Between MSGP 2000, MSGP 2008, and ADEQ’s AZPDES MSGP 2010):

- The language regarding critical habitat and compliance with the ESA should be revised to refer more clearly to the understood term of “critical habitat.” The confusing and undefined references to “habitat that may be important to the conservation of listed and/or proposed species” and “conservation measures that may be required” should be removed.
- The proposed Mining MSGP references the water quality standard requirements in Part 2.2.2 as water quality-based requirements or water quality standards, not as effluent limits (see Part 2.0 and the heading to Part 2.2). In addition, ADEQ agreed not to characterize the water quality-

based requirements in Part 2.2.2 as effluent limits. The fact sheet should stay consistent with the permit and with the agreed-upon approach during the stakeholder meetings (see also proposed revisions to Sections V.A.1 and V.C of the fact sheet).

- The language regarding how new dischargers to impaired waters demonstrate that the discharge is not expected to cause or contribute to a water quality standards exceedance is not consistent with the actual language in the permit. Nowhere in the permit is there a requirement that the permittee must demonstrate that existing dischargers to the waterbody are subject to compliance schedules to bring them into attainment with the water quality standards. In fact, this language, which was based on an aggressive interpretation of the 9th Circuit's controversial decision in *Friends of Pinto Creek*, was removed from the permit early in the informal stakeholder discussions with ADEQ. In addition, as noted above in the comments to Part 1.1.4.5 of the proposed Mining MSGP, AMA does not agree with the permit language in Part 1.1.4.5 that requires new dischargers to meet water quality standards at the point of discharge to the receiving water.
- The proposed language addressing antidegradation is inconsistent with A.A.C. R18-11-107.01(F) and should be revised accordingly.
- The discussion under "Industry Sector Specific Requirements" should be revised consistent with AMA's comments on the exploration and construction control measures on Part 8.G.4 of the proposed Mining MSGP (see above).

RESPONSE

Responses provided in order of comments:

1. The statement about "habitat that may be important to the conservation of listed and/or proposed species" was removed. All operators covered by either or both permits are now directed to contact the US Fish and Wildlife Service for guidance on how to comply with the Endangered Species Act (ESA).
2. The fact sheet has been revised.
3. The fact sheet has been rephrased to more clearly explain that compliance schedules are a component in a waste load allocation (WLA), which is assigned to each discharger in a watershed at the time the TMDL is established.
4. The fact sheet has been revised to reflect that additional review for antidegradation standards only applies to discharges that may impact impaired or Outstanding Arizona Waters.
5. The discussion of the definition of "mining operations" in Section XI of the fact sheet has been revised in accordance with ADEQ's revisions to Part 8.G and 8.J of the Mining and Non-mining MSGPs. See response to Comment #18.

COMMENT #28

Section IV.D (Terminating Coverage): The language in this section of the proposed fact sheet should be revised consistent with AMA's comments on Part 1.4 of the proposed Mining MSGP (see above).

RESPONSE

The language in Sections IV.D of both fact sheets and XIV.B (mining) and XIII.B (non-mining) have been revised in accordance with ADEQ's revisions to Part 1.4 of the Mining and Non-mining MSGPs. See response to Comment #3.

COMMENT #29

Section IV.E (Inactive and Unstaffed Sites):

- The proposed Mining MSGP (see Part 2.0) uses the defined term “minimize” when referring to the requirement to address the discharge of pollutants in stormwater. This term should be used in the fact sheet in place of the undefined terms of “reduce” or “prevent.” See also Sections V.A.2, V.B, V.B.1, IX.A.8, and X.B of the proposed fact sheet.
- The requirement to notify ADEQ of the change to an inactive and unstaffed site is not consistent with the actual permit language. The permit only requires that a facility that has changed to inactive and unstaffed prepare and sign a statement in the SWPPP that the facility is inactive and unstaffed (see Part 1.5 of the proposed Mining MSGP).

RESPONSE

Responses provided in order of comments:

1. ADEQ has replaced the word “reduce” and/or “prevent” in the listed sections with “minimize” for consistency with the permit.
2. Section IV.E of the fact sheet was revised to be consistent with the permit. However, ADEQ encourages the permittee to notify ADEQ either by letter or a revised NOI whenever the status of the facility changes.

COMMENT #30

Section V.B.1 (Control Measure Section and Design Considerations):

- The requirement to identify potential spill areas and keep an inventory of materials handled, used, and disposed of is not consistent with the permit language in Part 2.1.1.4.
- The discussion regarding erosion and sediment controls in the proposed fact sheet does not seem well suited to mining sites and should be revised as recommended to more clearly describe erosion and sediment control measures at mining sites.
- The heading to Part 2.1.1.8 in the proposed Mining MSGP is “Sector-Specific Control Measures.” This same language should be used in the fact sheet.
- It is not clear where the “no nuisance” language came from, or what it means in the context of non-stormwater discharges.

RESPONSE

1. The commenter suggests deleting language in the fact sheet that is not binding on the permittee. The fact sheet uses the word “should” because, as discussed at numerous stakeholder meetings, many details that embellish on the permit’s intent are fleshed out in the fact sheet. As such, technically, it is not an enforceable requirement. Identifying potential spill areas and keeping an inventory of materials handled, used, and disposed of is a good housekeeping practice that should be followed by any MSGP permittee. Therefore, no change was made to the fact sheet.
2. The proposed re-written text in the mining fact sheet was accepted.
3. The heading in the fact sheet was changed to “Sector-Specific Control Measures” to be consistent with the heading in 2.1.18 of the permit. Non-mining fact sheet.
4. The nuisance language has been deleted.

COMMENT #31

Section V.C (Numeric Effluent Limitations and Water Quality Standards): As noted above, the proposed Mining MSGP references the water quality standard requirements in Part 2.2.2 as water quality-based requirements or water quality standards, not as effluent limits (see Part 2.0 and the heading to Part 2.2). In

addition, ADEQ agreed not to characterize the water quality-based requirements in Part 2.2.2 as effluent limits. The fact sheet should stay consistent with the permit and with the agreed-upon approach during the stakeholder meetings.

RESPONSE

Section V.C of the fact sheet has been revised to be consistent with the response to Comment #5.

COMMENT #32

Section VI (Corrective Actions): The fact sheet language should be revised consistent with AMA's comments on Part 3 of the proposed Mining MSGP (see above).

RESPONSE

Inserting "during a storm event" was not adopted as explained in Comment #9 above.

COMMENT #33

Section VII.B (Visual Assessments): The fact sheet language should be revised to track the clarifying language in Part 4.2.3 of the proposed Mining MSGP that visual assessments of each substantially identical outfall should be performed on a rotating basis, "if possible."

RESPONSE

The proposed change was accepted.

COMMENT #34

Section VII.D (Inspections at Inactive and Unstaffed Mine Sites): The fact sheet language should be revised to track the language in Part 4.4 of the proposed Mining MSGP that inactive and unstaffed mine sites are required to conduct one comprehensive inspection each year and are not subject to routine facility inspection requirements.

RESPONSE

The proposed changes were accepted.

COMMENT #35

Section VIII.B (Required Modifications): The fact sheet language should be revised consistent with AMA's comments on Part 5.2 of the proposed Mining MSGP (see above).

RESPONSE

The proposed changes were accepted.

COMMENT #36

Section IX.A.6 (Sample Type): The fact sheet language should be revised to track the language in Part 6.1.2.3 addressing the situation when it is not possible to collect a sample within the first 30 minutes of a measurable storm event.

RESPONSE

ADEQ revised the fact sheet with language similar to what was proposed (that a grab sample may be collected as soon as practicable after the first 30 minutes, instead of the first hour of discharge), but with the added comment that this condition will be an exception and should not evolve to be the norm. In such cases the sample location should be moved.

COMMENT #37

Section IX.A.8 (Sampling and Analysis Plan): The information suggested in the fact sheet as being part of the sampling and analysis plan goes well beyond what is in the proposed Mining MSGP.

RESPONSE

During stakeholder meetings, stakeholders objected to inclusion of too much detail about the components of a sampling and analysis plan in the permit, fearing the language was too strict and could lead to numerous enforcement violations. The Department agreed and moved the details to the fact sheet, conveying to stakeholders the understanding that a typical sampling and analysis plan has to have all the components necessary to collect, document and analyze a sample to obtain credible data. Otherwise, to data reported will be of questionable validity that could be to the advantage, or detriment of the permittee. Furthermore, the information is provided in the fact sheet as guidance and not enforceable. No change was made to the fact sheet.

COMMENT #38

Section IX.B.1 (General Analytical Monitoring): Because the proposed monitoring guidance document has not been finalized, the references to the guidance document in the fact sheet should be modified to be less descriptive.

RESPONSE

The Department revised the fact sheet about the stormwater monitoring guidance document. The document is intended as guidance for the metallic and non-metallic mining industry in Arizona on how ADEQ will evaluate monitoring data submitted in compliance with the Mining MSGP.

COMMENT #39

Section IX.B.4 (Additional Monitoring Required by ADEQ): The fact sheet language should be revised consistent with AMA's comments on Part 6.2.4 of the proposed Mining MSGP (see above).

RESPONSE

Changes were made to the fact sheet in accordance with changes made to Part 6.2.4 of both permits.

COMMENT #40

Section IX.C (Follow-up Actions): The fact sheet language should be revised consistent with AMA's comments on Part 6.3 of the proposed Mining MSGP (see above).

RESPONSE

The fact sheet has been revised. Specifically, the reference to Part 2.2.2 added to Part 6.3 was included in the fact sheet and "water quality-based limitations" was replaced with "water quality-based requirements".

COMMENT #41

Section X.A (Reporting Monitoring Data to ADEQ): The fact sheet language should be revised to track the language in Part 7.1 regarding submittal of DMRs on an annual basis.

RESPONSE

The Mining MSGP fact sheet was modified to track the language in the non-mining MSGP fact sheet, which was the original intent.

COMMENT #42

Section X.C (Exceedance Report for Numeric Effluent Limitations): The fact sheet language should be revised consistent with AMA's comments on Parts 6.3 and 7.3 of the proposed Mining MSGP (see above).

RESPONSE

The fact sheet has been revised.

COMMENT #43

Section XI (Sector Specific Requirements): The "definitions" portion of this section of the fact sheet should be revised consistent with AMA's comments on Part 8.G.4 of the proposed Mining MSGP (see above).

RESPONSE

The language in Section XI of the fact sheet has been revised in accordance with ADEQ's revisions to Part 8.G.3.3 of the Mining MSGP. See response to Comment #18.

AMA COMMENT #44 ON PROPOSED NON-MINING PERMIT

With the exception of the AMA suggested comments to Parts 1.5, 4.4, 5.2, and 6.2.3.3 (new subpart), all of the remaining comments and supporting rationale made above to Parts 1 through 7 of the proposed Mining MSGP apply equally to the proposed non-mining MSGP. AMA respectfully requests that similar revisions be made to the non-mining MSGP as requested in these comments for Parts 1 through 7 of the Mining MSGP.

RESPONSE

The Department made revisions to the Non-mining MSGP fact sheet everywhere that was applicable and where changes were warranted, they were made in accordance with the revisions to the Mining MSGP permit.

ADDITIONAL CHANGES TO PERMIT LANGUAGE FROM DRAFT PERMIT TO FINAL PERMIT.

Permit Part 1.

- Part 1.3.1 of both permits – actual date of May 31, 2011 was installed in Table 1-2 (Non-mining MSGP) and Table 1-3 (Mining MSGP) for the NOI Submission Deadline. This date was previously left open, pending the permits' implementation date.

Permit Part 2.

- Part 2.1, first sentence, "to address the provisions in Part 2.1" was deleted from the Non-mining MSGP to be consistent with the same sentence in the Mining MSGP.

Permit Part 5:

- Part 5.1.2.3 – sixth bullet requiring the locations of surface waters on the site map was simplified in both permits;

- Part 5.1.2.3, eleventh bullet – inlets were deleted as a requirement on the site map in the Mining MSGP.

Permit Part 6:

- Part 6.2.1.1, Mining MSGP – reference to Appendix D (hardness calculations and ranges) in the permit was removed as an erroneous reference. The subject of hardness in surface waters receiving stormwater discharges is discussed in the “Stormwater Monitoring Guidance Document for the Mineral Industry MSGP”. Furthermore, the two bullets in this part were deleted from the permit and are addressed in the guidance document.

Permit Part 7:

- Parts 7.1 and 7.2 of both permits – applicable deadlines were revised to July 15 for the submittal of MSGP discharge monitoring reports (DMRs) and Annual Reports. This date was previously left open, pending the permits’ implementation date. The July 15 submittal deadline (postmark date) is 45 calendar days after the May 31 annual reporting deadline.

Because the Department established July 15 as the reporting deadline for all facilities, ADEQ deleted the requirement in the last paragraph of Part 7.2 to submit an annual report within 45 calendar days following completion of the Comprehensive Facility Inspection. In other words, all facilities are now on the same schedule (July 15 of each permit year) to submit their reports on the same date. Permittees are advised that the first reporting deadline will be July 15, 2012.

- Part 7.4 of both permits – delete duplicate “as applicable” from the second paragraph of the draft.

Permit Part 8:

- Part 8.G.8.2, Mining MSGP – changes were made to Table 8.G-8.2 and the text preceding it reflecting refinements to analyzing water hardness for metals.

SUMMARY OF CHANGES TO THE FACT SHEETS THAT ARE NOT ADDRESSED SPECIFICALLY IN RESPONSES TO COMMENTS

The procedures covering a facility’s compliance with ESA and making the SWPPP available to federal agencies was revised in both fact sheets (p. 4 of Mining MSGP fact sheet; p. 3 of Non-mining MSGP fact sheet) to reflect ADEQ’s current practice under the MSGP with respect to administering these requirements.

In numerous places in both fact sheets, “effluent limit” was changed to “effluent limitation” for consistency and to avoid confusion.

Section X.A (both fact sheets) – the last paragraph, as it appears in the Mining fact sheet, was revised to match the same paragraph of the Non-mining fact sheet that requires submittal of data annually by a certain date (November 30 in the draft). The submittal date was revised in both fact sheets to July 15, to reflect the changes to Parts 7.1 and 7.2 in both permits.

Sections XIII (Non-mining) and XIV (Mining) – the section on applicable forms was updated to reflect the finalized versions of various forms that will be required by permittees to comply with the permit.