

**Division of Surface Water**

**Response to Comments**

**National Pollutant Discharge Elimination System (NPDES) General Permit  
for Discharges of Storm Water Associated with Industrial Activity (Multi-  
Sector General Permit)**

**Ohio EPA General Permit No.: OHR000005**

**Agency Contact for this Package**

Division Contact: Jason Fyffe  
Division of Surface Water  
(614) 728-1793  
jason.fyffe@epa.state.oh.us

Ohio EPA held a public hearing and information session on December 16, 2010 regarding NPDES General Permit for Discharges of Storm Water Associated with Industrial Activity (OHR000005). This document summarizes the comments and questions received at the public hearing and/or during the associated comment period, which ended on February 28, 2011.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

**General**

**Comment 1:** **It was requested that a 90-day extension of the comment period on the draft general permit be given to allow additional time for review and comment.** *(Ohio Aggregates & Industrial Minerals Association, Ohio Chemistry Technology Council, Ohio Contractors Association, Ohio Concrete/Ohio Ready Mixed Concrete Association, Ohio Coal Association, Ohio Chamber of Commerce, The Ohio Manufacturers Association, Ohio Oil & Gas Association, Flexible Pavements of Ohio, Ohio Home Builders Association, Association of Ohio Metropolitan Wastewater Agencies, Perstorp Polyols, Inc.)*

- Response 1:** In response to comments received, Ohio EPA extended the comment period deadline from December 23, 2010 to February 28, 2011.
- Comment 2:** **A commenter supports changing the general permit's format to the federal multi-sector general permit. The commenter appealed the issuance of the current general permit (OHR000004), and entered into a joint stipulation and settlement agreement with Ohio EPA, under Case No. ERAC995918. The settlement agreement consists of incorporating certain language from the federal multi-sector general permit for this renewal. (Alcoa Inc.)**
- Response 2:** The comment was noted.
- Comment 3:** **Ohio EPA states that its proposal "mostly mirrors" U.S. EPA's current Multi-Sector permit. However, U.S. EPA does not mandate – as part of Ohio EPA's delegated authority to issue storm water permits under the Clean Water Act – that Ohio EPA adopt the U.S. EPA Multi-Sector permit. While Ohio EPA provides several reasons for its desire to utilize a multi-sector permit modeled after USEPA's, clearly missing from Ohio EPA's justification is any claim that USEPA has concerns with Ohio's current NPDES general permit or with overall compliance with the Clean Water Act.**
- Ohio EPA has not undertaken its own Ohio-specific or program-specific review of its current general permit. Instead, the agency simply chooses to impose additional, more stringent requirements on Ohio's industry with no discernible practical or legal reason to do so. Lost in this effort by Ohio EPA is any practical advantage of a general permit. The purpose of using a general permit is to allow permittees a quicker permitting process for a category of discharge activities deemed to be amendable to global permit terms. Ohio EPA has employed – for many years – its current general permit, yet the agency has provided no new information indicating its use has been ineffective or environmentally unsound.**
- It was requested that the existing industrial storm water general permit be renewed versus the draft permit. (Ohio Aggregates & Industrial Minerals Association, The Shell Company, Ohio Chamber of Commerce, Association of Ohio Metropolitan Wastewater Agencies, The Ohio**

*Manufacturers' Association, Ohio Concrete/Ohio Ready Mixed Concrete Association, Flexible Pavements of Ohio, Ohio Cast Metals Association)*

**Response 3:** OHR000004 significantly mirrors the original industrial storm water general permit issued by US EPA in 1992. On September 29, 1995, US EPA issued the first generation of the Multi-Sector General Permit (MSGP). US EPA's alteration of their original general permit demonstrated their issues with the original format and content. In part, sampling data showed the conditions which affect the presence of pollutants in storm water discharges varied among industries. In addition, there has been difficulty for both Ohio EPA inspectors and permitted facilities to assess compliance with such broad language of the previous general permits. Previous permit language was broad in scope and OHR000005's language provides more site specific requirements as they relate to the development of a Storm Water Pollution Prevention Plan (SWP3). A frequent question of industries who conduct sampling is how they should use monitoring data to evaluate BMP performance and site compliance. The benchmark monitoring addresses this question and will be applicable for year 4 of the permit.

Additionally, many industries are not currently allowed coverage under Ohio EPA's industrial storm water general permit because they are subject to federal effluent limitations. OHR000005 will allow these facilities general permit coverage versus the previous requirement of obtaining an individual NPDES permit which requires U.S. EPA Forms 1 and 2F and Ohio EPA's Anti-Degradation process. OHR000005 will provide these facilities a more simplified application for NPDES coverage as well as a quicker processing time. OHR000005 promotes consistency by giving the same permit conditions for identical industrial sectors.

**Comment 4:** **The current general permit consists of 36 pages. The draft permit consists of 43 generally applicable pages of permit, 8 substantive appendices, and 30 separate sector-specific sections containing numerous pages of additional, more stringent terms and conditions. Altogether, the draft permit totals 171 pages. This approach defeats the premise of a general permit because it increases the permit's complexity while creating uncertainty for business and industry. (Ohio Chamber of Commerce, Ohio Aggregates & Industrial**

*Minerals Association, The Shelly Company, The Ohio Manufacturers' Association)*

**Response 4:** OHR000004 was very vague and created uncertainty for regulated facilities. OHR000005 includes sector specific requirements which eliminates confusion and provides clear requirements for regulated facilities. The size of the permit is a result of the 29 sector specific sections. In addition to the general requirements, regulated facilities are only required to comply with the sector(s) which correlate to their facility. Entities can identify what sector(s) apply by reviewing Appendix D of the permit and determining what sector their standard industrial classification (SIC) code(s) correlate with.

**Comment 5:** **The current Ohio EPA general permit has been effective in contributing to the increased quality of Ohio waterways. In the recent revisions promulgated by Ohio EPA to the Water Quality Standards Use Designations in OAC 3745-1, the vast majority of uses reflected a change to a higher quality body of water. As such, the current general permit is effective and a new version is not needed.** *(Ohio Aggregates & Industrial Minerals Association, The Shelly Company, The Ohio Manufacturers' Association)*

**Response 5:** The vast majority of use designation improvements were a result of biosurveys being performed on these streams. Previously, these use designations were based on the 1978 default designations. Ohio EPA does agree that overall water quality has improved and upgrades to municipal wastewater treatment plants have been the biggest contributor to this improvement.

The NPDES permit system along with other efforts has been effective in improving the quality of Ohio's waters. However, NPDES permits are issued to protect as well as to improve water quality (see Federal Water Pollution Control Act, Title I, Research and Related Programs, Sec. 101 [33 U.S.C. 1251] Declaration of Goals and Policy, (a): "The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (Emphasis added). As Ohio EPA does not bracket every outfall and our water chemistry surveys are typically spaced every 8 sq. miles, some water quality impacts may be more localized than our data suggests. OHR000005 will be more effective in addressing existing impairments as well as preventing future problems.

**Comment 6:** The draft permit adds additional requirements for the methodologies used to control storm water. It requires a permittee take rapid action if any of a number of conditions occur, some of which are beyond the direct control of the permittee. For example, corrective action is required under the draft permit if Ohio EPA determines that permitted control measures are not stringent enough for discharge to meet applicable water quality standards. Rapid action is also required if an Ohio EPA official determines that modifications to control measures are necessary to meet the non-numeric effluent limitations in the draft permit. (*Ohio Aggregates & Industrial Minerals Association, The Shelly Company, Ohio Chamber of Commerce, The Ohio Manufacturers' Association*)

**Response 6:** OHR000004 also required the permittee to meet Water Quality Standards, take corrective action, maintain a current Storm Water Pollution Prevention Plan (SWP3), and required the permittee to modify their SWP3 when notified of deficiencies by Ohio EPA. This is unchanged from previous requirements and expectations. However, OHR000005 more clearly articulates the events triggering an action on the permittee's part and provides the timeframe to complete the action. The time intervals listed in the permit are not grace periods, but are schedules considered reasonable to document findings and for making repairs and improvements. They are included in the permit to ensure that the conditions prompting the need for improvements or repairs are not allowed to persist indefinitely. OHR000005 provides clearer permit language and provides facilities more certainty.

Corrective Action Deadlines (Part 3.3). The draft permit required permittees to document a discovery of conditions that require a review, revision, and/or modification to their controls to correct a problem/deficiency. Timeframes associated with the corrective action consisted of: (1) Within 24 hours, document the discovery of a problem/deficiency, and (2) Within 14 days, document any corrective action(s) to be taken to eliminate or further investigate the deficiency. Within the final permit, the 14 day timeframe has been changed to 30 days.

**Comment 7:** The draft permit adds additional, unnecessary inspection responsibilities. For example, the draft permit, at a minimum, requires quarterly inspections,

**with extensive accompanying documentation of the results of the inspection.** (*Ohio Aggregates & Industrial Minerals Association, The Shelly Company, Ohio Chamber of Commerce, Ohio Cast Metals Association, The Ohio Manufacturers' Association*)

**Response 7:** OHR000004 required that routine facility inspections be performed in addition to or as part of an annual comprehensive site evaluation. OHR000005 specifies that routine facility inspections shall be conducted at least quarterly on areas of the facility where industrial materials or activities are exposed to storm water. Ohio EPA does not believe that the documentation associated with the routine facility inspections is extensive. A 3 page recordkeeping template, which documents routine facility inspections, is available at the following:  
[http://www.epa.state.oh.us/dsw/permits/GP\\_IndustrialStormWater.aspx](http://www.epa.state.oh.us/dsw/permits/GP_IndustrialStormWater.aspx)

In response to comments received, annual reports will not be required to be submitted to Ohio EPA. As was required with OHR000004, these annual reports will be required to be maintained on site and available for review upon request.

**Comment 8:** **The SWPPP required under the draft permit is more comprehensive when compared to the current general permit. Along with the SWPPP, any permittee under the draft permit must maintain a laundry list of inspection, monitoring, and certification records, all of which adds cost and complexity.** (*Ohio Aggregates & Industrial Minerals Association, The Shelly Company, Ohio Chamber of Commerce, The Ohio Manufacturers' Association*)

**Response 8:** The Ohio EPA has received many inquiries concurrent with storm water inspections at industrial facilities regarding a true measure of compliance with the previous permit. It is the agency's intent to provide clear direction through the permit language to assist the permittee to comply with the intent of storm water pollution prevention. The federal Multi-Sector General Permit is utilized in at least 29 states and provides sector specific requirements to assist the regulated community with compliance while maintaining consistency within the State.

Routine facility inspections and documentation were requirements of the previous permit (OHR000004). OHR000005 does require the permittee to conduct visual

inspections of the storm water discharges and document the results. The agency feels this additional requirement does not impose significant resources above the previous requirements, yet provides a simple indication of compliance. The sector specific requirements will provide a clear direction of expected BMP's to address the sector specific activity. This does not necessarily provide a more stringent or comprehensive SWP3 rather indicates a clear direction regarding the development of the SWP3 to address the potential impacts from the activity. Simple recordkeeping templates are available at the following:  
[http://www.epa.state.oh.us/dsw/permits/GP\\_IndustrialStormWater.aspx](http://www.epa.state.oh.us/dsw/permits/GP_IndustrialStormWater.aspx)

As indicated in Response 7, in response to comments received, annual reports will not be required to be submitted to Ohio EPA. As was required with OHR000004, these annual reports will be required to be maintained on site and available for review upon request.

**Comment 9:**           **Section 1.3.1, Table 1.2, Discharge Authorization Date. A comment questioned the discharge authorization date timeframes for existing dischargers and new dischargers listed in this table. The federal MSGP provides coverage within 2 days of submitting the NOI. (Alcoa, Inc.)**

**Response 9:**           The draft permit did include an error in Table 1-2 for New Discharges or New Sources. OHR000005 will mirror OHR000004 and require that this category of dischargers submit an NOI at least 180 days prior to the planned commencement of storm water discharge associated with industrial activity at the facility. In addition, an NOI may be submitted less than 180 days prior to commencement of discharge upon showing of good cause. As with Existing Dischargers, the discharge authorization is the date which the Director issues a written authorization for the discharge under this permit. The permit has been modified to reflect this change and it remains consistent with OHR000004.

**Comment 10:**           **Section 1.3.2, first bullet. If the timeframe in Table 1-2 is changed, then this first bullet language needs to be modified as well. (Alcoa, Inc.)**

**Response 10:**           Table 1-2 has been modified as discussed in Response 9. As a result of this modification, the first bullet of Part 1.3.2 does not require modification.

**Comment 11:** **Part 2.1.2.1. The draft permit states that vehicle and equipment wash water cannot be discharged to the storm drainage system. It is unclear whether or not this type of discharge would be authorized under another NPDES permit. (Sherman Dixie)**

**Response 11:** Vehicle and equipment wash waters are wastewaters. OHR000005 is a storm water permit which does not authorize these wastewater discharges. This is consistent with OHR000004. Potential options available for discharges of vehicle and equipment wash waters are:

- Obtain permission to direct the wastewater to a publically owned treatment works (POTW) through a sanitary sewer.
- Collect the wastewater and arrange for disposal at a POTW or industrial waste disposal facility.
- Obtain a NPDES permit (not OHR000005) to discharge the wastewater.

The following Ohio EPA factsheet provides additional guidance:

<http://www.epa.ohio.gov/portals/41/sb/publications/powerwash.pdf>

**Comment 12:** **In order to meet the requirements of the permit it is understood that a building will have to be constructed. (Sherman Dixie)**

**Response 12:** OHR000005 does not require the construction of a building to ensure compliance with the permit. Alternate Best Management Practices (BMPs), such as containment measures may be considered to ensure compliance.

**Comment 13:** **Additional guidance was requested for developing the site map in Section 5.1.2 “locations of all receiving waters in the immediate vicinity of your facility, indicating if any of the waters are impaired and, if so, whether the waters have TMDLs established for them.” (Environmental Compliance Tools, LLC)**

**Response 13:** The draft permit mirrored the federal MSGP for this permit condition. However, OHR000005 does not include the federal MSGPs Discharges to Impaired Waters monitoring requirements. As such, this condition in the final permit has been changed to read “locations of all receiving waters in the immediate vicinity of your facility.”

## **Conditional Exclusion for No Exposure**

**Comment 14:**        **Section 1.5, Conditional Exclusion for No Exposure. Clarification was requested on how the conditional exclusion for no exposure is to work from a practical standpoint. The definition of storm water associated with industrial activity that facilities use to determine if a permit is needed includes (among other things) storm water from manufacturing buildings. However, EPA’s no exposure exclusion guidance documents state that as long as materials are stored indoors (including inside the manufacturing building), then a facility can utilize the no exposure exclusion. How can the same definition apply simultaneously to two opposite permitting situations? (Alcoa Inc.)**

**Response 14:**     In many cases the building does incorporate air emissions which have resulted in accumulation of materials on the roof posing a threat to storm water quality. Items such as bag houses or alternate collection best management practices (BMPs) may trigger the need for the permit. For additional information, please see US EPA’s Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on “No Exposure” of Industrial Activities to Storm Water: <http://www.epa.gov/npdes/pubs/noxguide.pdf>. This guidance manual states that: “Operators who certified that their facilities qualify for the conditional no exposure exclusion may, nonetheless, be required by the permitting authority to obtain permit coverage, based on a determination that storm water discharges are likely to have an adverse impact on water quality.”

Many efforts to achieve no exposure can employ simple good housekeeping and contaminant cleanup activities such as moving materials and activities into existing buildings or structures. In some cases industrial operators may make major changes at a site to achieve no exposure, such as constructing new buildings / shelters or constructing structures to prevent run on.

**Comment 15:**        **How are non-storm water discharges that are authorized under the MSGP to be handled if a facility utilizes the no exposure exclusion? Most of these types of flows have historically been directed to the storm water drainage system at industrial sites. These flows are not pollutant-free. Since the no exposure exemption puts a facility outside the realm of discharge coverage under**

**the Clean Water Act, it would appear that a facility electing the no exposure exclusion must: (1) ensure there are no pollutants in these types of discharges, (2) ensure these flows do not discharge off-site, (3) obtain an individual permit for them, or (4) apply for a general permit that covers these types of discharges, if such a general permit is available. (Alcoa Inc.)**

**Response 15:** OHR000005 is a permit for storm water discharges associated with industrial activities. Incidentally, it addresses several common non-storm water discharges that may occur at a facility, are co-mingled with and may affect the quality of storm water discharges. The other discharges mentioned may be wastewaters. Under Ohio Revised Code (ORC) 6111.04, any discharge of pollutants must be in accordance with an NPDES permit. If the permittee has knowledge that their discharges are not pollutant free, it is their obligation to seek NPDES permit coverage. To efficiently use resources, Ohio EPA will request an NPDES permit application to address non-storm water discharges that are known or are suspected to be impacting water quality as we become aware of them.

**Comment 16:** **If a facility opts for the no exposure exemption and subsequently has material or activities exposed to storm water, what does that do to the exclusion? The draft MSGP is silent with regard to this. Can the facility at some future time re-apply for the no exposure exemption? Under what conditions and timeframe should be taken into account to allow this? Guidance on these and other implementation questions needs to be developed to ensure consistency in the use of this option. (Alcoa Inc.)**

**Response 16:** US EPA has discussed these and other issues in the federal Phase II Storm water regulations and in US EPA's Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water: <http://www.epa.gov/npdes/pubs/noxguide.pdf>. From the September 8, 1999, Federal Register (FR Vol 64, No 235, p. 68786 "If at any time...or similar containers are opened, deteriorated or leaking, the discharger should take immediate actions to close or replace the container. Any resulting unpermitted discharge would violate the CWA." From US EPA's Guidance Manual: "If exposure could occur in the future due to some anticipated change at the facility, the discharger should apply for and obtain coverage under

an NPDES permit prior to such discharge to avoid enforcement for violations of the Clean Water Act.”

A facility may reapply for the No Exposure Certification once all industrial materials or activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste product. A facility should not apply until a permanent remedy/ procedure is in place to maintain the condition of No Exposure in order to avoid having an unpermitted discharge and violating the CWA. US EPA’s Guidance Manual may not specify every situation, but Ohio EPA will address these situations on a case-by-case basis.

In regards to timeframes, If exposure could occur in the future due to some anticipated change at the facility, the discharger should apply for industrial storm water general permit coverage at least 180 days prior to the anticipated discharge (see Table 1-2 for New Dischargers or New Sources). If exposure occurs from an un-planned change at a facility, the discharger should apply for industrial storm water general permit coverage immediately. A facility would always be eligible to re-apply for the no exposure exemption if no exposure would exist in the future.

**Comment 17:** **A comment requested clarification on when the draft permit becomes effective will qualifying facilities need to re-certify for no exposure or can they wait until their 5-year no exposure period is over? (*Environmental Quality Management, Inc.*)**

**Response 17:** As long as the condition of “no exposure” exists at a certified facility, the operator is excluded from NPDES industrial storm water permit requirements provided that the operator notifies Ohio EPA at least every five years with a No Exposure Certification form. The issuance of this general permit does not alter the five year notification schedule for facilities having a no exposure certification.

### **Monitoring Requirements**

**Comment 18:** **Section 4.2, Quarterly Visual Assessments. Comments requested that the quarterly visual assessments are unnecessary and burdensome. Facilities with limited**

**resources will find it difficult to visually asses all outfalls on a quarterly basis.** (*Association of Ohio Metropolitan Wastewater Agencies, The Shelly Company*)

**Response 18:**

A visual assessment is one of the cheapest and most effective methods to assess whether or not BMPs are being implemented and are effective at minimizing the discharge of pollutants. Ohio EPA emphasizes that this monitoring is **not** required to be collected in accordance with 40 CFR 136 procedures. It is not necessary to monitor an outfall if it does not have any industrial activity associated with it (e.g., discharge from an employee parking lot that does not commingle with storm water runoff from an area of industrial activity) or if the outfall does not drain to a surface water (i.e. the outfall drains to a sanitary sewer or combined sewer system). Also, please see Section 4.2.3 of OHR000005 which provides exceptions to the quarterly visual assessment requirements.

Additional flexibility was requested for the quarterly visual assessments. Specifically, the procedures to collect within the first 30 minutes of a storm water discharge that occurs at least 72 hours (3 days) from the previous discharge. In terms of flexibility, the permit provides the following exceptions to quarterly visual assessments (See Part 4.2.3): 1)adverse weather conditions, 2)inactive and unstaffed sites, and 3)substantially identical outfalls. In addition, the permit includes the following language (See Part 4.2.1):

*“If it is not possible to collect the sample within the first 30 minutes of discharge, the sample shall be collected as soon as practicable after the first 30 minutes and you shall document why it was not possible to take samples within the first 30 minutes.”*

To provide additional flexibility for this condition, the following language has been added to the final permit:

*“If it is not possible to collect the sample on discharges that occur at least 72 hours (3 days) from the previous discharge, the sample shall be collected as close to this storm interval as practicable and you shall document why it was not possible to take samples from a 72 hour (3 day) storm interval.”*

To aid permittees, US EPA’s Industrial Storm water Monitoring & Sampling Guide is available at:

[http://www.epa.gov/npdes/pubs/msgp\\_monitoring\\_guide.pdf](http://www.epa.gov/npdes/pubs/msgp_monitoring_guide.pdf). You can also find a template for the Quarterly Visual Assessment report (fill in the blanks) under the "Sample Recordkeeping Templates" web link on Ohio EPA's website: [http://www.epa.state.oh.us/dsw/permits/GP\\_IndustrialStormWater.aspx](http://www.epa.state.oh.us/dsw/permits/GP_IndustrialStormWater.aspx)

**Comment 19:** **Some outfalls are difficult to access or accessing can only be done at certain times of the day or year (i.e., by boat); otherwise, it could put employees in danger. In addition, storm water at industrial sites is not always discharged via discreet "outfalls" which makes the monitoring requirements impractical.** *(Association of Ohio Metropolitan Wastewater Agencies, The Shelly Company)*

**Response 19:** If there is an impending safety issue, then it would be an acceptable explanation regarding why the sample could not be taken at a certain time, provided the issue is properly documented. For non-discreet outfalls, please see Response 34.

**Comment 20:** **It may not be practical to access some outfalls within the permit's 30 minute timeframe or there may be an insufficient number of storm water events within the quarter to allow for sampling of outfalls. It was suggested to eliminate or lengthen the requirement to sample within the first 30 minutes of the occurrence of a storm water event.** *(Association of Ohio Metropolitan Wastewater Agencies)*

**Response 20:** Ohio EPA recognizes the first 30 minutes of discharge to represent the first flush. In the event the permittee cannot sample within the first 30 minutes, there is language in permit to address this issue as long as the reason is documented (see Section 6.1.4).

**Comment 21:** **Section 6.1.7, Monitoring Periods. This section references Section 6.1.6, but the section is reserved. Section 6.1.7 needs to be modified to eliminate the reference to this section.** *(Alcoa Inc.)*

**Response 21:** Ohio EPA agrees with this comment and the final permit has been changed to reflect this modification.

**Comment 22:** **Define what constitutes a storm water event?** *(Association of Ohio Metropolitan Wastewater Agencies)*

**Response 22:** Please see Part 6.1.3 of OHR000005 for permit language associated with “measurable storm events”.

OHR000005 specifies the characteristics of a measurable storm event as an event that results in a discharge from the permitted facility. OHR000004 required that a measurable storm event have at least a 0.1 inch magnitude and be at least 72 hours (3 days) after the last measurable event. The purpose of OHR000005’s language is to simply select a storm event with a discharge, regardless of whether the storm event is 0.1 inches or greater. The measurable storm event provision in OHR000005 requires only that a storm event results in a discharge from the permitted facility, and that it follows a period of greater than or equal to 72 hours (3 days) when no storm water discharge occurred. OHR000005’s provision provides more flexibility than OHR000004 and will reduce the burden on permittees from having to resample if a storm event doesn’t result in 0.1 inches.

**Comment 23:** **The draft permit adds unnecessary additional monitoring and sampling responsibilities. For example, every industry covered by the draft permit is required to sample and monitor all discharges from a facility, except those that are “substantially identical”. The monitoring data that is collected must then be sent to Ohio EPA within 30 days of receiving the complete laboratory results of sampling.** *(Ohio Aggregates & Industrial Minerals Association, The Shelly Company, Ohio Chamber of Commerce, Ohio Cast Metals Association, The Ohio Manufacturers’ Association)*

**Response 23:** When looking at the entire universe of industrial sectors required to monitor under OHR000004, approximately the same number of industrial sectors will be subject to the benchmark monitoring requirements of OHR000005. OHR000004 did not require that monitoring data be submitted to Ohio EPA; whereas, OHR000005 does require that the data be submitted using Ohio EPA’s online electronic discharge monitoring report (eDMR) system. This data reporting system is entirely web-based and accessible through Internet Explorer via any internet connection. The online system is straightforward to set up and provides a quick and efficient system for permittees to report. Division of Surface Water staff is available to aid permittees with eDMR and additional information can be found at the following:

<http://www.epa.state.oh.us/dsw/edmr/eDMR.aspx>

In addition, permittees that may not have internet access can submit paper reporting forms to the appropriate address identified in Section 7.6.1 of the permit.

**Comment 24:** **Ohio Cast Metals Association members participated in USEPA's Group Application in 1991-1992. This data revealed that storm water runoff from the participating foundries was not contributing significant water pollution; thus, extensive storm water monitoring at foundries was not necessary.** (*Ohio Cast Metals Association*)

**Response 24:** USEPA elected to replace group applicants and permits with the MSGP. Despite the commenter claim that storm water runoff from the participating foundries was not contributing significant pollution, USEPA elected to include the sampling requirements. It is Ohio EPA's intent to follow this process to maintain consistency.

**Comment 25:** **The draft renewal includes a significant increase in storm water monitoring from the current annual monitoring to quarterly monitoring and reporting. The Ohio EPA has not demonstrated any environmental benefit or need for these changes.** (*Ohio Concrete/Ohio Ready Mixed Concrete Association, American Trim, LLC*)

**Response 25:** The benchmark monitoring requirements are not effluent limitations; whereas, they simply represent a level to determine whether a facility's storm water pollution prevention plan (SWP3) is successful. To more clearly indicate this, the following sentence in Part 6.2.1 of the final general permit has been underlined in bold:

**"The benchmark concentrations are not effluent limitations; a benchmark exceedence, therefore, is not a permit violation."**

The draft general permit requires benchmark monitoring, specific for each industrial sector, for pollutant parameters which USEPA has determined to be of concern by industrial sector. The draft permit's benchmark monitoring was based on a collection of 4 quarterly samples during the first year of permit coverage. If the average of the 4 monitoring values for any parameter did not exceed the benchmark, the permittee would have fulfilled their monitoring requirements

for that parameter for the permit term. If this average would have exceeded the benchmark for a parameter, then the permittee would have needed to review their SWP3, control measures and modify accordingly. Additional quarterly monitoring would have been required.

The benchmark monitoring requirements have been modified in the final permit. During years 1 through 3 of the permit, permittees must select 4 quarterly monitoring periods (out of a total of 12) and perform benchmark monitoring. Over this 3 year period, one benchmark sampling event shall be taken during each of the quarterly monitoring periods (calendar quarters), unless a facility is always inactive and unstaffed for a particular quarterly monitoring period. In addition, comparison of benchmark results (the average may be used) to the permit's benchmark concentrations is only required during year 4 of the permit. Once compared, if results exceed the benchmark for a parameter, then the permittee will need to review their SWP3, control measures and modify accordingly (in accordance with Part 3 of the permit).

Concerns were raised that the benchmark concentrations may not be appropriate and achievable. In response to comments received, comparison of benchmark results to the permit's benchmark concentrations is only required during year 4 of the permit. Upon completion of year 3 of the permit, individual pollutant benchmark concentrations will be evaluated and may be adjusted through a permit modification if reasonable justification is provided to Ohio EPA.

Concerns were raised that errors may exist for benchmark values that are dependent on water hardness, specifically for lead and zinc. Ohio EPA tiered the hardness dependent criteria consistent with USEPA's MSGP. When calculating the hardness dependent values for each parameter, Ohio's statewide acute water quality criteria for the protection of aquatic life for hardness dependent parameters were used. For each parameter, the outside mixing zone maximum (OMZM) for the total recoverable form was used.

Based on the concerns raised, the Division of Surface Water's Standards & Technical Support staff reviewed all values associated with benchmark parameters dependent on water hardness. After review, no errors were found. However, the draft permit's maximum water hardness range

was for 250+ mg/l. The operational limit associated with the equation used to determine these values is 400 mg/L. As a result, the final permit includes additional water hardness ranges, in 25 mg/L increments, up to 400+ mg/L as follows:

Water Hardness Range	Benchmark Parameters Dependent on Water Hardness						
	Beryllium (T) (mg/L)	Cadmium (T) (mg/L)	Copper (T) (mg/L)	Lead (T) (mg/L)	Nickel (T) (mg/L)	Silver (T) (mg/L)	Zinc (T) (mg/L)
0-25 mg/L	0.01	0.0009	0.0038	0.021	0.15	0.0001	0.04
25-50 mg/L	0.02	0.0015	0.0056	0.035	0.20	0.0003	0.05
50-75 mg/L	0.04	0.0027	0.0090	0.067	0.32	0.0007	0.08
75-100 mg/L	0.08	0.0039	0.0123	0.103	0.42	0.0013	0.11
100-125 mg/L	0.11	0.0052	0.0156	0.142	0.52	0.0020	0.13
125-150 mg/L	0.16	0.0065	0.0189	0.184	0.61	0.0028	0.16
150-175 mg/L	0.20	0.0078	0.0221	0.227	0.71	0.0037	0.18
175-200 mg/L	0.26	0.0092	0.0253	0.272	0.80	0.0047	0.20
200-225 mg/L	0.31	0.0106	0.0285	0.320	0.89	0.0058	0.23
225-250 mg/L	0.38	0.0120	0.0316	0.368	0.98	0.0071	0.25
250-275 mg/L	0.44	0.0134	0.0348	0.418	1.06	0.0084	0.27
275-300 mg/L	0.51	0.0149	0.0379	0.470	1.15	0.0098	0.29
300-325 mg/L	0.58	0.0163	0.0410	0.522	1.23	0.0113	0.31
325-350 mg/L	0.66	0.0178	0.0440	0.576	1.31	0.0129	0.34
350-375 mg/L	0.74	0.0193	0.0471	0.631	1.39	0.0146	0.36
375-400 mg/L	0.83	0.0208	0.0502	0.687	1.48	0.0164	0.38
400+ mg/L	0.87	0.0216	0.0517	0.715	1.52	0.0173	0.39

**Comment 26:** The proper collection of storm water runoff samples requires training, planning, rain event monitoring, travel, coordination with the analytical testing laboratory, record-keeping, and data reporting. These increased costs will create a burden on industry. (Ohio Concrete/Ohio Ready Mixed Concrete Association)

**Response 26:** Proper collection of storm water samples for analytical testing has not changed from OHR000004. Unlike OHR000004, OHR000005 does require the analytical data to be reported. For additional information on reporting data through Ohio EPA's eDMR, please see: <http://www.epa.state.oh.us/dsw/edmr/eDMR.aspx>

The agency feels monitoring and sampling is a true measure of evaluating the success of your Storm Water Pollution Prevention Plan (SWP3). Additional guidance for a

permittee to conduct sampling can be found at the following:  
[http://www.epa.gov/npdes/pubs/msgp\\_monitoring\\_guide.pdf](http://www.epa.gov/npdes/pubs/msgp_monitoring_guide.pdf)

The sampling guidance is geared toward self monitoring to save on the cost of third party contractors. If you have any questions, you are encouraged to contact your Storm Water Coordinator with Ohio EPA. In addition, the agency plans on providing training with respect to the implementation of this permit including sampling.

**Comment 27:** **Facilities subject to benchmark monitoring must sample each outfall every quarter for the first year of coverage. This requirement may be difficult from many facilities to meet. Small businesses without the in-house expertise to conduct this type of sampling might be forced to contract with an outside provider to conduct this sampling. This will not only raise expenses, but it also runs contrary to the common sense sentiment expressed in Ohio Senate Bill 2 and Ohio House Bill 94. (Ohio Aggregates & Industrial Minerals Association, The Shelly Company, The Ohio Manufacturers' Association)**

**Response 27:** In response to this comment, please see Responses 25 and 26.

**Comment 28:** **If a facility's sampling does not reveal that its outfalls are within the benchmark concentrations, Ohio EPA can require the facility to conduct additional monitoring and sampling throughout the permit term, thus defeating the purpose and spirit of the concept of "benchmarking" (i.e. it is not a hard limit, rather a data point). (Ohio Aggregates & Industrial Minerals Association, The Shelly Company, The Ohio Manufacturers' Association)**

**Response 28:** In response to this comment, please see Response 25.

**Comment 29:** **Section 6.2.1.2, Natural background pollutant levels. The commenter requests that air deposition of pollutants not associated with the discharger's manufacturing process be included as natural background pollutants. (Alcoa Inc.)**

**Response 29:** The monitoring requirements would only directly reflect the permittee's manufacturing process. Therefore, sampling of pollutants not associated with the manufacturing process is not required. Relevant laws, rules and court cases hold individual facilities responsible for their discharge quality. If

the facility's industrial storm water is being contaminated by air deposition or an adjacent property/discharge they should attempt to divert or segregate from the facility's contribution. If separation is not an option, the permittee is obligated to still sample where storm water is discharged from their facility. In some cases the sampling location can be moved to better reflect only the facility's storm water quality (and exclude run-on from off-site sources).

**Comment 30:** **Section 6.1.3. The commenter stated that Section 6.1.3 stipulates sampling at every storm event that follows a preceding storm event by at least 3 days. Section 6.1.4 requires sampling within the first 30 minutes of an initial discharge. The commenter is concerned that some facilities do not operate 7 days per week, may not operate even 5 days per week, and do not operate 24 hours per day. What provisions are available in the general permit for such operations, i.e., less than 24 hours per day, 7 days per week? (Treated Wood Council)**

**Response 30:** Please see Response 25 for changes to the benchmark monitoring requirements. Regarding the commenter's concerns, benchmark monitoring (Part 6.2.1) will be required for 4 benchmark monitoring events over the first 3 years of the permit and visual monitoring (Part 4.2) is required on a quarterly basis throughout the permit. In addition, Part 4.2.3 of OHR000005 provides exceptions to the quarterly visual assessment requirements.

**Comment 31:** **Benchmark Values. The commenter requested the aluminum benchmark value be modified from total aluminum to dissolved aluminum. Dissolved aluminum is the more toxic from to aquatic life than total aluminum. Aluminum is the most abundant metal found in the earth's crust, making up on average 8% of the soil and will be a component of total suspended solids. (Alcoa Inc.)**

**Response 31:** The aluminum benchmark is the USEPA acute aquatic life criterion. Ohio does not have aquatic life criteria for aluminum. The USEPA justification document for the aluminum criteria specifically recommends against expressing the criteria as dissolved because they do not believe it would be protective. USEPA recommends expressing the aluminum criteria as "acid-soluble" but, at least in 1988, they did not have an approved analytical

method for measuring acid-soluble aluminum. The aluminum benchmark will remain as total aluminum.

**Comment 32:** **A commenter stated that the benchmark level for copper under certain hardness ranges, as listed under Table 8.A-1, is excessively low. Would the Ohio EPA explain the rationale for such levels?** *(Treated Wood Council)*

**Response 32:** The copper benchmarks are the Ohio acute aquatic life criteria, which are the same as the 1995 USEPA Water Quality Guidance for the Great Lakes System (40 CFR 132). USEPA revised their national copper criteria in 2007, recommending a biotic ligand model to regulate copper dischargers. The copper benchmark values will remain.

**Comment 33:** **Oftentimes Ohio experiences severe drought conditions. What provisions are available in the general permit to cover such circumstances?** *(Treated Wood Council)*

**Response 33:** Please see Adverse Weather Conditions in Part 4.2.3 and Part 6.1.5.

**Comment 34:** **If a facility has a blind connection to a storm sewer that prevents the collection of quarterly visual assessment samples and analytical samples, does the Agency expect the facility to install a catch basin or manhole (as appropriate) to enable the collection of these samples?** *(Environmental Quality Management, Inc.)*

**Response 34:** If there is no upstream location that captures all precipitation, then installation of a sampling port maybe required. Guidance has been provided to effectively collect storm water samples from areas where sheet flow is present. Please see guidance at the following (see pages 9 and 10): [http://www.epa.gov/npdes/pubs/msgp\\_monitoring\\_guide.pdf](http://www.epa.gov/npdes/pubs/msgp_monitoring_guide.pdf)

### **Reporting Requirements**

**Comment 35:** **Section 7.1, Reporting Monitoring Data to Ohio EPA. The commenter requested clarification of the language in the second sentence of the second paragraph in this section. Does Ohio EPA mean that each individual laboratory report is to be submitted separately if received more than 30 days apart? For example, if sampling is done in January for some parameters and then in March for others, rather than submit the**

**laboratory reports at one time, each separate laboratory report should be submitted? (Alcoa Inc.)**

**Response 35:** Only the numeric laboratory result must be entered into Ohio EPA's eDMR system for each constituent at each outfall within 30 days of the receipt of the data. No laboratory reports need to be submitted to Ohio EPA. Each industry required to perform sampling must set up an online account with a username and pin number and enter the numeric data within 30 days of receipt from the lab.

**Comment 36:** **The draft permit unreasonably increases reporting and recordkeeping obligations. In addition to this mandatory reporting and a mandatory annual report, the draft permit requires no fewer than six other reports be sent to Ohio EPA upon the occurrence of specified conditions.** *(Ohio Aggregates & Industrial Minerals Association, The Shelly Company, Ohio Chamber of Commerce, Ohio Cast Metals Association, The Ohio Manufacturers' Association)*

**Response 36:** As a result of comments received the agency will only require the annual reports to be maintained on-site and available for review. The review of the comprehensive report will provide necessary resources to the agency to evaluate common concerns and corrective actions taken to provide technical assistance to ensure the implementation of an effective and consistent program within the state. Please see Appendix I of OHR000005 to view the Annual Reporting Form. As previously stated, this report will not be required to be submitted but is to be maintained on site and available for review. The Annual Report Form provides guidance and a means for the permittee to document their annual comprehensive site inspection.

**Comment 37:** **The draft permit requires the submittal of an annual report including the findings from a comprehensive site inspection and any corrective actions taken to remedy the exceedence of any benchmark concentration. This purely administrative step is unnecessary; its compilation requires the expenditure of resources that could better be put to use actually reducing storm water runoff.** *(Ohio Aggregates & Industrial Minerals Association, The Shelly Company, Ohio Chamber of Commerce, Ohio Cast Metals Association, The Ohio Manufacturers' Association)*

**Response 37:** Based on comments received, the Annual Report Form will not be required to be submitted but is to be maintained on-site and available for review. In addition, the requirement for completing an annual comprehensive site inspection was required by the previous industrial storm water general permit (OHR000004); therefore, this requirement is consistent with the previous general permit. Please see Response 36 for additional information.

### **Sector Specific Comments**

#### **Sector C: Chemicals and Allied Products**

**Comment 38:** **The benchmark concentration for phosphorus of 1 mg/L appears to be more stringent than the federal effluent limit for phosphorus.** *(Ohio Chamber of Commerce)*

**Response 38:** The draft permit contained an effluent limitation for phosphorus from runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC code 2874). Ohio EPA is aware of only one facility in Ohio which manufactures phosphate fertilizer. This facility is currently covered under an individual permit. As such, the final permit has excluded storm water discharges from phosphatic fertilizer manufacturers (SIC code 2874).

Subsector C1 contains the only benchmark monitoring requirement for phosphorus. The draft permit's benchmark value for phosphorus was 1.0 mg/L. This value represents Ohio's Chronic Aesthetic value (Ohio's concentration value to prevent eutrophication). The federal MSGP's benchmark value for phosphorus is 2.0 mg/L (derived from North Carolina's benchmark value). Ohio EPA agrees that the draft permit's benchmark value for phosphorus needs modified; therefore, the final permit's phosphorus benchmark value has been changed to 2.0 mg/L, which is consistent with the federal MSGP.

#### **Sector D: Asphalt Paving and Roofing Materials and Lubricants**

**Comment 39:** **Commenters requested that the sampling and reporting requirements be eliminated for Industrial Sector D as these requirements will result in increased costs. There has been no known challenge regarding storm water discharges from an asphalt mixing facility. In addition, these facilities typically have no discrete flows which**

**make it impossible to capture a sample.** (*Flexible Pavements of Ohio, The Shelly Company*)

**Response 39:** OHR000005 includes a benchmark monitoring parameter for Total Suspended Solids (TSS) for Subsector D1 facilities (Asphalt Paving and Roofing Materials (SIC 2951, 2952)). Ohio EPA contacted various labs from around Ohio to determine the expected analytical cost for each monitoring parameter included within the permit. For TSS, it is expected that the laboratory analytical cost per outfall will be \$9.17. In addition, discharges from asphalt emulsion facilities are subject to federal effluent limitations for TSS, pH and oil and grease. OHR000004 did not authorize discharges subject to federal effluent limitations; therefore, these facilities were required to obtain an individual NPDES permit for these discharges. OHR000005 includes the federal effluent limitations; thus, providing a more streamlined permitting approach by allowing general permit coverage for these discharges.

In response to the later comment, guidance has been provide to effectively collect storm water samples from areas where sheet flow is present. Please see guidance at the following (see pages 9 and 10):  
[http://www.epa.gov/npdes/pubs/msgp\\_monitoring\\_guide.pdf](http://www.epa.gov/npdes/pubs/msgp_monitoring_guide.pdf)

The draft general permit provides an exception to routine facility inspections (Part 4.1.3) and quarterly visual assessments (Part 4.2.3) for a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to storm water. Inactive and unstaffed facilities covered under Sector J, are not required to meet the “no industrial materials or activities exposed to storm water” standard to be eligible for these exceptions. Due to similarities, it was requested that Sector D be included as well. The final permit has been changed to include Sector D for these exceptions.

**Comment 40:** **The draft permit includes a 100 mg/L benchmark monitoring concentration for TSS for Industrial Sector D. This benchmark practically and unlawfully functions as an effluent limit because it requires a permittee to re-evaluate the facility’s control measures and modify accordingly if the average of the four quarterly samples exceed this benchmark. In addition, this benchmark value is based on the federal benchmark value, which in turn is based on the results of the Nationwide Urban**

**Runoff Program (“NURP”) study. Ohio EPA should either eliminate the TSS benchmark or develop an appropriate benchmark based on Ohio-specific data.**  
*(The Shelly Company)*

**Response 40:** Please see Response 25 for additional information on modifications to the benchmark monitoring requirements in the final permit. The benchmark value for TSS at 100 mg/L is not an effluent limitation. The intent of the benchmark value serves as a key indicator to evaluate the success of implementing a Storm Water Pollution Prevention Plan (SWP3). Exceedances of the benchmark values are not considered a direct violation of OHR000005. Exceedances of benchmark values in OHR000005 would only require the permittee to improve/modify the implementation of the SWP3. In addition, the final permit only requires this comparison to benchmark values occur in year 4 of the permit. Ohio has evaluated state specific criteria for TSS in various existing NPDES permits. Generally, the individual and general permits address a limit of 30 to 70 mg/L. However, it was determined to proceed with the federal MSGP benchmark of 100 mg/L to maintain consistency.

In addition, discharges from asphalt emulsion facilities are subject to federal effluent limitations for TSS, pH and oil and grease. OHR000004 did not authorize discharges subject to federal effluent limitations; therefore, these facilities were required to obtain an individual NPDES permit for these discharges. OHR000005 includes the federal effluent limitations; thus, providing a more streamlined permitting approach by allowing general permit coverage for these discharges.

### **Sector E: Glass, Clay, Cement, Concrete, and Gypsum Products**

**Comment 41:** **Part 8.E.2.1. A commenter objected to this requirement which requires paved areas to be swept weekly. The commenter stated that the employee parking lot and other paved areas do not need swept in order for the TSS concentration in Table 8.E-1 to be satisfied. Facilities should be able to select appropriate BMPs to satisfy permit conditions, such as, the need to sweep and at what frequency. (Sherman Dixie)**

**Response 41:** Draft OHR000005 did require that paved areas associated with industrial activity be swept at least on a weekly basis (employee parking lots are not “associated with industrial

activity”). Ohio EPA agrees with the comment received. OHR000005 has been modified to provide the permittee with the flexibility to select appropriate BMPs and associated frequencies to satisfy permit conditions.

The draft general permit provides an exception to routine facility inspections (Part 4.1.3) and quarterly visual assessments (Part 4.2.3) for a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to storm water. Inactive and unstaffed facilities covered under Sector J, are not required to meet the “no industrial materials or activities exposed to storm water” standard to be eligible for these exceptions. Due to similarities, it was requested that Sector E be included as well. The final permit has been changed to include Sector E for these exceptions.

### **Sector G: Metal Mining (Ore Mining and Dressing)**

Ohio EPA has concluded that no facilities exist in Ohio which would fall under Sector G. Therefore, Sector G has been removed from the final general permit.

### **Sector J: Mineral Mining and Dressing**

**Comment 42:** The draft permit authorizes discharges from facilities holding existing NPDES permits, but does not apply to storm water discharges from new mineral mining facilities. There is no reason why new facilities should be exempted from coverage under the general permit. Discharges from a new facility are unlikely to be very different (if at all) from facilities that hold an existing NPDES permit. New facilities should be eligible for coverage under the general permit. (*Ohio Aggregates & Industrial Minerals Association, The Shelly Company*)

**Response 42:** The previous industrial storm water general permit (OHR000004) excluded general permit coverage for Sector J facilities. As such, Ohio EPA issued individual NPDES permits for these facilities. The draft general permit would have allowed coverage for these facilities when renewing coverage; but not for initial coverage.

Ohio EPA agrees with the comment received. As such, OHR000005 will allow new Sector J facilities coverage, provided that anti-degradation does not conflict.

**Comment 43:** The draft permit imposes significant requirements for controlling and preventing run-off during clearing, grading, and excavation activities on mineral mining facilities. The draft permit requires that an inspection occur at least once every 7 days, or at least once every 14 days and within 24 hours of receiving 0.5 inches of rain or more. This requirement is a departure from the currently existing permit, and will add compliance costs with relatively little benefit. So long as testing results show that a facility's storm water discharges is meeting both effluent limitations and benchmark monitoring concentrations, requiring extra inspections is redundant and wasteful. (*Ohio Aggregates & Industrial Minerals Association, The Shelly Company*)

**Response 43:** All existing Industrial Mineral Operations are currently covered under an Individual NPDES Permit. The majority of these permits mandate the development of a Storm Water Pollution Prevention Plan (SWP3). The SWP3 as well as existing permit language in Ohio EPA's Construction Storm Water Permit require specific self inspection, always at a frequency of every 7 days or within 24 hours of a rain event equal to or greater than 0.5 inches. It is the agency's intent to continue with self-inspections to ensure the permittee is evaluating operations and promptly identifying improvement opportunities which may prove to be economically beneficial opposed to reacting to permit violations.

**Comment 44:** The SWPPP requirements for mineral mining facilities are also more comprehensive than those generally-applicable SWPPP requirements. Adding additional requirements to the contents of a SWPPP only serves to increase the administrative inconvenience of formulating a plan without adding to the protections of the SWPPP. There is no reason why the SWPPP generally applicable to all industry sectors in the draft permit is not also adequate for the mineral mining industry sector. Imposing additional requirements requires the expenditure of additional time and money, and again, has little to no impact on the actual control of discharge coming from a mineral mining facility. (*Ohio Aggregates & Industrial Minerals Association, The Shelly Company*)

**Response 44:** All Storm Water Pollution Prevention Plan (SWP3) requirements are sector specific. The commenter is correct stating there are general SWP3 requirements that apply to

all sectors. However, the sector specific requirements address the potential storm water impacts which may result from the sector specific activity. The SWP3 requirements of this sector are not that dissimilar to the Construction Storm Water General Permit. Given, Mineral Mining operations must seek coverage under a General Storm Water Permit during the initial phases of construction. The majority of the mechanisms should be in place as a result of the construction process and should easily roll over to the requirements of OHR000005.

**Comment 45:** **The industry is concerned about the adoption of the 100 mg/L benchmark monitoring concentration standard for TSS and the 0.68 mg/L benchmark standard for Nitrate plus Nitrite Nitrogen. Ohio EPA indicates that these standards are based off the federal benchmark value, which in turn is based on the results of the Nationwide Urban Runoff Program (“NURP”) median. The NURP Report was finalized in 1983, and the data used in the report was not derived from any Ohio locations. Many sand and gravel mining facilities are also not located in what are traditionally considered “urban” areas, and the benchmarks in NURP may not even apply to many, or even most, facilities. Ohio EPA should either develop information specific to Ohio, or increase the concentration standard to reflect the uncertainty regarding the application of the federal benchmark value to the Ohio MSGP. (Ohio Aggregates & Industrial Minerals Association, The Shelly Company)**

**Response 45:** Ohio EPA agrees that the benchmark for Nitrate plus Nitrite Nitrogen will be removed to maintain consistency with existing Ohio EPA individual NPDES permits. The benchmark value for TSS at 100 mg/L is not an effluent limitation. The intent of the benchmark value serves as a key indicator to evaluate the success of implementing the Storm Water Pollution Prevention Plan (SWP3). In addition, comparison of benchmark results to the permit’s benchmark concentrations is only required in year 4 of the permit. Exceedances of the benchmark values are not considered a direct violation of OHR000005. During year 4, exceedance of benchmark values in OHR000005 would require the permittee to improve/modify the implementation of the SWP3. Ohio has evaluated state specific criteria for TSS in various existing NPDES permits. Generally the individual and general permits address a limit of 30 to 70 mg/L.

However, it was determined to proceed with the federal MSGP benchmark of 100 mg/L to maintain consistency.

**Comment 46:** **Adopting the federal benchmark standard without tailoring the requirement to Ohio's unique conditions could result in the expenditure of needlessly wasteful monitoring resources should a discharge exceed the proposed standards. Facilities not in compliance with the benchmark standard will also have to implement control-measure modifications until the benchmark standard is met to avoid violating the terms of the permit, even if the exceedance of the benchmark is not, in and of itself, a violation. These significant expenses should only be incurred when necessary to prevent damage to Ohio waterways. The currently proposed standards may go above and beyond the level required to be protective of Ohio waterways. There is no need to impose the additional monitoring requirements that occur when a benchmark is on average exceeded, if that benchmark is in no way indicative of the actual pollutant level required to protect Ohio waterways. (Ohio Aggregates & Industrial Minerals Association, The Shelly Company)**

**Response 46:** Permittees may always elect to seek coverage under an Individual NPDES storm water permit, in the event the benchmark levels appear low for a site specific receiving stream. OHR000005 does allow a determination that no further pollutant reductions are practical and achievable. For additional information, please see Section 6.2.1.2.

In response to comments received, comparison of benchmark results to the permit's benchmark concentrations is only required for year 4 of the permit. Upon completion of year 3 of the permit, individual pollutant benchmark concentrations will be evaluated and may be adjusted through a permit modification if reasonable justification is provided to Ohio EPA.

**Comment 47:** **Requiring additional monthly inspection of facilities which discharge to waters that are "impaired" for sediment or nitrogen is unnecessary. Under this provision, a facility that happens to be located adjacent to an impaired waterway will be punished with extra monitoring costs solely because of this fact. This provision is doubly unfair because a mineral mining facility must be located where the minerals being mined**

**are located. Even if the receiving water has been impaired through no fault of the mineral mining facility, under this general permit that facility will still bear the burden of excess monthly monitoring.** (*Ohio Aggregates & Industrial Minerals Association, The Shelly Company*)

**Response 47:** Since sediment is a primary pollutant of concern associated with Sector J facilities, requiring an operator to perform monthly inspections of best management practices (BMPs) is not an unreasonable burden when the discharge is going to a stream that is impaired for sediment. Ohio EPA's NPDES Construction Storm Water General Permit requires site operators to inspect their practices on a weekly basis. Ohio EPA agrees that nitrogen is not a pollutant of concern associated with Sector J facilities. If the receiving stream is not impaired for sediment, then the increased inspection frequency will not be required. OHR000005 has been revised accordingly.

**Comment 48:** **Under Section 8.J.8.1 of the draft permit, Ohio EPA has the authority to revoke an exemption from monitoring for unstaffed sites merely if a discharge “has a reasonable potential to cause” and in-stream excursion above an applicable water quality standard. This in effect allows Ohio EPA to re-impose extensive monitoring conditions on an unused site merely because run-off could possibly impinge water quality. Ohio EPA should not be able to revoke such an exemption unless showing is made that the discharge is actually contributing to a negative impact.** (*Ohio Aggregates & Industrial Minerals Association, The Shelly Company*)

**Response 48:** These restrictions are consistent with the previous general permit (OHR000004). It is the agency's intent to work with the entity to address potential threats prior to acting on this condition.

**Comment 49:** **Section 8.J.5.2.4 requires mining operations shall reconnect formerly flood prone areas within the mining area that were once disconnected during construction or mining operations through the use of levees and embankments. This provision adds new oversight to the EPA and will require additional cost and liability to mining operations. Flood plain regulations are currently handled through the FEMA which then grants authority to local County agencies to oversee their regulations.**

**This is not handled by the EPA or ODNR. Most levees were established prior to the FEMA regulations in 1981 and thus are grandfathered. Levees after 1981 went through the regulatory process and had to prove to FEMA or the local agency that their construction had no adverse impact to the remaining flood prone areas. Allowing the Ohio EPA to go beyond their bounds and require operations to remove levees that are grandfathered and/or properly permitted is excessive and beyond the scope of the agency. Furthermore, many of these areas have had levees for 30 to 50 years and have established mature growth after decades of placement. Removing these levees will degrade river quality; remove wildlife habitat and present excessive new costs to companies that are unfounded and unwarranted. Finally, if levees are removed per Ohio EPA orders, new areas may be flooded as a result; potential new liability could be directed at those companies following the new regulations. (Ohio Aggregates & Industrial Minerals Association, The Shelly Company)**

**Response 49:** The draft general permit required, before termination of permit coverage, reclamation of floodplain areas that are diked off during construction and operation of sand and gravel mining operations. Based on comments received, this condition has been modified to read:

“Reclamation for facilities with initial NPDES coverage on or after effective date of OHR000005: The permittee shall reclaim all dams, dikes, diversions, drainage channels, and impoundments unless specified as permanent structures in the Mining and Reclamation Plan approved by the Division of Mineral Resources Management which is consistent with the Ohio Administrative Code 1501:14-3-11, administered by Ohio Department of Natural Resources.”

### **Sector T: Treatment Works**

**Comment 50:** It was suggested that the permit decrease the visual assessment and sampling requirements for Treatment Works under Sector T to annually or semi-annually (and providing that Sector T requirements apply in lieu of the general conditions under Section 4.). (Association of Ohio Metropolitan Wastewater Agencies)

**Response 50:** There is no benchmark monitoring nor federal effluent limitation monitoring requirements for Sector T facilities. Ohio EPA does not believe that the quarterly visual evaluation of storm water runoff will not result in an expense that is unreasonable.

**Comment 51:** **There is a conflict between the sector specific requirements in Sector T and the requirements for minimizing exposure under Section 2.1.2.1. Sector T (8.T.4.1) requires treatment works to merely consider control measures as a means of minimizing run-off in order to comply with non-numeric technology based effluent limitations. Section 2, on the other hand, provides that covered entities “shall” minimize exposure “by either locating these industrial materials and activities inside or protecting them with storm resistant coverings.” Treatment works should be permitted, as set forth in Sector T, the flexibility to evaluate the control measures that are most cost effective in minimizing run-off to meet such limitations. Wholesale requirements for coverage of large areas of material may result in unnecessary costs where effluent limitations are already being met. We believe that between the general requirements in Section 2.1.2.1 and Sector T, Sector T requirements should apply.**  
*(Association of Ohio Metropolitan Wastewater Agencies)*

**Response 51:** Ohio EPA does not believe that this language is inconsistent. The statement "shall minimize" in Section 2.1.2.1 does not mean "shall eliminate all." As defined in Section 2, “minimize” means reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice. This statement means to use best available methods to keep exposure of industrial materials to storm water at a minimum. This can be achieved by either reducing the amount of time that industrial materials are outside or by covering the outdoor materials.

## **Appendices**

**Comment 52:** **Appendix A, Definitions, Abbreviations and Acronyms. The commenter suggested the following additions and deletions: (1) Add “Ohio EPA – Ohio Environmental Protection Agency”, and (2) Delete “Arid Climate” and**

**“Semi-Arid Climate”, as neither applies to the State of Ohio. (Alcoa Inc.)**

**Response 52:**

Ohio EPA will add the definition for "Ohio EPA." Ohio EPA can also delete the definition of "Arid Climate." Since "Semi-Arid Climates" can include areas that receive less than 40-inches of rain per year and most of Ohio receives on average of 38-inches of rain per year, this definition will remain in the general permit.

**End of Response to Comments**