Comments received during the official public comment period: AZPDES 2013 Construction Stormwater General Permit

November 23, 2012 through January 11, 2013

Comments were received from:

- Arizona Chamber of Commerce
- Arizona Department of Transportation, Administrative Services Division
- City of Mesa, Environmental and Sustainability Division
- City of Phoenix, Office of Environmental Programs
- Fennemore Craig, P.C. (representing home builders associations of central Arizona and southern Arizona)
- Logan Simpson Design, Inc.
- Maricopa County, Environmental Services Department
- Rosemont Copper Corporation
- US Environmental Protection Agency, Region 9
  (Part 1 and Part 2)

January 10, 2013

Via Email (dt1@azdeq.gov) and Regular Mail
Mr. Dennis Turner
Arizona Department of Environmental Quality
Water Quality Division
1110 West Washington Street, 5415A-1
Phoenix, Arizona 85007

Re: ***Arizona Chamber of Commerce and Industry Comments on Draft 2013 Stormwater Construction General Permit***

Dear Mr. Turner:

The Arizona Chamber of Commerce and Industry (Chamber) submits the following comments on the Arizona Department of Environmental Quality's (ADEQ) draft 2013 stormwater construction general permit (CGP). The Chamber appreciates ADEQ's efforts in developing the proposed CGP including the commendable stakeholder process that it implemented as part of the development of the permit. In the spirit of continued cooperation and stakeholder outreach, the Chamber respectfully submits the following comments and requests that ADEQ amend the proposed CGP consistent with the comments.

Part 1.3(2)(a): The first sentence to this subpart should be removed. It does not make sense to require reduction or elimination of non-stormwater discharges in the first sentence under allowable non-stormwater discharges and to then provide that certain non-stormwater discharges are allowed under the proposed CGP if the discharges are identified in the permit and are subject to appropriate control measures. The language in the first sentence implies some active obligation to eliminate non-stormwater discharges although the discharges are authorized if properly identified and managed. In any event, the concept that ADEQ is trying to address in the first sentence of this subpart is already addressed under Section 1.4 and should not be repeated in Part 1.3.

Part 1.3(2)(a)(ii) & Note: The statement that other wastewaters cannot be used to control dust and be discharged as allowable non-stormwater should be removed. First, the statement implies that all dust control should be conducted using only potable or raw water, when other water sources can and should be used to preserve potable or raw water sources. In fact, the language in the proposed CGP discourages the use of other waters sources, even though such sources would still be subject to the implementation of control measures and the requirement that the discharges not cause or contribute to exceedances of water quality standards. Second, while it makes sense

to exclude discharges of reclaimed water used for dust control given the language in A.A.C. R18-9-704(G)(3)(c), this same rationale does not apply to other sources of water since there is not a corresponding limitation on other wastewater sources. Part 1.3(2)(a)(ii) should be revised as follows: "Water used to control dust, provided reclaimed water ~~or other wastewaters are~~ is not used."

For the same reasons, the note provided at the bottom of Part 1.3(2)(a) should be revised to remove the reference to "other wastewaters" The note explains that the reason for excluding reclaimed water and other wastewaters used for dust control from the list of allowable non-stormwater discharges is because of the language in A.A.C. R18-9-704(G)(3)(c). However, the referenced language only applies to reclaimed water and is not applicable to "other wastewaters."

Part 1.3(2)(a)(iv), (xii): For the reasons set forth above regarding use of water for dust control, the reference to "other wastewaters" should be removed from Parts 1.3(2)(a)(iv) and (xii). The reference to "other wastewaters" is not mandated by any regulatory provisions and does not promote conservation of water.

Part 1.3(2)(a)(xiv): The language in this entry is not consistent with Part 3.1.4 (De-watering practices) or with the relevant regulatory language in 40 C.F.R. § 450.21(c). The entry should be changed to authorize the discharge of construction dewatering water as long as it is managed by an appropriate control in accordance with Part 3.1.4 (see also comments below on Parts 1.3(2)(b) and 3.1.4). If this language is not revised, the proposed CGP arguably creates obligations that are more stringent than requirements imposed under the federal Clean Water Act in violation of the statutory language in A.R.S. § 49-255.01(B).

Part 1.3(2)(b): The language in this entry should be revised to include the relevant allowable non-stormwater discharge SWPPP requirements from Part 3.1.4. As noted below on comments to Part 3.1.4, the application of the requirements to all allowable non-stormwater discharges in Part 3.1.4 are confusing because Part 3.1.4 applies to dewatering and not to all types of allowable non-stormwater discharges. Part 1.3(2)(b) therefore should be revised as follows (with corresponding revisions made to Part 3.1.4):

> The operator shall include the following information~~address~~ in the SWPPP for all allowable non-stormwater discharges (except for flows from emergency firefighting activities):
>
> i. Identification of each allowable non-stormwater discharge expected to be associated with the project;
>
> ii. The location(s) where each discharge is likely to occur; and

iii. Appropriate control measures that the operator will use to minimize the discharge of pollutants~~listed above that are expected to be associated with the project's construction activities as required in Parts 3.1.4 and 6.3~~.

Part 1.5(3): The requirements in the proposed CGP applicable to impaired waters should be limited to receiving waters impaired for a sediment-related parameter. It is not appropriate to impose broad requirements on construction-related discharges to waters impaired for pollutants other than sediment since the primary pollutant of concern at construction sites is sediment. The regulatory burden imposed through the current language proposed by ADEQ is not supported by any corresponding environmental benefit.

Parts 1.5(3)(b) & 7.0: Regardless of whether the impaired water requirements in the reissued CGP are limited to sediment, the requirement to prepare a sampling and analysis plan as well as the corresponding sampling requirements in Part 7.0 should be removed from the reissued CGP. The sampling and monitoring requirements, including the development and implementation of a sampling and analysis plan are not supported by any legitimate technical or legal rationale. In fact, the episodic and variability nature of stormwater discharges renders the application of sampling and monitoring requirements particularly problematic. Further, experience has shown that stormwater runoff quality from disturbed and undisturbed areas in the arid west is influenced as much or more by the type and intensity of the storm event, and the time since the last rain event, than by the type of control measures implemented. The quality of storm water discharge has been seen to vary significantly even where there has been no change in control measures. Ultimately, the imposition of stringent sampling and monitoring requirements on permitted stormwater discharges to impaired waters arguably violates the statutory limitation that ADEQ not adopt any requirement as part of the AZPDES permit program that is more stringent than or conflicts with a requirement of the federal Clean Water Act. A.R.S. § 49-255.01(B).

Part 1.5(4)(b) & 7.0: For the same reasons set forth above regarding discharges to impaired waters, the proposed sampling requirements applicable to discharges to outstanding Arizona waters in Parts 1.5(4)(b) should be removed from the reissued CGP.

Part 1.5(5): Paragraph (e) should be removed from Part 1.5(5) as well as the reference in the first sentence of Part 1.5(5) to paragraph (e). The language in paragraph (e) attempts to impose minimization and stabilization requirements on exempt construction activities, including construction activities that occur on less than one acre, which by federal and state regulation are exempt *without* any conditions (*see, e.g.*, A.A.C. R18-9-A902(B)(8)(c)). The language in paragraph (e) also appears to violate the statutory language in Arizona's AZPDES statute that provides that ADEQ "shall not adopt any requirement that is more stringent than or conflicts with any requirement of the clean water act." A.R.S. § 49-255.01(B).

Part 2.2(3)(b): The language automatically extending the period for ADEQ's review and approval of an NOI "that has the potential for discharge to reach impaired or outstanding Arizona waters" should be removed from the reissued CGP. First, the language appears to create a requirement that is more stringent than regulations and permits adopted by EPA under the federal Clean Water Act (*see* A.R.S. § 49-255.01(B)). Second, although the NOI requires the submittal of information regarding whether any portion of the proposed construction site is within ¼ mile of an impaired or outstanding Arizona water, the language in Part 2.2(3)(b) imposes an extended review period on sites that merely have some undefined "potential for discharge to reach impaired or outstanding Arizona waters." At the very least, if the language in Part 2.2(3)(b) is not removed, the language in the first sentence should be revised as follows to better track the other provisions in the draft CGP: "Applicants proposing a site that is within ¼ mile of an ~~has the potential for discharge to reach~~ impaired or outstanding Arizona water~~s~~ are not authorized under this permit for a minimum of 30 calendar days following receipt of the signed NOI, SWPPP and initial application fee."

Part 2.3(6): The last sentence to this part should be removed since it imposes a requirement that if any information submitted on an NOI changes, a new NOI must be submitted. The submittal of a new NOI implies that a new fee must be submitted and that new approval must be obtained from ADEQ even when minor information requested on the NOI has changed. At the very most, a revised NOI should be required for changes in information on an NOI, not the submittal of a new NOI. Individual permittees do not have such a burdensome requirement to resubmit their permit application during the permit term if information on the permit application changes as long as the information was correct when submitted.

Part 3.1.1.4(3): It is unclear what is meant by the language in Part 3.1.1.4(3) that requires the implementation of effective control measures to minimize discharges of sediment during dry weather. Further, since the permit addresses stormwater discharges from construction sites, it appears that this language attempts to regulate activities beyond actual stormwater discharges. This language should be removed from the reissued CGP.

Part 3.1.2.3(2): The language on the last line of this part appears to create a new distance standard with respect to impaired waters and outstanding Arizona waters. The language should be changed from "2.5 miles" to "1/4 mile" consistent with the other applicable sections of the proposed CGP.

Part 3.1.4: Consistent with the comments on Part 1.3(a)(a)(xiv) above, Part 3.1.4 should be revised as follows:

3.1.4 Dewatering practices.

Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

~~Control Measures for Non-Stormwater Discharge Requirements –~~ Appropriate controls include, but may not be limited to: sediment basins or traps; dewatering tanks; tube settlers; weir tanks; or filtration systems (e.g., bag or sand filters) that are designed to remove sediment.

~~1. The operator shall not allow any non-stormwater discharges from the site unless they are specifically authorized in Part 1.3(2).~~

~~2. The operator shall eliminate or reduce all non-stormwater discharges to the extent practicable. If discharges cannot be eliminated, the operator shall include the following information in the SWPPP for all non-stormwater discharge (except for flows from emergency firefighting activities),~~

~~i. Identification of each non-stormwater discharge expected to be associated with the project;~~

~~ii. The location(s) where each discharge is likely to occur; and~~

~~iii. Appropriate control measures that the operator will use to minimize the discharge of pollutants.~~

~~3. The operator shall ensure all water from dewatering or basin draining activities is discharged in a manner that does not cause nuisance conditions, including erosion in receiving channels or on surrounding properties.~~

~~4. The operator shall retain superchlorinated wastewaters (i.e., containing chlorine above residual levels acceptable in drinking water systems) on-site until the chlorine dissipates, or shall otherwise effectively dechlorinate the water prior to discharge.~~

~~*Note:* As with any non-stormwater, if acceptable to the local sanitary sewer authority, this wastewater may be discharged to the sanitary sewer. In this case, dechlorination is not required by this permit.~~

The language in Part 3.1.4 should simply describe the control measures appropriate for dewatering discharges consistent with 40 C.F.R. § 450.21(c). The additional language is confusing because it is not clear whether it applies to only dewatering discharges or all allowable non-stormwater discharges. In any event, allowable non-stormwater discharges, including dewatering discharges, are already addressed under Part 1.3(2) and that part should be the area of the proposed CGP that includes SWPPP-related requirements for allowable non-stormwater discharges (see comment above on Part 1.3(2)(b)).

Part 3.2.1: The core requirement of the proposed CGP is that discharges not cause or contribute to an exceedance of applicable water quality standards. Based on discussions from the recently issued non-mining and mining MSGPs by ADEQ, our 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 actual 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. In addition, in the Fact Sheet accompanying issuance of the 2008 MSGP (p. 53), 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).

This understanding was confirmed by ADEQ in the record for the recently issued non-mining and mining MSGPs. For instance, in the December 20, 2010 response to comments on the MSGP (p. 6) (http://www.azdeq.gov/environ/water/permits/download/2010/122010a.pdf), ADEQ stated that it agreed that the permit language stating that discharges not cause or contribute to exceedances of applicable water quality standards applies only to exceedances in the receiving water. ADEQ reconfirmed this position in the fact sheet for both the non-mining (pp. 17, 24, 27) (http://www.azdeq.gov/environ/water/permits/download/2010/122010d.pdf) and mining (pp. 18, 25, 28) (http://www.azdeq.gov/environ/water/permits/download/2010/122010e.pdf). While these efforts are appreciated, after issuance of the non-mining and mining MSGPs, various ADEQ personnel continued to take the position that the water quality requirement in the MSGPs applied directly to permitted stormwater discharges and not to the receiving water – in other words, the ADEQ personnel argued that the requirement in Part 2.2.2 of the MSGPs is that stormwater discharges themselves meet water quality standards regardless of the condition of the receiving waters.

To avoid this misapplication of the language in the reissued CGP, Part 3.2.1 should be revised as follows (insertion of this clarification or understanding in the fact sheet is not sufficient given the past experience with the MSGPs):

3.2.1 Water Quality Standards

> The operator shall control discharges from the site as necessary to not cause or contribute to an exceedance of an applicable water quality standard in the receiving water body.
>
> ADEQ expects that compliance with other conditions in this permit will control discharges as necessary to not cause or contribute to an exceedance of an applicable water quality standard in the receiving water body (A.A.C.R18-11, Article 1). However, if at any time the operator becomes aware, or ADEQ determines, that the facility's discharge causes or contributes to an exceedance of

an applicable water quality standard in the receiving water body, the operator shall take corrective action as required in Part 5.1, document the corrective actions as required in Parts 5.3 and 6.4, and report the corrective actions to ADEQ as required in Part 8.2(3).

Additionally, ADEQ may impose additional water quality-based requirements on a site-specific basis, or require the operator to obtain coverage under an individual permit in accordance with Part 1.2, if information in the NOI, required reports, or from other sources indicates that additional controls are necessary to not cause or contribute to an exceedance of an applicable water quality standard in the receiving water body.

Part 4.5(1): The phrase "including the visual assessment" should be removed from the first sentence in Part 4.5(1). Although the scope of the inspection requires the inspector to visually observe stormwater discharges if present during the inspection (*see* Part 4.3(11)), there is no visual assessment requirement and this reference should be removed from Part 4.5(1).

Part 5.0: The concept of corrective action is a recent development that EPA created in the 2008 MSGP and then repeated to some extent in the federal CGP. This concept is not mentioned at any location in the federal NPDES or state AZPDES regulations. The concept should be significantly revised from how it is proposed in the CGP or removed in its entirety from the permit for the following reasons.

First, practical experience in implementing the 2008 EPA MSGP in states without NPDES primacy has demonstrated that it is unclear what actually triggers corrective action requirements.

Second, it is unclear when the requirement to conduct corrective action in the event that a "necessary" control measure was never installed, was installed incorrectly, or not in accordance with the requirements in Parts 3.1 and/or 3.2 might be triggered. Does this language suggest that all of the control measures mentioned in Parts 3.1 and 3.2 must be installed even if determined not to be applicable or feasible? Also, who makes the determination of what control measures are "necessary"? Further, although ADEQ attempts to clarify that routine maintenance or repairs are not corrective actions, it then states that a failure to replace, repair, or maintain a control measure requires corrective action. This explanation creates confusion.

Third, the definition of "corrective action" found in Appendix A does not match the language used in Part 5.1 to define when corrective action is triggered.

Fourth, proper installation and maintenance of control measures is already addressed fully in Part 3.1 and 3.2 and does not need to be confusingly and repeatedly addressed in Part 5.0.

Fifth, the requirement to conduct corrective action if ADEQ or EPA determines that modification to the control measures are necessary to meet the requirements of Part 3 is tied to a subjective review of control measures. Further, this particular triggering event is not tied to unauthorized discharges or potential exceedances of applicable water quality standards in receiving water bodies but rather to implementation of multiple layers of control measures, which often are redundant and unnecessary.

Sixth, the additional reporting requirements related to sites that discharge to impaired waters or outstanding Arizona waters are entirely inappropriate and burdensome.

Seventh, because of the above concerns, it ADEQ believes it still has sufficient purpose and authority to require a corrective action concept in the CGP, the concept should be limited to responding to the occurrence of one of the prohibited discharges in Part 1.4. The other triggering events are based on subjective determinations or redundant requirements already found in Part 3 and should be removed.

Eighth, the creation of a corrective action concept in the proposed CGP violates the statutory limitation that ADEQ "shall not adopt any requirement that is more stringent than or conflicts with any requirement of the clean water act." A.R.S. § 49-255.01(B).

Part 7.0: Consistent with the comments set forth above on Parts 1.5(3)(b) and 1.5(4)(b), the Chamber respectfully requests that Part 7.0 and other related provisions in the proposed CGP be deleted from the final version of the permit. The Chamber strongly questions the technical and legal appropriateness of requiring monitoring for potential discharges of stormwater to impaired waters or outstanding Arizona waters given the burden and the limited usefulness of such information. Sampling of potential discharges from episodic storm events, given the unique conditions created during such events, does not appear to be necessary in light of the stormwater control measures approach applied by the permit. The focus of the permit should be on the selection and implementation of appropriate control measures associated with discharges to impaired waters or outstanding Arizona waters in light of the specific construction project rather than conducting analytical monitoring, which imposes substantial costs and other burdens without a clearly identified benefit or purpose.

Further, the proposed CGP already contains additional requirements that would apply to potential discharges to impaired waters or outstanding Arizona waters. These include submittal of SWPPPs (as well as payment of an associated review fee) with any submitted NOIs, implementation of control measures specific to ensure that the discharges are consistent with the provisions of any applicable TMDL, and increased frequency of sites inspections. ADEQ also has the ability to impose additional limits or controls on proposed discharges to impaired waters (see Section 3.2.2 of the proposed CGP). The Chamber believes that these additional burdens or

requirements are sufficient to ensure that discharges from construction sites to impaired waters or outstanding Arizona waters will not adversely impact the quality of such waters.

Appendix A: Several of the terms defined in Appendix A (e.g., "antidegradation requirements," "anticipated rain event," approved total maximum daily loads (TMDLs)," "business day," "exit points," "upland") are not used elsewhere in the proposed CGP. Such terms should be removed from Appendix A.

Further, the definition of "prohibited materials" should be removed from Appendix A because it is not consistent with the list of prohibited materials provided in Part 1.4 of the permit and which was discussed during the stakeholder meetings. The definition of "prohibited materials" in Appendix A attempts to add another category of prohibited materials that broadly includes waste, garbage, flowing debris, construction debris, etc. The definition should be removed or, at the very least, the additional category of prohibited materials inconsistent with stakeholder discussion on the proposed CGP should be removed from the proposed definition of "prohibited materials."

The Chamber again expresses its appreciation for the opportunity to submit the above comments and encourages ADEQ to amend the CGP consistent with the comments.

Sincerely,

Glenn Hamer
President and CEO
Arizona Chamber of Commerce and Industry
Arizona Manufacturers Council

Arizona Department of Transportation
Administrative Services Division
206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janice K. Brewer
Governor

John S. Halikowski
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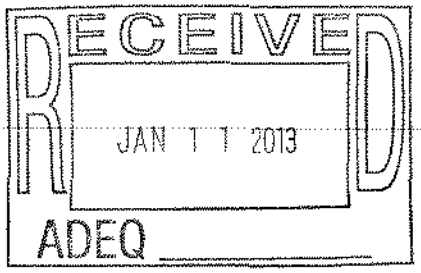
January 11, 2013



Dennis Turner
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Water Quality Division
1110 West Washington Street, 5415A-1
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RE: Draft 2013 Stormwater Construction General Permit

Dear Mr. Turner,

Thank you for the continuous stakeholder outreach throughout 2012. It was beneficial to go through the permit language section by section and discuss the principles behind this type of Clean Water Act permit.

The following comments are submitted for consideration, as clarification of the intent may be warranted and assist the regulated community, specifically with respect to linear transportation projects, with compliance to the Arizona Pollutant Discharge Elimination System.

Permit

In section 1.3, regarding stormwater discharges from construction support activities, clarify permit expectations for a single operator utilizing a support activity, like a staging area or source of material, for multiple unrelated projects.

Section 3.1.2.2 regarding final stabilization, specifically paragraphs 1a and 1b, rely on vegetative cover and permanent stabilization practices; however, there is no mention regarding the stability of soils. In certain cases, a site may exhibit 70% of pre-project cover, yet there is pronounced erosion and sediment leaving the site. In contrast, specifically in arid lands, stable slopes (no active erosion) that do not have 70% cover, should be given the same consideration.

Section 3.1.2.2(1b) add rock mulch and AB as list of stabilizing materials.

Section 3.1.3.1(3) exclude common componenets of cement after curing agents because it is covered under 3.1.3.1 Subsection 1.

Section 4.2 inspection schedule number 3 consider the following revision "the operator may reduce inspections to the schedule specified in Part 4.2(2) for those areas of the construction site that have been temporarily stabilized." Adding the word "temporarily" will assist linear projects, specifically with a Department of Transportation, in reduced inspections for sites that have received significant quantities of seed, yet, drought does not support seed germination for 1-3 years. In part 4.2(4), if temporary stabilization measures have been installed at unstaffed sites within ¼ mile of OAW or impaired water, ADEQ should allow for a similar reduced inspection frequency.

temporary stabilization measures have been installed at unstaffed sites within ¼ mile of OAW or impaired water, ADEQ should allow for a similar reduced inspection frequency.

Section 4.2 inspection schedules should also allow for reduced frequency for portions of the site that do not drain to the outstanding Arizona or impaired water. For example, on a 20-mile long, linear road construction project, perhaps only 6 miles drain to the outstanding Arizona or impaired water. Only the ¼ mile buffer within those 6 miles draining to that outstanding Arizona or impaired water should be held to the 7-day inspection standard.

Section 6.4 please require that the contractor submit to project owner all complaints, notices of violation, and similar, and to ADEQ.

Section 7.3 regarding wet seasons consider adopting June 15 as the beginning of the summer wet season as recognized statewide.

Table 7-1 left column should be revised to state only "Number of Discharge Points," unless a definition of outfall is added to the glossary in Appendix A.

Section 7.3(3a) sampling for turbidity should only be required if the water is impaired for turbidity, consistent with the monitoring protocol for other impairing constituents, mercury, copper, etc. Most Arizona systems are commonly turbid due to the nature of the flow (ephemeral, for example).

Section 7.3(3b) the sampling plan shall be included as part of the SWPPP to ensure that the current document is followed. Otherwise, it may be indeterminate which sampling plan was submitted for approval.

Inspection Form

Regarding the required standard inspection report form distributed recently, it appears to be well-designed and easy to follow. However, for ease of use, review, and economy, it is imperative that this form be fill-able to allow for additional rows or to remove rows that are not needed (specifically Sections II, III, and IV).

Regarding the box for inspecting an inactive/unstaffed construction site, and consistent with the recommendation in Section 4.2(4) above, if temporary stabilization measures have been installed at unstaffed sites within ¼ mile of an outstanding Arizona or impaired water, ADEQ should allow for a similar reduced inspection frequency. This is particularly true for linear transportation projects that span multiple years where earthwork is completed yet paving will commence the following year.

"Inspection Location" is vague and could mean multiple things or insinuate multiple forms are required. Recommend the section be changed to Project Area or similar. For example, a traffic interchange or support activity, like a staging area, could be an inspection location, but these are tied to the project overall and should not have separate forms.

Regarding the non-stormwater discharge section in the right-hand column titled "associated control measures:" add "for non-stormwater discharges" to be clearer.

Section III for stabilization method, the stage of the method, temporary or permanent, should be called for. This section must be fill-able to add or subtract rows in order to reduce paperwork and have a report that flows.

In Section IV(A)(B) there may be a need to include corrective actions at various locations, requiring the user to have the ability to repeat the required information by copying the cells and rows to allow for additional corrective actions. This section must be fill-able to add or subtract rows in order to reduce paperwork and have a report that flows.

Section V(A)(B) may be redundant. If the contractor is the permittee, it would sign both locations. If ADOT, for example, has control over the plans and the contractor has day-to-day control of the site, each must sign and both are permittees.

Thank you again for initiating the stakeholder process early in 2012. It was very helpful in streamlining the draft permit review process and identified where the regulated industry and regulator may not have a clear understanding of the other's perspectives and constraints.

Should you have any questions regarding these comments, please contact Leigh Waite, Water Quality Analyst, at 602.712.6170 or via email at lwaite@azdot.gov.

Sincerely,

Wendy Terlizzi
Water Quality Manager

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January 10, 2013

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Arizona Department of Environmental Quality
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1110 W. Washington Street
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RE: City of Mesa Public Comments on the Draft 2013 Stormwater Construction General Permit

Dear Mr. Turner,

The City of Mesa (City), a Phase I municipal separate storm sewer system (MS4) operator, is providing these attached comments on the ADEQ's draft 2013 construction general permit (CGP). The City has participated in the stakeholder process with the ADEQ and appreciates your efforts in working with us through the stakeholder process.

The City appreciates the opportunity to provide these comments to the ADEQ for review and response. If you have any questions, or the language is unclear, please do not hesitate to contact me at 480-644-4366 or John Meyer at 480-644-6967.

Sincerely,

FOR SCOTT BOUCHIE

Scott Bouchie
Deputy Director, Environmental & Sustainability Division

480.644.3599 (tel)
480.644.4774 (fax)

Comment COM-01: Definition of Construction Support Activities:

Mesa requests that use of the term "construction support activities" be used consistently throughout the permit where the ADEQ means those activities as defined in Appendix A and provided below. The definition provided in Appendix A is consistent with the current EPA CGP.

"Construction support activity" – a construction-related activity that exclusively supports the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas."

In some parts of the permit there are different terms used that appear to a reference to construction support activities as provided in Appendix A, but that term is not specifically used and the use of undefined terms is confusing to operators. In other parts of the permit the term appears to include examples of construction support activities that are not included in the definition in Appendix A. Mesa understands that the listing in Appendix A is not intended to be all inclusive (i.e. "can include"); however, the permit should not be written in a manner where there are inconsistencies between the various parts of the permit itself.

Additionally, in some parts of the permit, the term "construction support activities" is simply stated, which an operator would understand to be that definition in Appendix A, and in other parts the term is stated but references back to Section 1.3(c) which is consistent with the definition in Appendix A. No edits are proposed for those parts of the permit.

Mesa requests the following revisions.

- Section 1.2 (page 1) provides: "This general permit is also applicable to stormwater discharges support activities from temporary plants or operations set up to produce concrete, asphalt, or other materials exclusively for the permitted construction project." **Requested revision:** "This general permit is also applicable to stormwater discharges associated with construction support activities as defined in Appendix A ~~from temporary plants or operations set up to produce concrete, asphalt, or other materials exclusively for the permitted construction project~~."

- Section 1.3(c) (page 1) provides: "Stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) …" and continues to address conditions for the support activity. **Requested revision:** "Stormwater discharges from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards,

material**s** storage areas, excavated material disposal areas, borrow areas) …". The term "construction support activities" is defined where "support activities" is not.

- Section 1.5(1) (page 3) provides: "This general permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has achieved final stabilization and a Notice of Termination (NOT) has been filed." **Requested revision:** "This general permit does not authorize stormwater discharges that originate from the site, including any part of the site or off-site areas that had been used for construction support activities specifically for that project, after construction activities have been completed and ~~the site, including any temporary support activity site, has achieved~~ final stabilization and a Notice of Termination (NOT) has been filed." The way the original language was written is confusing. Also, "temporary support activities" is not defined. With the proposed edits, the statement provides more clarity on the fact that any area where "construction support activities" occurred would not be covered, if in fact, they are set up specifically for the project that was covered under the AZPDES permit.

- Section 3.1.2.1 (page 17) provides: "The operator must provide temporary stabilization, or initiate permanent stabilization, of disturbed areas within 14 calendar days of the most recent land disturbance in areas where construction or support activities …" **Requested revision:** "The operator must provide temporary stabilization, or initiate permanent stabilization, of disturbed areas within 14 calendar days of the most recent land disturbance in areas where construction or construction support activities …

- Section 6.3(5)(b) (page 32) provides: "The total area of the site, and an estimate of the total area of the site expected to be disturbed by construction activities including off-site supporting activities, borrow and fill areas, staging and equipment storage areas;" **Requested revision:** "The total area of the site, and an estimate of the total area of the site expected to be disturbed by construction activities including ~~off-site supporting~~ construction support activities~~, borrow and fill areas, staging and equipment storage areas~~;" This is particularly confusing since "off-site supporting activities" is not defined and "borrow areas" and "equipment staging yards" are included in the definition of construction support activities in Appendix A but "fill areas" is not.

- Section 6.3(6)(g) (page 33) provides: "Locations of on-site material, waste, borrow areas, or equipment storage areas, and other supporting activities (per Part 1.3(1)(c));" **Requested revision:** "Locations of construction support activities ~~on-site material, waste, borrow areas, or~~

~~equipment storage areas, and other supporting activities~~ (per Part 1.3(1)(c));" Here again, the definition supports almost all conditions and the proposed revision makes this consistent and understandable.

- Section 6.3(9) (page 34) provides: "The SWPPP shall identify the location and describe any pollutant sources, including any non-stormwater discharges expected to be associated with the project, from areas other than construction (i.e., support activities including stormwater discharges from dedicated asphalt or concrete plants and any other non-construction pollutant sources such as fueling and maintenance operations, materials stored on-site, waste piles, equipment staging yards, etc.)." **Requested revision:** "The SWPPP shall identify the location and describe any pollutant sources, including any non-stormwater discharges expected to be associated with the project, from areas other than construction (i.e., construction support activities including stormwater discharges ~~from dedicated asphalt or concrete plants~~ and ~~any~~ other non-construction related pollutant sources such as fueling and maintenance operations, ~~materials stored on-site,~~ waste piles, ~~equipment staging yards,~~ etc.)." The way the original language was written, equipment staging areas and materials storage areas do not seem to be a construction support activity which is inconsistent with other parts of the permit.

- Section 6.7(2) (page 38) provides: *"A copy of the site specific SWPPP shall be on-site whenever construction or support activities are actively underway …."* **Requested revision:** "A copy of the site specific SWPPP shall be on-site whenever construction or construction support activities are actively underway …."

Comment COM-02: Section 1.6 Waivers

The last draft issued for review during the stakeholder meeting process allowed for a TMDL Waiver. That has been removed from the draft issued for public comment. The TMDL waiver was part of the USEPA's recently released CGP and should be included in the Arizona CGP. Additionally, the USEPA CGP allows for an Equivalent Analysis Waiver. This should also be an option under the ADEQ CGP.

Comment COM-03: Effective Date of Permit Coverage

Section 2.3(3)(d) (page 8) provides time frames for routine coverage under the permit as:

"Routine Coverage. Except as provided in Parts 2.3(3)(a) through (c), an eligible operator is authorized to discharge stormwater from a construction project 7 calendar days after a complete and accurate NOI is received by ADEQ's Surface Water Section or when an authorization certificate is issued, whichever is earlier. However, in order to rely on the 7 calendar day "default" provision, the operator must submit the NOI in a manner that documents the date of ADEQ's receipt (i.e., certified mail, hand delivery, etc.).

Alternatively, applicants that submit a Smart NOI using the electronic signature feature will typically obtain immediate authorization unless the site is located near an OAW or impaired water."

Recent municipal separate storm sewer system (MS4) permits issued by the ADEQ to regulated municipalities requires those agencies to receive, as a submittal, a copy of the ADEQ Authorization Certificate prior to issuing any construction approval or authorization. Specifically, for the City of Mesa, the ADEQ provides that the City *"Require a copy of the ADEQ authorization document for non-municipal construction projects (as required by municipal stormwater requirements or ordinances or state stormwater requirements) to be submitted prior to issuing construction approval or authorization."*

As a result, recent MS4 permits are requiring regulated municipalities to be more stringent than the ADEQ themselves by not allowing those agencies an ability to issue a construction approval or authorization where the applicant has submitted a complete and accurate NOI within seven (7) days prior to applying for any such construction approval or authorization from that regulated MS4 agency. The ADEQ stated that they have an internal timeframe permitting process that they **must** follow that allows for the start of the permit within 7 days of receipt of the NOI. However, through their MS4 permitting program, the ADEQ is circumnavigating their own policies and procedures by placing more stringent requirements on permitted MS4 operators. If all MS4 permits end up with this requirement, then the ADEQ timeframe permitting process will essentially only be effective in rural areas of the State.

This fact was brought up at the CGP stakeholder meetings and the ADEQ stated that this was an issue for that needs to be addressed as part of the MS4 permitting process. However, this was not addressed as part of the original permit negotiation process in the past because it was reasonable for those MS4 operators to assume that the ADEQ would modify the 2013 CGP to be consistent with the conditions in the recently issued MS4 permits.

As such, Mesa requests the following revision to Section 2.3(3)(d).

Requested revision: "Routine Coverage. Except as provided in Parts 2.3(3)(a) through (c), an eligible operator is authorized to discharge stormwater from a construction project ~~7 calendar days~~ after ~~a complete and accurate NOI is received by ADEQ's Surface Water Section or when~~ an authorization certificate is issued~~, whichever is earlier~~. ~~However, in order to rely on the 7 calendar day "default" provision, the operator must submit the NOI in a manner that documents the date of ADEQ's receipt (i.e., certified mail, hand delivery, etc.). Alternatively, applicants~~ Applicants that submit a Smart NOI using the electronic signature feature will typically obtain immediate authorization unless the site is located near an OAW or impaired water."

If the ADEQ does not accept the proposed revision, then the ADEQ must issue a minor permit modification to any MS4 permittee that has this requirement in their permit allowing these agencies to issue a construction approval or authorization to a construction site operator who has submitted an NOI to the ADEQ within seven (7) calendar days prior to those agencies issuing a construction approval or authorization. The ADEQ must also keep in mind that it is the permitting agency's (ADEQ's) responsibility to ensure that the applicants have submitted a "complete and accurate" NOI, not the MS4 permitted operators.

COMMENT COM-04: SECTION 3.1

Section 3.1.1(B)(1) (page 13) provides the following:

"Complete installation of stormwater controls by the time each phase of earth-disturbance has begun, unless infeasible. By the time construction activities in any given portion of the site have begun, unless infeasible, the operator shall install and make operational any downgradient sediment controls (e.g., buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other land-disturbing activities."

Requested revision:

"Complete installation of stormwater controls by the time each phase of earth-disturbance has begun, unless infeasible. By the time construction activities in any given portion of the site have begun, unless infeasible, the operator shall install and make operational any downgradient sediment controls (e.g., buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other land-disturbing activities. <u>If it is infeasible to meet the requirements above, SWPPP records must document why it is infeasible.</u>"

Consistent with Section 3.1(2)(b).

Section 3.1.1.4(1) (page 15) provides:

"Perimeter controls are not required for individual lots within a construction site if stormwater from those lots is conveyed through internal streets or other conveyance structures to a sediment basin meeting the volume requirements of this section prior to discharge."

Requested revision:

"Perimeter controls are not required for individual lots within a construction site if stormwater from those lots is conveyed through internal streets or other conveyance structures, <u>exclusive of public rights-of-way,</u> to a sediment basin meeting the volume requirements of this section prior to discharge." This is consistent with Section 3.1.2.3(1)(b). Additionally, this will prevent discharges of pollutants to a municipal separate storm sewer systems, unless it is the ADEQ intention for MS4 operators to allow pollutant discharges to their system as long as it is retained or detained in these circumstances.

Section 3.1.3.1(1) (page 19) provides information regarding concrete washout. These locations are also managed under the ADEQ's APP program. A note should be added to inform operators of their responsibility to meet those requirements as well.

City of Phoenix
OFFICE OF ENVIRONMENTAL PROGRAMS

January 9, 2013

Mr. Dennis Turner
Water Quality Division, Surface Water Section
Arizona Department of Environmental Quality (ADEQ)
1110 West Washington Street, 5415A-1
Phoenix, Arizona 85007

Re: Comments on Draft Construction General Permit (CGP) 2013

Dear Mr. Turner:

Below are the comments and questions the City of Phoenix has regarding the Final Draft CGP-2013 for Public Comment, provided in accordance with the November 23, 2012 Public Notice. Also included are comments on the Draft Fact Sheet and Draft Inspection Form.

- Page 19, Section 3.1.2.3: The CGP provides that stabilization requirements do not apply for sites that have retention capacity that meets or exceeds the 100 year/2 hour storm event. The permit states certain conditions must be met, including: "All stormwater from the site is directed to one or more retention basins exclusive of public rights-of-way". The intent with respect to public rights-of-way is unclear. Does this mean that only stormwater not falling onto a public right of way (e.g. falling on unstabilized portion of site) must be directed into such retention basins? Does it mean that stormwater from the site may not be directed into public rights of way in order to reach such retention basins? Or alternatively, it can be interpreted to read that runoff from unstabilized portions of such sites could be directed into a public right of way and then into a retention basin. If the last option is the intent, this could transfer undue regulatory burden onto the MS4, both for stormwater and dust control. Can this be clarified and reworded to more specifically show the intent? We suggest this be changed to read, "All stormwater from the site is directed to one or more retention basins, provided stormwater from unstabilized portions of the site is not directed into any public right of way."

- Page 22, Section 3.1.3.3(2): The storage requirements are slightly different for each material mentioned. For example, pesticides need to either be covered or stored in a 'similarly effective means…', but there is no mention of secondary containment or the immediate clean-up of spills. Petroleum products need to be either covered, or stored in a 'similarly effective means', or provide secondary containment, and spills must be immediately cleaned-up and properly disposed. These requirements are similar to the requirements for hazardous waste, though slight variations in wording exist. For both (c) and (d), it appears that if the contractor provides any one of these controls, they don't have to provide any of the others. For example, if they have a spill kit located anywhere

on-site, they do not need to provide either a cover or secondary containment for chemicals. Is that the intent? If not, this section needs to be clarified.

- Page 27, Section 4.4(11): Any instances of non-compliance would already be noted in Sections 4-10 above, so it seems unnecessary to restate this in #11. In addition, the required ADEQ draft inspection form does not contain a place to record any other instances of non-compliance not addressed in 4-10. We suggest deleting the reiteration to identify any "non-compliance with conditions of the permit" here, or specify that these are "other instances of non compliance not noted above in 4-10", and also include a place on the inspection form on which to record any other such "incidents of noncompliance observed" (EPA CPG 2012 4.1.6.5 language).

- Additionally, this Section 4.4(11) refers to a certification statement that the project or site is being operated in compliance with the SWPPP and permit if the inspector did not note any deficiencies. However, the standard certification statement in the draft inspection form does not explicitly state this. We suggest adding to the draft inspection form a check-box option that conveys "there were no findings and the project was in full compliance with the SWPPP and permit", so that the certification statement will be consistent with the requirements of this section.

- Page 29, Section 5.3(1): This section applies to sites that 'Discharge to an Impaired Water or OAW'. Section 1.5 of the CGP clearly applies to projects that are located within ¼ mile of either an Impaired Water or OAW. However, Section 5.3(1) does not specify a distance from the water body (e.g., ¼ mile). Does the ¼ mile threshold also apply here or must the site discharge directly into the water body, or are both conditions required? For consistency with Section 1.5, we suggest that the ¼ mile from an Impaired Water or OAW definition also be used here.

- Page 34, Section 6.3(9): For sites within ¼ mile of an impaired water that is impaired due to historic use of pesticides, can the operator use information gathered from the Phase I Environmental Site Assessment or sampling results to demonstrate that the site is not a potential source of historic pesticides? And if so, can enhanced controls be omitted?

- Page 38, Section 6.8 does not mention that the ADEQ inspection form is to be used. We suggest this be specified here.

- Page 41, Section 7.4(4): The reference to 7.4(3)(a) does not exist. Should this be 7.3(3)(a)?

- Page A-2: The definition of 'Construction Activity' should include 'earth disturbing activities, such as ....' to be consistent with the EPA definition.

- Draft Inspection Form, Section I, Inspection Location and Inspection Schedule: Under Inspection Location, it appears that separate forms are required for multiple locations, since the inspector must specify the location here. However, under the Inspection Schedule, multiple options can be selected, for different areas of the site (check all that

apply). Does ADEQ want one form for each location? Or does ADEQ want one form to be used per project? Please clarify.

- Draft Inspection Form, Section V.A and V.B: What is the difference between the signature requirements (Contractor and Permittee)? Are both required? If so, what is the difference between the Contractor and the Permittee?

- The first sentence in II.2.3 on page 15 of the Fact Sheet states, "Like the CGP 2008, the CGP 2013 requires all construction operators, or dischargers (any owners and operators of the construction site; typically, a developer, builder, and/or contractor) to prepare and submit a complete and accurate NOI prior to commencing construction activities." This could be read to suggest that there are multiple types or classifications of parties that are required to file a NOI and obtain CGP coverage under the existing CGP 2008 and that will continue under the proposed CGP 2013. Accordingly, that sentence should be revised to be clear that only "operators" as defined in the current and proposed CGP are required to file an NOI and obtain CGP coverage for its discharge.

We look forward to your responses and to working with ADEQ in our mutual goal of protection of the environment.

Sincerely,

Philip McNeely, R.G., Manager
Office of Environmental Programs

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January 11, 2013

Via electronic and first class mail

Mr. Dennis Turner
Arizona Department of Environmental Quality
Water Quality Division
1110 West Washington Street
5415A-1
Phoenix, Arizona 85007

E-Mail dt1@azdeq.gov

Re: Draft 2013 Stormwater Construction General Permit (CGP)

Dear Dennis:

On behalf of the Home Builders Association of Central Arizona and Southern Arizona Home Builders Association, we are submitting the enclosed comments on the Draft CGP. We appreciate the opportunity to participate and provide input on the permit. If you have any questions, please contact us.

Sincerely,

FENNEMORE CRAIG, P.C.

Robert D. Anderson

RDA/sjf

cc: Connie Wilhelm, Home Builders Association of Central Arizona
Spencer Kamps, Home Builders Association of Central Arizona
David Godlewski, Southern Arizona Home Builders Association

Home Builders Association of Central Arizona
Southern Arizona Home Builders Association

Joint Comments
Draft 2013 Stormwater Construction General Permit (CGP) and Draft Fact Sheet
January 11, 2013

Item	Location in permit	Discussion (Italicized items=quotes from the Draft Fact Sheet or Draft Permit)
Discharge of water obtained from dewatering operations	**Draft CGP Part 1.3(2)(a)(xiv), p. 2.**	*"Uncontaminated waters obtained from dewatering operations/ foundations in preparation for and during excavation and construction."* This language is not consistent with Part 3.1.4 (De-watering practices) or with the relevant regulatory language in 40 C.F.R. § 450.21(c). The entry should be changed to authorize the discharge of construction dewatering water as long as it is managed by an appropriate control in accordance with Part 3.1.4.
Controls required for dewatering water	**Draft CGP Part 1.3(2)(b), p. 2.**	*"The operator shall address in the SWPPP all allowable non-stormwater discharges listed above that are expected to be associated with the project's construction activities as required in Parts 3.1.4 and 6.3."* This language could be misconstrued as applying the requirements of Part 3.1.4 (dewatering practices) to all types of allowable stormwater discharges. This should be clarified in the fact sheet.
Discharges to impaired waters.	**Draft CGP Part 1.5.3., p. 3; Fact Sheet p. 11.**	*Discharges to Impaired Waters. The following conditions and requirements apply if any portion of the construction site is located within 1/4 mile of a receiving water listed as impaired under section 303(d) of the Clean Water Act . . . .* This language would require submittal and review of a SWPPP for projects within a ¼ mile of an impaired water, regardless of whether construction sites are a source of the impairment or a source of pollutants that are causing the impairment. This level of review should be limited to waters that are impaired for sediments.
Additional conditions on exempt sites.	**Draft CGP Part 1.5.5.e. p.4**	*Additional Condition for Exemption. Persons that are not required to file for permit coverage under this section shall operate exempt construction sites in a manner that minimizes pollutants in the discharges,*

		including effectively stabilizing the site after completion of construction. In the event discharges from the site may cause or contribute to non-attainment of water quality standards, ADEQ may require the operator to obtain permit coverage. This language imposes additional conditions on exempt sites. If a site meets the requirements for being exempt in the first place, then it cannot be subject to permit requirements. This provision should be deleted and is not enforceable.
Submission of revised NOI/applicable fee	**Draft CGP Part 2.3.6, p. 9.**	*Revised NOI. If personnel contact information or the operator address on the NOI filed for permit coverage changes during permit coverage, the operator shall submit a revised NOI to ADEQ indicating the updated information. If information other than personnel contact or the operator's address changes, a new NOI shall be submitted to the address specified in Part 8.2.* The rules need to be clear that submitting a new NOI for these reasons does not require an additional fee. This is an administrative change for a facility that has already paid the basic NOI fee.
Corrective action in a Clean Water Act permit	**Draft CGP Parts 3, 5 and 6.**	*Corrective action* We had extended discussion of the meaning of this term in the stakeholder process and continue to get negative feedback on this distinction from our members as discussed in more detail below. The basic problem is distinguishing between corrective actions and maintenance. Simply put, it creates significant confusion in establishing permit requirements and enforcing the permit. In looking back on federal NPDES and state AZPDES regulations, we cannot find the term "corrective action" used in the stormwater context.
General Maintenance and Corrective Action recordkeeping requirements	**Draft CGP Part 3.1.2, p. 12** **General Maintenance Fact Sheet p. 22** **Draft CGP Part Section 5.1 and 5.3 p. 29 Corrective Action Report.**	**3.1.2.** *"Inspect all control measures in accordance with the inspection requirements in Part 4. The operator shall document the findings in accordance with Part 4.5. When controls need to be replaced, repaired, or maintained, make the necessary repairs or modifications.* ***Routine maintenance does not constitute a corrective action (see Part 5.1).*** *The operator shall comply with the following schedule:* *a. Initiate work to fix the problem immediately after discovery, and complete such work by the* ***close of the next work day****, if feasible and the problem does not require significant maintenance, repair or replacement, or if the*

	Draft CGP Part 6.4 .7, p. 36 Documentation Requirements including Permit Related Records	*problem can be corrected through routine maintenance.* ***SWPPP recordkeeping is not required for actions taken under this paragraph.*** *b. When installation of a new control that is not in response to a corrective action in Part 5.1, or a significant repair of existing controls is needed, install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery, or before the next rain event (whichever is sooner) where feasible."* **Fact sheet pg 22** *"...Regarding erosion and sediment controls for instance, if during the inspection, the operator discovers that a portion of the site's perimeter controls have fallen down or been driven over, repairs to the control must be made by the end of the next work day. The same would be true if the operator finds that a sediment control (e.g., sewer inlet control device, compost filter sock, check dam, silt fence, etc.) requires routine maintenance to remove accumulated sediment so that the control will operate effectively during the next storm event. By comparison, if a more significant repair is required, such as the complete removal and replacement of a device, the permit gives the operator up to 7 days to correct the problem, or as soon as practicable to complete work if complying with the 7-day deadline is infeasible. However, in order to prevent discharges of pollutants, the operator may have to implement temporary BMPs until the problem is corrected."* ***5.1 Corrective Action Triggers.*** *"Corrective actions are actions the operator takes in compliance with this Part to modify, or replace any control measure that failed to meet the conditions of Part 3. ADEQ does not consider routine maintenance or repairs as corrective actions, however, a failure to replace, repair or maintain a control measure that fails to meet the requirements of Part 3 requires a corrective action. If any of the following conditions at the construction site occur resulting in or from a failure of a control measure, the operator shall implement new or modified control(s):* *1 A necessary stormwater control was never installed, was installed incorrectly, or not in accordance with the requirements in Parts 3.1 and/ or 3.2; or..."* ***5.3.*** *"For each corrective action taken in accordance*

		with this Part, the operator shall document the details of the corrective action in the inspection report required by Part 4.4." **6.4.7.** *"Documentation of repairs of structural control measures, including the date(s) of discovery of areas in need of repair/replacement, date(s) that the structural control measure(s) returned to full function, and the justification for any extended repair schedules (see Part 3.1). This documentation need not be maintained with the SWPPP but shall be made available to ADEQ, USEPA, or another Federal, State or local agency upon request. The maintenance records shall include the date(s) of regular maintenance;"* The difference between "routine maintenance" and "corrective action" is ambiguous and confusing for the field person/inspector to distinguish and document accordingly. As explained in the Fact Sheet, a silt fence that has fallen down or is in need of removal and replacement is considered a routine maintenance item. However, per Part 5.1 in this example, a silt fence that was not installed correctly and needs to be replaced or re-installed is a corrective action. The time constraints for addressing each are the same. We do not see the environmental benefit of categorizing the silt fence replacement as corrective action rather than maintenance. The Department is imposing requirements above industry standards. The scope of the site inspection should be simplified with respect to documentation of repairs, maintenance or replacement as needed for on-site stormwater BMPs. All repairs, maintenance and/or replacement of BMPS that are found to be inefficient should be identified, addressed in a timely manner and documented in the inspection report inclusive of the date of discovery and date of correction as per Part 4.4. The obligation to fix certain routine maintenance issues by the next work day will be difficult to implement. Determining what is significant versus what is not is obviously a judgment call and there is the potential for compliance issues if an ADEQ inspector disagrees about the subjective call. It would be better to change all next day limits to within 7 days.

Sediment Basin and Trap Design Criteria	**Draft CGP, Part 3.1.1.1.2. Sediment Basins and Traps, p. 14; Part 3.1.1.4.1 Perimeter Controls, p. 15.**	*3.1.1(2) "Sediment Basins and Traps. If necessary, the operator shall install and maintain sediment basin(s) and / or traps to manage run-on, runoff, and sediment discharge from the construction site.* *a. Design requirements. The SWPPP shall provide sizing and calculation requirements for sediment basin(s) and shall indicate whether the basin(s) will be temporary or permanent."* **3.1.1.4.1.** *"Perimeter Control. The operator shall use appropriate control measures (e.g., fiber rolls, berms, silt fences, vegetative buffer strips, sediment traps, or equivalent sediment controls) at all times for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction site unless* ***a sediment basin that will store a calculated volume of runoff as documented in the SWPPP, in accordance with Part 3.1.1.1(2), is provided.*** *Perimeter controls are not required for individual lots within a construction site if stormwater from those lots is conveyed through internal streets or other conveyance structures to a* ***sediment basin meeting the volume requirements of this section*** *prior to discharge."* What are the 2013 CGP design criteria for sediment basins/traps that will meet the requirements in section of 3.1 as stated above? Sediment basin and trap design criteria is neither in the Fact Sheet nor the Permit. Prior EPA CGPs did contain a sizing requirement based on drainage area. We believe that this could be clarified in the Fact Sheet. Additionally, the fact sheet should make clear sediment basin design and sizing are distinct from Site Stabilization Alternatives Part 3.1.2.3 where an operator may choose stabilization alternatives if the site has a basin with the calculated retention capacity for the 100 year 2-hour storm. This standard is substantially higher than normally used for sediment traps. The two should not be confused.
Inlet protection	**Draft CGP, Part 3.1.1.4.4., p. 15; Draft Fact Sheet, p. 28.**	***Fact sheet: Storm Drain Inlet Protection.*** *For any discharges from the site to a storm drain inlet that discharges to a surface water (and it is not first directed to a sediment basin, sediment trap, or similarly effective control), and for which the operator has authority to access the storm drain inlet, the*

		operator must assess the need for and install inlet protection measures as necessary that remove sediment from the discharge ***prior to entry into the storm drain inlet.*** There are inlet protection measures that are actually installed in the inlet itself. The fact sheet should note this.
Site stabilization alternatives – distance to perennial or intermittent streams	**Draft CGP, Part 3.1.2.3.1, p. 18-19.**	*1. Sites with additional retention capacity (see A.R.S. § 49 – 255.01(L)). Stabilization deadline requirements in this permit do not apply to sites with retention capacity that meets or exceeds the 100 year/ 2 hour storm event as calculated by an Arizona registered professional engineer, geologist or landscape architect (A.R.S. § 32-144) and that meet the following conditions:* *a. The nearest receiving water is ephemeral and not within 2.5 miles of a perennial or intermittent water body;* The 2.5 mile threshold for qualifying for this exemption is unreasonable. For other sensitive waters, such as impaired waters or OAW, the CGP imposes stricter controls when the activity is occurring within ¼ mile of the sensitive water. Here, the Department has included a distance limit that is ten times farther, for a pollutant that simply does not migrate the distance included in the CGP. This distance threshold should be changed to ¼ mile.
Inspection schedule	**Draft CGP Parts 4.2, 4.2.1 p. 25**	**4.2** *"At a minimum, operator shall conduct a site inspection in accordance with one of the schedules listed below. The operator shall document in the SWPPP which schedule is being used and,* ***when necessary****, the location of the rain gauge or weather station used to obtain rainfall information."* In Section 4.2 the language implies that it may not be necessary to have a rain gauge or use a weather station- when will it not be necessary?
Pollution Prevention Requirements: Concrete washout	**Draft CGP Part 3.1.3.1 Minimize the Discharge of Pollutants, p. 19** **Fact Sheet III.3.1, p. 39**	**3.1.3.1.3.** Washing of Applicators and Containers used for Paint, Concrete, or Other Materials. *"To comply with the prohibition in Parts 1.4(1) and 1.4(2),.... To comply with this requirement, the operator shall:* *a. Direct all washwater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation;* *b. Locate any washout or cleanout activities as far*

		away as possible from surface waters and stormwater inlets or conveyances, and, to the extent practicable, designate areas to be used for these activities and conduct such activities only in these areas,..." Fact Sheet: **III.3.1** discharges from concrete washouts must also be handled in accordance with the Aquifer Protection Program Type 1 general permit: "*A 1.12 general permit allows the discharge of wastewater resulting from washing concrete from trucks, pumps, and ancillary equipment to an impoundment if the following conditions are met... The vegetation at the soil base of the impoundment is cleared, grubbed, and compacted to uniform density not less than 95 percent. If the impoundment is located above grade, the berms or dikes are compacted to a uniform density not less than 95 percent;* *4. If groundwater is less than 20 feet below land surface, the impoundment is lined with a synthetic liner at least 30 mils thick;* *5. The impoundment is located at least 50 feet from any storm drain inlet, open drainage facility, or watercourse and 100 feet from any water supply well;* In some cases, the nature and location of a construction site does not allow for a concrete washout pit to be located 50 feet from conveyances as required by the APP criteria outlined in the Fact sheet page III.3. The Permit language allows for a washout to be located as far away as possible from stormwater conveyance or surface waters. If the fact sheet is used as an explanation for Permit, the location of the concrete washout should be at 50ft or as far as possible from a surface water or storm water conveyance structure.
Causing or contributing to an exceedance of standards in the receiving waters	**Draft CGP, Part 3.2.1, p. 23.**	*3.2.1 Water Quality Standards* *The operator shall control discharges from the site as necessary to not cause or contribute to an exceedance of an applicable water quality standard.* The permit makes numerous references to controlling discharges from the site so as not to cause or contribute to exceedances of an applicable water quality standard. In all places where the permit refers to exceeding standards it should add the phrase "in the receiving waters" because that is how compliance is determined. The discharge of stormwater itself does

		not need meet standards it only cannot cause or contribute to an exceedances of those standards in the receiving waters.
Rain gauge location	**Draft Fact Sheet Part IV.2 Inspection Schedule, p. 48**	*"Part 4.2 establishes the required inspection frequencies for construction sites in various situations. When the use of a rain gauge or weather station that is representative of the location is necessary to determine the rainfall threshold that will trigger an inspection,* ***the operator must be consistent to use the same location throughout the life of the construction project.*** *The SWPPP must document which inspection schedule was chosen, as well as the location of the rain gauge or weather station used to obtain the rainfall information."* What is the benefit of keeping the rain gauge in one location? Considering the nature and dynamics of construction schedules, locations of activity and ownership can change frequently, it may not be possible to have the rain gauge at the same location throughout the duration of construction. We request that the CGP allow flexibility with the rain gauge location within the area of operational control for the permitted site. Since a rain event may extend over the weekend and/or a holiday when management is not on site to monitor the rain gauge, it should also be permissible, as necessary, to use both a rain gauge and a local weather station that is representative of rainfall for the site location.
Definition of the end of a storm event	**Draft CGP 4.2.1 p. 25, and Appendix A-1, p. A-6 (Definitions and Acronyms)**	"Storm event *as used in this permit is defined as a precipitation event that results in a measurable amount of precipitation."* The Permit needs to further clarify what constitutes the *end* of the storm event so that the operator can perform the post rain inspection within the time frame required. Because rainfall can occur intermittently throughout a particular day, it is difficult for field personnel to know when an event has concluded. It would be helpful to add to the above definition the following: "The event ends with the occurrence of a 48 hour or greater dry period."
Inspection Schedule	**Draft CGP Part 4.2.5, p. 26.**	**4.2.5** *"Inspections are only required during the project's normal working hours. If an inspection day* ***(except those required relative to a rainfall event)*** *falls on a Saturday or holiday, the inspection may be conducted on the preceding workday. If the inspection day falls on a Sunday, the inspection may be conducted on the following Monday."*

		First, it would be helpful to define "normal working hours". Second, the following sentence should be added to the end of this section: "If rainfall events occur on the weekend or holiday, an inspection relative to that event may be conducted the following business day."
Inspection Report form	**CGP 4.4 pg. 27**	**4.4** *"For each inspection, the operator shall complete an inspection report on a form provided by the Department online at http://www.azdeq.gov/environ/water/permits/cgp.html. The operator may supplement the Inspection Report Form as necessary with additional information, forms or drawings."* We strongly object to requiring the operator to use only the inspection form provided by the department. It is not required by the EPA CGP permit to use a specific inspection form. At a great cost to the builder/operator, many have previously incorporated electronic data management systems that have been developed to comply with inspection requirements of the State as well as other requirements that may be imposed by the USEPA or local jurisdictions. To require only the department's inspection form be used will be a costly change for those operators who already have an on-line inspection data management system in place. Since the Department already allows operators with USEPA or local jurisdiction inspection requirements to be exempt from using the Department's form and allows the operator to supplement the inspection form, the operator should be given the option to use an alternative inspection form as long as the alternative form documents the information required in AZCGP Part 4.4. If the Department's inspection form is used as a model form, Section III of the inspection form is problematic: ***"Section III. Condition and Effectiveness of All On-site Control Measures (Erosion and Sediment (E&S)), Stabilization and Pollution Prevention (P2) Practices (CGP Part 3.1.1 through 3.1.3:*** **Location/ Description of Control Measures** " Section III of the Department's current Inspection Form requires identifying the location of each BMP implemented on site. This will be cumbersome, laborious and time intensive for the field inspector which would add significant cost for the operator.

		What is the purpose of imposing such an arduous task upon the construction industry? A construction site is dynamic in nature and as such, a varied combination of structural erosion and sediment controls as well as non-structural BMPs are implemented on site; all of which can change frequently both by type and location. It should be noted that the number of implemented BMPs can be quite large depending on the size, nature and complexity of the site development. We do not object to tracking the location of structural BMPs on the site map however, we object to tracking individual structural and non-structural BMPs by location on the inspection form. The additional time and cost of the requirements set forth in the inspection form would outweigh any environmental benefits.
Site coordination with other permittees	**Draft CGP Part 6.1; Draft Fact Sheet p. 55-56.**	***Fact Sheet:*** *"Operators may develop a joint or common SWPPP where two or more operators will be engaged in construction activities at the same site. For instance, if both the owner and the general contractor of the construction site are permitted, the owner may be the person responsible for SWPPP development, and the general contractor can choose to use this same SWPPP, provided that the SWPPP addresses the general contractor's scope of construction work and obligations under this permit. Or individual operators may develop their own (individual) SWPPP, covering only an individual operator's portion of the site (provided reference is made to the other operators of the site).* ***Operators that choose to develop individual plans must coordinate with all other permittees (operators) to ensure stormwater discharge controls are consistent between the sites.*** *Regardless of development of an individual or comprehensive SWPPP, the permit requires all operators to ensure that individual activities do not negatively impact another operator's stormwater control measures."* (Emphasis added). The highlighted language in the fact sheet appears to place some obligation on operators to ensure that controls are "consistent". Controls need to comply with the permit and it is irrelevant whether two operators are using controls that are "consistent." The general obligation not to interfere with other operators controls is sufficient.
Stormwater teams	**Draft CGP Part 6.3.1.; Draft Fact**	***CGP:*** *Stormwater Team.* *Each operator, or group of operators, must assemble*

	Sheet p. 58.	*a "stormwater team," which is responsible for overseeing the development of the SWPPP, any later modifications to it, and for compliance with the requirements in this permit.* *The SWPPP must identify the name, title and a description of the qualifications and a copy of any training certificates of team members, including inspector(s), as well as their individual responsibilities. Each member of the stormwater team must have ready access to an electronic or paper copy of applicable portions of this permit, the most updated copy of the SWPPP, and other relevant documents or information that must be kept with the SWPPP.* *The team may include members who are not employed by the operator (such as third party consultants).* This language is going to create confusion among smaller operators who may have only one person managing stormwater responsibilities. The fact sheet should make clear that in some instances, the "team" may consist of only one person.
Sampling and monitoring program for discharges to impaired waters	**Draft CGP Part 7.0, p. 39.**	*The provisions of Part 7 apply only to operators with construction projects located within 1/4 mile of an impaired or outstanding Arizona water (OAW). Any portion of the project area that extends within this distance is subject to the requirements of this Part. Unless the operator provides a justification for not monitoring, monitoring is required of any discharge with a pollutant of concern. The monitoring plan, or justification, must be a part of the SWPPP and submitted along with it to ADEQ for approval.* The requirement to prepare a sampling and analysis plan with corresponding sampling requirements is very problematic and should be removed. Sampling of stormwater is inherently difficult given the sporadic nature of discharges and it is highly influenced in the arid west by storm conditions (intensity, length of storm, length of time between storm events) and may not reflect to efficacy of storm water controls.
Sampling and monitoring program for discharges to impaired waters	**Draft CGP Part 7.1, p. 39**	*Operators of projects that are located within 1/4 mile of impaired or outstanding Arizona waters shall prepare and implement a monitoring program that meets the requirements of this Part. Sites can be exempted from monitoring if the operator provides a demonstration acceptable to ADEQ that there is no potential for discharge to reach the OAW or impaired receiving water.* *For sites that discharge to an impaired water, if the*

		operator can demonstrate that there is no reasonable expectation that construction activities will be an additional source of a specific pollutant, analytical monitoring for that parameter is not required. As part of this demonstration, the operator must consider all on-site activities, as well as the potential for any pollutants (metals, nutrients, etc.) to be present in the on-site soils that will be disturbed. Hence monitoring for other pollutants may still be required, if present on the project site. This language is unclear about what is required in terms of monitoring for pollutants. If a sampling program is required (see comment above), the operator should be able to be exempt if it can show that its discharges either do not contain the pollutant for which the water body is listed as impaired or that those pollutants are present in such small amounts that they cannot be reasonably expected to contribute to the impairment.

From:	Kevin Boesch
To:	Dennis L. Turner
Subject:	ADEQ 2013 Draft Construction General Permit Comments
Date:	Friday, January 11, 2013 3:03:11 PM
Attachments:	ADEQ Specific Comments 130103.pdf

Dennis,

Please find my attached comments pertaining to the Arizona Draft AZPDES Construction General Permit. I would like to thank you and the department for your time and efforts to hosts all of the stakeholder meetings. I appreciate the opportunity to comment.

Should you have any questions regarding these comments, please feel free to contact me. I am also available to meet and discuss my comments in person.

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LOGAN SIMPSON
DESIGN INC.

ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM
Proposed GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY TO WATERS OF THE UNITED STATES
Draft Permit No. AZG2013-001

Draft Permit Specific Comments:

1. **Page 2; Part 1.3.2.a Allowable Non-Stormwater Discharges**
   Consider rewording Part 1.5.2 of the Draft 2013 CGP to allow for such variance, or remove Parts 1.3.2.a "x" and "xi".

   The ADEQ De-Minimis General Permit Part I.B.4 and Part III.B.10 of has requirements for water quality data (sampling requirements) to be submitted to ADEQ with the Notice of Intent (NOI) prior to a discharge to perennial, intermediate, ephemeral, drinking water supplies, Outstanding Arizona Waters (OAWs), and Impaired waters for discharges. By including these Non-Stormwater discharges under the Construction General Permit (CGP) the discharge of flushing of wells and hydrostatic testing has no timeline parameter and eliminates water quality testing. The De-Minimis Permit typically allows for a less than 30 day timeframe for discharges. By including these two allowable non-stormwater discharges for construction activity, the Draft 2013 CGP contradicts the ADEQ De-Minimis Permit conditions. See Part 1.5.2 Discharges covered by Another AZPDES Permit on page 3 of the Draft that specifically does not allow such activities to be covered by the CGP permit. These allowable discharges are also listed in the accompanying Fact Sheet.

2. **Page 3: Section 1.4 Prohibited Discharges.**
   Consider changing the last sentence of the first paragraph to read: "The following are considered both *discharges of pollutants* and *prohibited discharges*:" The terms "***prohibited discharges***" and "***discharges of pollutants***" reflects the definitions in Appendix A of this permit and would include surface runoff instead of only addressing discharges from the site.
   Consider the reference in the Fact Sheet on page 42, Section III.3.1 for ***A.A.C. R18-9-B301(L) Type 1 General Permit***, identifying the ***Concrete Washout Aquifer Protection General Permit*** on page 11 of the Fact Sheet as an example.

3. **Page 4: Section 1.6.1**
   The Draft 2013 CGP language and the associated Fact Sheet require the use of ADEQ Smart NOI electronic system to calculate the rainfall erosivity Factor "R" for waiver eligibility.

   Consider revising this language to include, as an alternative method, the use of EPA approved "R" value calculation identified in and in accordance with Chapter 2 of *Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)*, pages 21–64, dated January 1997; United States Department of Agriculture (USDA), Agricultural Research Service.

4. **Page 6; Section 2.1.1 Responsibilities of Operators.**
   Consider adding language to the end of the sentence: "All operators are required to obtain coverage for stormwater discharges associated with construction activity under this permit *unless already covered by an alternative AZPDES Permit (i.e. ADOT as a department who has an individual permit)*.

5. **Page 9; Section 2.3.6 Revised NOI.**
   General question: If a revised NOI is to be submitted electronically via ADEQ's Smart-NOI System, would additionally fees be required by ADEQ for such an action? Please clarify the anticipated process if this is required and how the fees would be paid.

6. **Page 10; Section 2.4.4. Authorization of Emergency-Related Construction Activities.**
   Please describe what is meant by "*applicable requirements*" in Appendix B or in the Fact Sheet. To be covered under the CGP, all terms conditions are required to be met, regardless of whether an emergency condition exists or not, except for timeframe allowances on NOIs and SWPPPs.

7. **Page 12; 3.0 Waiver for ongoing construction projects.**
   Should this waiver require some form of notification to ADEQ (with signature/certification statement) to match the Waiver notification form using the Smart NOI system?

8. **Page 13; Section 3.1.1 Erosion and Sediment Control Requirements.**
   Consider including language found in Part IV.A.3 of the 2008 CGP that states: *"Design and implement a combination of Erosion and Sediment Controls …".* We are of the opinion that ADEQ's past operating approach has been to encourage the use of multiple Best Management Practices (BMP) in lieu of relying on single type of control measure.

9. **Page 13; Section 3.1.1.A.2. Erosion and Sediment Control Requirements: Design Requirements.**
   The last sentence of Section 3.1.1.A.2. states *"Use velocity dissipation devices if necessary to prevent erosion when directing stormwater to vegetated areas."* Consider changing the term "if necessary" in the Draft Permit language and the Fact Sheet to "*as practicable*" in keeping with guidance language throughout the Fact Sheet.

10. **Page 15; Section 3.1.1.4.1 Perimeter Control.**
    The second paragraph states: *"Perimeter controls are not required for individual lots within a construction site if stormwater from those lots is conveyed through internal streets or other conveyance structures to a sediment basin meeting the volume requirements of this section prior to discharge."*
    Consider adding the condition "all stormwater" in place of "stormwater". Simply installing a sediment basin does not mean all stormwater drains to it.
    Consider making the change to the word "sediment basin" to "sediment basin(s)".

11. **Page 15; Section 3.1.1.4.2.d Control discharges from stockpiled sediment or soil piles.**
    Consider changing the term "Avoid" to stronger regulatory language such as "Do not".

    Is the term "*soil pile*" in the title different than a soil stockpile/soil materials; being terms defined and used throughout the Draft Permit? Please clarify or define "*soil pile*".

12. **Page 15; Section 3.1.1.4.4. Note:**
    The note pertaining to stormdrain inlets states: *"Inlet protection measures can be removed in the event of flood conditions or to prevent erosion."*

    Removal of a BMP during the very instance a BMP is needed is not recommended. The very name of this permit is *Pollution Discharge Elimination*. ADEQ should not instruct the removal of a functioning BMP unless a permittee is filing a Notice of Termination after final stabilization, performing a repair, or the BMP is no longer necessary. If a stormdrain inlet protection BMP is causing flooding, the incorrect BMP is utilized, it is not maintained, or erosion control BMPs are not being used in combination with this sediment control BMP. Consider changing the note to read: *"No stormdrain inlet protection BMP shall cause flooding, increased erosion, or hazards to traveling public."*
    Incorporate this change on Page 28 of the Fact Sheet as well.

13. **Page 16; Section 3.1.1.5. and Sections 3.1.1.5.1-3.**
The Draft Permit states: *"Maintain natural buffers adjacent to perennial waters and direct stormwater to vegetated areas to increase sediment removal, unless infeasible."*
Is the intent of this language for a permittee to only buffer perennial waters? In other locations (Part 6.3.7; Part 6.3.6.c.iii.; Part 3.1.2.3.; etc.) the Draft Permit refers to surface water(s), receiving water(s), including ephemeral and intermittent streams, dry washes, and arroyos. Does the Draft Permit intend to protect perennial waters only?

Appendix A of this Draft Permit defines "*perennial water*" as surface water that flows continuously throughout the year, citing Arizona Administrative Code. Lakes and ponds do not "flow" and are not considered perennial waters by definition. Would lakes and ponds not require buffers? The Fact Sheet (page 29) also makes this requirement of projects within 50 ft of perennial waters only.

The EPA 2012 Final Permit requires natural buffers for projects where "*surface water is located within 50 feet of your project's earth disturbances …" and later defines "Surface Water" – a "Water of the United States" (Waters) as defined in 40 CFR §122.2.*

Page 29 of the Fact Sheet states: "*In Arizona, buffers used to achieve erosion and sediment control are most effective when applied to areas adjacent to perennial waters."* Is there research or data that supports this declaration? Page 30 of the Fact Sheet (3.a.) seemingly uses the terms "surface water" and "perennial water" interchangeably.

Consider revising the Draft Permit and associated Fact Sheet to incorporate "Waters of the United States" as defined in Appendix A, which also cites 40 CFR §122.2.

We suggest that the term "unless infeasible" be changed to "unless impractical".

14. **Page 18; Section 3.1.2.2.1.a. Final Soil Stabilization**
The Draft Permit states: *"A uniform (i.e., evenly distributed, without large bare areas) annual and/ or perennial vegetative cover with a density of 70% of the native background vegetative cover …"*
Consider removing the condition of "annual vegetation". Annual vegetation will only provide two to three months of vegetative cover in most of the low desert areas of Arizona which makes up approximately one third of the State. The current 2008 CGP only allows for perennial vegetation. Would two to three months of annual vegetative be considered adequate to meet the final stability requirement?

15. **Page 19; Section 3.1.2.3.1. *Sites with additional retention capacity***
Consider removing this alternative to site stability.

The Draft Permit states: *"An operator with an eligible site may choose either of the following alternatives instead of implementing the stabilization requirements in Parts 3.1.2.1 or 3.1.2.2:"*
By including this alternative , the Draft Permit would allow for a site which has installed additional retention basin(s) to file a Notice of Termination per Draft Permit Section 2.5.1.f. Understanding that this alternative is meant to include the conditions of *A.R.S. § 49 – 255.01(L) SB* 1289, however, construction that has coverage under the CGP is still required to meet all of the conditions of the CGP including addressing and maintaining: construction materials, good housekeeping practices, concrete washout and washing of equipment and vehicles, washing of applicators and containers used for paint, concrete, or

other materials, fueling and maintenance of equipment and vehicles, storage, handling, and disposal of construction materials, products, and wastes. The CGP covers all elements above, not just soil disturbances; the proposed alternative would allow a large construction site to operate construction activities indefinitely without permit coverage including leaving old temporary BMPs in place. Section 3.1.2.2.a. of the Draft Permit only addresses pollutant load from disturbed area, not all of the permit covered activities listed above.

How does ADEQ intend to administer and evaluate this alternative, including its effectiveness listed in Parts 3.1.2.3 .1 a thru e, after an NOT has been submitted, given that there is no illustration of how the procedures and protocols in the CGP apply to this alternative? The EPA CGP makes no allowance for less stringent policies; this alternative appears to allow the potential for a lower level of protection to Waters, as noted in the example above.

Section 3.1.2.3 .1.e. does attempt to address these conditions by incorporating Part 3.2 of the Draft Permit. However, a permittee can no longer be held to any of the Draft Permit conditions after the NOT has been accepted by ADEQ including stormwater inspections, maintenance, repairs, or maintaining retention capacity.

We recommend that ADEQ revisit this matter to develop language to better achieve the objective of providing synchronization with *A.R.S. § 49 – 255.01(L).*

16. **Page 19; Section 3.1.2.3.1. *Sites with additional retention capacity*.**
Should this alternative remain in the final Permit, consider revising the Draft Permit language: *"Sites with additional retention capacity (see A.R.S. § 49 – 255.01(L)). Stabilization deadline requirements in this permit do not apply to sites with retention capacity that meets or exceeds the 100 year/ 2 hour storm event as calculated by an Arizona registered professional engineer, geologist or landscape architect and that meet the following conditions:"*

This condition should be expanded to capture more registered or certified categories, since the 100 year/2 hour storm event volumes and the potential direction of on-site flows do not necessitate a registered professional. A Certified Professional in Erosion and Sediment Control (CPESC) may command a better knowledge and calculative understanding on this topic than some PEs or RLAs. All PEs are not trained and/or certified in the industry standards of sediment loading. One example is an electrical PE. For example, CPESC are certified professionals in determining sediment loading, soil erosivity, and basin design and should be included in this condition.

The current CGP and the Draft Permit already contain conditional language for a "Qualified Person or Qualified Personnel" (who would have to certify such documented actions per Appendix B.9.b. and c.) to address the installation of stormwater controls including sediment basins. *"Qualified personnel are those (either the operator's employees or outside personnel) who are knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possess the skills to assess conditions at the construction site that could impact stormwater quality, and the skills to assess the effectiveness of any stormwater controls selected to control the quality of stormwater discharges from the construction activity."* In contrast, Section 6.8.5 of this Draft Permit list the responsibilities of the qualified person or qualified personnel as: design, installation, maintenance, and/ or repair of stormwater controls (including pollution prevention measures); the application and storage of treatment chemicals (if applicable); conducting inspections as required in Part 4.1; and taking corrective actions as required in

Part 5. With the current definition of qualified personnel in the Draft Permit, 'design' is a responsibility with no certification or registration requirement (see Part 6.8).

Should the definition of "Qualified Personnel" now exclude sediment basin design as allowed for in Section 3.1.1.1.2 on page 14 of this Draft Permit?

17. **Page 19; Section 3.1.2.3.2. *Sites returned to pre-construction discharge conditions*.**
Should this alternative remain in the final Permit, consider revising the Draft Permit language to: "*Sites returned to pre-construction discharge conditions. Construction operators may qualify for this exemption by demonstrating that stormwater discharge from the site's pre- and post-construction activities is equal or less than in volume and pollutant load from disturbed areas as calculated by an Arizona registered professional engineer, geologist or landscape architect and where the site is not located within 2.5 miles of an OAW or an impaired water."*

Again, this condition should be expanded to capture a wider base of certified individuals as noted in the comments above on Section 3.1.2.3.1.

The current CGP and this Draft Permit already contain conditional language for a "Qualified Person or Qualified Personnel" (who would have to certify such documented actions per Appendix B.9.b. and c.) to address the stormwater controls including *"having overall responsibility for environmental matters …"* . Why are the requirements of the qualified person already stated in the current and Draft CGP not acceptable under this subsection?

18. **Page 21; Section 3.1.3.2 Note**
Consider including requirements in Section 3.1.1.4.5.c of this Draft Permit to capture local government compliance language.

19. **Page 22; Section 3.1.3.3.2.c. For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals.**
Section 3.1.3.3.c.i. contains language pursuant to providing *"secondary containment (e.g., spill berms, decks, spill containment pallets)".* 40 CFR § 112.7.c refers to diesel fuel, oil, hydraulic fluids, other petroleum products and states: *"… The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs."* One of the listed prevention systems includes the term *"sufficiently impervious".* The term "spill berms" is not defined by this Draft Permit and could be construed to mean an unlined earthen berm.

Please consider defining the term "secondary containment" in Appendix A of this Draft permit to be consistent with 40 CFR which defines secondary containment as having 150% storage capacity of the largest container therein and shall be impervious to the materials stored there for a minimum contact time of 72 hours.

Please also consider including the term "impervious" in the parenthesis of this section for clarity. Ex: *(e.g., impervious spill berms, decks, spill containment pallets)*

20. **Page 25; Section 4.2.1. Routine Inspection Schedule.**
A Reduced Inspection Frequency has been added to this Draft Permit under the "routine" header. However, the heading reads as a *"Routine Inspection Frequency"*.

The inclusion of the EPA permit language for arid areas from Part 4.1.4.2 of the Federal Construction General Permit (FCGP) is understood, but that language resides under Section 4.1.4. titled **"Reductions in Inspection Frequency"** of that permit and not under Section 4.1.2 "Frequency of Inspections", containing routine schedules. Consider including this third frequency (4.2.1.c.) under section 4.2.2. of this Draft Permit as a "Reduced Inspection Frequency".

21. **Page 25; Section 4.2.1.b. Routine Inspection Schedule.**
The inspection trigger for a storm of 0.50 inch or greater is less stringent that the FCGP 0.25 inch inspection trigger. Please elaborate on how this less stringent requirement is allowed to be less stringent than the FCGP and/or revise the Draft Permit to be at least as stringent as the FCGP.

22. **Page 25; Section 4.2.1.c. Routine Inspection Schedule and Section 4.2.2 Reduced Inspection Schedule.**
Section c. of the Routine Inspection Schedule and Section 4.2.2 includes the term "once per month".

Consider changing this term to "once every 28 calendar days". This is in keeping with the calendar day criteria of other language in Draft Permit; this removes the potential for an inspection to take place on the last day of one month and the first day on the next month, effectively negating the intended inspection frequency and protection of Waters.

23. **Page 25; Section 4.2.3. Inspection Schedule for sites within ¼ Mile of Impaired or OAWs.**
This section would increase the inspection schedule for an entire project if only one portion of the project is within the ¼ Mile proximity. On linear construction projects, only a portion of the site may trigger the ¼ mile determination. Consider allowing only the portion of the site that exists within the ¼ proximity to the Impaired or OAW water to meet this increased inspection schedule.

24. **Page 26: Section 4.2.6. Inspections are not required under Adverse Conditions.**
Consider adding a reference to Section 4.4.12. or Section 7.3.2. of this Draft Permit requiring the documentation of Adverse Conditions.

Consider either defining the term "high winds" or removing it.

25. **Page 28; Section 4.5.1 Control Measure Assessment.**
This section refers to *"visual assessment"*. However, in this version of the Draft Permit, the Visual Assessment section no longer exists. Should this read as "visual observation" in keeping with and alluding to Section 4.3.11. of this Draft permit?

26. **Page 29; Section 5.3.1 Sites that Discharge to an Impaired Water or OAW.**
Because ADEQ is requiring a Corrective Action Report to be submitted to ADEQ annually with the Discharge Monitoring Report (DMR) and with the submittal of the Notice of Termination (NOT), does ADEQ intend to provide a formal Corrective Action Report Form online to meet this reporting requirement much like the NOI, NOT, Inspection Report, and DMR?

27. **Page 30; Section 6.1. SWPPP General Information.**
    Section 4 of this Part states: *"The operator shall implement the SWPPP from initial commencement of construction activity until final stabilization is complete and an NOT is filed, or an NOT transferring the site to a new operator is received by ADEQ."*

    Consider revising *"from the initial commencement of construction activity"* to *"from receiving approval of permit coverage".*

    It is possible that a permittee might not commence construction activity immediately after the NOI is accepted by ADEQ. However, all conditions of the CGP are effective once a NOI is approved by ADEQ for that permittee including inspections, monitoring, housekeeping, etc.

    See Part 2.5.1. on page 10 of this Draft Permit referring to similar language for Notices of Termination: *"The operator is responsible for meeting the terms and conditions of this permit until the construction site's authorization is terminated."*

    Consider revising "*… NOT is filed …*" to *"… NOT is approved by ADEQ…"*.

28. **Page 30; Section 6.1.6 Emergency Related Projects.**
    Emergency Related Project as defined in this section requires Construction General Permit Coverage/notification to ADEQ such as the condition of the Federal Construction General Permit (FCGP) and this Draft Permit.

    Consider adding language citing Section 2.4.2 on page 10 of this Draft Permit language requiring the submittal of an NOI and SWPPP creation.

29. ***Page 36; Section 6.4.12. Post Construction Stormwater Management NOTE 2.***
    The second note under this section states: *"…and an NOT has been filed."*
    Consider revising this language to state: *"… and an NOT has been approved by ADEQ."*

30. **Page 37; Section 6.6 Deficiencies in the SWPPP**
    Consider adding language pursuant to: *The approved SWPPP and all contents become an enforceable part of this permit for the permittee's activities.*

31. **Page 38; Section 6.7.5 Inactive and Unstaffed Sites.**
    This Draft Permit and associated Fact Sheet refer to the term *"Inactive and Unstaffed Sites"* several times. The Fact Sheet has criteria for the intended inspection schedule for Inactive and Unstaffed Sites. However, neither the Draft permit, Fact Sheet, or Appendix A definitions define the term or timeframes. Is the language of Page 25; Section 4.2.4. intended to be the definition? Consider defining this term in the Fact Sheet and/or Appendix A.

32. **Page 40; Section 7.0 MONITORING REQUIREMENTS FOR DISCHARGES TO IMPAIRED OR OUTSTANDING ARIZONA WATERS (OAW)**
    This section contains analytical monitoring that should not be included as a condition of this permit. It should be removed in its entirety.

The conditions of this section are far above Federal (NPDES) Construction General Permit requirements. At no time has ADEQ demonstrated that construction site monitoring has provided information (qualitative or quantitative) showing that monitoring requirements included in the last two versions of the Arizona CGP (2003 or 2008 permits) have reduced any listed impairment to any waterbody (defined as Impaired, Unique, Outstanding Arizona Water, or non-attaining). This condition has proven to be a financial burden on the construction industry. By contrast, the Small MS4 General Permit only requires Monitoring if a TMDL has been established; the 2010 MSGP only requires 1/year monitoring or wet season monitoring (4 total) for facilities that discharge directly to a listed impaired waterbodies and even an exemption from monitoring when no discharge is present. Only large MS4 Permittees and/or parties holding Individual Permits (e.g. ADOT) have this level of stringent monitoring included as a condition of permit coverage. Furthermore, the monitoring condition is more stringent on the construction industry since monitoring must be performed even if the short term nature of dispersed construction is located within ¼ mile of a listed Impaired or OAW, where as permanent installations (covered by MS4 and MSGPs) only have to perform such monitoring when direct discharges to an Impaired water alone exists.

33. **Page 39; Section 7.1. Monitoring Program.**
Should Monitoring remain in this Draft permit, the first paragraph of Section 7.1 contains an exclusionary clause stating: *"Sites that are down-gradient of these waterbodies can be exempted from monitoring if the operator provides a demonstration acceptable to ADEQ that there is no potential for discharge to reach the OAW or impaired receiving water."*

Consider adding to the condition of down-gradient language similar to: *… or demonstrate no connectivity (e.g. blocked by freeway, sound wall, or manmade irrigation canal) …*

34. **Page 39; Section 7.1. Monitoring Program.**
Should Monitoring remain in this Draft permit, the second paragraph of section 7.1 contains a sentence that states: *"As part of this demonstration, the operator must consider all on-site activities, as well as the potential for any pollutants (metals, nutrients, etc.) to be present in the on-site soils which will be disturbed."* This sentence only addresses soil disturbing pollutants.

Consider adding language similar to *"… the operator must consider all on-site activities, construction material, or products such as stored chemicals, as well as the potential…"*

35. **Page 40; Section 7.3.4. Analytical Monitoring Parameters.**
For turbidity values, this section states: *"If there is a 25% or more increase at the downstream monitoring location …"*

For an impaired lake or pond, provide guidance as to where ADEQ envisions upstream and downstream locations for analytical monitoring of turbidity should be located.

Draft Fact Sheet Specific Comments:

1. **Page 7; Section II.1.2, Fifth bullet.**
This Fact Sheet states that eligibility for this Draft Permit covers construction activities on Federal lands. Federal lands have been defined by the United States Department of the Interior (DOI) and United States

Geological Survey (USGS), among other major Federal departments, as including Indian Land. ADEQ does not have permitting authority on "Indian Country".
Consider including a clarifying statement to this point or a parenthetical *(non-tribal land)*.

2. **Page 13; Section II.1.6.2. Permit Waiver Certification.**
The Fact Sheet and Draft Permit require the use of ADEQ Smart NOI electronic system to calculate the rainfall erosivity Factor "R" for waiver eligibility.

Consider revising this language to include, as an alternative method, the use of EPA approved "R" value calculation identified in and in accordance with Chapter 2 of *Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)*, pages 21–64, dated January 1997; United States Department of Agriculture (USDA), Agricultural Research Service.

3. **Page 39; Section III.3.1 Minimize the Discharge of Pollutants. (Part 3.1.3.1)**
The Fact Sheet states: *"The on-site use of prefabricated concrete washout containers is another alternative, provided that the rinsate is not discharged to the ground or offsite."*

This inclusion of language addressing the rinsate discharge to the ground is very much needed.

Consider including the condition "*provided that the rinsate is <u>not discharged to the ground</u> or offsite"* at the end of the first paragraph of Concrete Washout on page 38 of the Fact Sheet and, more importantly, in Section 1.4 (1) on page 3 of the Draft Permit.

Appendix A definitions of "***Discharge***", "***Discharge of a Pollutant***", and "***Discharge to an Impaired Water***" all refer to adding pollutants to waters or waterbodies. Consider updating these definitions to include discharges to bare ground.

4. **Page 43; Section III.3.3.3. For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals: (Part 3.1.3.3(2)(c)).**
Consider defining the term "secondary containment", or citing 40 CFR definition of secondary containment as having 150% storage capacity of the largest container therein and shall be impervious to the materials stored there for a minimum contact time of 72 hours.

Consider replacing the term "water-tight" with the term "impervious" in the parenthesis of this section for clarity. Ex: *(e.g., <u>impervious</u> spill berms, decks, spill containment pallets)*. The term impervious better addresses fuels and other hydrocarbon based chemicals for containment.

5. **Page 48; Section IV.1 Inspector Qualifications (Part 4.1)**
The Draft Fact Sheet and the Draft Permit require the inspector to be a "qualified person" and then go into detail about how the "qualified person" does not require a certification.

Consider including some level of certification/training required for inspectors pertaining to this Draft Permit. This addition would add uniformity to the Draft Permit. Section 3.1.2.3.a. "*Sites with additional retention capacity"* include some level of certification required for persons calculating additional retention capacity. A higher level of certification for inspectors would ensure more regulatory, control measure,

erosion & sediment control principals understanding and uniformity of compliance for all construction activities covered by this permit. Many certifications are readily available including:

Certifications through EnviroCert International

CPESC (Certified Professional in Erosion and Sediment Control)
CESSWI (Certified Erosion, Sediment and Stormwater Inspector)
CMS4S (Certified Municipal Separate Strom Sewer System Specialist)
CPSWQ (Certified Professional in Storm Water Quality)

Certification through CISEC Incorporated

Certified Inspector of Sediment and Erosion Control

Certification through Arizona Chapter of Associated General Contractors

Erosion Control Coordinator

The above certifications, among others, would clearly demonstrate that an inspector meets the requirements of being *"knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possess the skills to assess conditions at the construction site that could impact stormwater quality, and the skills to assess the effectiveness of any stormwater controls selected to control the quality of stormwater discharges from the construction activity."*

The inclusion of a certification for "*Qualified Personnel*" should also meet requirements of Section 3.1.2.3.1. Sites with additional retention capacity.

6. **Page 49; Section IV.2 Increase Inspection for Sites Discharging to OAWs or Impaired Waters (Part 4.2(3))**
This section of the Fact Sheet states, both in the title and in the text, state that increase of inspection is required for sites that discharge to OWAs or Impaired waters. The Draft Permit language, however, uses the condition of having a "discharge point" (page 25 of the Draft Permit).

Perhaps it is a fine point, but a discharge point may never "discharge" during the life of the construction activity, especially in the arid southwest, yet the potential still exists. The intent of the Draft Permit is to increase inspection frequency for areas of construction activity within ¼ mile of OAW or Impaired waters, actively discharging or not. The current language could be construed to mean; if an operator is not discharging, then the increased inspection schedule is not required/applicable.

Consider using the same term, discharge point, in the fact sheet as in the Draft Permit as all sites within ¼ mile of an OAW or Impaired water would have to have the increased inspection schedule (every 7 days) regardless of if the project is discharging or not. This permit, and most every environmental regulation, is based on potential to discharge/pollute. This point is not clear in the Fact Sheet and should be reinforced to add explanation for additional inspections.

Section 7.1 of the Draft Permit allows the operator to demonstrate, acceptable to ADEQ, that there is no potential for a discharge to reach an OAW or Impaired water, thereby achieving exemption from Monitoring for a select parameter. If this scenario is acceptable to exempt monitoring, then also consider including a similar exemption applicable to the increased inspection schedule in part 4.2.3 of the Draft Permit.
On linear construction projects, only one portion of the project may be within the ¼ mile determination. Consider adding an allowance of standard inspection frequencies for portions of the project not located within the ¼ mile proximity of the impaired or OAW waters for Part 4.2.3 of the Draft Permit on page 25.

7. **Page 55; Section V.I. Stormwater Pollution Prevention Plan (SWPPP) (Part 6)**
   Consider clarification language for this paragraph of the Fact Sheet for the second sentence to read:
   "*The plan, once signed, becomes a part of the regulated permit and must be adhered to throughout the entire duration of the construction activity, up to and including ADEQ receiving the NOT.*"

8. **Page 70; Section IX.1 NOI Form**
   ADEQ Smart NOI system forces a person filing for a waiver to click on the box that states: *"I confirm that a SWPPP meeting the requirements of this general permit has been developed and will be implemented prior to commencing construction activities at this site."*

   This statement is not accurate, nor is a SWPPP a requirement for a waiver, yet the Smart NOI system forces this declaration.

   Please add a check-box for waiver applicants.

9. **Page 70; Section IX 4 Annual Reporting Form**
   Is the **Annual Reporting Form** the same form as the **Corrective Action Reporting Form** discussed on Page 29; Section 5.3.1 of the Draft Permit?

   If they are the same document, please cite a location to where the form is available on ADEQ's website.

10. **Page 70; Section IX.5 Discharge Monitoring Report (DMR) Form**
    Current version of the DMR Form does not allow electronic population and must be printed first to hand populate.

    Please adjust the form to allow electronic population of all fields.

Draft Fact Sheet General Comments:

1. Page 8 of the Fact Sheet elaborates on what is meant by a Common Plan of Development. Guidance in this Draft Permit and Draft Fact Sheet as well as previous EPA and ADEQ permits and fact sheets provided examples for "Quarter-Mile Exclusion Rule", examples for housing developments and lot division, but not for Roadway, Bridge, Traffic Engineering, and linear electric transmission projects.

   Please insert the following scenarios dealing with Common Plan of Development in an effort of clarity for Roadway, Bridge, Traffic Engineering, and linear electric transmission projects.

   a) An advertized linear roadway construction project consisting of soil disturbance sites from both sides of an existing paved roadway mainline with culvert extensions and shoulder widening. There is no disturbed connection between either sides of the existing paved roadway (with no contiguous soil disturbance); as the existing roadway is and will remain paved. The two sites are within ¼-mile from each other. Because the project was advertized as one plan (common plan) the soil disturbance from the both sides of that paved roadway should be cumulatively added as total area disturbed.

   b) Multiple bridge deck rehabilitations on the discrete bridge sites will be bid and constructed as one project. Each site will disturb less than 0.5 Acre of soil. The multiple discrete bridge sites are within ¼-mile from each other, but are discharging into the different receiving waters (Waters of the US).

There is no connected soil disturbance between them (with no contiguous soil disturbance). The soil disturbance from the multiple discrete bridge sites should be cumulatively added. Again, because the project was advertized as a "common plan" the soil disturbance from the both sides of that paved roadway should be cumulatively added as total area disturbed.

c) A traffic engineering project consists of numerous discrete light poles and signage poles foundations. All the pole foundations are within ¼-mile from each other. However, there is no connected soil disturbance between them (with no contiguous soil disturbance). The soil disturbance from all discrete pole foundations should be added up as cumulative disturbance because it is one project (plan).

d) A linear electric transmission project is bid as one plan. Seventy small 0.25 acre areas of disturbance will be required to install towers and pads for the transmission line. Because the disturbances are more than ¼ mile apart and no blazing of new access roads will be required there is no connected soil disturbance between them (with no contiguous soil disturbance). The soil disturbance from all discrete pole foundations should be added up as cumulative disturbance because the project was advertized as a "common plan".

Draft Inspection Report General Comments:

1. The Draft Inspection Report, according to the ADEQ Stakeholder e-mail announcement dated January 7, 2013, will be a required form to be used on all inspections. The current format adequately addresses all CGP conditions and is only three pages and length. This form is not user friendly, does not allow for electronic population of blank fields, and is eight pages in length (a 265% increase in documentation). Increased paper generation is not in keeping with the Federal Paperwork Reduction Act (44 U.S.C. Chapter 35) to ensure that information collected from the public minimizes burden.

   The current permit allows for the use of the Inspection Form attached to the current CGP, or an alternative, provided the condition of the permit are met. Consider removing the required use of this form and allowing this same alternative for compliance with the Draft Permit.

Maricopa County
Environmental Services

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January 9, 2013

Dennis Turner
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Re: Maricopa County Environmental Services Department Comments to the proposed DRAFT Permit No. AZG2013-001

Dear Mr. Turner;

Over the past year, Maricopa County (County), along with a number of stakeholders, has attended public meetings held by the Arizona Department of Environmental Quality (ADEQ) to discuss wording of the DRAFT Permit No. AZG2013-001, and offered suggestions for consideration in this wording. The County would like to thank ADEQ for the opportunity to voice our concerns at these meetings. We appreciate and understand the hard work that ADEQ has performed to develop this proposed Draft Permit, and we thank ADEQ these efforts.

Maricopa County, a Phase II MS4 permit holder with significant land in both un-urbanized and urbanized area, has significant area that may be developed and a large number of Waters of the United States that may be affected by the requirements found in this Draft Permit. With this understanding, it is in our best interest to provide feedback to ADEQ on our concerns with the wording of this proposed draft, and it is our pleasure to offer our written comments on this proposed Draft Permit (attached).

Thank you for your time in reviewing our concerns.

Sincerely,

John Kolman, RS, MBA
Director
Maricopa County Environmental Services Department

Enc: Maricopa County Comments to the proposed Draft Permit AZG2013-001

January 9, 2013

Maricopa County Environmental Services Department, Stormwater Quality Program

RE: Maricopa County Comments to the proposed Draft Permit AZG2013-001

Issue #	Page / Section	Wording	Comment
1	General Comments		As the DRAFT Permit currently is written, there does seem to be a loophole for a contractor to begin to perform land development, and if economic conditions falter, and the business collapses, and leave the owner unknowingly responsible for a construction site. It is a good idea to address this concern by having all applicants include an affidavit from the property owner declaring their knowledge and potential liability of the construction operation on the property they own and their responsibility should the listed operator of the property fail in the responsibilities as defined in this DRAFT Permit.
2	General Comments		The DRAFT Permit appears to be taking a more aggressive stance with more requirements on operators than the 2008 version. With the increased requirements, it appears that ADEQ would like to take more responsibility for construction projects. This may conflict with the requirements that ADEQ has placed on municipalities through the AZPDES MS4 permits to have regulatory authority over construction sites, including having an ordinance for erosion and sediment control, site plan review, site inspections, and enforcement. Please add wording in the permit declaring the responsibility of MS4s over construction sites, or describe why ADEQ has not provided more clarity of the authority that has been required to be held by the MS4s over construction sites.
3	10 / 2.5,f	f. The operator qualifies for one of the stabilization alternatives in Part 3.1.2.3. If qualifying for either alternative, the operator shall submit the required documentation with the NOT demonstrating compliance	**Action:** Strike this line from the document (also see Issue # 6 for additional context). **Reason:** 1. This wording could allow an operator to not perform final stabilization on a site. 2. This wording could allow an operator to submit a Notice of Termination (NOT) without meeting the full requirements of an NOT.

Issue #	Page / Section	Wording	Comment
		with Part 3.1.2.3.	3. Allowing an operator to not have responsibility for their site before final stabilization occurs could be devastating to a private or public operator that takes over responsibility of a storm system when the system and/or the sites that discharge to the system have not been properly stabilized.
4	10 / 2.5,1.g.	ii. Identifies the reasons for being unable to submit an NOT that complies with the requirements of Part 2.5;	**Action:** Strike this line from the document and replace with "Identifies the reasons for no longer meeting the definition of an operator in Part 2.1;" **Reason:** The current wording is contradictory to the intent of this line, which is to enable the operator to file an NOT.
5	15 / 3.1.1.4,1.	Section 1, Paragraph 2 …. Perimeter controls are not required for individual lots within a construction site if stormwater from those lots is conveyed through internal streets or other conveyance structures to a sediment basin meeting the volume requirements of this section prior to discharge. …	**Actions:** Strike this paragraph from the permit. **Reasons:** 1. Perimeter "controls" or perimeter Best Management Practices (BMPS) do not exist within or internal to a construction site. The paragraph is not worded accurately. 2. If one construction site is located within another, and each is permitted separately, there should be a requirement for the Stormwater Pollution Prevention Plans (SWPPPs) and/or approved plans to take into account all erosion and sedimentation controls or best management practices (BMPs) found within the confines of the individually approved construction site borders. Failure to maintain soils within an operator's site with erosion and sedimentation controls could lead to a discharge of sediment to a neighboring construction site. This wording gives a site operator the right to not maintain perimeter BMPS if they are located "within" a larger construction site. If DEQ wishes to keep this wording, there should be requirements for all BMPs to be listed in SWPPPs of both construction sites and for a written agreement to exist between the two sites for BMPs to address the additional construction activity. The wording should include reference that the larger construction site is the perimeter control for the smaller site. 3. Frequently, larger infrastructure construction sites are completed before individual lots are completed. These larger sites may be turned over to the private or public system owner/operator as soon as residency starts in any home in a subdivision. This opens the possibility that smaller construction sites within a larger site, that have had unfettered discharges to a the larger

Issue #	Page / Section	Wording	Comment
			"perimeter control" would then need to adjust their permitted control so that they do not cause sedimentation to a fully functional storm system that may be directly or indirectly attached to a Water of the United States (WoUS). Any failure of this change in the status of the site could result in sedimentation to operating storm system that was installed to protect WoUS, or a direct discharge to the WoUS, with subsequent flooding due to sediment build up in the system or with damages to the WoUS due to polluted sediments and significant sediment deposition. Each construction site should be required to take on the responsibility of the erosion and sedimentation within their own site, and not allowed to pass that responsibility on to another construction site operator.
6	15 / 3.1.1.4,3.	3. Discharge of Sediments during Dry Weather. The operator shall implement effective control measures that minimize the discharge of sediments from construction activities to any water body including dry washes during dry weather.	**Action:** Strike the phrase "to any water body including dry washes during dry weather" and replaced with "*off site*". **Reason:** Regardless of the season, sediments should not be allowed to leave a construction site. The current wording allows for sediment discharges to public and private storm systems. Public or private operators of storms systems should not be forced to pay the maintenance bill on their systems caused by discharges from construction sites. The current wording allows construction site operators to be free from maintaining sediments within their approved construction site if there is no WoUS directly adjacent to their site, and therefore allows operators to discharge sediments to private and public storm systems that were not designed to be erosion or sedimentation controls or best management practices.
7	15 / 3.1.1.4,4.	4. Storm Drain Inlet Protection. The operator shall assess the need for and install inlet protection measures as necessary that remove sediment from the site's discharge. If the site discharges to any storm drain inlet that carries stormwater flow directly to a surface water (and it is not first directed to a sediment basin,	**Action:** Strike wording: "… that carries stormwater flow directly to a surface water (and it is not first directed to a sediment basin, sediment trap, or similarly effective control and the operator has authority to access the storm drain inlet)…." The section should read: "If the site discharges to any storm drain inlet and the operator may obtain authority to access the storm drain inlet, then inlet protection is required." **Reason:** Sediment discharges off-site from any construction site, regardless if it discharges to a WoUS or to a private or public storm system that may discharge to a WoUS, shall remain the responsibility of the construction site operator. Most private and

Issue #	Page / Section	Wording	Comment
		sediment trap, or similarly effective control and the operator has authority to access the storm drain inlet), then inlet protection is required.	public storm systems are direct dischargers to WoUS or to dry wells. Sediments are not allowed to be discharged to WoUS or to dry wells, and therefore construction site operators should not be allowed to discharge sediments to any natural or man-made drainage structures that flow to WoUS or dry wells. Sedimentation into these natural or man-made drainage structures could cause flooding or adverse effects to the environment from pollution in the soils.
8	19/3.1.2.3	Site Stabilization Alternatives. An operator with an eligible site may choose either of the following alternatives instead of implementing the stabilization requirements in parts 3.1.2.1 or 3.1.2.2:	**Action:** Revise this statement as it applies to alternative (1) *Sites with additional retention capacity*. Allow relief from implementing temporary stabilization requirements only (part 3.1.2.1). Do not allow relief from implementing final stabilization requirements (part 3.1.2.2). (See also Issue #1 for additional context.) **Reason:** Operators of construction sites meeting the criteria of alternative (1) should still be responsible to complete their construction project while meeting the requirements of the Permit. They should not be able to file an NOT before their whole site is stabilized as was defined in the 2008 Permit. To allow operators to terminate Permit coverage before a site achieves final stabilization is contrary the NPDES program and would allow operators to continue construction without being required to implement a SWPPP, without performing regular inspections, all while MS4s are required to enforce the implementation of a stormwater site plan during construction. This creates an incongruent and confusing situation for operators and MS4s, and opens the door for many problems. As an MS4, we are also concerned that our streets within an uncompleted subdivision could receive sediment discharges under the current permit wording, were it not for current air quality rules requiring trackout control and other measures.
9	19 /3.1.2.3,1.b.	b. All stormwater from the site is directed to one or more retention basins exclusive of public rights-of-way;	**Action:** Reword this section "All stormwater from the site (exclusive of public rights of way) is directed to one or more onsite retention basins;" **Reason:** The construction site operator might discharge to a private storm system that is not owned by the operator and outside of the bounds of the construction site, thereby causing maintenance costs on an entity not associated with the construction site. The construction site operator should remain responsible for the sediment that is generated from the construction site.

ROSEMONT COPPER
redefining mining.

January 11, 2013

Via Email (dt1@azdeq.gov) and Regular Mail

Dennis Turner
Arizona Department of Environmental Quality
Water Quality Division
1110 West Washington Street, 5415A-1
Phoenix, AZ 85007

Re: Comments on Proposed AZPDES Stormwater Construction General Permit

Dear Mr. Turner:

Rosemont Copper Company ("Rosemont") submits the following comments on the proposed AZPDES general permit for stormwater discharges associated with construction activity (the "construction general permit" or "CGP"). As you know, Rosemont is planning to develop a mine in Pima County, Arizona. Clearing, grading and excavation activities to develop a mine can be conducted under either the multi-sector general permit for mining activities ("mining MSGP") or the CGP. See Part 8.G.4 of the mining MSGP. Because the CGP remains an option for site development activities at its proposed mine, Rosemont has an interest in the final terms and conditions of the CGP.

As was the case with the development of the mining MSGP and the non-mining MSGP, Rosemont appreciates the time and effort that you and your colleagues at ADEQ invested in development of the draft CGP, as well as the extensive stakeholder outreach conducted.

Rosemont has the following comments on the proposed CGP. The comments come from the perspective of an entity that may utilize the CGP for initial construction activities at a mine site, before transitioning to the MSGP for the operational phase.

Part 1.3(2)(a): (a) The first sentence of this section requires allowable non-stormwater discharges to be reduced or eliminated to the extent practicable. This is an excessively burdensome requirement given the nature of many of the sources of allowable non-stormwater discharges (e.g., uncontaminated groundwater or spring water). Moreover, the very next sentence requires that appropriate control measures consistent with Part 3 of the permit be in

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place. The requirement to reduce or eliminate discharges therefore is unnecessary and should be removed.

(b) Rosemont also supports the comment made by the Arizona Chamber of Commerce and Industry ("Chamber") regarding removal of the undefined and confusing phrase "other wastewaters" in subparagraphs (ii), (iv) and (xii) of this section. The regulation cited by ADEQ in the "note" addresses only reclaimed wastewater, which is a defined term under the reclaimed water program.

(c) In Part 1.3(2)(a)(xii), why are authorized discharges limited only to hydrostatic testing of "new" pipes, tanks or vessels? If only potable water, surface water or uncontaminated groundwater is used, and if control measures are in place (as required by subsection (a)), it would seem that hydrostatic testing of existing pipes, tanks or vessels, if needed, also should be authorized by the CGP.

(d) Rosemont also supports the Chamber's comment regarding Section 1.3(2)(a)(xiv), which authorizes the discharge only of "uncontaminated waters" obtained from dewatering operations/foundations. The corresponding effluent limitation guideline ("ELG") in 40 C.F.R. § 450.21(c) allows discharges from dewatering activities if managed by appropriate controls. Similar language is found in Part 3.1.4 of the proposed CGP. The proposed language in this section is overly limiting and should be revised to better track the ELG.

Part 1.3(2)(c): This section prohibits discharges of non-stormwater if the "site is within ¼ mile of an outstanding Arizona water." It would be more logical to refer to a *discharge* being located within a certain distance of an OAW, rather than a site. Likewise, since water flows only one direction in a stream, it would be more logical to refer to discharges "to or within ¼ mile upstream of" an OAW. A site located downstream of an OAW, and therefore having no potential to impact the OAW, should not be subject to this prohibition.

Part 1.4: This section identifies prohibited non-stormwater discharges. It is based on the ELG found at C.F.R. § 450.21(e). However, Part 1.4 goes beyond the ELG in two respects. First, Part 1.4(1) prohibits all discharges of wastewater from washout of concrete, whereas the ELG allows such discharges if they managed by an appropriate control. Second, Part 1.4(5) prohibits discharges of toxic or hazardous substances from a spill or other release, whereas the ELG requires permittees to take measures to minimize the discharge of pollutants from spills and leaks and implement spill and leak prevention response procedures (40 C.F.R. § 450.21(d)(3)). Rosemont suggests that the list of prohibited discharges be revised to more closely track the ELGs.

Part 1.5(3): (a) Consistent with the above comment regarding Part 1.3(2)(c), Rosemont suggests that the first sentence of Part 1.5.3 refer to "discharges" to or within ¼ mile upgradient of an impaired water, rather than referring to portions of a "site" being located "within ¼ mile of" an impaired water. If a site discharges downgradient of an impaired water, it should not be subject to the additional eligibility requirements of Part 1.5.

(b) Part 1.5(3)(b) requires an applicant to develop a sampling analysis plan if there is potential for discharges from the site to include the pollutants for which a water is listed as impaired. In doing this analysis, the applicant must consider all on-site activities, "including the potential for the pollutants (metals, nutrients, etc.) to be present in site soils." As a practical matter, does this require a soil sampling program be conducted prior to seeking coverage under the CGP if a site is within ¼ mile of an impaired water? How would one prove that there is "no reasonable expectation that construction activities could be an additional source of the identified pollutant(s)"? For example, if a water is listed as impaired due to selenium levels and there is detectable selenium in the soil (even at very low levels), would an applicant be unable to demonstrate that it would not be an "additional source" of selenium? Depending upon how ADEQ interprets this provision, it could be very difficult to use the "off ramp" that this paragraph seems intended to provide.

Part 1.5(4): For the reasons discussed above, Rosemont suggests that this provision refer to discharges to or within ¼ mile up gradient of an OAW, rather than referring to any portion of a site being located "within" ¼ mile of an OAW.

Part 1.5(5)(e): Rosemont shares the Chamber's concern with this provision, which imposes conditions on sites that are not required to obtain permit coverage under either federal or state law (i.e., sites disturbing under one acre). If ADEQ wishes to extend the stormwater permitting program to such activities, the proper way to do so would be by a rulemaking amending A.A.C. R18-9-A902(B)(8)(c), assuming this would be consistent with the statutory mandate to be no more stringent than the Clean Water Act, and not via a condition in the CGP.

Part 2.2(2): (a) The phrase "and implement" should be deleted from the first line of this subsection because it is confusing. As currently drafted, the permit reads that "prior to submission of an NOI," an applicant shall "develop and implement" a SWPPP. The SWPPP should certainly be developed prior to submission of the NOI, but there may be nothing to implement if no construction activities have commenced. This actually is made clear in Part 2.2(2)(a), which states that the SWPPP shall be prepared prior to submission and implemented prior to the start of construction. That language is clear and appropriate. Because of its presence, deleting the phrase "and implement" in the first line of Part 2.2(2) would not alter the substantive requirements of the permit, but would improve clarity.

(b) For the reasons discussed above, Rosemont suggest that Part 2.2(ii)(b) reference submission of SWPPPs for discharges to or within ¼ mile upgradient of impaired waters or OAWs, rather than referring to projects located within ¼ mile of impaired waters or OAWs.

Part 2.3(2): (a) Part 2.3(2)(d) requires that the NOI include an estimate of total project acreage to the nearest ½ acre. ADEQ should clarify in the Fact Sheet that this estimate is non-binding (i.e., it does not create a maximum threshold for disturbance). For a large mining site that uses the CGP to develop the mine initially, the disturbed area will be quite large and it may be impossible to precisely estimate the total disturbance to within ½ acre prior to commencing construction.

(b) Rosemont presumes that this subparagraph is requesting the latitude and longitude of the single point at the site that is nearest to a receiving water. A large mine site being constructed may have more than one receiving water. Our intent is simply to clarify that a single point is to be identified on the NOI, rather than the point closest to each receiving water if there is more than one such water.

Rosemont also presumes that ADEQ understands that the "point" closest to the nearest receiving water may not always be where the discharge is occurring (i.e., the latitude and longitude may not correspond to an outfall).

(c) Part 2.3(2)(m) requires an applicant to identify on the NOI other environmental permits or approval, and associated permit numbers. For a site such as Rosemont that will have a very large number of environmental approvals, this requirement seems excessive and unnecessary. From the standpoint of compliance with the CGP, what is the need for this information? At most, it seems that the requirement should be to notify ADEQ of permits related to water quality (e.g., Section 404 permits, associated Section 401 certification, etc.), and not things like air quality permits or subdivision approvals (both of which are mentioned as being required in the proposed CGP).

(d) Consistent with earlier comments, Rosemont suggests that Part 2.3(2)(n) refer to discharges occurring to or within ¼ mile upgradient of impaired waters or OAWs, rather than to portions of sites being located within ¼ mile of such waters.

(e) The last sentence of Part 2.3(2)(r) addresses fees for permit waiver certifications filed by small construction sites seeking an erosivity waiver. This sentence should be deleted because it does belong in a section addressing NOIs, and because it is redundant of language already found in Part 1.6(2).

Part 2.3(3): (a) Part 2.3(3)(b) states that routine authorization to discharge will not be forthcoming for sites with the "potential for discharge to reach impaired or outstanding Arizona waters." Instead, ADEQ has 30 days to review the NOI and SWPPP to determine if coverage is appropriate. This provision should be scaled back to address only discharges within ¼ mile upgradient of an impaired or outstanding Arizona water for several reasons.

First, the phrase "potential . . . to reach" is vague and confusing. Parts 1.5(3)(a) and 1.5(4)(a) require applicants to submit a copy of the SWPPP with their NOIs when located within ¼ mile of an impaired water or OAW, but this section implicitly suggests that many other applicants should be submitting their SWPPPs (i.e., anyone with a discharge that has the "potential to reach" an impaired water or OAW). This creates significant confusion and uncertainty.

Second, as was discussed in the MSGP process, the primary pollutant of concern for activities regulated by the CGP is sediment. Sediment tends to drop out relatively quickly in water, and not be carried long distances. ADEQ made this point when explaining why the impaired water and OAW provisions in the MSGP were more expansive than those in the current CGP, addressing facilities within 2.5 miles of impaired waters or OAWs. The balance of the proposed CGP is consistent with this explanation, imposing some additional requirements on facilities within ¼ mile of impaired waters or OAWs. However, Part 2.3(3)(b) seems to dramatically expand the potential scope of ADEQ review, potentially going well beyond even that authorized under the MSGP.

Rosemont believes for the reasons described above that this provision is unnecessary and should be deleted. Proposed Part 2.3(3)(c) allows ADEQ to notify an operator that additional time is needed to review the proposed discharge, and other sections of the permit require applicants within ¼ mile of an impaired water or OAW to submit a SWPPP along with the NOI. Taken together, these two provisions give ADEQ sufficient authority to review more carefully sites that have a realistic potential to impact impaired waters or OAWs through the discharge of the pollutant commonly associated with construction, namely sediment. Such an approach is more appropriate to a general permit than an amorphous "potential to reach" standard.

(b) Part 2.3(3)(c) should require ADEQ to identify specific SWPPP deficiencies or omissions if it is going to conclude that a submitted SWPPP is deficient or incomplete. General comments that control measures are insufficient, for example, are not adequate - applicants need to understand the specific basis for ADEQ's conclusions that a measure or measures is insufficient in order to revise a proposed SWPPP. Language similar to that in Part 6.6 may suffice (that part requires ADEQ to identify specific permit terms not being satisfied and those parts of the SWPPP that need changed to meet those terms).

(c) In Part 2.3(3)(d), ADEQ states that applicants using the Smart NOI system will typically obtain immediate authorization unless the site is located "near" an OAW or impaired water. How does or will the Smart NOI system define "near"? Rosemont suggests that nearness should be considered to be ¼ mile upgradient, consistent with its comments on the remaining provisions of the CGP.

Part 2.3(6): This section requires a new NOI (and presumably the associated fee) to be submitted if any information (other than personnel contact or operator address information) changes during a project. This has the potential to be extremely onerous given that some information required on the NOI could change frequently during construction at a large mine site, and yet may have little if any impact on discharge quality. An example is the list of other environmental permits and their numbers, which could change frequently for a large mine. Similarly, the estimate of acreage to be disturbed (to the nearest ½ acre) could change frequently during the construction process for a large mine. These sorts of changes should not require submission of a new NOI (and associated fee).

Rosemont suggests that ADEQ identify those specific NOI components (as defined in Part 2.3(2)) that may be relevant to discharge water quality or permit eligibility, and require submission of a new NOI only for those provisions (e.g., changing "no" to "yes" in response to whether the discharge is within ¼ mile of an impaired water or OAW).

Part 2.5(1)(e): Rosemont suggests that the language in Part 2.5(1)(e) be slightly tweaked to refer to obtaining coverage under "an individual or alternative general AZPDES permit." In the case of a mine site, MSGP coverage would ultimately be required once the operational phase begins. The suggested language change would merely clarify that another AZPDES general permit may be available for a site where initial construction was done pursuant to the CGP. The proposed language also echoes that in the Fact Sheet (p. 19).

Part 2.5(4): The language in Part 2.5(4) regarding the date of permit termination is duplicative of language in the third sentence of Part 2.5(1). It is not necessary to have the same language in both locations.

Part 3.1.1: (a) Among other provisions, this section requires that an operator "minimize the amount of soil exposed during construction activities." As a practical matter, what does this mean in the context of a mine construction project? Rosemont suggests that the phrase "to the extent practicable" be added to the beginning of that sentence (i.e., the second sentence of Part 3.1.1).

(b) Part 3.1.1(A)(2) requires that stormwater discharges be directed to vegetative areas or natural buffers "unless infeasible" (tracking the language in 40 C.F.R. § 450.21(a)(6)). The Fact Sheet (p. 23) provides some examples of infeasibility. Rosemont suggests that mining sites using the CGP for construction activities should be added to the Fact Sheet discussion as examples of where this may be infeasible, given common site conditions (topographical constraints, absence of vegetated areas, difficulty in moving water from one area of a large construction footprint to another area where a vegetated area might exist).

Part 3.1.1.1(2)(a)(iii): This subsection requires that sediment basins be situated outside of surface waters. Placement of a sediment basin within a surface water should be allowed if authorized in a Section 404 permit.

Part 3.1.1.3: The first sentence of this section requires operators to minimize the amount of soil exposed and the disturbance of steep slopes during construction. Again, Rosemont suggests that the phrase "to the extent practicable" (or perhaps "where feasible") be added to the beginning of this sentence. Rosemont's mine site is located in an area of steep topography, and the location of various facilities is being established through other environmental permitting programs (including a Section 404 permit, a mine plan of operations from the U.S. Forest Service, and an EIS process addressing the entire project). These permits and approvals, along with the location of the ore body, will dictate where facilities are located, which in turn will determine the amount of soil disturbance and the extent to which steep slopes will be disturbed.

Part 3.1.2.3(2): This section provides an alternative to final stabilization requirements, based on returning sites to pre-construction discharge conditions. It appears to be limited to sites not located within 2.5 miles of an impaired water or an OAW. What is the basis for the 2.5 mile requirement? Should it instead be ¼ mile, the distance used elsewhere in the CGP?

Part 3.1.3.1(1): As noted above, the proposed CGP's absolute prohibition on discharges from concrete washout activities is inconsistent with the ELG found at 40 C.F.R. § 450.21(e)(1), which prohibits such discharges only if they are not managed by an appropriate control. Rosemont suggests that subparagraph (b) state that operators must contain and manage on-site concrete washout to prevent "or minimize" discharge (or perhaps "control" discharge).

Part 3.1.3.1(3)(a): What makes a container or pit "leak-proof"?

Part 3.1.3.4: (a) The first and third sentences of this part seem largely redundant (both require minimization of the potential for discharges from spills and leaks and implementation of response procedures). Are both sentences necessary?

(b) The second sentence of this part refers back to the prohibition in Part 1.4(5) on discharges of toxic or hazardous substances from a spill or other release. As noted in its comment on Part 1.4, Rosemont believes this goes beyond the requirements of the applicable ELG. For this reason, Rosemont suggests that the second sentence of Part 3.1.3.4 be deleted.

Part 3.1.4: Rosemont supports the Chamber's comments regarding this section (dewatering practices).

Part 3.2.1: (a) Rosemont supports the position articulated by the Chamber and HBACA/SAHBA that the permit should clarify that the controlling water quality requirement is that any discharge not cause or contribute to an exceedance of a water quality standard in a receiving water (as opposed to the discharge itself having to meet water quality standards). That distinction, based on the difficulty of controlling stormwater quality, underlies the different approach that has always been taken to stormwater discharges under the NPDES program (a BMP approach rather than a water-quality based effluent limitation approach). This distinction is particularly important – and appropriate - for discharges from a construction site, where the primary pollutant of concern is sediment. The State's suspended sediment surface water quality standard does not apply to ephemeral or effluent-dependent waters, nor does it apply during or within 48 hours of a storm event. See A.A.C. R18-11-109(D). Stormwater discharges under the CGP will occur only when it rains – i.e., when the only potentially applicable sediment is not applicable. Focusing on the discharge quality in this context would make no sense. Therefore, Rosemont concurs with the Chamber and HBACA/SAHBA that it would be beneficial for the permit language in Part 3.2.1 to specify that standards are to be maintained in receiving waters.

(b) Part 3.2.1 also states that ADEQ may impose additional water-quality based requirements on a site-specific basis. What is the basis for this authority, and when and under what circumstances does ADEQ envision using it? The provisions of Part 3.2.2 (additional limits necessary to meet a TMDL) appear to be one example – are there others?

Part 3.2.2: Consistent with earlier comments, Rosemont believes that the first sentence should refer to "sites that discharge to or within ¼ mile upgradient of an impaired water or OAW."

Part 4.2(3): Consistent with earlier comments, Rosemont believes that the first sentence should refer to discharge points that are "within ¼ mile upgradient of an impaired water or OAW."

Part 4.2(4): Consistent with earlier comments, Rosemont believes that the second sentence should refer to sites "with discharge points within ¼ mile upgradient of an OAW or impaired water."

Part 4.3(3): This section requires the periodic routine inspection to cover "all areas of the site disturbed by construction activity." At a mine construction site, very large areas may be disturbed at any given time. Trying to visually view every square foot of disturbed ground would be problematic. Moreover, why is it necessary to inspect all disturbed ground? Inspection of the control measures and discharge points, and the other items listed in Part 4.3, is logical, but it is unclear why all disturbed ground must be viewed on a routine basis (no less frequently than monthly, and perhaps as often as weekly, depending on the frequency chosen by the operator). This language (the first clause of Part 4.3(3)) therefore should be deleted. In the alternative, the requirement should only be to inspect areas disturbed since the last inspection, or to inspect disturbed areas to the extent necessary to assess whether any planned erosion controls are being implemented.

Part 5: Rosemont shares the concerns articulated by the Chamber and HBACA/SAHBA regarding the scope of the corrective action requirements.

Part 6.1(4): This part states that the CGP SWPPP must be implemented until final stabilization activity is complete and a NOT is filed, or a NOT transferring the site to another operator is filed. NOTs may be filed for other reasons as well (see Part 2.5(1)). Of most relevance to Rosemont, a NOT may be filed if coverage under another AZPDES permit is obtained. If Rosemont utilizes the CGP for construction, it will eventually transition to the mining MSGP for operation. At that point, a SWPPP under the mining MSGP will be prepared and implemented, and the CGP SWPPP will no longer be implemented.

Rosemont therefore recommends that this section require the CGP SWPPP be maintained "until a NOT is filed pursuant to Part 2.5(1))."

Part 6.1(5): This section states that operating under an incomplete or inadequate SWPPP is considered a permit violation. Very few operators will be required to submit their SWPPP to ADEQ for review with the NOI. Thus, it is likely most operators will have no reason to know that ADEQ might consider their SWPPP to be inadequate until an inspection occurs. At that point, the language in the proposed CGP suggests that the permittee has been out of compliance since the day they secured permit coverage, based on ADEQ's potentially subjective conclusion that a SWPPP is inadequate. This is problematic.

This section instead should provide that if ADEQ notifies an operator of SWPPP deficiencies, and the operator does not address the deficiencies, the operator is in violation at that time.

Part 6.3(6): (a) Why must the site map identify "trees" (subparagraph m)? That seems both unnecessary and potentially very burdensome.

(b) The requirement to identify where non-stormwater discharges may occur is found in two locations – subparagraphs (j)(i) and n. One reference is sufficient.

Part 6.3(7): In the first sentence, the phrase "receiving waters, including ephemeral and intermittent streams, dry washes and arroyos" could be interpreted to suggest that all these features are in fact receiving waters (defined in the permit as waters of the U.S). In fact, not every dry wash is jurisdictional. ADEQ should either delete everything after "receiving waters" or clarify in the Fact Sheet that not every ephemeral or intermittent water is regulated by the Clean Water Act.

Part 6.3(9): In the first sentence of the second paragraph, for the reasons described above, Rosemont believes that the language should refer to discharge points "within ¼ mile upgradient of an impaired water."

Part 6.3(11)(a): It seems unnecessary to repeat verbatim in subparagraphs (i) through (iv) language from Part 3.1.3.4. A simple cross-reference would seem sufficient.

Part 6.4: This section requires the maintenance of extensive documentation "in the SWPPP." Rosemont suggests that the requirement instead be to maintain documentation "with the SWPPP." This would allow the information to be kept in separate folders (or electronic format) from the SWPPP itself. This also would be consistent with the language in Part 5.4 of the mining and non-mining MSGPs.

Part 6.4(12): The permit language itself – or the Fact Sheet at a minimum - should clarify that the prohibition on permanent stormwater outfalls "to" an OAW refers only to outfalls directly to the OAW, as opposed to those merely located in the same watershed as an OAW (but some distance away).

Part 6.5.2(4): The phrase "pursuant to Part 6.5.1" should be added after "impose additional requirements on your discharge." This makes the requirement less open-ended and explains why ADEQ may impose such additional requirements.

Part 6.6: For the reasons discussed above with regard to Part 6.1.5, Rosemont believes that the second paragraph of this section should be deleted. Enforcement against an operator operating in good faith under a SWPPP that ADEQ later finds deficient is not appropriate.

Parts 7 and 7.1: (a) Consistent with its earlier comments, Rosemont believes that these requirements for monitoring of discharges near OAWs and impaired waters should only apply if there is a discharge point (not just a portion of the site) within ¼ mile of an impaired water, and only if the point is upgradient of the OAW or impaired water. The exemption process in Part 7.1 *may be* sufficient to address these concerns, but it is not clear how it will be implemented.

(b) We assume that the "specific pollutant" mentioned in the first sentence of the second paragraph of Part 7.1 means a pollutant for which the water is listed as impaired? If so, this should be clarified.

(c) The reference to monitoring for "other pollutants" in the last sentence of the second paragraph of Part 7.1 is confusing and should be explained. Presumably, monitoring for these "other pollutants" is still limited to cases where the other pollutant is one for which the water is listed as impaired. This too should be clarified.

Part 7.2: Consistent with its earlier comments, Rosemont believes that monitoring should only be required if discharges occurring to or within ¼ mile "upgradient" of an OAW or impaired water.

This same comment also applies to the language in Parts 7.3(3) and 7.3(4)(a).

Part 7.3(4)(b): What is meant by the requirement for the operator with discharges to an OAW to sample for pollutants that "should be known to be present at the site"? Who determines what "should" be known to be present? This language should be deleted.

Even if the "should be known" language is deleted, the proposed CGP permit still would require sampling of any pollutants known to be present at the site. That requirement is open-ended and confusing. The requirement should be limited to pollutants likely to be present in the discharge from the site.

Appendix A: This appendix (definitions and acronyms) includes definitions of terms not used in the permit (for example, "antidegradation requirements" and "best management practices"). These definitions should be deleted as unnecessary.

Appendix B, Paragraph 17(a): This section addresses situations where a discharger covered by a general permit may be required to, or may request to, be covered instead by an

individual permit. For the most part, it tracks the applicable regulations at A.A.C. R18-9-C902. However, the second sentence of this subsection, which provides that any interested person may petition ADEQ to take action, is not found in the governing regulations. Rosemont does not understand the purpose of this provision, particularly since no process is set out, no timeframes for ADEQ action on the petition are provided, and no criteria for decision-making are established. This sentence should be deleted.

Please contact me if you have any questions regarding these comments.

Sincerely,

Dan Hugh for Kathy Arnold

Kathy Arnold
Vice President Environmental and Regulatory Affairs

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JAN 11 2013

Re: Proposed Arizona Construction General Permit (AZG2013-001)

Dear Mr. Henninger:

Thank you for the opportunity to review ADEQ's proposed Construction General Permit (public noticed November 23, 2012). EPA is generally supportive of the draft permit with the exception of the newly proposed language in Section 2.5(1)(g) which allows an operator to submit a Notice of Termination without a mechanism to ensure that either the construction site is stabilized or the construction site continues to have permit coverage. As further explained below, EPA believes this addition creates a scenario where ADEQ is not requiring permits for discharges of stormwater from industrial activity, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq*. and its implementing regulations.

Pursuant to 40 CFR 123.44 and the terms of the 2002 Memorandum of Agreement between ADEQ and EPA Region 9, EPA reserves the right to object to issuance of this permit if our concerns are not addressed.

Section 301(a) of the Clean Water Act (CWA) prohibits the discharge of any pollutant that is not in compliance with a permit issued under CWA § 402. Section 402(p)(2)(B) of the CWA requires permits for "stormwater discharges from industrial activity." Federal regulations at 40 C.F.R. §§ 122.26(b)(14)(x) and (15) define stormwater discharges from industrial activity as including stormwater discharges from construction activity of at least one acre, or less than one acre if part of a larger common plan of development (with some limited exceptions). In contrast, the proposed permit allows operators who have already submitted a Notice of Intent for a construction project to exempt themselves from further permit coverage when they believe they "no longer meet the definition of operator" (see Section 2.5(1)(g)).

The addition of Section 2.5(1)(g) makes the proposed CGP internally inconsistent and renders Section 3.1.2.2 and Sections 2.5(1)(b) and (e) the permit unenforceable. Section 3.1.2.2 of the proposed permit (Final Stabilization) correctly identify the Best Management Practices and potential pollutant sources associated with an unstabilized site, including the requirements to terminate soil disturbing activities, establish vegetative cover, remove and properly dispose of construction materials and waste, and remove and properly dispose of temporary control measures, or achieve alternative stabilization. Sections 2.5(1)(b) and (e) allow a permittee to terminate coverage prior to achieving final stabilization only if the discharge of stormwater from the construction activity retains coverage under the CGP or an individual permit by another operator.

However, by adding Section 2.5(1)(g), the proposed permit allows a permittee to terminate coverage at the point the permittee no longer believes it has control over plans and specifications or day-to-day activities at the site, regardless of whether or not "the person who will take control" has applied for permit coverage. With this allowance, ADEQ is carving out an exemption from the requirement that all stormwater discharges from industrial activities have permit coverage. This exemption would not comply with the Clean Water Act or its implementing regulations.

EPA recommends ADEQ modify the proposed permit to remove the newly proposed language in Section 2.5(1)(g) allowing a permittee to terminate coverage without a mechanism to ensure that either the construction site is stabilized or the construction site continues to have permit coverage. EPA recommends the permit retain requirements for Notice of Termination as proposed in Sections 2.5(1)(a) through 2.5(1)(f), and as established in the existing AZGCP.

Please feel free to call me at (415) (972-3464) or John Tinger at (415) 972-3518 with any questions.

Sincerely,

David W Smith, Manager
NPDES Permits Office

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JAN 11 2013

Re: PART 2: Proposed Arizona Construction General Permit (AZG2013-001)

Dear Mr. Henninger:

Thank you for the opportunity to review ADEQ's proposed Construction General Permit (public noticed November 23, 2012). EPA has provided specific comment in a separate letter taking issue with Section 2.5(1)(g) of the permit related to Notice of Termination language.

EPA would like to provide the following additional comments for your consideration:

Page 15; Section 3.1.1.4.4. Inlet Protection states: *Note:* Inlet protection measures can be removed in the event of flood conditions or to prevent erosion."

Comment: A properly designed inlet protection control should not be causing flood conditions nor causing erosions. The language as written is overly broad and would allow a permittee to remove the BMP under a variety of circumstances.

EPA recommends ADEQ remove this annotation. EPA notes the standard conditions of the permit regarding a "bypass" provide an affirmative defense in the event that an inlet protection control measure need be removed to prevent flooding or erosion. EPA believes the existing "bypass" provisions are sufficient to provide an operator recourse in an emergency situation.

Alternatively, if ADEQ would like to keep this annotation in the permit, EPA recommends the language be revised to be more specific to disallow removal of inlet protection under normal circumstances. EPA suggests *"Note:* Inlet protection measures can be removed in the event of flood conditions which may endanger safety or to prevent severe erosion". Additionally, the permit should specify that removal of inlet protection must be documented in the Inspection Report Form, and must be addressed as a Corrective Action by the permittee.

Page 15: Section 3.1.1.4 (1) Perimeter Control. States "The operator shall use appropriate control measures (e.g., fiber rolls, berms, silt fences, vegetative buffer strips, sediment traps, or equivalent sediment controls) at all times for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction site unless a sediment basin that will store a calculated volume of runoff as documented in the SWPPP, in accordance with Part 3.1.1.1(2), is provided."

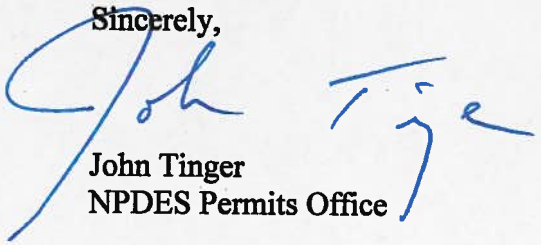
Comment: The language states that perimeter controls are not required when sediment basins are utilized. The language appears to imply, but does not require, that all runoff from the site must be directed to the sediment basin(s).

Suggest: Revise language to specify that a site is not required to use perimeter controls only when all stormwater runoff from the site is directed to the properly designed sediment basin(s).

Page 23: Section 3.1.4 is titled "Dewatering practices" but the language in 3.1.4 appears to apply restrictions to all non-stormwater discharges.
Suggest: For clarity, suggest Section 3.1.4 be titled "Control Measures for Non-stormwater discharge practices" as written in underline within 3.1.4.

Please feel free to call me at (415) 972-3518 with any questions.

Sincerely,



John Tinger
NPDES Permits Office