



## Division of Surface Water Response to Comments

### General Permit for Storm Water Discharges Associated with Construction Activity from Oil and Gas Linear Transmission Line and Gathering Line Installation

Ohio EPA General Permit No.: OHCG00001

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Ohio EPA held a public hearing and information session on May 30, 2018, regarding a General Permit for Storm Water Discharges Associated with Construction Activity from Oil and Gas Linear Transmission Line and Gathering Line Installation (OHCG00001). This document summarizes the comments and questions received at the public hearing and during the associated comment period, which ended on June 6, 2018.

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. Often, public concerns fall outside the scope of that authority. For example, concerns about zoning issues are addressed at the local level. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

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

#### General Comments

**Comment 1:** Legal Authority. We believe that Ohio EPA lacks legal authority to promulgate this permit. The Clean Water Act §402(l) and Ohio Administrative Code 3745-39-04(A)(2)(b) both specifically exclude storm water discharges from construction activities associated with oil and gas

transmission projects, unless (a) there is a discharge of a reportable quantity which requires notification; or (b) the storm water discharges contribute to a violation of a water quality standard. How does Ohio EPA reconcile its promulgation of this permit in light of the federal and state exemptions?

In its Fact Sheet, Ohio EPA refers to this permit as a “non-NPDES” permit. Presumably, this is to avoid the exemptions discussed above, but regardless of the label that Ohio EPA chooses to apply to the permit, the permit applies to the exact same activity that the exemptions specifically exempt: storm water discharges from construction activity associated with pipelines. The permit indicates that it covers “all new and existing discharges composed entirely of storm water discharges associated with construction activity from oil and gas linear transmission line and gathering line installation that enter surface waters of the State.” See Part I.B.1 of permit. This is precisely the activity that OAC 3745-39-04(A)(2)(b) excludes. (*Enbridge, Inc., American Petroleum Institute of Ohio*)

**Legal Authority.** Ohio EPA’s authority to regulate storm water discharges associated with the construction of oil and gas linear transmission line and gathering line installations is in question. Specifically, uncontaminated storm water discharges from certain oil and gas-related activities are exempt from permitting under the Federal Water Pollution Control Act. See e.g., 33 U.S.C §1342(l)(2); 40 CFR §122.26(a)(2). It is requested that Ohio EPA clarify its authority to issue the general permit, and to specify which oil and gas-related activities are still subject to the federal exemption. (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)

**Legal Authority.** Ohio law does not expressly authorize Ohio EPA to issue a non-NPDES/CWA permit to regulate storm water discharges to waters of the State from construction activities for installation of oil and gas linear transmission pipelines. The Ohio statute authorizing the issuance of permits regulating discharges to waters of the State, i.e., R.C. 6111.03(J), is grounded in the requirements of the Federal Water Pollution Control Act, 33 U.S.C §1251 et. seq (“CWA”). Uncontaminated precipitation runoff from certain oil and gas-related exploration, production, processing, or treatment operations or transmission facilities are exempt from NPDES/CWA permitting requirements for storm water runoff. 33 U.S.C §1342(l)(2); 40 CFR §122.26(a)(2).

This exemption is recognized by Ohio EPA and rendered

inapplicable only if (1) there has been a discharge of storm water at the site, which results in a discharge of a reportable quantity (“RQ”) of oil or hazardous substances; or (2) the site contributes to a water quality violation (including water quality violations caused by sediment discharges entering a surface water). See Ohio EPA Fact Sheet – Storm Water Permitting for Oil- and Gas-related Operations (July 2017). The Association is concerned that the proposed general permit, which has been characterized as a “non-NPDES” permit, would apply even in situations where the federal permitting exemption applies (i.e., where there was not a discharge in a reportable quantity or a discharge resulting in a water quality violation). Ohio EPA cannot revise the applicability of the federal CWA exemption in Ohio without the proper statutory authority.

It should be noted that Ohio’s neighbors, West Virginia and Pennsylvania and their environmental agencies, have been granted specifically enumerated authority to adopt a program similar to that provided in the proposed general permit. Notably, Pennsylvania’s regulations implementing its Clean Streams Law specifically authorize general permits for activities that are exempt from NPDES permitting. See 25 Pa. Code 102.5(m)(1). The West Virginia general permit is issued in accordance with a statute granting authority under a statutory scheme different from R.C. 6111. Good public policy dictates that Ohio EPA seek express authority for the proposed general permit before adopting it. Should Ohio EPA decide to finalize the general permit, despite the apparent lack of authority, the Association requests that Ohio EPA clarify which oil and gas activities remain covered under the federal exemption. (*Ohio Oil & Gas Association*)

**Response 1:**

While it is true that there is a qualified federal exemption under the NPDES permitting program that conditionally exempts NPDES permitting of storm water from oil and gas operations and Ohio’s rule’s include that same qualified exemption from obtaining an NPDES permit, the Clean Water Act specifically reserves the rights of states to require more stringent standards to prevent, reduce and eliminate pollution than those established by federal law. Based on our experience and observation of this industry over the last several years, we have determined that, if not appropriately managed, storm water from these activities have the potential to discharge large amounts of sediment to Ohio’s streams and wetlands. Further, addressing those issues under the NPDES permitting program, after the harm has occurred and the project is significantly under way was not conducive to ensuring protection of Ohio’s waters.

There are no specific exemptions in 6111.04 that exempt these

discharges from the prohibition of discharging pollution to waters of the state. Further, Ohio law specifically empowers the director to issue permits authorizing the discharge of pollutants to waters of the state. This authority, combined with Ohio EPA's experience in the field with these operations, has lead us to conclude that it is legally appropriate to issue this permit that will regulate the discharge of pollutants from the more significant operations.

**Comment 2:**

**Legal Authority.** To the extent that the Ohio EPA has the authority to issue the general permit, which is questioned, the scope of coverage is objected too. Specifically, the applicability of the general permit to the construction of gathering lines, as well as the construction of production lines including, but not limited to, flow lines, transfer lines and condensate lines. Pursuant to Ohio Revised Code Chapter 1509, the construction of such pipelines should remain under the sole and exclusive jurisdiction of the Ohio Department of Natural Resources. (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)

**Legal Authority.** As an initial matter, Ohio Revised Code (R.C.) 1509.02 provides that the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management “has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations (see definition of Production Operations at R.C. 1509.1(AA)) within the state, excepting only those activities regulated under federal laws for which oversight has been delegated to the environmental protection agency and activities regulated under sections 6111.02 and 6111.028 of the Revised Code.”

The revised proposed general permit specifies that the general permit only covers construction activity associated with large regional-scale oil and gas linear transmission and gathering pipelines. Ohio EPA does not have this authority. To ensure that construction activities related to the installation of pipelines associated with oil or natural gas production operations are not subject to regulation under the proposed general permit, it is requested that the Ohio EPA insert language in the eligibility section of the general permit (Part I, paragraph B.1) that expressly excludes construction activities related to the installation of production pipelines from coverage under the general permit. It is also suggested that the general permit reference 49 CFR 192.8 as the applicable standard for determining the point at which production operations (and ODNR's sole and exclusive authority) end and a gathering pipeline begins.

The Association objects to any effort to regulate storm water

**discharges from construction of production pipelines including, but not limited to, flow lines, transfer lines, and condensate lines, which the ODNR has sole and exclusive authority to regulate. (Ohio Oil & Gas Association)**

- Response 2:** Ohio Department of Natural Resources does not regulate sediment and erosion control of pipeline infrastructure under ORC Chapter 1509 and thus there is no preclusion under that chapter for the regulation of storm water discharges to waters of the state by this permit.
- Comment 3:** **Legal Authority. The Horizontal Directional Drilling (HDD) section of the permit is particularly troubling. See Part II of the permit. As a preliminary matter, this is new; Ohio EPA did not include this section in the draft permit it released on November 30, 2017. Moreover, the permit seeks to regulate HDD activity that has no relationship to storm water discharges or discharges to waters of the State. If there is no inadvertent return (IR) to groundwater or surface water, there is no “discharge” of a pollutant to waters of the State for Ohio EPA to regulate. What authority does Ohio EPA believe it has to regulate this type of HDD activity? (Enbridge, Inc., American Petroleum Institute of Ohio)**
- Response 3:** Based on Ohio EPA’s experience, significant inadvertent returns from HDD activities, will, in most instances, result in a discharge to waters of the state (whether it be surface water or ground water). These conditions are intended to ensure that plans are in place to appropriately manage these events when they occur and thereby minimize the harm that they cause to Ohio’s waters.
- Comment 4:** **We seek clarification from Ohio EPA regarding the protections that a permittee might enjoy. Does coverage under the permit give permittees “permit shield” protection, so that if a permittee is in compliance with the permit, neither Ohio EPA nor citizens can bring an enforcement action? (Enbridge, Inc., American Petroleum Institute of Ohio)**
- Response 4:** If a permittee complies with the terms and conditions in the permit, there would not be a basis for Ohio EPA to undertake enforcement action because there would be no violation of ORC Section 6111.07. There also would be no basis for an entity to file a verified complaint under ORC Section 3745.08. Last, the federal citizen suit provisions would not apply.
- Comment 5:** **The permit contains no language clarifying that compliance with the permit shall preempt any local requirements related to storm water discharges. It is requested that Ohio EPA add such clarifying language to the permit to prevent confusion if Ohio EPA issues this permit. (Enbridge, Inc., American**

*Petroleum Institute of Ohio)*

**Response 5:** Ohio EPA is unaware of any provision in ORC Chapter 6111 that would support including this requirement. Ohio EPA wants to clarify that the NPDES Small MS4 general permit nor any individual NPDES MS4 permit requires any action regarding MS4 compliance to the activities covered under this general permit.

**Comment 6:** **It is appreciated that Part II.A, Part III.A and Part III.G of the permit specify that each Storm Water Pollution Prevention Plan (“SWP3”) and HDD Contingency Plan shall be site specific documents identifying and addressing specific erosion, sedimentation and storm water management strategies required for the area. (Ohio Farm Bureau)**

**Response 6:** Thank you for your comment.

**Comment 7:** **Table of Contents, Section I of the Table of Contents (Penalties for falsification of monitoring systems) does not exist in the Part V permit condition and should be removed from Table of Contents. Additionally, Part V of the permit includes two sections (Duty to Reapply and Permit Actions) that need added to the Table of Contents. (The American Petroleum Institute Ohio)**

**Response 7:** Thank you for your comment. Ohio EPA agrees and these corrections have been made to the final permit.

## **Part I**

**Comment 8:** **Part I.B.1. It is still unclear what types of transmission and gathering lines are required by the permit. There are many types of pipelines that fit under the permit’s terms, and without further definition it will be unclear which lines need or do not need permit coverage. Farmers have experienced storm water issues with all types of pipelines, from those carrying typical petroleum and natural gas to those carrying derivative products such as pure ethane and butane. It is requested that projects requiring this permit also include:**

- Interstate and intrastate pipelines that transport crude oil, natural gas, natural gas liquids, refined market products and/or any materials coming to and from oil and gas production projects, fractionation plants, refineries and storage facilities;
- Well site production and product gathering lines under jurisdiction of ODNR-Division of Oil and Gas, PUCO, Ohio Power Siting Board (“OPSB”), Ohio Department of Commerce-Division of Industrial Compliance and/or local

- zoning authorities; and
- Utility infrastructure under PUCO and OPSB jurisdiction.

*(Ohio Farm Bureau)*

**Part I.B.1.** Ohio EPA should incorporate into the general permit a definition of “oil and gas linear transmission line and gathering line installation” that specifically identifies the types of projects that are subject to the general permit and the types of projects which the general permit does not apply. For instance, language should be incorporated here stating that the general permit does not apply to post-installation oil and gas linear transmission line or gathering line maintenance or repair activities, or for tree clearing activity where stumps are left in place. *(Marathon Petroleum Company LP and Marathon Pipe Line LLC)*

**Part I.B.1.** It was suggested that the general permit include the 49 Code of Federal Regulation (CFR) Part 192 definitions of Transmission and Gathering to clarify the types of projects that are covered. *(Dominion Energy)*

**Response 8:** The definitions of transmission and gathering lines found within 49 CFR Part 192 have been added to Part VII of the final permit.

**Comment 9:** **Part I.B.1.** This section of permit does not specify whether activities associated with maintenance or repair (or other activities within existing rights-of-way) of a transmission or gathering pipeline system are covered under this permit. We request a statement regarding eligibility for maintenance and repair activities. *(Dominion Energy)*

**Part I.B.1.** The general permit should not be required for maintenance and replacement activities on a completed linear transmission pipeline subject to the general permit. *(Ohio Oil & Gas Association)*

**Response 9:** Language has been added to clarify that the permit is applicable to maintenance activities on existing gathering and transmission lines that disturb the acreage threshold.

**Comment 10:** **Part I.B.1.** This section of the permit establishes a threshold trigger of five acres of land being disturbed before coverage under the general permit is required. This requirement should be tied to a discharge of storm water from a pipeline construction site disturbing a certain number of acres. Just because land is disturbed does not mean there will be a discharge to waters of the State. In addition, the entire width of a pipeline Right-of-Way (ROW) is usually not disturbed as there are typically buffers from the actual limits of

disturbance. The five-acre trigger is too low of a trigger for the general permit as it will capture small gathering lines linear pipeline projects that have little or no potential to impact waters of the State. It is suggested that 12 acres of actual disturbed land that will have a storm water discharge to waters of the State is a better threshold trigger for applicability of this general permit (this is based on a 10,454 ft. length and 50 ft. ROW width disturbance). An alternative is to establish a linear distance, for example two (2) miles or greater.

Importantly, if the five-acre trigger is retained, the proposed general permit should clarify whether existing construction projects are covered under the general if less than five acres of the project is disturbed and has not achieved final stabilization at the time that the permit becomes effective, even if the overall project is greater than five acres. Additionally, the proposed general permit should specify that “existing projects” that are completed do not require submittal of an NOI. (*Ohio Oil & Gas Association*)

**Part I.B.1.** The permit requires coverage for construction activities disturbing five or more acres of total land, or that will disturb less than five acres of land but are part of a larger common plan of development or sale that will ultimately disturb five or more acres of land. What is Ohio EPA’s rationale for this five-acre requirement? Furthermore, “common plan of development” should be restricted in time and location. It is suggested that the permit be revised to clarify that aggregation under the “common plan of development” only occur if more than one acre is disturbed adjacent to previously disturbed acreage within one year of the previous disturbance. (*Enbridge, Inc., The American Petroleum Institute Ohio*)

**Response 10:**

The five acre threshold was selected to require coverage for the larger pipeline projects that Ohio EPA intends for the permit to apply. This threshold has not changed in the final permit. Additionally, the language requiring existing projects that started construction prior to the effective date of the permit to apply for coverage remains. However, clarifying language was added that such existing projects would only be required to obtain coverage if five or more acres of disturbance exists or will occur beyond 90 days after the effective date of the permit.

**Comment 11:**

**Part I.B.1.** Tree clearing activities which do not result in earth disturbance - i.e., the mere felling of trees and leaving the stumps and fallen trees in place – should not be considered a construction activity covered under the general permit. It is requested that the second paragraph in Part I.B.1 be revised

**to clarify that tree clearing activities alone do not trigger the need to obtain the general permit. (Ohio Oil & Gas Association)**

**Part I.B.1. Regarding what constitutes “construction” in order to prevent confusion the permit should clarify that tree clearing by hand does not constitute “construction,” thereby triggering the requirement to obtain permit coverage. (Enbridge, Inc., The American Petroleum Institute Ohio)**

**Response 11:** Part VII.C of the permit contains the definition of “commencement of construction activity” which means the initial disturbance of soils associated with clearing, grubbing, grading, placement of fill, or excavating activities or other construction activities. Simply cutting trees by hand and not dragging the logs out would not constitute commencement of construction activity. However, if any heavy equipment is used and dragging of logs occurs, then this would result in significant land disturbance which would constitute commencement of construction activity. No change to the definition is warranted.

**Comment 12:** **Part I.B.1. Are temporary parking, staging, and storage areas where grass and vegetation are left in place excluded from the 5 acres threshold? (Langan Engineering and Environmental Services, Inc.)**

**Response 12:** These areas should be included within the SWP3 as disturbance of soils will likely occur.

**Comment 13:** **Part I.B.1. Where is the cutoff for the 5 acres threshold where gathering lines reach well pads or valve yards? (Langan Engineering and Environmental Services, Inc.)**

**Response 13:** Well pads are generally regulated by ODNR and not considered in the calculation. Valve yards would be considered in the calculation.

**Comment 14:** **Part I.B.1. Are access roads that are shared with a well pad excluded from the 5 acres threshold? (Langan Engineering and Environmental Services, Inc.)**

**Response 14:** Any access road associated with the regulated pipeline project would be included under the permit.

**Comment 15:** **Part I.B.1. Are compressor station pads and access roads excluded from permitting? (Langan Engineering and Environmental Services, Inc.)**

- Response 15:** Access roads, compressor station pads and valve yards associated with the regulated pipeline project are subject to the permit.
- Comment 16:** **Part I.B.1. Are water lines that do not follow gas line right-of-way excluded from the 5 acres threshold?** (Langan Engineering and Environmental Services, Inc.)
- Response 16:** No.
- Comment 17:** **Part I.B.4. The words “and in no case, during any 24-hour period, may the discharge(s) contain a hazardous substance equal to or in excess of reportable quantities” should be deleted at the end of the first paragraph in this section.** (Marathon Petroleum Company LP and Marathon Pipe Line LLC)
- Response 17:** This comment was evaluated but no changes were made to the final permit.
- Comment 18:** **Part I.B.1. Suggest the following grammatical correction: “Construction activities disturbing five or more acres of land, or will disturbing less than five acres of land but which are part of a larger common plan....”** (The American Petroleum Institute Ohio)
- Response 18:** This comment was evaluated but no changes were made to the final permit.
- Comment 19:** **Part I.B.2. In the introductory sentence of this subsection, the wording “associated with construction activity” should be removed because the first discharge description in subsection B.2.a is not associated with construction activity. The sentence should be revised as follows: “The following storm water discharges ~~associated with construction activity~~ are not covered by this permit:”** (The American Petroleum Institute Ohio)
- Response 19:** The suggested change was made to the final permit.
- Comment 20:** **Part I.B.2.d. This sentence should be revised for clarity as follows: “Storm Water discharges that originate from the site and which result ~~has resulted~~ in the discharge of a....”** (The American Petroleum Institute Ohio)
- Response 20:** The suggested change was made to the final permit.
- Comment 21:** **Part I.C.2. There is a period “.” missing between the second and third sentences of this paragraph, between the words “director” and “If.”** (The American Petroleum Institute Ohio)

- Response 21:** The suggested change was made to the final permit.
- Comment 22:** **Part I.D.1. The permit does not specify a timeframe for Ohio EPA’s response to an NOI submission. There will be significant financial, logistical, and labor-related impacts to the industry if it is forced to put projects on hold indefinitely while waiting for Ohio EPA’s response. It is suggested to add language to this permit part providing for automatic authorization if Ohio EPA does not respond to an NOI within 21 days. (Ohio Oil & Gas Association)**
- Response 22:** Part I.E.1 of the general permit requires that the Notice of Intent (NOI) form and application fee be submitted at least 21 days prior to the commencement of construction activity. This timeframe ensures that adequate time is provided for any applicants that choose to pay their application fee via check. Complete applications submitted less than 21 days prior to construction will still be processed and issued. Currently, Ohio EPA averages two-three days to issue a complete NOI when the NOI is submitted electronically and payment is made electronically. No changes to the general permit were made as a result of this comment.
- Comment 23:** **Part I.D.2. This section of the permit states that the issuance of the general permit is subject to resolution of an antidegradation review. What does this review entail and what happens if the proposed project does not pass the antidegradation review? Can the NOI be amended? It is requested that the general permit include details regarding the antidegradation review. (Ohio Oil & Gas Association)**
- Response 23:** **After** further review by Ohio EPA’s legal staff, the Agency has determined this permit is not subject to antidegradation, pursuant to OAC 3745-1-05 and as a result, the reference to antidegradation has been removed.
- Comment 24:** **Part I.D.2. The last sentence in this paragraph is generally unnecessary, but if retained, should be modified to avoid confusion over a reference to the ODNR Division of Water with regard to “wells,” which appears to be referring to water wells, which would be totally unrelated to oil and gas transmission or gathering lines. This sentence would be more appropriately worded as follows: “This permit does not relieve the permittee of other responsibilities associated with construction activities such as contacting the Ohio Department of Natural Resources, for any construction activities that fall under their jurisdiction Division of Water, to ~~ensure proper well installation and abandonment of wells.~~” (The American Petroleum Institute Ohio)**
- Response 24:** The suggested change was made to the final permit.

**Comment 25:** **Part I.E.1.a.** The second sentence of this paragraph should be revised as shown to remove duplicative wording: “Existing projects which have started construction prior construction activity prior to the effective date of this permit shall apply for coverage within 90 days after this permit becomes effective.”  
(*The American Petroleum Institute Ohio*)

**Response 25:** The suggested change was made to the final permit.

**Comment 26:** **Part I.E.1.a.** It was recommended that projects started prior to and or within 90 days of the effective date of the proposed permit be exempt from coverage to avoid potential in-service schedule disruptions. (*Dominion Energy*)

**Part I.E.1.a.** Ohio EPA should clarify whether existing construction projects require permit registration if less than 5 acres of the project is disturbed and has not achieved final stabilization at the time that the permit becomes effective, even if the overall project is greater than 5 acres.

Additionally, it should be clarified that “existing projects” that are completed do not require application or stipulate a prior commencement of construction start time period relative to the effective date, since defining this requirement simply by “started construction prior” does not necessarily exclude projects that started many years in the past. This could be rephrased to state that registration is required for ongoing construction activities if disturbance to 5 or more acres has not achieved final stabilization within 90 days after this permit becomes effective. Existing construction projects that have achieved final stabilization are not required to apply for coverage. (*Civil and Environmental Consultants*)

**Part I.E.1.a.** It is requested that Ohio EPA add a “grandfather” provision, such that any construction activity that begins before the effective date of the permit does not require permit coverage. Currently, the permit simply contains a 90-day window of time to complete construction and avoid the permit coverage requirement. (*Enbridge, Inc., The American Petroleum Institute Ohio*)

**Response 26:** See the Response 10.

**Comment 27:** **Part I.E.1.a.** Ohio EPA should clarify that submittal of separate Notice of Intent is acceptable for phased projects even if they are part of a larger pipeline system. Generally, pipelines longer than 0.5 mile with a typical right-of-way width of 100 feet would be required to register based on the 5 acres threshold. In many cases, especially for gathering pipeline, construction is broken into phases, each segment having discrete start and end points at existing or short-term

planned infrastructure. Although these segments connecting well pads or midstream supporting facilities are rarely less than 0.5 miles long (meaning they would require registration), there should be flexibility defined in the permit requirements allowing registration of permits that match construction plans regardless of the “larger plan of development” that might be poorly defined during initial phases. If separate permits for phases is not allowed, then Ohio EPA should clarify that detailed plans for future phases can be submitted as modifications to the permit for the initial phase. Similarly, if a pipeline ROW is used to lay parallel pipe segments for different functions or during separate phase, then the permanent stabilization criteria of one year or more between periods of disturbance should apply to whether separate permits or permit modifications are issued. *(Civil and Environmental Consultants)*

**Part I.E.1.a.** The general permit should allow for the submittal of separate NOIs for phased projects, even if they are part of a larger pipeline system that might otherwise qualify as a larger common plan of development in the future to extend a pipeline. Pipeline planning is different than land development for commercial purposes, like planning to build a shopping mall. Planning pipeline routings and connections with other pipelines to get oil and gas to market can change frequently and have indefinite timelines. Sometimes, pipeline development may require years of advanced planning before construction begins. If the proposed general permit does not cover phased projects, then Ohio EPA should clarify that detailed plans for future phases can be submitted as modifications to the permit for the initial phase. *(Ohio Oil & Gas Association)*

**Response 27:**

If the project as a whole will result in a land disturbance greater than five acres, coverage under this permit is expected. However, if the project is phased and a SWP3 is developed independently, then yes, separate NOI's can be submitted as the permit will only authorize activities where the SWP3 is fully developed. Future phases may not have a completed SWP3 concurrent with the submittal of the first phase. As such, additional phases can be authorized via multiple NOI submittals. Language was added to Part I.E.1.a to clarify that multiple NOIs can be submitted.

**Comment 28:**

**Part I.E.1.a.** This section provides that “coverage under this permit is not effective until an approval letter granting coverage from the director of Ohio EPA is received by the applicant.” However, at Ohio EPA’s public hearing on May 30, 2018, Mr. Harry Kallipolitis indicated that Ohio EPA does not review and approve Notices of Intent (NOI), Storm Water Pollution Prevention Plans (SWP3) or HDD Plans submitted

**pursuant to the terms and conditions of the permit. It is requested that Ohio EPA confirm the requisite permitting procedures expected of regulated entities in order to be granted permit coverage and suggests that the permit indicate that the NOI is automatically deemed approved by the director of Ohio EPA within ten (10) calendar days of its submittal if the director does not provide written notice to the permittee that the NOI has been denied, along with the basis for the denial. (Enbridge, Inc., The American Petroleum Institute Ohio)**

**Response 28:** The NOI application will not require the submittal of the SWP3 nor HDD Plan. As long as the NOI application is complete and the application fee is paid, Ohio EPA will issue the coverage. Electronic NOIs with payment made electronically average two-three days to be issued. No changes to the final permit were made based on this comment.

**Comment 29:** **Part I.E.4. This section requires that even though the SWP3 and HDD Plan are not required to be submitted with the NOI, such documents constitute public records and must be made available to the public and/or Ohio EPA, upon request. This is an unlawful expansion of Ohio's public records law, which defines a "public record" as any record "kept" by a public office. See Ohio Rev. Code Section 143.43(A)(1). It is suggested that SWP3 and HDD plans not be provided to the public as a "public record." (Enbridge, Inc., The American Petroleum Institute Ohio)**

**Response 29:** Part I.E.4 and Part III.C.2.c have been revised to address this comment. For more detail, see Response 77.

## **Part II**

**Comment 30:** **Part II. The general permit is not the appropriate mechanism for addressing inadvertent return; this general permit addresses storm water. There are regulatory programs that exist for the purposes of addressing inadvertent return, but such regulation would need to occur under the CWA 401/404 permitting scheme. We contend that regulating horizontal directional drilling (HDD) under the general permit is not appropriate given that the HDD section of the general permit addresses inadvertent returns of drilling fluids. (Ohio Oil & Gas Association)**

**Response 30:** There can be occasions where HDD would result in no placement of fill in waters of the state. As a result, no 404/401 water quality certification is required. The inclusion of the HDD in the General Permit would capture all construction activities where HDD is proposed.

**Comment 31:** **Part II.** The HDD Contingency Plan appears to be designed for large diameter (>24" pipe). We suggest either exempting small HDD operations (<24" pipe) from the HDD Contingency Plan requirement or developing a less extensive HDD plan that is more feasible for small diameter projects. Criteria for HDD categorization may also be based on length of bore for instance, Large HDD (>900 foot bore) vs. Small HDD (<900 foot bore). (*Dominion Energy*)

**Part II.** Some of the HDD contingency plan requirements detailed in Part II Sections D through J may be overly specific for every HDD drilling scenario. It may be more appropriate to reference these details as a manual or recommended practice guide that can be readily revised by Ohio EPA and available online, rather than written into the standard permit language. (*Civil and Environmental Consultants*)

**Part II.** The HDD contingency plan provisions are not related to true contingency planning, but require upfront analysis and data collection that go far beyond what to do if the contingency arises. The permit essentially prescribes the means and processes by which a contractor would perform the boring activities, which impacts the operational flexibility and professional discretion required to perform technical activities at a particular site. To the extent Ohio EPA requires the development of a HDD Contingency Plan, it should only dictate that a plan be in place; not attempt to insert itself into the technical work process necessary to perform the activities. (*Ohio Oil & Gas Association*)

**Response 31:** Ohio EPA contends the potential threats associated with smaller diameter pipe and the corresponding length remains the same. In addition, many of the smaller installations would be exempt from permitting and HDD requirements as the five acre threshold would apply.

The agency contends the specifics of the HDD requirements are necessary to set a benchmark on expectations. In addition, the inclusion of the HDD plan in the General Permit would standardize expectations on what is acceptable in the protection of water quality standards.

Upfront analysis and data collections are essential to true contingency planning. Site specific information has a direct impact in the planning process for an appropriate contingency plan. Information such as formations, types of resources avoided, equipment staging, etc., is essential in the development of a true contingency plan.

- Comment 32:** **Part II. If a project does not meet the 5 acres threshold, but has an HDD, does it need to be permitted? If it does not need to be permitted, but there is an inadvertent return, are there changes in reporting requirements or permitting?** (Langan Engineering and Environmental Services, Inc.)
- Response 32:** No, only projects greater than five acres must seek a permit and develop a contingency plan in accordance with the permit. The Agency does recommend appropriate contingency plan is developed for all cases. At a minimum, any IRs which result in a discharge to waters of the state should be reported to Ohio EPA's Spill Hotline at 1-800-282-9378.
- Comment 33:** **Part II. If a project meets the 5 acres criteria and contains an HDD, but the HDD is under a road or railroad, not an aquatic feature, does HDD contingency planning need to be incorporated into the SWP3?** (Langan Engineering and Environmental Services, Inc.)
- Response 33:** Yes.
- Comment 34:** **Part II. Are slick bores exempt from the requirements for HDD contingency planning?** (Langan Engineering and Environmental Services, Inc.)
- Response 34:** Yes. Language was added to Part II.A to clarify that HDD activities do not include slick bores.
- Comment 35:** **Part II.B, First Paragraph. Depending on why or where the HDD is being performed (convenience versus avoidance; upland areas versus stream and/or wetland areas; etc.), some of the requirements of the HDD Plan should not apply (i.e., continual annular pressure monitoring).** (Marathon Petroleum Company LP and Marathon Pipe Line LLC)
- Response 35:** Ohio EPA has revised the language to include deviations of the HDD plan based on a case-by-case review.
- Comment 36:** **Part II.B, Second Paragraph. The second sentence reads: "All drilling fluids must be limited to a non-toxic clay and water" should be expanded to also recognize that certain drilling fluid additives may also be included. One way to do this would be to combine the second and fourth sentences of this paragraph, as follows: "This section must detail the content and intended use of the associated drilling fluids. All drilling fluids must be limited to a non-toxic clay, and water and any drilling fluid additives used in accordance with the drilling fluid additive/LCM section of this Part II. The Plan must include how and where the makeup water is obtained. Any drilling fluid additives must be used in accordance with the**

~~drilling fluid additive/LCM section of this appendix.”~~ (*The American Petroleum Institute Ohio*)

**Response 36:** This suggested change has been made to the final permit.

**Comment 37:** **Part II.B, Third Paragraph.** The definition of an Inadvertent Return (“IR”) should not include situations where there has simply been a higher annual pressure reading for a certain period of time. An IR should be considered to have occurred when drilling fluid reaches the surface. For instance, fluid losses to the formation should not be considered an IR as the fluids are not “returning,” and there are cases when fluid loss to the formation could be acceptable for continuation of drilling operations. Grouping IRs and subsurface losses to the formation together in the same definition which requires the same remedial measures could result in incorrect actions being taken in some cases. (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)

**Part II.B, Third Paragraph.** The definition of “inadvertent return” is insufficient as it would improperly regulate fluids that regularly (and allowably) return to the surface. The definition should be specific to fluids that actually flow to the surface from unexpected locations in the process. (*Ohio Oil & Gas Association*)

**Part II.B, Third Paragraph.** Regarding the requirement to define IR in the HDD Plan, how does Ohio EPA intend for permittees to calculate loss of fluids and/or annular pressure which exceed 50% over a 24-hour period or a 25% loss or greater of fluids and/or annular pressure sustained over a 48-hour period? Clarification of Ohio EPA’s expectations is needed. Further, the IR definition must include a daily maximum not to exceed 50,000 gallons of drilling fluid loss. Please explain Ohio EPA’s basis for this 50,000-gallon number. It is suggested that the definition of IR be limited to “all unintended fluid returns which reach the surface.” (*Enbridge, Inc., The American Petroleum Institute Ohio*)

**Part II.B, Third Paragraph.** The IR definition must include losses of fluids to underground formations. Daily calculation of fluids not being returned is not a calculation that is typically performed in the HDD industry, because an IR and a loss of fluid to a formation are entirely different factual scenarios. By design, fluid is left (i.e., lost) in the formation in order to maintain the integrity of the hole. This is intended and completely inapposite from an IR. It is suggested to please delete this requirement as it relates to the definition of IR. (*Enbridge, Inc., The American Petroleum Institute Ohio*)

- Response 37:** Pursuant to ORC 6111.01 ground water is included in the definition of waters of the state. This is the very reason the definition of IR was expanded beyond drilling fluids reaching the surface. The Agency has experience with the continual loss of drilling fluids down hole with no evidence of the material surfacing. The Agency contends these types of losses are unacceptable and propose a threat to ground water quality. The Agency worked closely with industry and our Division of Drinking and Ground Waters to set thresholds which were acceptable yet protective. As a result there are no proposed changes to the definition of an IR.
- Comment 38:** **Part II.B, Third Paragraph.** The first part of the second sentence, which refers to “hydraulic fracturing” (a term not generally associated with shall HDD activities) and “formational fluid loss” is somewhat confusing and not necessary. We suggest that this sentence be revised, but removing that introductory, unnecessary wording, as follows: ~~“Understanding, fluid loss may result from formational fluid loss or hydraulic fracturing, t~~The IR definition must include...” (The American Petroleum Institute Ohio)
- Response 38:** The terms were taken directly from the Agency’s discussion with industry with the understanding that they were large contributors to fluid losses, as a result there is no proposed change to the language.
- Comment 39:** **Part II.B, Fourth Paragraph.** Continual annual pressure monitoring should not be required for all HDD operations. For instance, continual annual pressure monitoring should only be required for specific operations (such as pilot hole drilling, reaming, etc.) conducted in conjunction with longer bores and situations where large drilling rigs are utilized. Marathon does not believe that such monitoring can be implemented when small drilling rigs are utilized for HDD operations. Also, continual annual pressure monitoring should not be required in HDD operations conducted in upland areas. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)
- Response 39:** Continual pressure monitoring is the lead indicator of fluid loss. No changes were made to the final permit.
- Comment 40:** **Part II.B, Fifth Paragraph.** A HDD Plan should not be required to contain a speculative narrative of conditions which could lead to a loss of drilling fluid pressure, loss of fluids and/or loss of circulation. Quite often, IRs occur as a result of unknown underground conditions that could not be identified despite extensive due diligence efforts and pre-drill geological investigations. Similarly, corrective actions are typically dictated by site-specific conditions. Therefore, while a HDD Plan can include a generic list of corrective actions

that may be appropriate in certain circumstances, it should not be required to identify specific corrective actions for any particular HDD site in advance. Appropriate corrective actions can only be determined after identifying the specific cause of an IR. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)

**Part II.B, Fifth Paragraph.** When discussing corrective action triggers, this paragraph states “corrective action triggers (i.e., “swap the bore hole,” “trip.” “LCMs.” etc.) must be clearly defined in this section.” Emphasis added. “Swab,” not “swap,” is the proper word to use in this instance. The permit requires “corrective action must be initiated and completed until such time appropriate circulation/pressures are restored and until such time the IR as defined in this section is eliminated.” Emphasis added. What will Ohio EPA consider to be the appropriate circulation/pressure, if not what is defined in this section as an IR? It is unclear how Ohio EPA views these two items as being distinct from one another. (Enbridge, Inc., The American Petroleum Institute Ohio)

**Response 40:** The Agency contends the corrective measure options in the permit are sufficient to address the majority of IR events. If there is an alternate method not addressed in the permit, the contractor/permittee is welcome to contact Ohio EPA for a site specific remedy, pursuant to Part II.H of the permit.

Swab vs Swap was a typo and will be corrected.  
The Agency contends the options for corrective measures is too variable in scope and understands alternate options other than specific permit language mandates may be too restrictive.

**Comment 41:** **Part II.C.1.** The words “to evaluate conditions favorable to an IR” should be deleted from the first sentence of this paragraph. Oftentimes, an IR may occur despite the fact that the potential for an IR was not identified as a result of geologic/hydrogeologic investigations. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)

**Response 41:** While an an IR may occur in conditions outside those indentified as favorable, the intent of this section is to attempt to evaluate conditions favorable to IRs to minimize the risk.

**Comment 42:** **Part II.C.1.** Suggest making the following edits: (1) add “a” between “include” and “site” in third sentence. (2) change “and” to “an” in last sentence. (The American Petroleum Institute Ohio)

**Response 42:** The language was revised in the final permit.

**Comment 43:** **Part II.C.1. Bore hole evaluation is ambiguous. Is there an expiration date on bores? For example, can an operator evaluate a bore hole on file from construction activities in the 1980s? What sorts of tests are required for the bore hole to be officially “evaluated” (e.g., RDQ, unconfined compressive strength, etc.)? Are alternate methods such as CPT authorized? (Langan Engineering and Environmental Services, Inc.)**

**Response 43:** The type of bore hole is at the discretion of the permittee or applicant provided it satisfies the intent to evaluate conditions favorable to an IR occurrence.

**Comment 44:** **Part II.C.1. If the HDD plan calls for the path to remain in soil for the entirety of the drill, is a bore hole evaluation required since it will not be in any formations? Would a test pit be considered sufficient? (Langan Engineering and Environmental Services, Inc.)**

**Response 44:** Yes, a test pit would be sufficient.

**Comment 45:** **Part II.C.2. This paragraph should be deleted in its entirety. It would be impossible to speculate as to site-specific factors – that may indicate that conditions are favorable for an IR – that are not already identified as a result of a geologic/hydrogeologic investigations conducted pursuant to the preceding paragraph. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)**

**Response 45:** This paragraph serves to emphasize considerations of all conditions which are favorable to an IR that could go beyond geology. No changes were made to the final permit based on this comment.

**Comment 46:** **Part II.C.3. An HDD Plan can discuss SOPs in general, but it would be virtually impossible to include a detailed discussion regarding the potential to encounter abnormal conditions and/or the SOPs that would be followed in such circumstances. Corrective actions must be determined on a site-specific basis after an identification of the specific cause of an IR. Drillers must be afforded flexibility to determine SOPs and corrective actions based on site-specific conditions and the exact cause of an IR. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)**

**Response 46:** There are many variabilities which could affect an appropriate course of action. However, communication protocols and options for considerations can be inclusive in this section, as such, there are no changes to this section.

**Comment 47:** **Part II.C.4. Use of relief wells to vent HDD fluid injections is not a standard practice and typically only effective at precise, isolated locations where drilling of additional wells along the HDD alignment is possible. Although it seems reasonable that use of relief wells “should be evaluated,” the requirement that they “must be inclusive” is not clear and should not oblige mandatory use of this technique if other more effective measures (e.g. conductor casing) are preferred. (Civil and Environmental Consultants)**

**Part II.C.4. Marathon does not believe that a HDD Plan should require the evaluation of the use of a relief well in connection with HDD operations. The goal of an HDD is to create a clean path for pipe to be successfully installed. A relief well may not allow for soils to be flushed out of the entire HDD path, which could hinder the installation of pipe in the borehole or cause damage to pipe coatings during pullback. For this reason, the Army Corps of Engineers often does not prefer the implementation of relief wells in connection with HDD operations. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)**

**Response 47:** The Agency is proposing the evaluation of relief wells in environmentally sensitive areas, therefore, relief wells should be considered as an option where conditions are favorable for an IR.

**Comment 48:** **Part II.C.6. The general permit should not require that primary and secondary containment equipment be staged at each HDD location. Instead, the general permit should allow the staging of containment equipment at a laydown yard in reasonable proximity to the HDD location. Additionally, the fourth sentence of this paragraph should read: “Secondary controls are required as a redundancy and the containment volume must support 110% of the primary volume as practicable.” Such wording would be consistent with Part II.F of the general permit. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)**

**Part II.C.6. The requirement for secondary containment controls to contain 110% of volume, it is unclear what volume Ohio EPA is referring to here. The total volume of drilling fluid estimated to be used on the HDD would not be appropriate, as a permittee would never lose that much to the surface if it was following protocol and halting drilling in the event of an IR to the surface. Please clarify. It is requested that Part II.C.6 be eliminated from the permit. (Enbridge, Inc., The American Petroleum Institute Ohio)**

**Response 48:** The language of this section was revised to include staging considerations of reasonable proximity. In addition, the language

in the final permit includes 110 percent of the “primary containment volume”.

**Comment 49:** **Part II.C.7. The requirement to have response equipment solely developed to HDD activity and onsite is unnecessary and will cause difficulties for permittees. Some HDD sites have very limited space due to site-specific constraints. For example, would Ohio EPA require a permittee performing forest clearing in a category 3 wetland area to create space to store all of these materials at the HDD site? It would be more practical to require this equipment and/or material to be readily available in close proximity to the site in order to allow for a quick response action. It is requested that Part II.C.7 be eliminated from the permit. (Enbridge, Inc., The American Petroleum Institute Ohio)**

**Response 49:** The purpose of this requirement is to include planning considerations for redundancies in the event of multiple IRs or primary recovery equipment failure. This could include a written protocol detailing where to obtain additional equipment in a timely manner.

**Comment 50:** **Part II.C.8. Negotiating land access permission for a hypothetical emergency clean-up scenario is problematic and unrealistic. This should be revised to state that written notification must be made to land owners adjacent to the HDD drilling operation. The notification should include a cautionary statement that if a release of subsurface drilling fluids occurs outside the right-of-way, then emergency access to contain and remedy the release may be necessary and immediate notifications will be made to affected landowners to coordinate corrective actions. (Civil and Environmental Consultants)**

**Part II.C.8. The requirement for permittees to maintain a list of adjacent property owners and an attempt to acquire access rights prior to drilling in case of an IR outside of the ROW will be extremely time-intensive and costly to fulfill, and will create numerous additional hurdles for permittees when attempting to coordinate with landowners. It is requested that Part II.C.8 be eliminated from the permit. (Enbridge, Inc.)**

**Response 50:** The language was revised to read “The permittee must include and maintain a list of adjacent property owners in order to obtain access in the event of an IR outside the right of way”.

**Comment 51:** **Part II.D. The monitoring procedures required by this section of the permit are additionally onerous, unnecessary, and unjustified. We object to the permit requirement that documentation logs be filled out after every shift, and that**

such logs must include (i) the amount of drilling fluids lost and return flows per hour and (ii) visual inspections every 4 hours (and 2 hours for wetlands and streams). Drilling fluids are not usually “lost” but rather incorporated into the foundation of the pipeline placement. As a result, drillers do not typically calculate the amount of drilling fluid “lost” or displaced during a drill. At the very least, it is recommended striking the requirement for “Evaluation of drilling pressures (documenting losses per hour) and replacing with “Evaluation of drilling fluid pressures”, and specify that quantification of drilling fluid loss and return flows per hour be provided in total daily at the end of the shift. (*Enbridge, Inc., The American Petroleum Institute Ohio*)

**Response 51:** These requirements are necessary for the protection of Ohio’ Water Quality Standards. However, changes to the permit were made to address “evaluation of drilling fluid pressures”.

**Comment 52:** **Part II.D.** The sentence preceding the bullet points in this section, the word “including” should be corrected to read “include”. (*The American Petroleum Institute Ohio*)

**Response 52:** The revision was made.

**Comment 53:** **Part II.E, First Paragraph.** Marathon agrees that this requirement should be applicable to unintended IRs that reach the surface, but it is concerned with the potential applicability of this notification requirement to all IR. Simply stated, Marathon is concerned that IRs may occur and go unnoticed despite diligent monitoring and observation of the HDD operation. This provision should be revised so as to ensure that an operator is not held to be in violation of the general permit due to the failure to report an IR that went undetected despite the exercise of reasonable diligence. (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)

**Part II.E.** The notification and response procedures of the permit require notification to Ohio EPA within 30 minutes of an inadvertent return. This is untenable, and is significantly more onerous than many emergency response reporting programs. At the time of an inadvertent return, the field personnel observing the inadvertent return will be focused entirely on assessing and addressing the situation; operators and contractors should be given the flexibility to report only once field personnel have completed the necessary activities to mitigate the inadvertent return and ensure the safety of field personnel and the public. (*Ohio Oil & Gas Association*)

**Response 53:** The permit reads “upon discovery” which would not include unnoticed or undetected IRs despite diligent monitoring and

observation of the HDD operation.  
The language has been changed to 60 minutes.

**Comment 54:**

**Part II.E, Fourth Paragraph.** The property owner notification requirement should give consideration to the size of the release, general location, and/or property type of the affected area (agricultural area versus industrial area versus residential area). For example, if HDD operations are being conducted 24/7 and an IR occurs at 2:00 a.m. and results in the release of five gallons of drilling mud into an agricultural field, Marathon assumes that the Ohio EPA would not expect the permittee to wake the property owner up to provide notification in such a situation. *(Marathon Petroleum Company LP and Marathon Pipe Line LLC)*

**Part II.E.** This section states “Permittee shall contact the property owner, within 30 minutes of discovery, affected by the IR and shall coordinate with them on the corrective actions necessary to contain and remediate the release.” As it is not reasonable in many cases to contact the land owner within 30 minutes, we suggest that the land owner be contacted prior to the HDD activities so that an IR response plan may be discussed in advance of construction activities. In addition, an alternative to the land owner notification should be included in the permit if a land owner is unable to be reached through reasonable means. *(Dominion Energy)*

**Part II.E.** This should be restated the permittee shall “attempt to contact the property owner(s) affected by the IR within 30 minutes of discovery, and make repeated attempts if unsuccessful, to coordinate with them..” since it may not be possible even under emergency circumstances to reach certain property owners within 30 minutes. *(Civil and Environmental Consultants)*

**Part II.E.** We are concerned with the requirement that all IRs be reported to the property owner affected by the IR within 30 minutes of discovery and to coordinate with the property owner on corrective action. Given the permit’s definition of IR, permittees would be required to report loss of circulation to landowners. Loss of circulation is entirely unrelated to storm water, and there would be no need (and no resultant benefit to the landowner) to follow this reporting procedure set forth in this permit section. Moreover, some property owners do not reside on their property but live out of state. Contacting absentee landowners could be problematic without any resulting benefit. It is suggested that this requirement be limited to residents of properties affected by an IR and that 24 hours be allowed for the notice. *(Enbridge, Inc., The American Petroleum Institute Ohio)*

**Response 54:** See Responses 50 and 53.

**Comment 55:** **Part II.F. Suggest revising the sixth, seventh and ninth paragraphs of this section as follows: (1) sixth - ....to allow collection, the ~~drilling fluids released into containment structures~~, the collected fluids must...(2) seventh – delete the words “shall” and “of.” (3) ninth – change “consulting” to “consult.”** (*The American Petroleum Institute Ohio*)

**Response 55:** These paragraphs have been revised in the final permit.

**Comment 56:** **Part II.F. This section states “all contingency plans must be approved by the Ohio EPA”. Based on comments made during the informational meeting on May 22, 2018, it is not the intent of the Ohio EPA to review and approve the HDD Contingency Plans. We request that the Ohio EPA include language indicating that the HDD contingency plan does not require agency review and approval prior to issuance of the permit.** (*Dominion Energy*)

**Part II.F. We object to the requirement that if IR occurs within a stream, the permittee must obtain approval from Ohio EPA of a contingency plan in order to continue. There is no timeline for Ohio EPA’s review and approval of the contingency plan and/or corrective action that is being implemented. Therefore, a minor IR that has been corrected and addressed can shut down the entire drill indefinitely, while the permittee pays stand-by costs to the driller. We suggest that language be included that Ohio EPA will review and respond to the contingency plan and/or proposed corrective action on an expedited basis.** (*Enbridge, Inc., The American Petroleum Institute Ohio*)

**Response 56:** The language was revised from “All contingency plans must be approved” to all “instream corrective measures must be approved”.

The Agency provides 365-day, 24-hour response to all spills and our approval is necessary to ensure protection of Ohio’s Water Quality Standards.

**Comment 57:** **Part II.F, First Paragraph. Marathon would suggest that the first sentence in the first paragraph of this section be worded as follows: “Upon discovery of a complete loss of circulation and sign of a drilling fluid pressure drop, ...” Simply stated, it is possible to have a small loss of circulation and the cause may be a slightly blocked borehole that requires additional pressure to be flushed.** (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)

- Response 57:** The language was revised to reflect a sustained loss of circulation or pressure defined by exceeding a duration of 30 minutes.
- Comment 58:** **Part II.F. We object to the requirement that a permittee undertake temporary suspension of drilling operations if a loss of drilling fluid pressure or loss of fluids and/or circulation occurs. Oftentimes, drilling fluids are not “lost” but incorporated into the formation to maintain the integrity of the hole. (Enbridge, Inc., The American Petroleum Institute Ohio)**
- Response 58:** The temporary suspension requirements are intended for the protection of Ohio’s Water Quality Standards. The requirement remains in the final permit.
- Comment 59:** **Part II.G.1, First Bullet. In most cases, it would not be feasible to install silt fence and other erosion control devices around the entry and exit “drill pads” at a HDD site. Specifically, it is common during HDD operations for pipe trucks, vac trucks, and other equipment to access HDD drilling areas throughout the normal course of a work day. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)**
- Response 59:** Part II G.1., first bullet was changed to read “Effective perimeter controls, including the installation of silt fence and/or other equivalent Erosion Control Devices”. This allows erosion control such as a mulch cover or erosion control matting to serve as the primary control to minimize off-site sedimentation and still allowing access.
- Comment 60:** **Part II.G.1, Second Bullet. States “Installation of silt fence and other ECDs at wetland or waterbody edges near the HDD location to further protect the resources”. As wetlands and waterbodies upslope of HDD operations are not likely to be disturbed, we suggest modifying the language to state “Silt fence and other ECDs be installed as needed near wetland or waterbody edges near the HDD location to further protect the resources”. (Dominion Energy)**
- Response 60:** This concept can be clearly addressed in the Storm Water Pollution Prevention Plan as part of the controls section.
- Comment 61:** **Part II.G.4. We are concerned with the requirement that all personnel be trained regarding the HDD Plan requirements, and that records of attendance be kept. It is suggested that training of the HDD Plan requirements (and documentation thereof) be limited to supervisory personnel of the HDD. (Enbridge, Inc.)**
- Response 61:** All personnel associated with HDD operations should be trained

regarding the contingency plan in order to have the knowledge to bring issues observed to their supervisor. This would effectively minimize the threat of an IR and ensure appropriate corrective measures are implemented in a timely manner.

**Comment 62:** **Part II.G.5. Marathon would request that the Ohio EPA clarify what the word “systematically” means in this context.**  
*(Marathon Petroleum Company LP and Marathon Pipe Line LLC)*

**Part II.G.5. We object to the permit requirement that when implementing best management practices, the permittee collect non-toxic clay and water slurry returns at the drill entry location “systematically” for analysis. What does Ohio EPA intend to require with the use of the word “systematically.? It is suggested that clay and water slurry returns at the drill entry location be analyzed “prior to disposal,” as opposed to “systematically.”** *(Enbridge, Inc., The American Petroleum Institute Ohio)*

**Response 62:** The language has been revised.

**Comment 63:** **Part II.G.6. To the extent that this paragraph is meant to address continual annular pressure monitoring, please see the previous comments set forth by Marathon. As stated previously, continual annular pressure monitoring may not be feasible or possible for smaller HDD operations conducted with small drilling equipment.** *(Marathon Petroleum Company LP and Marathon Pipe Line LLC)*

**Response 63:** See Response 35.

**Comment 64:** **Part II.H. In the third bullet item following the first paragraph on this section, the reference to “Section 2” should be corrected to read “Section B.”** *(The American Petroleum Institute Ohio)*

**Response 64:** This correction has been made to the final permit.

**Comment 65:** **Part II.H. In the first and second bullet items following the second paragraph of this Section, there appears to be an inconsistency with regard to the material that must be placed in the top 5 feet of the hole. The first bullet requires grout in the “upper 30 feet” of the hole, while the second bullet requires compacted soil in the “top 5 feet of the hole.” That apparent discrepancy with regard to the required fill material in the first 5 feet below surface should be clarified.** *(The American Petroleum Institute Ohio)*

**Response 65:** This clarification has been made to the final permit.

- Comment 66:** **Part II.H.** We are concerned with the term in this section requiring that an HDD attempt will be considered failed if “circulation losses present an imminent risk to human health and the environment.” How is “imminent risk” defined? Notably, circulation loss of non-toxic clay below the surface as defined by IR in the permit does not automatically pose imminent risk to human health or the environment. Further, if loss of circulation is defined by Ohio EPA to pose imminent risk to human health or the environment, can the assessed risk of circulation loss into a formation during an HDD be used as justification in the 401 Water Quality Certification permitting process alternatives analysis to propose open cuts? It is suggested that the following phrase and associated bullet items be deleted from the permit: “An HDD attempt will be considered failed if any of the following occur:” (*Enbridge, Inc., The American Petroleum Institute Ohio*)
- Response 66:** Language has been added to the final permit to address this comment.
- Comment 67:** **Part II.H, First Paragraph, First Bullet.** Depending on the location of the loss of circulation, a borehole would not have to be abandoned if a “wash over” casing is installed. (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)
- Response 67:** See Response 66.
- Comment 68:** **Part II.H, First Paragraph, Third Bullet.** Marathon requests clarification as to what is intended in this bullet point. (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)
- Response 68:** See Response 64.
- Comment 69:** **Part II.H.** We have concerns regarding the term in this section of the permit requiring that an HDD attempt will be considered failed if “circulation is insufficient to maintain the integrity of the borehole.” How will Ohio EPA evaluate the sufficiency of circulation? Notably, in some formations the loss of circulation is not directly associated with the ability to maintain the integrity of the borehole. For example, as evident with a recent HDD crossing of the Tuscarawas River on a well-known project, loss of circulation did not prevent the drill from maintaining the integrity of the borehole and completing the pull-back and installation of the pipeline. Quite simply, at times there is no correlation between the loss of circulation and ability to maintain the integrity of the borehole. (*Enbridge, Inc., The American Petroleum Institute Ohio*)
- Response 69:** See Response 66.

- Comment 70:** **Part II.I. We object to the requirement in this section of the permit that drilling fluid additives and LCM's be comprised and consistent with materials used in the drinking water distribution industry. Some additional additives and LCM's are completely safe for HDD drilling and should be available depending upon the circumstances. Moreover, this restriction is totally inconsistent with the disposal and testing requirements for drilling fluids as noted in Part II.J. (Enbridge, Inc., The American Petroleum Institute Ohio)**
- Response 70:** Given the multiple products available, this review is necessary for the protection of Ohio Water Quality Standards.
- Comment 71:** **Part II.J. For the first and second bullet items following the third paragraph, the references to "utility" should be changed to "gathering." (The American Petroleum Institute Ohio)**
- Response 71:** The language was revised.
- Comment 72:** **Part II.J. The permit requires that, prior to disposal, all drilling fluids be analyzed for VOCs and semi-VOCs. The permit further requires that if additives or LCMs are contained in the drilling fluids, all spent drilling fluids must be disposed of at an approved sanitary landfill. It is requested that Ohio EPA explain its reasoning for this requirement. Why would the use of non-toxic additives approved for drinking water drinking wells require disposal in a sanitary landfill? (Enbridge, Inc., The American Petroleum Institute Ohio)**
- Response 72:** The language was revised to only require disposal at an off-site sanitary landfill pursuant to the sampling methods in permit. Drilling fluids which pass the test and contain drilling fluids or additives consistent with drinking water standards may consider on-site disposal other than a sanitary landfill.
- Comment 73:** **Part II.J, Second Paragraph. Oftentimes, HDD operations incorporate the use of LCMs such as sawdust and/or crushed walnut shells. In situations where such LCMs are utilized, sanitary landfill disposal of spent drilling fluids should not be required. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)**
- Response 73:** See Response 72.
- Comment 74:** **Part II.J, Third Paragraph, First Two Bullets. In situations where drilling mud contains no additives or LCMs, the burial of spent drilling fluids and drill cuttings should not be required. For instance, many times landowners request that spent drilling fluids and/or drill cuttings be left in agricultural fields or request the ability to utilize such materials for fill or**

**other purposes on other portions of their properties. Such requests should not be a concern if the spent drilling fluids and/or drill cuttings contain no additives or problematic LCMs. (Marathon Petroleum Company LP and Marathon Pipe Line LLC)**

**Part II.J. The permit requires that if the drilling fluids contain no additives or LCMs, the permit allows for on-location burial, but requires disposal of the drilling fluids at least 100 feet from surface water and 100 feet from a potable water well, and that any off-site disposal be approved by the Ohio EPA. If there are no VOCs or semi-VOCs detected, there should be no requirement to dispose of the fluids off-site and Ohio EPA should not have to approve such disposal off-site. (Enbridge, Inc., The American Petroleum Institute Ohio)**

**Response 74:** See Response 72.

### **Part III**

**Comment 75:** **Part III.A. It would be helpful to clarify if the Ohio EPA's expectation is that SWP3s must be sealed or certified by a Professional Engineer registered in the state of Ohio, a registered CPESC, or just a professional competent in design. If the SWP3 must be prepared by an Ohio P.E., does the SWP3 and associated drawings have to be signed and sealed? (Civil and Environmental Consultants, Ohio Oil & Gas Association)**

**Response 75:** The general permit does not require the SWP3 to be prepared by a Professional Engineer. The general permit requires that the SWP3 be prepared in accordance with sound engineering and/or conservation practices by a professional experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction.

**Comment 76:** **Part III.B. The SWP3 should be required to be completed prior to initiation of construction activities, not at the time of NOI submittal. (Ohio Oil & Gas Association)**

**Response 76:** See Response 22.

**Comment 77:** **Part III.C.2.c. We object regarding the availability of the SWP3 in the general permit. The NPDES permit only requires that a SWP3 be prepared and maintained on-site at all times during the construction activity. The NPDES permit does not require the SWP3 to be submitted to Ohio EPA, in turn, would make the SWP3 available to the public upon request to Ohio EPA,**

in accordance with Ohio's public records law. Additionally, as recognized by Ohio EPA in the permit, portions of the SWP3 may be confidential trade secrets or Confidential Business Information. By removing Ohio EPA's oversight of public records requests and effectively making the permittee a clearinghouse of information places undue burden on the permittee and jeopardizes the maintenance of confidential information contained in the SWP3. (*Ohio Oil & Gas Association*)

**Response 77:** This general permit does not require the SWP3 to be submitted to Ohio EPA unless specifically requested by Ohio EPA. The general permit requires that the SWP3 be maintained on site. Due to the linear nature of pipeline projects, Part III.C.2.a specifies that it is acceptable that the SWP3 be maintained by the lead contractor at the site.

Part III.C.2.c has been modified to read, "If Ohio EPA has a copy of your SWP3, Ohio EPA may provide access to portions of your SWP3 to a member of the public upon request. However, the permittee may claim to Ohio EPA any portion of an SWP3 as confidential in accordance with Ohio law".

**Comment 78:** **Part III.C.2.a. The permit requires the SWP3 to be maintained "on-site" during working hours. Since these are linear projects, the requirement to maintain the SWP3 "on-site" should be revised that it be kept by the construction manager at the project.** (*Enbridge, Inc., The American Petroleum Institute Ohio*)

**Response 78:** The general permit requires that the SWP3 be maintained on site. Due to the linear nature of pipeline projects, Part III.C.2.a specifies that it is acceptable that the SWP3 be maintained by the lead contractor at the site.

**Comment 79:** **Part III.E. The permit obligates permittees to maintain a list of signatures of all contractors and subcontractors involved in the implementation of the SWP3 as proof acknowledging that they reviewed and understand the conditions and responsibilities of the SWP3 prior to commencement of work on site. Subcontractors, in particular, may employ several people over the course of a project and having each employee sign an acknowledgement that he/she has reviewed and understands every condition and responsibility of the SWP3 is onerous and not realistic. This requirement should be deleted.** (*Enbridge, Inc., The American Petroleum Institute Ohio*)

**Response 79:** The intent of Part III.E is that a responsible official for each contractor/subcontractor sign that they acknowledge and have

reviewed and understand the conditions and responsibilities of the SWP3. There is no requirement that each employee of every contractor/subcontractor company sign the document. No changes to the general permit were made based on this comment.

**Comment 80:** **Part III.G.1.a.** For consistency with the wording in Subsection G.1.g.i regarding the associated off-site disturbed areas, the wording in parentheses in this subsection should be amended as follows: “Total area of the right-of-way (ROW) and the area of the ROW that is expected to be disturbed (i.e., grubbing, clearing, excavation, filling or grading, including associated off-site borrow or spoil areas that are not addressed by a separate NOI and associated SWP3.” (*The American Petroleum Institute Ohio*)

**Response 80:** Part III.G.1.a has been modified to incorporate the suggested wording.

**Comment 81:** **Part III.G.1.b.** This requirement should be deleted in its entirety or be applicable only to small projects. Requiring a description of prior land use could be extremely burdensome and confusing for large projects, as there can be numerous different land uses along a lengthy pipeline corridor. (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)

**Response 81:** This condition is not burdensome and can be easily identified during the permitting process. Additionally, the suggested language added to the stabilization requirements of the permit regarding agricultural lands (see Response 89) would necessitate the need to identify prior land uses.

**Comment 82:** **Part III.G.1.e.** The word “and” at the end of this G.1.e paragraph should be removed, since it does not appear at the end of any of the preceding subsections and there is more than one subsection that follows. Though not necessary, the word “and” could be moved from the end of G.1.e to the end of G.1.f. (*The American Petroleum Institute Ohio*)

**Response 82:** The word “and” has been moved from the end of G.1.e to the end of G.1.f as suggested.

**Comment 83:** **Part III.G.1.g.** The requirements for the site map in the permit are impractical. At the very least, this requirement should be reduced to require surface water locations within 100 feet of the ROW. (*Enbridge, Inc., The American Petroleum Institute Ohio*)

**Response 83:** The final permit has been changed to address this.

**Comment 84:** **Part III.G.1.g.ii.** What is the level of precision required for contours? (*Langan Engineering and Environmental Services,*

Inc.)

- Response 84:** Ohio EPA recommends a minimum two foot contours is reasonable for higher relief areas and one foot contours is reasonable in flat areas of the state. These are publically available from the Ohio Geographically Referenced Information Program (OGRIP).
- Comment 85:** **Part III.G.1.g.ii.** As drafted “water wells” are listed as an example of “surface water locations” but they are not surface waters. Also, the reference to “and first subsequent named receiving water(s)” is confusing where it located in that sentence. For clarification, the G.1.g.ii sentence should be revised as follows: · “Surface water locations including springs, wetlands, streams, lakes, etc. and water wells, etc., on or within 200 feet of the ROW, including the boundaries of wetlands or stream channels in the ROW ~~and first subsequent named receiving water(s)~~ the permittee intends to....”. If there is a need to show the first subsequent named receiving water(s) on the map for wetlands or stream channels that will be filled or relocated, then that should be added as a subsequent second sentence. (*The American Petroleum Institute Ohio*)
- Response 85:** This wording was revised as proposed to provide more clarity. The “within 200 feet of the ROW” has been changed to “within 100 feet of the ROW”.
- Comment 86:** **Part III.G.1.g.v.** The word “anticipated” should be inserted between the word “The” and the word “location” at the start of this sentence. (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)
- Response 86:** The final permit was revised to insert the word “anticipated.”
- Comment 87:** **Part III.G.1.g.vi.** In the second sentence of G.1.g.vi the wording “water quality volume” should be changed to “water volume” and the wording “practice surface area” should be changed to just “surface area.” (*The American Petroleum Institute Ohio*)
- Response 87:** The two suggested revisions are included in the final permit.
- Comment 88:** **Part III.G.1.g.vii and viii.** The depiction of these locations on a site map should not be required as they are not typical for pipeline construction sites. (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)
- Response 88:** The final permit includes the word “anticipated” for these two locations. If no areas will exist per subsection vii then these would

be need to be depicted. The SWP3 is a living document and if construction entrances change during the life of the project then the SWP3 can be updated to reflect the changes.

**Comment 89:** **Part III.G.2.b.i, Stabilization.** Language should be added here and in the tables below to provide exemptions from temporary and/or permanent stabilization requirements in certain circumstances (i.e., for agricultural fields where farmers do not want grass mixtures or other seed mixes planted in their farm fields; for portions of a right-of-way that are utilized for vehicle/equipment access or ingress/egress such that they will not be dormant or idle; etc.). Similar exemption language may need to be added in other sections of the general permit as well as where temporary or permanent stabilization requirements are addressed. *(Marathon Petroleum Company LP and Marathon Pipe Line LLC)*

**Response 89:** Language has been added to address the agricultural fields issue in the final permit.

**Comment 90:** **Part III.G.2.b.i, Stabilization.** The stabilization time frames should be “weather permitting.” Industry cannot be held to the time frames in the permit if the weather does not allow for the required stabilization measures to be implemented. *(Ohio Oil & Gas Association)*

**Response 90:** Ohio EPA evaluated this comment but no changes were made to the final permit.

**Comment 91:** **Part III.G.2.d.** The requirement for structural practices to be used to control erosion and trap sediment from a site remaining disturbed for more than 14 days should be revised to 28 days. *(Enbridge, Inc., The American Petroleum Institute Ohio)*

**Response 91:** No changes were made to the final permit. The proposed timeframe of 28 days would not be protective in minimizing sediment laden discharges from active sites.

**Comment 92:** **Part III.G.2.d.** The sentence “All sediment control practices must be capable of ponding runoff to be considered functional” should be deleted from this permit. *(Marathon Petroleum Company LP and Marathon Pipe Line LLC)*

**Response 92:** In order for sediment control practices to be effective they must be able to pond runoff to facilitate settling of suspended solids. No changes to the permit were made based on this comment.

**Comment 93:** **Part III.G.2.d.** Although they may be appropriate for unique situations, structural controls such as sediment basins are

not typically used for linear project since non-structural erosion and runoff control are considered adequate. Ohio EPA should clarify if there is an expectation that if a site remains disturbed for more than 14 days (shorter duration for active pipeline construction than on most projects), then structural controls will need to be installed to store/divert runoff away from the disturbed area. If an area is applied with temporary or permanent stabilization measures (i.e. mulching, seeding, blanket, etc.) within 14 days of earth disturbance activities, then would those areas be exempt from these requirements? This would likely necessitate a much larger corridor of disturbance than just the pipeline ROW to accommodate such basins or traps at the bottom of each slope. Also, it should be clarified if controls will be required for runoff that is diverted around and away from disturbed areas by water bars, or if the assumption that diverting runoff into undisturbed, well-vegetated areas is adequate for most circumstances. *(Civil and Environmental Consultants)*

**Part III.G.2.d.** Structural controls such as sediment basins are not typically used for linear projects since non-structural erosion and runoff control are considered adequate. Further clarification is needed with respect to what and when structural controls need to be implemented. As drafted, the permit is also overly-prescriptive, and thereby, too rigid and unyielding to properly account for best professional judgment. These details should be struck in favor of phrasing that requires usage of best engineering practices, recognizing that there are numerous agency guidance documents available to ensure proper implementation of those practices. See e.g., Ohio's Rainwater and Land Development Manual. *(Ohio Oil & Gas Association)*

**Response 93:**

The permittee may elect to utilize expedited stabilization requirements in lieu of structural controls as stated in Part III.G.2.d.ii.

**Comment 94:**

**Part III.G.2.d.ii.** Ohio EPA should clarify if runoff directed around or away from the pipeline ROW by perimeter controls or waterbars into sediment traps qualify as "concentrated runoff". Silt fence and diversions (as discussed in Part III.G.d.iii) are normally adequate to protect by intercepting sheet runoff from upslope undisturbed areas, and the upslope drainage area at the point of interest within the pipeline ROW seldom exceed 10 acres except at stream crossings. If sediment settling ponds were required to control drainage both within and upslope of the disturbed area for a linear ROW traversing many slopes, this would greatly increase the area requiring disturbance—a counter-

**productive practice under most circumstances.** (*Civil and Environmental Consultants*)

- Response 94:** Re-routing diversions and erosion control diversions does not require additional sediment control or necessitate the use of a sediment impoundment. If the the erosion control diversions are installed correctly, the provided sediment retention within the diversion. At times, the erosion control diversions are not installed correctly and the gradient of the diversion is significant and will result in the direct transport of sediment where additional controls may be warranted on a case-by-case basis. As a result, this section was not changed.
- Comment 95:** **Part III.G.2.d.ii.** This permit language should start as follows: **“Sediment settling ponds. Except as provided herein,.....**  
(*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)
- Response 95:** The suggested change has been made to the final permit.
- Comment 96:** **Part III.G.2.d.iii.** Ohio EPA should reference the Ohio ***Rainwater and Land Development Manual*** Table 6.3.1 (Chapter 6, page 31) and Table 6.6.1 (Chapter 6, page 48) instead of this table for determining design capacity in the application of silt fence or filter sock. It should also be clarified if it is acceptable to calculate design capacity based on the slope length within the disturbance limits as opposed to including the undisturbed upslope area, assuming sheet flow is adequately diverted. (*Civil and Environmental Consultants*)
- Response 96:** The table was derived from the manual, therefore, a reference is not needed. The slope length, not just the disturbed slope length, is essential in determining the design capacity as it is for all sediment controls. No changes are necessary.
- Comment 97:** **Part III.G.2.f.i.** The next to last sentence in this paragraph reads “The SWP3 must include methods to minimize the exposure of, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides to precipitation, storm water runoff, and snow melt. The SWP3 shall include measures to prevent and respond to chemical spills and leaks.” However, landscape materials, fertilizers, pesticides, and herbicides, when used, are generally intended to be exposed to precipitation. Clarification should be added to this paragraph that the requirement to minimize exposure to precipitation does not apply to the proper use of landscape materials, fertilizers, pesticides, and herbicides, since the use of any or all of those materials may be key components of establishing fully functional stabilization and erosion control. (*The American Petroleum Institute Ohio*)

- Response 97:** Language has been added to provide clarification regarding the proper use of these materials.
- Comment 98:** **Part III.G.2.f.iv.** The start of this permit section should read as follows: “Trench and ground water control. Turbid discharges to surface waters of the state resulting from dewatering activities shall be minimized to the maximum extent practicable.....” (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)
- Response 98:** Maximum extent practicable could result in a violation of Ohio’s Water Quality Standards, therefore no changes were made to this section.
- Comment 99:** **Part III.G.1.g.iii.** Ohio EPA should clarify if a desktop delineation using background data is acceptable to satisfy identification of surface waters outside the proposed disturbance limits on the site map. The permit should expressly authorize the use of a desktop delineation using background data for purposes of identifying surface water locations on or within 200 feet of the ROW. Typical review corridors for water delineations are 200 or 300 feet wide to accommodate a typical ROW varying in width from 50 to 200 feet wide but requiring field delineations for waters within 200 feet of the ROW would mean a review corridor up to 600 feet wide. This is not only impractical, but land owner access would prohibit accomplishing identification of all waters within 200 feet of the ROW. Or, this requirement should be simplified to require “surface water locations....within and adjacent to the ROW” without a defined buffer distance. (*Civil and Environmental Consultants, Ohio Oil & Gas Association*)
- Response 99:** Desktop delineation is certainly a start, however, there remains the liability that a significant resource may be missed. Therefore, no changes were made to this section. In addition, the site mapping requirement was reduced to “on or within 100 feet of the ROW” in Part III.G.1.g.iii.
- Comment 100:** **Part III.G.2.h.** The requirement for inspections after any storm event greater than one-half inch of rain per 24-hour period by the end of the next calendar day and once every seven calendar days is incredibly burdensome, and monitoring quantities of rainfall is not something that permittees are already equipped to monitor. This requirement should be revised to require inspections “as needed” depending upon the rainfall event. (*Enbridge, Inc., The American Petroleum Institute Ohio*)
- Response 100:** Adequate inspections need to occur to ensure that controls are functional and adequate. Ohio EPA does not agree that an

inspection frequency of “as needed” would be appropriate. No changes were made to the final permit.

**Comment 101:** **Part III.G.2.h.** We believe the requirement for permittees to maintain detailed records of inspections for three years after submittal of a Notice of Termination (NOT) is unjustifiably onerous. It is suggested the record retention be reduced to one year. (*Enbridge, Inc., The American Petroleum Institute Ohio*)

**Response 101:** Ohio EPA disagrees that this is an onerous requirement. No changes were made based on this comment.

**Comment 102:** **Part III.G.2.h.** This permit specifies that the permittee shall assign “qualified inspection personnel” to conduct inspections to ensure that control practices employed at the site are functional, support best management practices, and that needed supplies and equipment to address contingency plans are in place. Additional requirements for the permit should be added to ensure that an inspector has “stop work” authority, as well as detailed procedures that provide landowner access to a phone number where the inspector(s) may be contacted. (*Ohio Farm Bureau*)

**Response 102:** This comment was evaluated but no changes were made to the final permit.

**Comment 103:** **Part III.G.2.h, Second ii.** This requires that the “names, titles, and qualifications of personnel making the inspection;” however, since the inspection is already required by prior language to be performed by someone meeting the definition of “qualified inspection personnel,” there should be no need to further describe the person’s specific “qualifications” on every inspection report. That provision should be revised by either removing the reference to “qualifications” here as unnecessary, or simply requiring the inspector to confirm that he/she meets the definition of “qualified inspection personnel” as shown here: Either revise as (1) “names, and titles, ~~and qualifications~~ of personnel making the inspection;” or as (2) “names, and titles, ~~and qualifications~~ of personnel making the inspection, and a confirmation that they meet the definition of “qualified inspection personnel” in the permit.”. (*The American Petroleum Institute Ohio*)

**Response 103:** The final permit has been modified as suggested.

#### **Part IV**

**Comment 104:** **Part IV.B.1.** The second sentence of this paragraph says that “compliance with this permit is required until an NOT form is submitted and issued”. It isn’t clear what is mean by “and

issued” in that sentence. For consistency with the language in Part IV.A stating that the terms and conditions of this permit shall remain in effect until a signed NOT is submitted, the second sentence in this part should be revised by deleting the wording “and issued.” (*The American Petroleum Institute Ohio*)

**Response 104:** The word issued is pertaining to Ohio EPA receiving a complete NOT application and processing the NOT. Once processed/issued, a NOT letter indicating the permit has been terminated is emailed to the NOT submitter. No changes were made to the final permit based on this comment.

## **Part V**

**Comment 105:** **Part V.G.2.** In the first sentence of this part, the words “the permits” should be revised to read “this permit”. (*The American Petroleum Institute Ohio*)

**Response 105:** This suggested revision had been made to the final permit.

**Comment 106:** **Part V.G.2.a and c.** Part G.2.c requires that the written authorization must be submitted to the director is duplicative of G.2.a, since G.2.a already requires that the authorization be in writing and be submitted to the director. As such, G.2.c is unnecessary and could be removed, in which case, the word “and” at the end of G.2.b should be removed as well. (*The American Petroleum Institute Ohio*)

**Response 106:** This suggested revision had been made to the final permit.

**Comment 107:** **Part V.I.** In the second sentence of this permit part, the words “for equipment” following “requirements” should be removed to more accurately reflect the scope of 40 CFR 112, and for consistency with the language used in 40 CFR 112.1(a)(1). (*The American Petroleum Institute Ohio*)

**Response 107:** This suggested revision had been made to the final permit.

**Comment 108:** **Part V.P.** As currently worded, this provision does not seem to be entirely consistent with Part V.B. Part V.B states that an “expired” general permit continues in force and effect until a new general permit is issued, but Part V.P states that after the “expiration date” of this permit, the permittee must apply for and obtain a new permit, with no reference to the expired permit remaining in effect until a new permit is available. Modification to either one or both of Parts V.B and P would seem to be appropriate to ensure they’re consistent with each other and clear (or consider combining those two

**subsections to address permit expiration in one place).** (*The American Petroleum Institute Ohio*)

**Response 108:** Part V.B states that this general permit will stay in force and effect after its expiration date if Ohio EPA does not renew the general permit on time. If this was the case, all existing permittees under this general permit would continue to have active permit coverage under the expired general permit.

Language was added to Part V.P for clarification.

## **Part VII**

**Comment 109:** **Part VII.C.** The following sentence should be added to the definition of “Commencement of construction”:  
**“Commencement of construction does not include tree clearing where stumps are left in place.”** (*Marathon Petroleum Company LP and Marathon Pipe Line LLC*)

**Response 109:** See the Reponse 11.

**Comment 110:** **Part VII.F.** As currently worded, the term “discharge” is defined as always meaning the addition of a “pollutant” to surface waters, however, that doesn’t seem to be appropriate in numerous places within this permit that refer to discharges of storm water or discharges of ground water, since neither the storm water nor ground water would generally be considered a “pollutant.” Suggest modifying the definition of “discharge” using the qualifying wording from the Federal definition at 40 CFR 122.2, to read as follows: **“Discharge means, when used without qualification, the addition of any pollutant to surface waters of the state from a point source.”** (*The American Petroleum Institute Ohio*)

**Response 110:** The intent the permit is to regulate a discharge in a manner to minimize pollutants to wates of the state while recognizing the discharge may contain some level of a pollutant. The permit is designed to implement best management practices to regulate the storm water discharge or discharge from ground water to minimize the exposure to any potential pollutant source.

**Comment 111:** **Part VII.J.** How is “larger common plan of development or sale” going to be applied to linear gathering line projects? Will projects that are designed and constructed to end at a distinct point, such as a valve yard, be considered individual projects for permitting purposes? (*Langan Engineering and Environmental Services, Inc.*)

**Part VII.J. “Larger common plan of development or sale”.** The

permit should specify the process for acreage reductions for portions of projects that have been reclaimed. The definition borrowed from the NPDES construction storm water general permit does not fit in a permit for a pipeline construction project. The definition should be revised to incorporate the typical phased planning well into the future that occurs with pipelines. We understand the concern that pipelines could be planned in small segments/phases to intentionally avoid having to obtain coverage under the permit, but that concern is overblown. (*Ohio Oil & Gas Association*)

**Response 111:** "Sale" was removed from the final permit.

**Comment 112:** **Part VII.K. MS4 definition.** The definition of municipal separate storm sewer system (MS4) is included but there is no mention of MS4 elsewhere in the permit document. It should be clarified if there are any requirements specifically pertaining to MS4. (*Civil and Environmental Consultants*)

**Response 112:** The definition was removed from the final permit.

**Comment 113:** **Part VII.T. Qualified Inspection Personnel.** "Knowledgeable" does not necessarily equate to "qualified." Ohio EPA should specify the necessary qualifications or remove this term from the permit. We suggest that a competent person is all that is needed to perform inspections. (*Ohio Oil & Gas Association*)

**Response 113:** Through the definition and pursuant to permit compliance, "Qualified" does equate to "Knowledgeable".

**Comment 114:** **Part VII.AA. Steep Slopes definition.** The United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) defines "steep" as a slope class greater than 20% (*Soil Survey Manual USDA Handbook No. 18, Chapter 2, page 44, Table 2-3*). Under the USDA NRCS slope classes, 15% would be considered strongly sloping but not steep. Very steep is defined as a slope greater than 45%. Many sediment stabilization construction techniques use thresholds of 3:1 (33%), e.g. surface roughening grade treatment or erosion control blanket. It would be more reasonable to define steep slopes as 33% or greater in grade, or at minimum 20% or greater. (*Civil and Environmental Consultants*)

**Response 114:** The concern of increased erosion potential with increasing slope is addressed in the permit with a steep slope definition and required use of runoff control practices. This erosion is typically exhibited in rill and gully erosion and sometimes in landslides depending upon the soils. This type of erosion is difficult to correct and occurs on disturbed land (ranging in a continuum) from slopes

much less than 15 percent to much steeper slopes. In Natural Resource Conservation Service (NRCS) soil mapping terms, this could be strongly sloping, moderately steep, steep or very steep areas. For this permit's purpose, a slope of 15 percent was selected. This slope is has a high probability of experiencing erosion and is not intended to mirror NRCS gradient descriptors. On areas where the land gradient is above 15 percent, diverting additional run-on from upland areas is expected to be needed in addition to the use of good soil stabilization techniques. Because the term is defined in the permit, no change was made in response to this comment.

**End of Response to Comments**