Fact Sheet for the Issuance of a NPDES Permit

Facilities: NPDES General Permit for Storm Water Discharges from Large and Small Construction Activity in EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 in areas where EPA is the permitting authority.

Background: Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA) which required the Environmental Protection Agency (EPA) to develop a phased approach to regulate storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase of this program on November 16, 1990, establishing permit application requirements for "storm water discharges associated with industrial activity." EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. Construction activities that disturb at least five acres of land and have point source discharges to waters of the U.S. are defined as an "industrial activity" per 40 CFR §122.26(b)(14)(x).

Phase II of the storm water program was published in the Federal Register on December 8, 1999. Phase II includes sites disturbing greater that one acre and less than five acres as well as sites less than one acre of total land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity is defined per 40 CFR §122.26(b)(15)(i).

The following provides a fact sheet for proposed NPDES general permits for discharges from large and small construction activity in EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 in areas where EPA is the permitting authority. Hereinafter, the terms "permit" or "construction general permit" or "CGP" will replace "permits" for reasons of readability (the pluralized form is technically more proper, denoting separate general permits in each of the Regions listed above). Also, the term "EPA" will replace the terms "EPA Regions" and "Permitting Authority" to clarify that EPA is the responsible entity for developing and overseeing this general permit.

Contents

I. Introduction

The United States Environmental Protection Agency (EPA) is proposing to reissue the construction general permit that authorizes the discharge of pollutants in storm water discharges associated with construction activity. As used in this permit, "Storm water associated with large construction activity" refers to the disturbance of five or more acres, as well as disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more (40 CFR §122.26(b)(14)(x)). "Storm water associated with small construction activity," as defined in 40 CFR §122.26(b)(15), refers to the disturbance of equal to or greater than one and less than five acres of land for construction or the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

This permit, upon reissuance, will replace the previous Construction General Permits which were issued for a five-year term by various EPA Regions in February 1998 (63 FR 7858) and July 1998 (63 FR 36490). The organization and numbering of today's proposed CGP has been revised slightly from the 1998 CGP to more clearly present permittee responsibilities. In addition, following is a list of significant changes included in the proposed CGP as compared to the February 1998 CGP. These proposed changes are discussed in more detail in the CGP fact sheet.

1. Change in Permit Areas Covered
    a. Additions
        - Indian Country within the States of Michigan, Wisconsin, Minnesota, Louisiana, Oklahoma, New Mexico, and Texas,
        - State of New Mexico,
        - Discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC codes 1311, 1381, 1382, 1389, and 5171), and point source discharges associated with agricultural production, services, and silviculture, and
        - Discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly TNRCC), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.
    b. Deletions
        i. State of Maine,
        ii. Indian Country within the State of Maine,
        iii. State of Arizona.
2. Small construction activities (those disturbing one to five acres) added to eligibility provisions.
3. Uncontaminated excavation dewatering added as an allowable non-storm water discharge.
4. Clarification of eligibility provisions for discharges threatening water quality.
5. Restrictions on and documentation of discharges to waters with Total Maximum Daily Loads (TMDLs) added.
6. Eligibility requirements specific to the National Historic Preservation Act added.
7. Small construction waiver availability added.
8. Discharge authorization timeframe changed from 48 hours after NOI submission to immediately upon submission of a complete and accurate NOI.
9. NOI content requirements (and draft revised NOI Form) modified to include:
    a. Nature of construction project,
    b. Name of Indian reservation or affiliated Tribe,
    c. Address of SWPPP location changed from optional to required,
    d. Receiving water name clarified to indicate MS4 name may be appropriate response,
    e. Identification of whether site is part of larger common plan and if site is large or small, and
    f. National Historic Preservation Act eligibility certification.

10. Notification of potential waiting periods for permit authorization in certain areas as necessitated for the protection of endangered or threatened species added.
11. Partial final stabilization acceptable.
12. Elimination of the need to estimate runoff coefficient of the site for pre- and post-construction.
13. Option for weekly site inspections rather than biweekly inspections with followup inspections after each rain event added.
14. Clarification of inspection requirements for linear construction projects.
15. Procedures for addressing non-attainment of water quality standards.
16. Standard conditions revised consistent with 40 CFR §122.41.
17. Delegation of signatory authorities for all reports other than NOIs, can be retained on-site in the SWPPP rather than submitted to EPA.

This construction general permit is written as if it was a single permit rather than a number of legally separate and individually numbered general permits it is comprised of. Unless otherwise noted, references to "the permit" apply to the common language of each of the separate general permits. Any area-specific conditions that apply are found in Part 7 of the permit.

This general permit for storm water discharges associated with construction activity is hereby proposed, and upon issuance, will provide individual permit numbers for the following areas:

Region 1: The Commonwealth of Massachusetts and the State of New Hampshire; Indian Country in the Commonwealth of Massachusetts and the States of Rhode Island and Connecticut; Federal facilities in Vermont.

Region 2: The Commonwealth of Puerto Rico and Indian Country in the State of New York.

Region 3: District of Columbia; Federal facilities in the State of Delaware.

Region 5: Indian Country in the States of Michigan, Minnesota, and Wisconsin.

Region 6: The State of New Mexico; Indian Country in the States of Louisiana, Oklahoma, Texas, and New Mexico (except Navajo Reservation Lands [see Region 9] and Ute Mountain Reservation Lands [see Region 8]); discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC codes 1311, 1381, 1382, 1389, and 5171) and point source discharges associated with agricultural production, services, and silviculture, and discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.

Region 7: Indian Country in the States of Iowa, Kansas and Nebraska (except Pine Ridge Reservation Lands [see Region 8]).

Region 8: Federal facilities in Colorado; Indian Country in Colorado (as well as the portion of the Ute Mountain Reservation located in New Mexico), Montana, North Dakota (as well as that portion of the Standing Rock Reservation located in South Dakota and excluding the lands within the former boundaries of the Lake Traverse Reservation which is covered under the permit for areas of South Dakota), South Dakota (as well as the portion of the Pine Ridge Reservation located in Nebraska and the portion of the lands within the former boundaries of the Lake Traverse Reservation located in North Dakota and excluding the Standing Rock Reservation which is covered under the permit for areas of North Dakota), Utah (except Goshute and Navajo Reservation lands [see Region 9]) and Wyoming.

Region 9: The Islands of American Samoa and Guam, Johnston Atoll, Midway/Wake Islands and Commonwealth of the Northern Mariana Islands; Indian Country in Arizona (as well as Navajo Reservation lands in New Mexico

and Utah), California and Nevada (as well as the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah).

Region 10: The States of Alaska and Idaho; Indian Country in Alaska and Idaho (except Duck Valley Reservation [see Region 9]), Washington and Oregon (except for Fort McDermitt Reservation [see Region 9]); Federal facilities in Washington.

II. Coverage Provided by General Permits

Section 402(p) of the Clean Water Act (CWA) states that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. The term "discharge" when used in the context of the NPDES program means the discharge of pollutants (40 CFR §122.2).

EPA issued the first round of the Phase I construction general permit on two dates: September 9, 1992, for certain States and territories, and September 25, 1992, for other States and territories where EPA was the Permitting Authority. The Phase I permit was commonly referred to as the Baseline Construction General Permit. The second-round permit (simply called the "construction general permit," "CGP," or "permit"), issued February 17, 1998, was for use in the States, territories and Indian Country where EPA was the NPDES Permitting Authority except for EPA Regions 4 and 6. The EPA Region 4 permit was reissued on March 31, 1998 (63 FR 15621) and modified on April 28, 2000 (65 FR 25122). The EPA Region 6 permit was published on July 6, 1998 (63 FR 36490). Today's permit reflects changes under Phase II of the storm water program, and is for use in States, territories, and Indian Country where EPA is the NPDES Permitting Authority, except for EPA Region 4.

Operators of construction projects in EPA Region 6, previously not covered under the national permit, may now be covered by the terms of this permit. The previous Region 6 construction general permit covered the states of New Mexico and Texas; Indian Country in Louisiana, Oklahoma, Texas and New Mexico (except Navajo Reservation Lands [see Region 9] and Ute Mountain Reservation Lands [see Region 8] until July 7, 2003. Upon expiration, operators of construction projects must re-apply for coverage under the appropriate permit (see Part 1.2 of the CGP for appropriate permit if EPA is the Permitting Authority). Operators of construction projects in Texas, other than oil, gas, and pipeline construction, must seek coverage under Texas's permit as of March 10, 2003. (More information is available for Texas operators at http://www.tnrcc.state.tx.us/permitting/waterperm/wwperm/construct.html) Operators of oil, gas, and pipeline construction projects currently regulated by the Texas Railroad Commission in the State of Texas and the Oklahoma Corporation Commission in the State of Oklahoma must seek coverage under this EPA Construction General Permit or submit a waiver certification form. EPA Region 6 is hereby providing notice pursuant to Part VI.B.4 of the Region 6 permits published July 6, 1998, that those permits will not be reissued and permit coverage under those permits will not be administratively continued after permit expiration. Operators of construction projects in EPA Region 4 should continue to seek coverage under the appropriate permit, either Region 4's permit or a State permit.

On November 16, 1990, EPA published regulations under the NPDES program that defined one facet of the phrase "storm water discharges associated with industrial activity" as being discharges from construction activities (including clearing, grading and excavation activities) that result in the disturbance of five or more acres of total land area, including smaller areas that are part of a larger common plan of development or sale (40 CFR §122.26(b)(14)(x)). These are commonly referred to as Phase I construction activities.

The regulation entitled "National Pollution Discharge Elimination System - Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges" (64 FR 68722) was published by EPA on December 8, 1999. This regulation, which is considered Phase II of the storm water program, expands the existing NPDES storm water program to address discharges that result in land disturbance of equal to or greater than one and less than five acres or less than one acre if part of a larger common plan of development or sale. The Storm Water Phase II Rule automatically designates these small sites; however, this rule allows for the exclusion of certain sources from the national program based on a demonstration of the lack of impact on water quality, as well as the inclusion of others based on a higher likelihood of localized adverse impact on water quality. Exclusion

from the program is available through waivers to operators of small construction activity who certify for one of the available waivers.

There may be confusion about permitting requirements for sites that are part of a larger common plan of development or sale. All large construction activity, regulated under 40 CFR §122.26(b)(14)(x), is required to obtain coverage under a storm water permit including sites disturbing less than five acres that are part of a larger common plan of development or sale that has the potential to disturb five or more acres collectively. A similar permit requirement exists for small construction activity, regulated under 40 CFR §122.26(b)(15)(i), that disturbs less than one acre but is part of a larger common plan of development or sale having the potential to disturb at least one, but less than five acres collectively. Examples of these would be lots in a subdivision or industrial park. Sub one-acre construction projects not meeting these requirements may still be designated to be covered under this permit based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States (40 CFR §122.26(b)(15)(ii)).

To help clarify what projects must be addressed as part of a "common plan of development or sale" and what projects can be considered on their own merit, EPA is addressing the issue of non-contiguous construction activities. Where discrete construction projects within a larger common plan of development or sale are located at least 1/4 mile apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan"is not concurrently being disturbed. For example, two oil and gas well pads separated by 1/4 mile could be treated as separate "common plans." However, if the same two well pads and an interconnecting access road were all under construction at the same time, they would need to be considered as part of a single "common plan" for permitting purposes. If a utility company was constructing new trunk lines off an existing transmission line to serve separate residential subdivisions located more than 1/4 mile apart, the two trunk line projects could be considered to be separate projects. EPA requests comments on other criteria (e.g., different distances) that could be used to delineate between contiguous construction activities that should be considered parts of a "common plan of development or sale" and non-contiguous activities that should be considered on their own merit.

For situations where a common plan of development or sale exists and a single SWPPP is developed for an entire site, the requirements and burdens associated with maintaining permit compliance can be commensurately reduced as portions of the site are stabilized. For example, BMPs may be removed and inspections ceased for a stabilized area, as long as the threat of pollutants in any discharges from the area resulting from construction or construction-related activities no longer exists. It is not necessary to revise the NOI in this situation. Instead, the construction operator must thoroughly document all activities leading up to and including final stabilization, so that an inspector will understand that BMPs and regular inspections are no longer needed in that area.

The NPDES regulations, at 40 CFR §122.44(s) provide for incorporation of qualifying State, Tribal or local erosion and sediment control program requirements by reference into the CGP for both small and large construction activities. Under that provision, the CGP would require compliance with the qualifying local program rather than with two different sets of requirements. If a partially-qualifying program does not have all of the elements described under §122.44(s)(1), then EPA may still incorporate language in the CGP that requires the construction site operator to follow the program, but the CGP also must incorporate the missing required elements in order to satisfy CWA requirements. As a result of this provision, local requirements would, in effect, provide the substantive construction site erosion and sediment control requirements for the NPDES permit authorization. Therefore, by following one set of erosion and sediment control requirements, construction site operators satisfy both local and NPDES permit requirements without duplicative effort. At the same time, noncompliance with the referenced local requirements would be considered noncompliance with the NPDES permit which is federally enforceable. Based on limited review, EPA has opted not to include any qualifying State, Tribal or local erosion and sediment control program requirements in the CGP at this time.

Federal regulations, at 40 Part 125, Subpart M, establish guidelines for issuance of NPDES permits for the discharges into the territorial seas, the contiguous zone, and the oceans. The regulations specify that EPA shall determine whether a discharge will cause unreasonable degradation of the marine environment based on

consideration of a number of factors (see 40 CFR §125.122(a)). EPA has made the determination that the CGP is designed to control discharges such that these discharges will not cause unreasonable degradation of the marine environment. As such, this permit is consistent with provisions specified in 40 CFR §125.123(a).

III. Summary of Options for Controlling Pollutants

EPA is providing the following information on controlling pollutants in storm water discharges to assist permittees in preparing storm water pollution prevention plans (SWPPPs). Most controls for construction activities can be categorized in either of two groups: sediment and erosion controls and storm water management measures.

Sediment and erosion controls ordinarily address pollutants in storm water generated from the site during active construction-related work. Storm water management measures are customarily installed before, and coincident with, completion of construction activities, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures that should be employed throughout a project include housekeeping best management practices, such as materials management and litter control.

A. Sediment and Erosion Controls

Erosion controls provide the first line of defense in preventing off-site sedimentation and are designed to prevent erosion through protection and preservation of soil. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. A more thorough description of these practices is given in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992 (www.epa.gov/npdes/pubs/owm0307.pdf). Permittees should also consider the construction of new projects in phases to minimize the amount of bare soil which is exposed at one time and the amount of stabilization or structural controls that would be required.

1. Stabilization Practices

Stabilization refers to covering or maintaining an existing cover over soil. Vegetative cover includes grass, trees, vines, shrubs, etc. Stabilization measures can also include non-vegetative controls such as geotextiles, riprap or gabions (wire mesh boxes filled with rock). Mulches such as straw or bark can be somewhat effective at stabilization in stand-alone fashion but are most effective when used in conjunction with vegetation.

Stabilization of exposed soil is one of the foremost means to minimize pollutant discharge during construction activities. Stabilization reduces erosion potential by absorbing the kinetic energy of raindrops that would otherwise mobilize unprotected soil; by intercepting water so that it infiltrates into the ground instead of running off the surface; and slowing the velocity of runoff, thereby promoting deposition of sediment already being carried. Stabilization provides large reductions in the levels of suspended sediment in discharges and receiving waters. Examples of stabilization measures are summarized below.

a. Temporary Seeding. Seeding of temporary vegetation provides stabilization by establishing vegetative cover at areas of the site where earth disturbing activities have temporarily ceased, but will resume later in the construction project. Without temporary stabilization, soil can be exposed to precipitation for an extended period leaving it vulnerable to erosion, even though earth-disturbing activities are not occurring on these areas. Temporary seeding practices have been found to be up to 95% effective in reducing erosion.[1]

[1]Guidelines for Erosion and Sediment Control in California; USDA, Soil Conservation Service, Davis, CA; revised 1985.

b. Permanent Seeding. Establishing a permanent and sustainable ground cover at a site stabilizes the soil and hence reduces sediment in runoff. Permanent seeding is typically required at most sites for aesthetic reasons.

c. Mulching. Mulching is often done coupled with permanent and temporary seeding. Where temporary or permanent seeding is not feasible, exposed soil can be stabilized by spreading plant residues or other suitable materials on the soil surface. Although generally not as effective as vegetation, mulching by itself provides a measure of temporary erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of plant growth. In addition, mulching protects newly-applied seeds, providing a higher likelihood of successful vegetation. To maintain its effectiveness, mulch should be anchored to resist wind displacement.

d. Sod Stabilization. Sod stabilization involves establishing long- term stands of grass by planting sod on exposed surfaces. When maintained properly, sod can be more than 99% effective in reducing erosion, and is the most immediately effective vegetation method available. However, the cost of sod stabilization (relative to other vegetative controls) typically limits its use to situations where a quick vegetative cover is desired (e.g., steep or erodible slopes) and sites which can be maintained with ground equipment. Sod is also sensitive to climate and may require intensive watering and fertilization.[2]

e. Vegetative Buffer Strips. Vegetative buffer strips are indigenous or replanted strips of vegetation located at the top and bottom of a slope, outlining property boundaries or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff at critical locations, decreasing erosion and allowing sedimentation. They can be especially useful for very narrow linear construction projects such as underground utilities or pipelines.

f. Preservation of Trees. This practice involves preserving selected trees already on-site prior to development. Mature trees provide extensive canopy and root systems which protect and hold soil in place. Shade trees also keep soil from drying rapidly, decreasing the soil's susceptibility to erosion. Measures taken to protect trees can vary significantly, from simply installing tree armor and fences around the drip line, to more complex measures such as building retaining walls and tree wells. Along with the erosion benefits provided by trees, they can also add to the aesthetics and value of the property.

g. Contouring and Protection of Sensitive Areas. Contouring refers to the practice of building in harmony with the natural flow and contour of the land. By minimizing changes in the natural contour of the land, existing drainage patterns are preserved as much as possible, thereby reducing erosion. Minimizing the amount of regrading done will also reduce the amount of soil being disturbed. The preservation of sensitive areas at a site such as steep slopes and wetlands should also be a priority. Disturbance of soil on steep slopes should be avoided due to vulnerability to erosion. Wetlands should be protected because they provide flood protection, pollution mitigation and an essential aquatic habitat.

2. Structural Practices

Structural practices involve the installation of devices to divert, store or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from flowing on disturbed areas where erosion may occur. This involves diverting runoff from undisturbed, up-slope areas through use of earth dikes, temporary swales, perimeter dikes or other diversions to stable areas. Another objective of structural practices may be to cause sedimentation before the runoff leaves the site. Methods for removing sediment from runoff include diverting flows to a trapping or storage device or filtering diffuse flows through on-site silt fences. All structural practices require proper maintenance (e.g., removal of collected sediment) to remain functional and should be designed to avoid presenting a safety hazard - especially in areas frequented by children.

a. Earth Dikes. Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation or an equally efficacious method.

[2]Ibid.

b. Silt Fences. Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. They must be firmly anchored and may require additional support, such as reinforcing with wire mesh. Used alone, silt fences are usually inappropriate for flows of concentrated high volume or high velocity. They must be carefully maintained to ensure structural stability and be cleaned of excess sediment.

c. Drainage Swales. A drainage swale is a channel lined with grass, riprap, asphalt, concrete or other materials. They are installed to convey runoff without causing erosion.

d. Sediment Traps. Sediment traps are installed in drainage pathways, at storm drain inlets or other discharge points from disturbed areas. They are temporary structures designed to reduce water velocity and subsequently allow soil particles to settle.

e. Check Dams. Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff, thereby reducing erosion in the swale or ditch. They should not be used in a permanent stream. More elaborate erosion controls in a flow conduit may be unnecessary if check dams are installed, due to the decrease in energy of the runoff.

f. Level Spreaders. Level spreaders are outlets for dikes and flow channels consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse flow and release it onto areas stabilized by existing vegetation.

g. Subsurface Drains. Subsurface drains transport runoff to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.

h. Pipe Slope Drains. A pipe slope drain is a temporary runoff conveyance running down a slope to prevent erosion on the face of the slope.

i. Temporary Storm Drain Diversions. Temporary storm drain diversions are used to re-direct flow in a storm drain for capturing sediment in a trapping device.

j. Storm Drain Inlet Protection. Storm drain inlet protection reduces sediment entering storm drainage systems prior to permanent stabilization of disturbed areas. Examples include a sediment filter or an excavated detention area around a storm drain inlet.

k. Rock Outlet Protection. Rock protection placed at the outlet of conduits can reduce the depth and velocity of water so the flow will not cause downstream erosion.

l. Other Controls. Examples of other controls include temporary sedimentation basins, sump pits, entrance stabilization, waterway crossings and wind breaks.

B. Storm Water Management Measures

Storm water management measures are usually installed before, and coincident with, completion of construction activities. The measures primarily result in reductions of pollutants in storm water discharged from the site after cessation of construction activities. Storm water management may also be needed for compliance with local flood control requirements (which may be unrelated to NPDES requirements).

Construction frequently causes significant alterations in the characteristics of the affected land. One such change is an increase in the overall imperviousness of the site, which can dramatically affect the site's flow patterns. An increase in runoff may increase the amount of pollutants carried by the runoff. In addition, some activities (e.g., automobile travel on newly-built roads) can result in higher pollutant concentrations in runoff compared to pre-construction levels. Traditional storm water management controls attempt to limit increases in the amount of runoff and pollution discharged from land impacted by construction.

Storm water management measures include, but are not limited to, on-site infiltration of runoff, flow attenuation by vegetation or natural depressions, outfall velocity dissipation devices, storm water retention basins and artificial wetlands, and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in 'Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices," Metropolitan Washington Council of Governments, March 1992. In designing storm water controls, features that would pose a safety hazard - especially for children - should be avoided and/or have limited public access.

a. On-Site Infiltration. Inducing infiltration, through infiltration trenches or basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration measures tend to mitigate impacts to an area's natural hydrologic characteristics. Properly designed and installed infiltration constructs can reduce peak discharges, facilitate recharging of the groundwater, augment low flow conditions in receiving streams, reduce storm water discharge volumes and pollutant loads, and inhibit downstream erosion.

Infiltration measures are particularly effective in permeable soils and where the water table and bedrock are well below the surface. Infiltration basins can also double as sediment basins during construction. Infiltration trenches can be easily incorporated into less active areas of a development and are appropriate for small sites and in-fill developments. However, trenches may require regular maintenance to prevent clogging, particularly where grass inlets or other sedimentation measures are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

b. Flow Attenuation by Vegetation or Natural Depressions. Flow attenuation caused by vegetation or natural depressions can facilitate pollutant removal and infiltration and can reduce the erosivity of runoff. Use of vegetative flow attenuation measures can protect habitats and enhance the appearance of a site. These measures include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Given their limited capacity to accept large volumes of runoff (and the concomitant erosivity), vegetative controls should usually be used in combination with other storm water devices. Incorporating check dams into flow paths can provide additional infiltration and flow attenuation. Grass swales are typically used in areas such as low or medium density residential development and highway medians as an alternative to curb and gutter drainage system. In general, the costs of vegetative controls are less than for other storm water measures.

c. Outfall Velocity Dissipation Devices. Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. They slow the flow of water discharged from a site thereby reducing erosion.

d. Retention Structures/Artificial Wetlands. Retention structures are ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands can achieve a high removal rate of sediment, biochemical oxygen demand (BOD), organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed site. These constructs rely on settling and biological processes to remove pollutants. Retention ponds and artificial wetlands can also become wildlife habitats, recreation, and landscape amenities, and increase local property values.

While the Agency believes artificial wetlands can be one of the most effective long-term storm water management measures, EPA also recognizes the potential problems to which wetlands may contribute at certain sites. This could be the case at airports where bird populations drawn to wetlands proximate to runways/taxiways may endanger moving aircraft. EPA recommends that structures that maintain continuous habitat for wildlife not be constructed within 10,000 feet of a public-use airport serving turbine-powered aircraft, or within 5,000 feet of a public-use airport serving piston-powered aircraft. EPA, as always, stresses public safety and sound engineering judgement in the implementation of any storm water measure, control or best management practice.

e. Water Quality Detention Structures. Storm water detention structures, which include extended detention ponds, control the rate at which water drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 48 hours and to remain dry at other times. They can provide pollutant removal efficiencies similar to those of retention pond. Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.

C. Housekeeping Best Management Practices (BMPs)

Pollutants that could be discharged in storm water from construction sites because of poor housekeeping include oil, grease, paints, gasoline, concrete truck wash down, raw materials used in the manufacture of concrete (sand, aggregate, and cement), solvents, litter, debris and sanitary wastes. Construction site storm water pollution prevention plans (SWPPPs) should address the following to prevent the discharge of pollutants:

- Designate and control areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and regular collection of wastes;
- Locate equipment wash down areas on site, and provide appropriate control of washwater to prevent unauthorized dry weather discharges and avoid mixing with storm water;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, and other potentially toxic materials; and
- Provide adequately maintained sanitary facilities.

IV. Summary of Permit Conditions

This section has been written in an informal style and follows the structure of the CGP, but does not reflect verbatim the actual language used in the permit. It is intended to help the regulated community and members of the public understand the intent and basis of the actual permit language. If any confusion or conflicts exist between this summary and the actual CGP language, the permittee must comply with the CGP as written. EPA requests the assistance of the public in identifying any areas of apparent conflict that need to be addressed.

1. Coverage Under This Permit

1.1 Introduction

This Construction General Permit (CGP) authorizes storm water discharges from large and small construction-related activities that result in a total land disturbance of equal to or greater than one acre, where those discharges enter surface waters of the United States or a storm drain. This permit expands coverage from the 1998 CGP that provided coverage for large construction sites (i.e., those disturbing greater than 5 acres) to include both small and large construction activities (i.e., any project disturbing greater than one acre).

Similar to the 1998 CGP, the goal of this permit is to reduce or eliminate storm water pollution from construction activity through development and implementation of an appropriate storm water pollution prevention plan.

EPA provides answers to some of the more common questions on the construction storm water permitting program in Part VIII of this Fact Sheet. It is intended to help you get started in understanding the permit. Be aware these answers are fairly broad and may not take into account all scenarios possible at construction sites.

1.2 Permit Area

Each separate construction general permit is individually numbered and only makes available coverage to construction activities in the permit's designated area or category (e.g., State, Federal facility within a State, Indian Country, etc.). Each permittee will be assigned a number when his or her Notice of Intent is processed. Note that the assigned number is not an NPDES Permit Number; rather, the assigned number is for tracking purposes only. The actual permit number is the number identified in Part 1.2 of the permit for the specific operator area and status.

This permit modifies the area of available coverage from the February 1998 CGP; specifically, entities covered by the EPA Region 6 CGP (63 FR 36489, July 6, 1998) must now apply for coverage under this permit and the State of Maine is now the permitting authority for construction activities therein. This permit reflects the spilt in permitting authority between Oklahoma and Texas and EPA. In Oklahoma, the permit will only be available to construction activities that are not under the authority of the Oklahoma Department of Environmental Quality. In Texas, the permit will only be available to construction activities that are not under the authority of the Texas Commission on Environmental Quality. EPA is currently processing an NPDES permit program delegation request from the Arizona Department of Environmental Quality (ADEQ). At the present time, EPA does not have authority to issue permits in Arizona (except for Indian Country). When the final CGP is issued, EPA will clarify whether construction operators in Arizona must seek coverage under EPA's permit or an ADEQ permit. As of the effective date of this permit, construction site operators in the areas designated in part 1.2 of the CGP seeking permit coverage must comply with the terms of this permit.

1.3 Eligibility

1.3.A *Allowable Storm Water Discharges*. This permit authorizes all discharges of storm water from construction activities except those excluded under Limitations on Coverage (Part 1.3.C) in the CGP. Coverage under the CGP is authorized for:

- Storm water discharges associated with construction activities from either large or small construction sites (including storm water discharges from operators disturbing less than one acre that are part of a larger common plan of development or sale that combined, disturbs one acre or more);
- Storm water discharges from sites disturbing less than one acre, but designated by EPA as needing coverage under the CGP;
- Storm water discharges from construction site support activities given that these support activities are directly related to a construction site with NPDES CGP coverage;
- Non-storm water discharges as noted in Part 1.3.B; and
- Any discharge authorized by a different NPDES permit commingled with discharges authorized by this permit.

As noted above, activities that occur on-site in support of construction activity are covered under the CGP. Specifically, the permit authorizes discharges from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, etc.) for local project(s) with which an operator is currently involved (e.g., a concrete batch plant providing concrete to several different highway projects in the same county). Authorization of this discharge is contingent upon (1) the support activity not being a commercial operation serving multiple, unrelated construction projects and not operating beyond the completion of the last related construction project it serves; and (2) appropriate controls are identified in the storm water pollution prevention plan (SWPPP) for the discharges from the support activity areas.

1.3.B *Allowable Non-Storm Water Discharges*. This permit authorizes certain non-storm water discharges associated with construction activity, provided that the non-storm water component is in compliance with Part 3.5 of the permit. Specifically, operators are required to identify in the SWPPP all allowable sources of non-storm water discharges and must identify and ensure the implementation of appropriate pollution prevention measures for these discharges. The operator should also eliminate or reduce these discharges to the extent feasible. Allowable non-storm water discharges include those listed in Part 1.3.B of the CGP.

1.3.C *Limitations on Coverage.* Not all storm water discharges from construction sites are authorized by this permit. Specifically excluded are:

1.3.C.1 *Post Construction Discharges*. Storm water discharges originating from a site after construction activities have ceased, the site has undergone final stabilization, and a Notice of Termination has been submitted. If there will be a discharge of storm water associated with industrial activity, or some other regulated discharge from the completed project (e.g., wastewater from a newly-constructed chemical plant), coverage under another permit(s) must be obtained for these discharges.

1.3.C.2 *Prohibition on Discharges Mixed With Non-Storm Water*. Storm water discharges that are mixed with non-storm water sources, other than those identified in and complying with the permit. Non-storm water discharges that are authorized under a different NPDES permit may be commingled with discharges authorized under this permit.

1.3.C.3 *Discharges Covered by Another Permit*. Storm water discharges associated with construction activity that are covered under an individual permit or discharges required to be covered under an alternative general permit.

1.3.C.4 *Attainment of Water Quality Standards.* 40 CFR 122.4(d) states that no permit may be issued if the "conditions cannot ensure compliance with the applicable water quality requirements" and 40 CFR 122.44(d) states that permits must contain conditions to assure attainment of water quality standards. Unlike individual permits that include specific requirements tailored to the site-specific considerations about facilities and waters receiving the discharge, general permits, while tailored to specific industrial processes or types of discharges (e.g. offshore oil and gas or storm water), do not contain site specific requirements that address the water quality conditions of the waters receiving the discharge. Therefore, general permits rely on permittees to evaluate the conditions at their site, certify that they meet the eligibility conditions and implement requirements that will ensure compliance with the conditions of the permit.

EPA does not typically review information and data about specific discharges prior to authorization under the CGP. Instead, a general permittee determines whether its discharges are eligible for authorization under the general permit and, if so, certifies to that determination and develops a storm water pollution prevention plan (SWPPP) according to requirements in the general permit. The proposed language is included to ensure that those seeking coverage under this general permit design and implement Best Management Practices (BMPs) at their construction site that will be adequate and sufficient to meet water quality standards for all pollutants of concern. Based on EPA's 1996 *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits (EPA 833-D-96-001),* EPA has determined that BMPs, when properly designed and implemented do provide effluent quality that can meet WQS. However, because proper design and implementation are so critical to the success of BMP effectiveness, simply "installing BMPs" at a construction site will often not provide adequate water quality protection. Today EPA is proposing to include language in permit that would require operators to design and implement BMPs that are "adequate and sufficient to meet WQS."

1.3.C.5 *Discharging into Receiving Waters With a Total Maximum Daily Load (TMDL) Analysis.* The operator must determine whether EPA has approved or established a TMDL and for what pollutants. TMDLs identify the pollutant parameter(s) for which they are approved or established. As a starting point, operators can access the EPA web-site http://www.epa.gov/owow/tmdl for information on TMDLs, and for links to many of the state agency web sites that may also have this information.

When a TMDL has been established for the receiving water body, eligibility for permit coverage requires the development and certification of a SWPPP that is consistent with the assumptions and requirements of the TMDL. EPA recognizes that the assumptions and requirements of TMDLs vary widely. These assumptions and requirements may be contained in the TMDL or could be described in the suporting information referenced in the TMDL. Allocations may be expressed in terms of mass per time, toxicity, or other appropriate measure, e.g. pounds or a certain percent reduction in loading of a pollutant. In addition, TMDLs may recommend implementation activities that include certain narrative requirements such as implementation of specific BMPs; specified inspection, discharge monitoring or characterization, education, tracking or reporting requirements; or some combination of these or other conditions. Permits are required to be consistent with any approved TMDL (40 CFR 122.44(d)). TMDL assumptions and requirements, once incorporated into an operators SWPPP, are considered to be enforceable permit conditions, consistent with 40 CFR 122.44(d)(1)(vii)(B). At any time, EPA may review the SWPPP to determine the adequacy of the dischargers' selected approach for complying with the TMDL. As a result of the review, EPA may determine that the discharger is not eligible for permit coverage or eligible only if certain additional conditions are met. This provision provides EPA with an added level of insurance that dischargers are taking the necessary steps to be consistent with any applicable TMDLs.

For a situation where a TMDL has not specified a wasteload allocation for construction storm water discharges, but has not specifically concluded that such wasteload allocations are unnecessary, an applicant still must develop and implement BMPs that will ensure that its discharge is consistent with the TMDL. EPA is considering how to best accomplish this. One option would require operators to ask the State or EPA Region that developed the TMDL whether storm water discharges from construction activity were considered during development of the allocations. Construction activity may have been considered as part of either the wasteload or load allocation, but not specifically mentioned in the TMDL. Another possibility is that the TMDL includes a load allocation for agriculture and much of the agricultural land has been sold for development. Under this option, as long as an allocation is available for the discharge from construction activities, the discharger is eligible for coverage as long as he develops and certifies a SWPPP that is consistent with the assumptions and requirements of the TMDL. If there is no allocation available for the construction discharges, the construction activity could not be covered under the general permit.

Another option would require any operator that would discharge to a water for which there is a TMDL for sediment or a parameter that addresses sediment, to submit an individual application for permit coverage and not be eligible to discharge until an individual permit is issued to the operator. A third option being contemplated is that storm water discharges from construction activity would not be allowed until the TMDL has been revised to specifically include these sources. EPA is requesting comments on all these options or other ways to address the situation of a TMDL without specific mention of storm water from construction activity. EPA is also requesting comments on the type of information that should be requested from applicants to ensure consistency with TMDLs.

1.3.C.6 *Endangered and Threatened Species and Critical Habitat Protection.* Before submitting an NOI, the operator should follow the procedures in Addendum A to determine his or her eligibility for permitting with regard to protection of endangered species and critical and essential fish habitat protection. The project "owner" or developer performs the endangered species analysis during the planning stages of a project (i.e., before construction is scheduled to begin). By design, this effort should not have to be repeated by the contractors, homebuilders, utilities, etc., whose involvement in the project will not happen until later. See Addendum A of the permit for the ESA Screening Process, to determine eligibility prior to submittal of the NOI.

Documentation of the determination of eligibility may be required where EPA, FWS, and/or NMFS determine that there is a potential impact on endangered or threatened species or critical habitat. Discharges are not authorized if they cause a prohibited "take" of threatened or endangered species, unless such takes are authorized under sections 7 or 10 of the ESA.

It is important to note that consultation with FWS can begin without submission of an individual permit application if the applicant is unclear about whether he or she can satisfy Addendum A without FWS input.

1.3.C.7 *Historic Properties*. To obtain eligibility under this general permit, the operator of a site must be in compliance with the National Historic Preservation Act. Part 1.3.C.7 of the permit lists three criteria for determining eligibility for coverage under this permit.

1.4 *Waivers for Small Construction Activities*. Phase II extends the requirements of the storm water program from construction sites disturbing five or more acres (large construction) to sites disturbing between one and five acres (small construction), although EPA may also waive small construction sites that do not have adverse water quality impacts. To receive a waiver, the operator of a small construction activity must certify to a low predicted rainfall erosivity or lack of water quality impacts. See Part VII of the fact sheet for more information on waivers.

A low predicted rainfall erosivity exists during the period of construction activity resulting in a period when the value of the rainfall erosivity factor is less than 5. If the construction activity extends past the dates specified in the waiver certification, the operator must recalculate the waiver using the original start date and a new ending date. If the R-Factor is still under 5, a new waiver certification form must be submitted. If the recalculated R-Factor is greater than 5, an NOI must be submitted prior to the end of the waiver period for the operator to be

covered by the permit. Details of procedures for determining eligibility for the low predicted rainfall erosivity waiver are provided in Addendum C.

A determination that storm water controls are not necessary may also be based on a total maximum daily load (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The operator must certify that the construction activity and the drainage area are addressed by the TMDL or equivalent analysis. Details of procedures for determining eligibility for these waivers are provided in Addendum C.

2. Authorizations for Discharges of Storm Water From Construction Activity

Operators of construction sites greater than one acre, or those designated by EPA, are required to submit Notices of Intent (NOI) to obtain permit coverage (40 CFR §122.28(b)(2)). Submission of a complete and accurate NOI eliminates the need to apply for an individual permit for a regulated discharge, unless EPA specifically notifies the discharger that an individual permit application must be submitted.

Only NOI forms provided by EPA (or photocopies thereof) are valid. Applicants must be aware that by signing and dating the form they certify that they understand and are willing to comply with all terms and conditions of the NPDES permit for which they have applied, namely the Construction General Permit. These conditions include those found in Part 1.3 (Permit Eligibility) of the permit.

It is acceptable to fill in information that will be the same for every project (e.g., a company's name, address) and make copies of the partially completed form for future use; however, an original signature is required to be included on each form submitted to EPA. An electronic version of the existing NOI form is currently available on EPA's NPDES website on the Internet (www.epa.gov/npdes/stormwater) and various EPA Regional websites.

Each entity considered an operator of large or small construction activity, must submit an NOI. The definition of "operator" and the existing regulatory definitions of "owner or operator" and "facility or activity" have been included in the permit. For more details on who must file an NOI, see Addendum D of this Fact Sheet.

EPA believes there exist situations where a utility company installing service lines meets the definition of operator and must get permit coverage, although most of the time a utility would be considered a "subcontractor" (i.e., non-permittee). If a utility company is constructing a project for itself (e.g., main transmission line, transformer station) it must obtain permit coverage. Otherwise, as a non-permittee working at construction site, EPA encourages utility companies (as it does any subcontractor) to abide by the site's SWPPP provisions and minimize its impacts on storm water controls.

2.1 Discharge Authorization

An NOI must be submitted by all operators seeking authorization for storm water discharges from a construction site under the CGP. Those required to obtain an individual storm water permit may not use an NOI, but must use the forms as described in Part 4.2 of the permit.

The NOI form requires the following information (instructions are on NOI form):

- The construction site operator's name, address, telephone number;
- Whether the site is a Federal project or located on Federal lands;
- The nature of the construction project (e.g., commercial, industrial, residential, agricultural, or resource extraction (oil and gas/mining));
- The name (or other identifier), address (description of location if street address is unavailable), county or similar governmental subdivision, and the latitude/longitude of the construction site (e.g., "Jackson Acres

Subdivision, 123 South St., Anyburg, Our County, NH" or "1 mile south of Anyburg, NH, on County Road No. 1; Anyburg, Our County, NH"). Help on finding your latitude and longitude is provided in the instructions to the NOI form. If you will be involved in many construction projects, you may wish to invest in a portable Global Positioning System (GPS) unit that provides read-outs of the latitude and longitude. Units designed for recreational use (e.g., boating, hiking) can cost less than $100.

- Whether the site is located on an Indian Country, and, if so, the name of the Reservation where the project is located or the Tribal affiliation;
- The location of where the plan can be viewed if different from the project address and the name and telephone number of a contact person for scheduling viewing times;
- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer system, the name of the municipal operator of the storm sewer (e.g., "Nimby Creek" or "Anyburg, NH " for municipal storm sewers);
- An indication whether the discharge is to a water body with an approved TMDL and if so, if the TMDL is for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation);
- An estimate of project start date and completion date and an estimate of the number of acres (to the nearest quarter acre) of the site on which soil will be disturbed. Note that the project start and stop dates need not be exact. EPA recognizes that many factors, often beyond the permittee's control, contribute to whether a project will actually start or end on the estimated dates. Acreage may be determined by dividing square footage by 43,560, as demonstrated in the following example:
  Convert 100,000 ft^2 to acres:
  - Divide 100,000 ft^2 by 43,560 square feet per acre:
  - 100,000 ft^2 ÷43,560 ft^2/acre = 2.30 acres. Report 2.25 acres on the NOI Form.
- Whether any listed threatened or endangered species or designated critical habitat, described in more detail in Addendum A of the permit, are in proximity to the construction project and which of the listed criteria enables the operator to claim eligibility for permit coverage (see Addendum A for instructions);
- Whether any historic property listed or eligible for listing is located on or near the construction project and which of the listed criteria enables the operator to claim eligibility for permit coverage;
- A signature block is provided following a certification statement that everything on the NOI form is correct. Also, the NOI must include the name and title of the authorized representative and date of signature.

The NOI must be signed in accordance with the signatory requirements of 40 CFR §122.22. A complete description of these signatory requirements is provided in Part 8.11 of the general permit.

2.2 Submission Deadlines

A. Operators must submit the NOI form prior to commencement of construction activities. EPA modified the submission deadline for NOIs from two days (48 hours) in advance of commencement of construction activity to "prior to commencement of construction activity." This change is to clarify that operators are responsible for submitting complete and accurate NOIs (including eligibility of permit coverage) and two days does not provide any added benefit to the operators or EPA for evaluating eligibility or the adequacy of NOI submissions. Rather, operators are now clearly fully responsible for making these determinations as certified to in the signed NOI form submitted to EPA. Construction activity includes the initial disturbance of soils associated with clearing, grading, excavation activities, etc.

B. EPA is allowing operators of large construction projects that received authorization under one of the 1998 CGPs 90 days after the effective date of this permit (or by July 7, 2003 for facilities electing to remain covered by the 1998 region 6 permit until it expires) to submit an NOI for coverage under the 2003 CGP. If the operator is eligible to submit an NOT (e.g., the construction activities are completed and the site is finally stabilized) within 90 days after the effective date of this permit (or by July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires), a new NOI is not required to be submitted. In addition, the 2003 CGP provides these existing large construction operators 90 days to update their SWPPPs (or by July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires) as necessary to comply with the

terms of the 2003 CGP. These operators are required to comply with the terms of the 1998 CGP during this 90 day period (or until July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires). Any new large construction projects (i.e., operators of activities at large construction projects that commence construction after the effective date of this permit), must submit an NOI and develop a SWPPP prior to commencement of construction activity.

C. EPA is allowing operators of small construction projects that commence operation prior to the effective date of this permit until March 10, 2003 to submit an NOI for coverage under the 2003 CGP. March 10, 2003 is the date identified in 40 CFR §122.26(e)(8), as specified in the Phase II Rule (64 FR 68722, December 8, 1999), by which all operators of storm water discharges associated with small construction activity must obtain permit coverage. In addition, the 2003 CGP provides these existing small construction operators 90 days after the effective date of this permit to develop and begin to implement a SWPPP. If construction is completed and final stabilization achieved prior to the 90th day, development of a SWPPP is unnecessary although EPA expects these operators will comply with all applicable local and state erosion and sediment control requirements. Any new small construction projects (i.e., operators of activities at small construction projects that commence construction after the effective date of this permit), must submit an NOI and develop a SWPPP prior to commencement of construction activity.

D. If an operator at a construction site changes or if a new operator is added after an NOI has been submitted, the new operator must submit an NOI prior to assuming operational control over the site or beginning work on-site.

E. If an NOI is submitted after construction activity has begun, the operator is authorized for discharges that occur only after the postmark date of the NOI. The Agency may seek enforcement action for any unpermitted discharges or permit non-compliance that occur between the time construction begins and discharge authorization.

2.3 Where to Submit

EPA operates a Storm Water NOI Processing Center that handles all NOIs and NOTs for all EPA Regions submitted as a requirement of this permit. Complete and accurate NOIs and NOTs must be sent to the following address:

Regular U.S. Mail Delivery
Storm Water Notice of Intent
Mail Code 4203M
U.S. EPA
1200 Pennsylvania Avenue
Washington, DC 20460

Overnight/Express Mail Delivery
Storm Water Notice of Intent
Room 7420, Mail Code 4203M
U.S. EPA
1201 Constitution Avenue
Washington, DC 20004

2.4 Effective Date of Permit Coverage

As noted above, the operator of a construction activity is authorized to discharge storm water from those construction activities under the terms and conditions of this permit immediately (i.e., the NOI postmark date) upon submission of a complete and accurate NOI to EPA, but in no event earlier than the effective date of the permit except as noted in Part 2.2. Authorization to discharge is not automatically granted on the postmark date if your NOI is materially incomplete or incorrect or if your discharge(s) is not eligible for coverage by the permit. At any point, EPA may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information. Specific procedures and timeframes for submission of an application for an individual NPDES permit are provided in Part 4.2.

If EPA becomes aware that additional measures may be necessary for protection of an endangered or threatened species, EPA would publish a notice in the Federal Register. The notice would identify any additional measures and specify which construction operators are affected. For example, the notice may state that construction

operators in county x must wait 30 days before they are authorized to discharge under the CGP, or that operators in areas that contain endangered plant y must implement a specific BMP.

3. Storm Water Pollution Prevention Plans

3.1 Storm Water Pollution Prevention Plan Requirements

The SWPPP focuses on two major requirements: (1) Providing a site description that identifies sources of pollution to storm water discharges associated with industrial activity on site; and (2) identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of this permit. All SWPPPs must be developed in accordance with sound engineering practices and must be developed specific to the site. Recognizing that much of the plan will likely be very similar from project to project, EPA recommends use of model plans or templates that can be easily adapted for individual projects to minimize the burden of plan preparation. For coverage under this permit, the SWPPP must be prepared before commencement of construction and then updated as appropriate.

The permit also clarifies that once a definable area of the site has been finally stabilized, no further SWPPP requirements apply to that portion of the site as long as the SWPPP has been updated accordingly to identify that portion of the site as complete.

3.2 Requirements for Different Types of Operators

The term "operator" may be defined as one with operational control over construction plans and specifications or one with control over the day-to-day activities of the site. Operators may also only have control over a portion of a larger project and several operators are then responsible for separate portions of the entire construction project.

A. Operators with Operational Control Over Construction Plans and Specifications.

If an operator falls within this category, he or she must ensure that the SWPPP indicates the areas of the project where operational control over project specifications, including the ability to make modifications to plans and specifications occur. The operator must ensure that all other permittees implementing portions of the SWPPP impacted by any changes made to the plan are notified of such modifications in a timely manner and ensure that the SWPPP contains the appropriate information indicating who has operational control.

B. Operators with Control Over Day-to-Day Activities.

If an operator is responsible for the day-to-day operational control of the activities at a project site necessary to ensure compliance with the SWPPP, he or she must ensure the SWPPP meets the minimum requirements of Part 3 of the permit. The operator must also identify those responsible for implementation of control measures required in the SWPPP, ensure the SWPPP indicates areas of the project where operational control of day-to-day activities are maintained, and identify the parties responsible for implementation of control measures identified in the plan.

C. Operators with Control Over a Portion of a Larger Project

If an operator is responsible for only a portion of a larger construction project he or she must maintain compliance with all applicable terms and conditions of this general permit for that portion of the project. This includes protection of endangered species and historic properties as well as implementation of BMPs and controls required by the SWPPP. Operators have the option of developing and implementing either a comprehensive SWPPP, that covers all operators at the construction site, or an individual SWPPP, covering only an individual operator's portion of the site (provided reference is made to the other operators of the site). Operators are encouraged to develop a comprehensive SWPPP to enhance cost sharing and coordination of BMPs. If operators choose to develop individual plans, cooperation between the permittees is encouraged to ensure storm water discharge controls are consistent between the sites. Regardless of development of an individual or comprehensive SWPPP, operators must ensure that individual activities do not negatively impact another operators pollution controls.

3.3 Pollution Prevention Plan Contents: Site and Activity Description

A. Identification of Operators. The SWPPP must identify all operators of the project site, and the areas of the site over which each operator has control. This information should identify clearly the boundaries of each operator's responsibility.

B. Site Description. The SWPPP must be based on an accurate assessment of the potential for generating and discharging pollutants from the site. Hence, the permit requires a description of the site and intended construction activities in the SWPPP (to provide a better understanding of site runoff characteristics). At a minimum, the SWPPP must describe the nature of the construction activity, including:

- The function of the project (e.g., low-density residential, shopping mall, highway, etc.);
- The intended significant activities, presented sequentially, that disturb soil over major portions of the site (e.g., grubbing, excavation, grading);
- Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading or other activities, including off-site borrow/fill areas. It may be preferable to separately describe portions of the site as they are disturbed at different stages of the construction process; and
- A general location map able to identify the location of the activity and the receiving waters within one mile of the activity.

C. Legible Site Map. The SWPPP must contain a legible site map indicating: (1) Anticipated drainage patterns and slopes after major grading activities; (2) areas of soil disturbance and areas that will not be disturbed; (3) locations of major structural and nonstructural controls identified in the plan; (4) locations of planned stabilization measures; (5) off-site locations of equipment storage, material storage, waste storage and borrow/fill areas; (6) locations of surface waters (including wetlands); and (7) locations of discharge points to surface waters;. Site maps should also include other major features and potential pollutant sources, such as locations of impervious structures and soil storage piles.

D. Receiving Waters. The SWPPP must identify the name(s) of the nearest receiving water(s) to the construction site that may be disturbed or will receive storm water discharges from the site. Receiving waters include, but are not limited to intermittent streams, dry sloughs, and arroyos, and the areal extent and description of wetlands or other special aquatic sites (defined under 40 CFR 230.3(q-1)).

E. Other Industrial Activities. The SWPPP must provide a description of any discharge associated with industrial activity other than construction (including storm water discharges from dedicated asphalt plants, concrete plants, etc.) and the location of that activity on the construction site.

3.4 Pollution Prevention Plan Contents: Controls to Reduce Pollutants

A. The SWPPP must describe the practices that will be used to reduce the pollutants in storm water discharges from the site and assure compliance with the terms and conditions of the permit.

The SWPPP must describe the intended sequence of major storm water control activities and when, in relation to the construction process, they will be implemented. EPA recognizes that many factors can impact the actual construction schedule, so the permittee need not include specific dates (e.g. plan could say install silt fence for area "A" before rough grading, rather than put up silt fences on August 15). Good site planning and preservation of mature vegetation are imperative for controlling pollution in storm water discharges both during and after construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls.

B. Stabilization practices are the first line of defense in preventing erosion. The SWPPP must include a description of interim and permanent stabilization practices, including a schedule of their implementation. The permittee should ensure that existing vegetation is preserved wherever possible and that disturbed portions of the

site are stabilized as quickly as practicable. Stabilization practices include seeding of temporary vegetation, seeding of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, preservation of trees and mature vegetative buffer strips, and other appropriate measures. Temporary stabilization can be the single most important factor in reducing erosion at construction sites.

Stabilization also involves preserving and protecting selected trees on the site prior to development. Mature trees have extensive canopy and root systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple ones such as installing tree armoring and fencing around the drip line, to more complex measures such as building retaining walls and tree wells.

C. The SWPPP requires that specific construction dates be documented and maintained as a way for the construction operator as well as EPA to determine applicability and implementation status of SWPPP requirements. Important dates include when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated.

D. The SWPPP must include a description of structures built to divert flows from exposed soils, and store or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls may be necessary because vegetative controls cannot be employed where soil is continually disturbed and because of the lag time before vegetation becomes effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, reinforced soil retaining systems, gabions and temporary or permanent sediment basins.

E. The SWPPP must include a description of any post-construction storm water management measures. This permit, however, addresses only the installation of these measures; not the ongoing operation and maintenance of them after cessation of construction activities and final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures until final stabilization of the site. When selecting storm water management measures, the operator should consider the amount of required maintenance and whether there will be adequate resources for maintaining them `over the longer term.

Some discharges of pollutants from post-construction storm water management structures may need to be authorized under an NPDES permit (e.g., the construction project was an industrial facility in a sector covered by the NPDES multi-sector general permit). The owner/operator of such discharges may ask EPA if this requirement applies to them.

Storm water management measures installed during the construction process can control the volume and velocity of runoff, as well as reduce the quantity of pollutants discharged post-construction. Reductions in peak discharge velocity and volume can reduce pollutant loads as well as diminish physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to pre-development runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be installed on upland areas to the extent feasible. The installation of such measures may be subject to section 404 of the CWA if they will be located in wetlands or other waters of the United States.

Options for storm water management measures that should be evaluated in the development of plans include:

- On-site infiltration of precipitation;
- Flow attenuation by use of open vegetated swales and natural depressions;
- Storm water retention/detention structures (including wet ponds); and
- Sequential systems using multiple methods.

The pollution prevention plan shall include an explanation of the technical basis used to select control measures, where flows exceed pre-development levels. This explanation should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, costs of the measures, site-specific factors that will affect the utility of the measures, whether the measure is economically achievable at a particular site and any other relevant factors.

Although not a limitation or performance standard in the permit, EPA anticipates that storm water management measures at many sites will be able to achieve removal of at least 80% of total suspended solids. A number of storm water management measures can be used to achieve this level of control, including:

- Properly designed and installed wet ponds;
- Infiltration trenches and basins;
- Sand filter systems;
- Manmade storm water wetlands; and
- Multiple pond systems.

The pollutant removal efficiencies of various storm water management measures can be estimated from a number of sources, including "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices" prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992. Additional information on BMPs is available from EPA in an on-line document entitled, "National Menu of Best Management Practices for Storm Water Phase II" and found on the Internet at www.epa.gov/npdes/menuofbmps/menu.htm and from an on-line database entitled, "National Stormwater Best Management Practices (BMP) Database" sponsored by EPA and the American Society of Civil Engineers (ASCE) and available on the Internet at www.bmpdatabase.org.

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although SWPPPs primarily focus on storm water management, EPA encourages facilities to avoid creating groundwater pollution problems. For example, if the water table is high in an area or soils are especially porous, an infiltration pond may contaminate the groundwater unless special preventive measures are taken. In fact, certain storm water control practices may meet EPA's definition of underground injection, triggering responsibilities under the Safe Drinking Water Act, as codified in 40 CFR Parts 144-146. Storm water controls, such as wet ponds, should also be designed to have minimal safety risks, especially to children.

F. Other controls to be addressed in SWPPPs for construction activities are for compliance with the requirement that solid materials, including building material wastes, not be discharged at the site except as authorized by a section 404 permit.

G. The SWPPP must describe measures to minimize vehicular tracking of soil off-site and the generation of dust. Dust and dirt-tracking can be minimized by measures such as providing gravel or paving at entrance/ exit drive paths, parking areas and unpaved transit ways on the site carrying significant amounts of traffic (i.e., more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and performing street sweeping.

H. The SWPPP must also contain a description of practices to reduce pollutants from construction-related materials which are stored on site, including a description of said construction materials (with updates as appropriate). The plan should include a description of pollutant sources from areas untouched by construction and a description of controls and measures which will be implemented in those areas.

I. The SWPPP must also contain a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

3.5 Non-Storm Water Discharge Management

The SWPPP must identify appropriate pollution prevention measures for each of the eligible non-storm water components of the discharge covered by this permit when combined with storm water discharges associated with construction activity. The eligible non-storm water discharges are discussed in subpart IV.1.3.B. of this Fact Sheet.

3.6 Maintenance of Controls

Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. The SWPPP requires all erosion and sediment control measures to be maintained in effective operating condition. If site inspections identify BMPs that are not operating effectively, maintenance must be performed before the next anticipated storm event. If maintenance before the next anticipated storm event is impracticable, maintenance must be completed as soon as practicable. The permit also requires that the operator remove sediment from sediment traps or sedimentation ponds when design capacity of that device has been reduced by 50 percent or more.

3.7 Documentation of Permit Eligibility Related to Endangered Species

An operator's SWPPP must contain documentation of permit eligibility in regard to the protection of endangered species and critical habitat. Documentation must include:

- information on whether listed or endangered or threatened species or critical habitat are located near the site;
- whether such species or habitat may be adversely affected by the storm water discharges or related activities coming from the site;
- the results of the screening determination from Addendum A of the permit; and
- a description of the measures necessary to protect endangered or threatened species or critical habitat; including terms or conditions imposed under the eligibility requirements of the permit (Part 1.3.C.6). Failure to implement these measures will result in ineligibility of coverage under this permit.

3.8 Documentation of Permit Eligibility Related to Historic Places

An operator's SWPPP must contain documentation of permit eligibility in regard to the protection of Historic Places (part 1.3.C.7 of the permit). Documentation must include:

- information on whether a property that is listed or eligible to be listed on the National Register of Historic Places will be affected by a site's storm water discharges or related activities;
- in areas where these sites may be affected, any written agreements that have been made with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other Tribal leader to mitigate these effects; and
- a description of the measures necessary to avoid or minimize adverse impacts on places listed or eligible for listing on the National Register of Historic Places; including terms or conditions imposed under the eligibility requirements of the permit (Part 1.3.C.7). Failure to implement these measures will result in ineligibility of coverage under this permit.

3.9 Copy of Permit Requirements

Copies of the CGP, the signed and certified NOI submitted to EPA, and a copy of the letter from EPA's NOI Processing Center indicating that a complete NOI has been received must be included in the SWPPP. This condition in the permit is intended to stress the importance of these documents for operators to understanding permit responsibilities.

3.10 Applicable State, Tribal, or Local Programs

Many States, Tribes, municipalities and counties have developed sediment and erosion control requirements for construction activities. A significant number have also developed storm water management requirements. The CGP requires that SWPPPs for sites that discharge storm water associated with construction activities be consistent with procedures and requirements of State/Tribal and local sediment and erosion control plans and storm water management plans. The construction site's SWPPP may incorporate portions of a State, Tribe, or local program's pollution prevention plan if these requirements are at least as strict as the CGP. If your construction site is located in an area covered by such a local program, then your compliance with various aspects of the local program would constitute compliance with these aspects of the CGP.

The ability to reference other programs in the SWPPP is intended to reduce confusion between overlapping and similar requirements, while still providing for both local and national regulatory coverage of the construction site.

3.11 Inspections

A. Permittees must inspect designated areas on the site regularly. For purposes of this part, EPA defines "regularly" to mean either (1) at least once every 7 calendar days or (2) at least once every 14 calendar days, and within 24 hours after any storm event of 0.5 inches or greater. EPA also recommends that permittees perform a "walk through" inspection of the construction site before anticipated storm events (or series of events such as intermittent showers over a period of days) that could potentially yield a significant amount of runoff. Depending on local rainfall patterns, it is possible that either more or less inspections would be required under the once per week option. In exchange for committing to more frequent inspections, the operator could plan and budget for one inspection per week and would not have to deal with uncertainties associated with an unknown number of additional inspections triggered by rain events and the need to have inspectors on standby. This flexibility would be especially valuable for unmanned locations. Proper operation and maintenance of storm water BMPs is independently required by Part 3.6 of the permit, so either inspection schedule is expected to provide adequate environmental protection.

B. For sites that have undergone stabilization (temporary or final) or experience seasonal aridity (average annual rainfall of 0 to 10 inches) or semi-aridity (annual rainfall of 10 to 20 inches), inspections must be conducted at least once a month. Where construction activity has been halted due to frozen conditions, inspections are not required until one month before thawing is expected (i.e., snowmelt runoff would commence).

C. In areas of the country where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month), and land disturbance activities are suspended during these times, Subpart 3.11.A and 3.11.B requirements are waived. This waiver is granted until one month before thawing conditions are expected to result in a storm water discharge from the site. The beginning and ending dates of the waiver period must be documented in the SWPPP.

D. Inspections must be performed by qualified personnel; either the operator's own personnel or consultants hired to perform the inspections. The inspectors must be knowledgeable and possess the skills to assess conditions at the construction site that could impact storm water quality and assess the effectiveness of sedimentation and erosion control measure chosen to control the quality of the sites storm water discharges.

E. Visual inspections must comprise, at a minimum:

- Disturbed areas;
- Areas used for storage of materials exposed to precipitation;
- Sediment and erosion control measures; and
- Locations where vehicles enter or exit the site.

Where discharge points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing impacts to receiving waters. This can be done by inspecting the waters for evidence of

erosion or sediment introduction. If discharge points are inaccessible, the permit requires that nearby downstream locations be inspected, if practicable.

Inspectors must determine whether erosion control measures are effective in preventing impacts to the receiving water and look for evidence of or the potential for pollutants entering the drainage system.

F. For linear construction activities (e.g., utility line installation, pipeline construction), representative inspections are acceptable and allow for inspection of the project 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the construction site. This is to limit additional disturbance to soils, increasing the erosion potential, resulting from vehicles compromising stabilized areas.

G. Once an inspection has been performed, a report must be retained with the SWPPP for up to three years after the permit expires or is terminated. The report should include:

- The inspection date,
- Name, title, and qualifications of personnel conducting the inspection,
- Weather information for the period since the last inspection (or since commencement of construction activity if the first inspection performed) including a best estimate of the beginning of each storm event, the duration of each storm event, the time elapsed since the last storm event, and the approximate amount of rainfall for each storm event (in inches),
- Location(s) of discharges of sediment or other pollutants from the site;
- Location(s) of BMPs that need to be maintained;
- Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location; and
- Location(s) where additional BMPs are needed that did not exist at the time of the inspection.

The report must also identify any actions taken in accordance with Part 3 SWPPP requirements and must identify any incidents of non-compliance with permit conditions. If no incidents of non-compliance were found, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. Finally, the report must be signed in accordance with the signatory requirements in subpart 8.11 of the CGP.

3.12 Maintaining an Updated SWPPP

Storm water pollution prevention plans must be revised whenever a change in design, construction method, operation, maintenance procedure, etc., may cause a significant effect on the discharge of pollutants to surface waters or municipal separate storm sewer systems.

The plan must also be amended if inspections or investigations by site staff, or by local, State, Tribal, or Federal officials determine that the discharges are causing water quality exceedances or the SWPPP is ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the construction site.

Also, if an inspection reveals inadequacies, the site description and pollution prevention measures identified in the SWPPP must be revised. All necessary modifications to the SWPPP must be made within seven calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation must be completed consistent with Subpart 3.6.B of the permit. Specifically, these changes must be completed before the next anticipated storm event. If implementation before the next storm event is impracticable, this situation should be documented in the SWPPP and the changes must be implemented as soon as practicable.

3.13 Signature, Plan Review, and Making Plans Available

A. A copy of the SWPPP must be kept at the construction site from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over the plan's implementation must keep a copy of the plan readily available whenever they are on site (a central location accessible by all on-site operators

is sufficient). If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site. A copy of the SWPPP must be readily available to authorized inspectors during normal business hours.

B. A notice about the permit and SWPPP must be posted conspicuously near the main entrance of the site. If displaying near the main entrance is infeasible, the notice can be posted in a local public building such as the town hall or public library. For linear projects, the notice must be posted at a publicly accessible location near the active part of the construction project (e.g., where a pipeline project crosses a public road). The permit notice must include the following information:

- A copy of the completed Notice of Intent as submitted to EPA;
- The current location of the SWPPP (if different than that submitted to EPA in the NOI)
- The current contact person and telephone number for scheduling times to view the SWPPP (if different than that submitted to EPA in the NOI).

The permit does not require that the general public have access to the construction site nor does it require that copies of the plan be available or mailed to members of the public. However, EPA strongly encourages permittees to provide public access to SWPPPs at reasonable hours. Upon request, EPA intends to assist members of the public in obtaining access to permitting information, including SWPPPs. EPA believes this approach will create a balance between the public's need for information on projects potentially impacting their water bodies and the site operator's need for safe and unimpeded work conditions.

C. Permittees must make SWPPPs available, upon request, to EPA, State, Tribal or local agencies approving sediment and erosion plans, grading plans or storm water management plans; local government officials; the operator of a municipal separate storm sewer receiving discharges from the site; and representatives of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service). Plans may also have to be sent to local government officials, the operator of the municipal separate storm sewer which receives the discharge, or to representatives from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. Also, the operator must make SWPPPs available to EPA or its authorized representative for review and copying during any on-site inspection.

D. The SWPPP must be signed in accordance with the signatory requirements in the Standard Permit Conditions section of the permit (Part 8.11).

3.14 Management Practices

A. Erosion and sediment controls include both stabilization practices and structural practices. A construction site’s erosion and sediment controls should be designed with the objective to retain sediment on site.

B. Control measures must be properly selected and installed in accordance with sound engineering practices and manufacturers specifications.

C. Off-site accumulations of sediment must be regularly removed to minimize impacts.

D. Litter, construction debris, and construction chemicals must be prevented from entering a receiving water.

E. It is imperative that stabilization be employed as soon as practicable in critical areas. The CGP requires that, except in three situations, stabilization measures must be instituted on disturbed areas as soon as practicable, but no more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site. The three exceptions to this requirement are the following:

- When construction activities will resume on a portion of the site within 14 days from suspension of previous construction activities;

- When the initiation of stabilization measures is precluded by snow cover or frozen ground, in which case they must be initiated as soon as practicable; and
- In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid areas (10 to 20 inches) and areas experiencing droughts; where the initiation of perennial vegetative stabilization measures is precluded by seasonal arid conditions. In this instance, stabilization measures must be initiated as soon as practicable.

F. Placement of structural controls in flood plains should be avoided, rather they should be located on upland soils to the degree possible.

For sites with more than 10 disturbed acres at a time, all of which are served by a common drainage location, a sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures (such as suitably-sized dry wells or infiltration structures), must be provided where practicable until final stabilization of the site has been accomplished. In lieu of the default 3,600 cubic feet/acre, the permittee can calculate the basin size based on the expected runoff volume from the local two-year, 24-hour storm event and local runoff coefficient. Flows from off-site or on-site areas that are undisturbed or have undergone final stabilization, may be diverted around both the sediment basin and the disturbed area. These diverted flows can be ignored when designing the sediment basin.

For the drainage locations which serve more than 10 disturbed acres at a time and where a sediment basin designed according to the above guidelines is not feasible, smaller sediment basins or traps should be used. At a minimum, silt fences, vegetative buffer strips or equivalent sediment controls are required for all down-slope and appropriate mid-slope boundaries of the construction area. Diversion structures should be used on upland boundaries of disturbed areas to prevent run-on from impacting disturbed areas. EPA does not intend to imply that silt fences or vegetative buffer strips on down-slope boundaries are the only BMPs that need to be used to protect water quality. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

For drainage locations serving 10 or less acres, smaller sediment basins or sediment traps should be used and, at a minimum, silt fences or equivalent sediment controls are required for all down slope and appropriate mid-slope boundaries of the construction area. Alternatively, the permittee may install a sediment basin providing storage for 3,600 cubic feet (or the alternative calculated volume) of storage per acre drained. Diversion structures should be installed on upland boundaries of disturbed areas to prevent run-on. EPA does not intend to imply that silt fences or vegetative buffer strips on down-slope boundaries are the only BMPs that need to be used to protect water quality. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

G. Land development can significantly increase storm water runoff volume and peak velocity if appropriate storm water management measures are not implemented. In addition, post-development storm water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients and high oxygen-demand components.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed pre-development levels can be based on hydrologic models which consider conditions such as the natural vegetation endemic to the area.

Increased discharge velocities can greatly accelerate erosion near the outlet of structural measures. To mitigate these effects, velocity dissipation devices should be placed at discharge points and along the length of a runoff conveyance, as necessary, to provide a non-erosive flow. Velocity dissipation devices help protect a water body's natural, pre-construction physical and biological uses and characteristics (e.g., hydrologic conditions such as the hydro period and hydrodynamics).

3.15 Documentation of Permit Eligibility Related to Total Maximum Daily Loads

Section 1.3.C.4 of the permit requires that all general permit applicants determine whether a total maximum daily load (TMDL) has been developed for the receiving water into which they discharge and if so, whether the TMDL is for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation). To make such a determination, operators can access EPA's TMDL website at *www.epa.gov/owow/tmdl* or any of the many state environmental agencies' websites or contact the relevant EPA Regional Office. Section 3.15 of the permit requires documentation of this determination. If a TMDL has not been approved or established, operators must document such a finding, and then can proceed with establishing eligibility without further inquiry or certification related to TMDLs (except that, if EPA subsequently provides notice that a TMDL has been developed that addresses the operator's discharge, further subsequent action would be required).

If EPA has approved or established a sediment or sediment-related TMDL for the receiving water segment, the operator must determine and document whether the operator's discharge is identified, either specifically or generally, in the TMDL. In certain instances, the TMDL may specifically identify each discharger contributing (or that will be contributing) pollutants to the receiving stream and the controls that are necessary for each discharger to meet the established waste load allocation. More likely, for construction activities the TMDL will identify a category of dischargers (e.g., construction activity or new development) and will identify the types of controls necessary to meet the cumulative waste load allocation for the group of dischargers. In any instance, it is the operator's responsibility to translate the TMDL language into specific measures that have to be included in the operator's SWPPP to ensure that the discharge is consistent with the assumptions and requirements in the TMDL. This approach should identify any Best Management Practices (BMPs) and/or other controls that ensure those discharges will be consistent with the provisions of the TMDL. The operator must document the rationale for the selected approach. If the TMDL specifically precludes such discharges, the operator is not eligible for coverage under this general permit.

4. Special Conditions, Management Practices and Other Non-numeric Limitations

4.1 Continuation of the Expired General Permit

The permit specifies procedures for continued coverage under a general permit if the permit expires prior to a replacement permit being issued. In short, the expired permit would remain in full force and effect in accordance with the Administrative Procedures Act. Any permittee granted coverage prior to the permit's expiration date will automatically remain covered by the continued permit until the earliest of:

- The permit being reissued or replaced;
- The permittee terminating coverage by submitting an NOT;
- Issuance of an individual permit for the permittee's discharges; or
- A formal decision by EPA not to reissue the general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

However, should the permit expire prior to a replacement permit being issued, the existing permit will only cover those operators that submitted a complete and accurate NOI and met all the eligibility requirements prior to the expiration date of the permit. New construction projects requiring permit coverage after the expiration date of this permit are not eligible for coverage until a replacement permit is issued.

4.2 Requiring an Individual Permit or an Alternative General Permit

Based upon a number of different situations (e.g., applicable numeric effluent limitations resulting from a TMDL, or a determination that the operator has the potential to cause or contribute to a water quality standard exceedance), EPA may determine that coverage under an individual permit is necessary. If a permittee is currently discharging under this general permit and EPA determines that individual coverage is required, written notification of this required change in permit coverage, including reasoning for this decision, an application form, and a deadline for filing the application, will be provided to the permittee by EPA.

Additionally, any permittee may apply for an individual permit rather than apply for coverage under this general permit. An individual application must be submitted for coverage under such a permit with reasoning supporting the request. If such reasoning is considered adequate by EPA, the request will be granted and an individual permit issued. If an individual permit or alternative NPDES permit is issued to the permittee currently covered under this general permit, coverage under the general permit is terminated on the effective date of the new permit. Alternatively, if a permittee, currently covered under the general permit, seeks coverage under an individual or alternative NPDES permit and is denied, coverage under the general permit is terminated on the date of such denial, unless otherwise specified by EPA.

4.3 Releases in Excess of Reportable Quantities

The construction general permit requires the operator to prevent the discharge of hazardous substances or oil from a site in accordance with the SWPPP. Furthermore, if a permitted discharge contains a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302, during a 24-hour period, the National Response Center (NRC) must be notified (dial 800-424-8802 or 202-426-2675 in the Washington, DC area). Also, within 14 calendar days of knowledge of the release, the SWPPP must be modified to include the date and description of the release, the circumstances leading to the release, responses to be employed for such releases, and measures to prevent the reoccurrence of such releases. This approach is necessary because of statutory requirements that make a clear distinction between hazardous substances typically found in storm water discharges and spilled hazardous substances that are not (See 40 CFR 117.12(d)(2)(i)).

4.4 Spills

Discharge of a hazardous substance or oil caused by a spill (e.g., a spill of oil into a separate storm sewer) are not authorized by this permit. The construction site must have the capacity to control, contain, and remove such spills if they are to occur. Spills in excess of reportable quantities, as described in Part 4.3, must still be reported as required under 40 CFR 110. Also Section 311 of the CWA and certain provisions of Sections 301 and 402 of the CWA are also applicable.

4.5 Non-Attainment of Water Quality Standards After Authorization

The construction general permit contains requirements when EPA determines a discharge will cause or contribute to non-attainment of WQS, including failure to protect and maintain existing designated uses of receiving waters. When EPA notifies the operator after making such a determination, the permittee must then take one of the following three actions:

- Develop a supplemental BMP action plan describing SWPPP modifications to respond to the identified water quality concerns;
- Submit to EPA valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining WQS; or
- Apply for an individual permit according to Part 4.2 of the permit.

EPA expects the operator to be proactive about following up on any discharges likely to contribute to water quality standard exceedances, and not simply rely on the State or EPA notification. EPA expects operators to vigilantly and in-good-faith follow and document the process for BMP selection, implementation and maintenance, and cooperate to eliminate the identified problem within a time frame stipulated by EPA.

5. Termination of Coverage

Permittees must submit a completed Notice of Termination (NOT) that is signed according to Part 8.11 of the permit when one or more of the conditions contained in Part 5.1 of the permit have been met. NOTs must be submitted using the form provided by EPA (found in Appendix E of the permit), or a photocopy thereof, and sent

to the address specified on the form. NOTs provide EPA with a useful mechanism to track the status of projects which are actively covered by the permit.

The NOT includes:

- The NPDES permit tracking number for the storm water discharge identified by the Notice of Termination;
- The basis for submission of the NOT, including: final stabilization has been achieved on all portions of the site for which the permittee is responsible; another operator/permittee has assumed control over all areas of the site that have not been finally stabilized; coverage under an alternative NPDES permit has been obtained; or for residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner;
- The name, address and telephone number of the permittee submitting the Notice of Termination;
- The name of the project and street address (or a description of location if no street address is available) of the construction site for which the notification is submitted;
- The latitude and longitude of the project site; and
- A certification statement, signed and dated by an authorized representative as defined in Subpart 8.11 and the name and title of that authorized representative.

The NOT must be filed within 30 days after cessation of construction activities and final stabilization of the permittee's portion of the site (or temporary stabilization for residential construction where a homeowner is assuming control of a property). An NOT must also be submitted by a permittee within 30 days after another operator assumes the previous permittee's liabilities. This new permittee must submit an NOI for coverage consistent with Subpart 2.2.D. If the operator submits and is covered by a low erosion potential or TMDL waiver, continued compliance with the permit is not necessary nor is submittal of an NOT.

The operator may face enforcement action if an NOT is submitted without meeting one of the requirements in Part 5.1 of the permit unless there has been authorization under an alternative permit or a waiver for coverage under this permit has been approved.

The NOT must be submitted to the address listed in Part 5.3 of the permit.

6. Retention of Records

The permit requires that the operator must retain all records and reports required by this permit, including SWPPPs and information used to complete the NOI, for at least three years from the date of final stabilization. This period may be extended by request of EPA.

7. Permit Conditions Applicable to Specific States, Indian Country or Territories

Permit conditions that only apply to construction projects located in a specific State, Indian Country or other area are in Part 7 of the permit. These conditions are modifications or additions to analogous conditions in Parts 1 through 6 of the CGP, and reflect additional requirements arising from the State section 401 (Clean Water Act) or Coastal Zone Management Act (CZMA) certification processes or as otherwise established by EPA. EPA must include any more stringent permit conditions required by a State or Tribe to get State/Tribal certifications of the permit under section 401 (See 40 CFR §122.44(d)(3)) or CZMA (See 40 CFR §122.49(d)). Specific requirements will be added to the final permit upon completion of the certification processes. Added conditions will be specific to each State/Tribal area.

8. Standard Permit Conditions

The Federal regulations require all NPDES permits to contain the standard conditions specified at 40 CFR §122.41. This section of the permit describes those conditions.

8.1 Duty To Comply

The permittee must comply with all conditions of this permit. An operator not fulfilling his or her obligations, as agreed upon by signing the NOI, is considered in violation of the Clean Water Act and is grounds for injunctive relief, substantial monetary penalties, incarceration, changes or terminations to the permit, or denial of permit renewal.

8.2 Duty to Reapply

If the permittee, after expiration of its permit, desires to continue its activities, it must reapply for and obtain a new permit. For general permit coverage, this requires the permittee to comply with the terms of the reissued permit regarding follow-on permit coverage.

8.3 Need to Halt or Reduce Activity Not a Defense

The permittee facing enforcement action may not use as a defense the reasoning that compliance could only be achieved by halting or reducing the permitted activity.

8.4 Duty to Mitigate

The permittee is required to take all reasonable steps to prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

8.5 Proper Operation and Maintenance

The permittee must properly operate and maintain all equipment and treatment systems used by the permittee for compliance with the terms of the permit. This includes sediment and erosion controls installed at the site used to achieve compliance with the terms of the permit and the SWPPP. The permittee must provide appropriate laboratory controls and quality assurance procedures as necessary. Backup systems are required when needed to ensure compliance.

8.6 Permit Actions

The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation, reissuance, termination, or a notification of planned changes or anticipated noncompliance does not halt any permit condition.

8.7 Property Rights

An operator of a construction activity does not convey his or her property rights or privileges through issuance of this permit or coverage of activity under this permit. Injury to private property or invasion of personal rights are also not authorized under this permit nor any infringement of Federal, State, or local laws or regulations.

8.8 Duty to Provide Information

The permittee must transmit any information needed to determine compliance with the permit or to modify the permit.

8.9 Inspection and Entry

The permittee must, upon presentation of valid credentials by EPA or its representative, allow entry into the premises where the regulated activity and/or records are present. EPA must have access to view and to be able to make copies of any required records, inspect facilities, practices, operations, and equipment, and sample or monitor at reasonable times.

8.10 Monitoring and Records

Samples must be representative of the monitored activity. Records must be retained for 3 years (5 years for sludge activities) subject to extension by EPA. Monitoring records must identify the sampling dates and personnel, the sample location and time, the analytical techniques used, and corresponding results. Wastewater and sludge measurements must be conducted in accordance with 40 CFR Parts 136 or 503 or other specified procedures. Falsification of results is a violation.

8.11 Signatory Requirements

Applications, reports, NOIs, NOTs, or other information submitted to EPA must be signed and certified by a responsible officer, a general partner or proprietor of a partnership, or a principal executive officer or ranking elected official for a municipality, State, Federal, or other public agency. Knowingly making false statement, representations, or certifications is subject to penalties. Other than for applications and NOIs, these reports may be signed by a duly authorized representative. A person is considered a duly authorized representative only if the authorization is made in writing by such person and submitted to EPA. A duly authorized representative may be either a named individual or any individual occupying a named position. The duly authorized representative is not the same as an operator, but the legally bound representative of the operator.

8.12 Reporting Requirements

1. Planned changes. Notice must be given to EPA as soon as possible of any planned physical alterations and/or additions to the facility. This notice is required if the facility changes to meet the criteria for a new source or the nature and concentration of pollutants are affected.
2. Anticipated noncompliance. The permittee must give advance notice of any conditions that may result in noncompliance.
3. Permit Transfers. The permit is not transferable except after written notice to EPA. EPA may require modification or revocation and reissuance as necessary.
4. Monitoring reports. Reports must be submitted on a DMR or on an EPA-specified form for sludge use/disposal practices. In addition, more frequent monitoring must be reported. Calculations requiring averaging must use an arithmetic mean, except for fecal coliform. Monitoring results must be reported at the frequency specified in the permit.
5. Compliance schedules. Reports required by a compliance schedule in the permit must be submitted within 14 days of the due date.
6. Twenty-four hour reporting. The permittee must report any noncompliance that may endanger human health or the environment within 24 hours after becoming aware of the circumstance. Within 5 days, the permittee must provide a written submission containing the information outlined in 40 CFR §122.41(l)(6)(ii) unless the requirement is waived by EPA.
7. Other noncompliance. The permittee must report all instances of noncompliance not reported under other specific reporting requirements at the time monitoring reports are submitted.
8. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to EPA, it must promptly submit such facts or information.

8.13 Bypass

Intentional diversions of untreated waste streams from any portion of a treatment facility are prohibited unless (1) the bypass does not cause effluent to exceed limits, and (2) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, and there was no feasible alternatives, and the proper notification was submitted.

8.14 Upset

An upset can be used as an affirmative defense in actions brought to the permittee for noncompliance. The permittee (who has the burden of proof) must have operational logs or other evidence that shows (1) when the upset occurred and its cause, (2) that the facility was being operated properly, (3) proper notification was made, and (4) remedial measures were taken.

9. Re-opener Clause

This permit contains a re-opener clause allowing the permit to be re-opened and modified during the term of the permit consistent with the Federal regulations at 40 CFR §122.62, §122.63, §122.64, and §124.5. Generally, this would be triggered by a water quality concern, a change in NPDES statutes, or to incorporate new procedures or requirements developed by the EPA regarding such things as additional guidance regarding Historic Preservation to provide for additional consideration of effects to properties either listed or eligible for listing in the National Register of Historic Places. Indication that a permittee is contributing to a water quality concern, impacting historic properties, or generally not fulfilling his or her obligations under this permit, may result in a review of the permit and requirement to obtain an individual permit or alternative general permit, or have the limitations and/or requirements under this permit be modified.

10. Definitions

The permit contains definitions of statutory, regulatory and other terms important for understanding the permit and its requirements. Several definitions were added to this permit that were not included in the 1998 permit. In addition, several terms that were defined in the body of the 1998 permit were moved to the definition section. New terms defined in this permit include: large construction activity, receiving water, small construction activity, and wetland. Definitions of these terms were added for clarity of permit conditions.

11. Acronyms

The permit contains a list of acronyms found in the permit which aids in the understanding of the permit and its requirements.

V. Endangered Species Protection

A. Background

The CGP contains conditions to ensure the activities regulated by it are protective of species that are listed under the Endangered Species Act (ESA) as endangered or threatened (known as “listed species”), and listed species habitat that is designated under the ESA as critical (“critical habitat”). In addition, the permit's coverage does not extend to discharges and discharge-related activities likely to jeopardize the continued existence of species proposed but not yet listed as endangered or threatened or result in the adverse modification of habitat proposed to be designated critical habitat.

The ESA places several different requirements on activities covered by the CGP. First, section 9 of the ESA and the ESA implementing regulations generally prohibit any person from “taking” a listed animal species (e.g., harassing or harming it) unless the take is authorized under the ESA. This prohibition applies to all entities and includes EPA, permit applicants, permittees and the public at large. Second, section 7(a)(2) of the ESA requires that Federal agencies consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) (“the Services”) to insure that any action authorized, funded or carried out by them (also known as “agency actions”) are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Jeopardizing the continued existence of a listed species means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species (See 40 CFR §402.02).

The ESA section 7 implementing regulations at 50 CFR Part 402 apply this consultation requirement to any action authorized by a Federal agency that may affect listed species or critical habitat, including permits. This effect, among other things, can be beneficial, detrimental, direct and indirect. The issuance of the CGP by EPA is thus subject to the ESA section 7(a)(2) consultation requirements. Finally, ESA section 7(a)(1) directs Federal agencies to use their authority to further the purposes of the ESA by carrying out programs for the conservation of listed species, and section 7(a)(4) directs Federal agencies to confer with the Services on Agency actions likely to jeopardize the existence of species proposed but not yet finally listed or result in the adverse modification of critical habitat proposed to be designated.

The ESA regulations provide for two types of consultation; formal and informal. Informal consultation is an optional process that includes discussions, correspondence, etc. between the Services and a Federal agency or a designated non-Federal representative (NFR) to determine whether a Federal action is likely to have an adverse effect on listed species or critical habitat. During informal consultation the Services may suggest modifications to the action that a Federal agency, permit applicant or non-Federal representative could implement to avoid likely adverse effects to listed species or critical habitat. If adverse effects are likely and those effects cannot be addressed through informal consultation, then formal consultation generally occurs.

Formal consultation is a 135-day process that results in issuance of a biological opinion by the Services in which they determine whether the Federal action is likely to jeopardize the existence of a listed species or result in adverse modification or destruction of critical habitat. Formal consultation can also provide authorization for anticipated incidental take of listed animal species, provided any such take is consistent with an incidental take statement contained in the biological opinion. While informal consultation is not a prerequisite to formal consultation, most section 7 consultations are carried out as informal consultations.

Federal permit applicants frequently play a key role in both formal and informal consultation. The ESA regulations provide for permit applicants, where designated, to carry out informal consultations as a NFR, which enables them to work directly with the Services (See 50 CFR §402.08). EPA designates operators who wish to try to become eligible for this storm water construction general permit through the consultation process as non-Federal representatives. The regulations also provide for the participation of permit applicants in formal consultation (See 50 CFR §402.14 and 51 FR 19939).

Also of relevance for the CGP are ESA section 10 incidental taking permits. Section 10 of the ESA allows persons, including non-Federal entities to incidentally take listed animal species, where otherwise prohibited, through the issuance of a permit after development of a habitat conservation plan (HCP). These procedures were developed to allow non-Federal entities such as developers to, among other things, alter habitat without incurring takings liability where take is minimized to the extent practicable.

B. Conditions To Protect Listed Species

Based on the informal consultation that was completed between EPA and NMFS/FWS in November 1997 for the 1998 CGP, NMFS and FWS provided their respective concurrences with EPA's finding that issuance of the CGP was not likely to adversely affect listed species or critical habitat. Coverage under the CGP is available only if:

a. No Federally-listed threatened or endangered species or their designated critical habitat are in the project area as defined in Addendum A; or

b. Formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service under section 7 of the ESA has been concluded and that consultation:

- i. Addressed the effects of the project's storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat, and
- ii. The consultation resulted in either:
  - (a) Biological opinion finding no jeopardy to listed species or destruction/adverse modification of designated critical habitat, or

(b) written concurrence from the Service with a finding that the storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to adversely affect listed species or critical habitat; or

c. The construction activities are authorized under section 10 of the ESA, and that authorization addresses the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat; or

d. Storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to adversely affect any listed threatened or endangered species or result in the destruction or adverse modification of designated critical habitat; or

e. The project's storm water discharges, allowable non-storm water discharges, and discharge- related activities were already addressed in another operator's valid certification of eligibility under Criteria A-D which included your construction activities and there is no reason to believe that listed species or designated critical habitat not considered in the prior certification may be present or located in the project area. By certifying eligibility under this Subpart, the operator agrees to comply with any measures or controls upon which the other operator's certification was based.

Applicants must comply with any applicable terms, conditions, or other requirements developed in the process of meeting the eligibility requirements of the criteria in Subpart 1.3.C.6 above to remain eligible for coverage under this permit. Such terms and conditions must be documented and incorporated into the applicant's storm water pollution prevention plan.

- Operators who conduct informal consultation to meet the eligibility requirements of Criterion B are automatically designated as non-Federal representatives. See 50 CFR §402.08. Operators who choose to conduct informal consultation as a non-Federal representative must notify EPA and the appropriate Service office in writing of that decision.

The CGP requires that applicants consider effects to listed species and critical habitat when developing SWPPPs and require that those plans include measures, as appropriate, to protect those resources. Failure by permittees to abide by measures in the SWPPPs to protect species and critical habitat may invalidate permit coverage.

Addendum A contains instructions to assist permit applicants in making this inquiry. Those instructions require that applicants ascertain: (1) If their construction activities would occur in critical habitat; (2) whether listed species are in the project area; and (3) whether the applicant's storm water discharges and discharge-related activities are likely to adversely affect listed species or critical habitat. If adverse effects are likely, then applicants would have to meet one of the eligibility requirements to receive permit coverage. "Discharge-related activities" include activities which cause point source storm water pollutant discharges including but not limited to excavation, site development, and other surface disturbing activities, and measures to control, reduce or prevent storm water pollution including the siting, construction and operation of BMPs. The "project area" includes:

1. Area(s) on the construction site where storm water discharges originate and flow towards the point of discharge into the receiving waters (this includes the entire area or areas where excavation, site development, or other ground disturbance activities occur), and the immediate vicinity;
2. Area(s) where storm water discharges flow from the construction site to the point of discharge into receiving waters;
3. Area(s) where storm water from construction activities discharges into the receiving waters and the area(s) in the vicinity of the point of discharge; and
4. Area(s) where storm water BMPs will be constructed and operated, including any area(s) where storm water flows to and from BMPs.

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the measures (including BMPs) to control storm water runoff, and the type of receiving waters.

Addendum A also contains a list of listed and proposed species organized by State and county to assist applicants in determining if further inquiry is necessary as to whether listed species are present in the project area. This list is current as of October 30, 2001, and will be updated periodically and made available on the Office of Wastewater Management's NPDES website at: http://cfpub.epa.gov/npdes/stormwater/endangersearch.cfm. CGP applicants can also get updated species information for their county by calling the appropriate FWS or NMFS office or the appropriate EPA Regional storm water office.

The CGP also requires that applicants comply with any conditions imposed under the eligibility requirements of Parts 1.3.C.6 to remain eligible for coverage under this permit. Such conditions must be incorporated in the applicant's SWPPP. The CGP does not authorize any prohibited take (as defined under section 3 of the ESA and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under sections 7 or 10 of the ESA. The CGP does not authorize any storm water discharges or storm water discharge- related activities that are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

It is EPA's intention to provide permit applicants with the greatest possible flexibility in meeting permit requirements for protecting listed species and critical habitat. Thus, EPA is allowing applicants to use either section 7 or section 10 ESA mechanisms to address situations where adverse effects are likely (see Criteria B and C of Subpart 1.3.C.6.d). Also, to give applicants additional flexibility with the timing of informal consultations and in meeting eligibility requirements, the permit automatically designates CGP applicants as non-Federal representatives for the purpose of carrying out informal consultation.

C. Essential Fish Habitat

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth a number of new mandates for the National Marine Fisheries Service (NMFS), regional fishery management councils, and Federal agencies to identify and protect important marine and anadromous fish habitat. Regional fishery management councils, with assistance from NMFS, are required to delineate Essential Fish Habitat (EFH).

The Magnuson-Stevens Act requires that Federal agencies consult with NMFS on all actions undertaken by the agency, including permit issuance, which may adversely affect EFH. Final revised regulations addressing such consultations were promulgated by NMFS on January 17, 2002 (67 Fed. Reg. 2343). The term “adverse effect” is defined in the NMFS regulations at 50 CFR Part 600.910 as any impact that “reduces quality and/or quantity of EFH”, and may include “direct or indirect physical, chemical or biological alternations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat and other ecosystem components.”

The proposed permit would regulate for the first time currently unpermitted storm water discharges from small construction activities in addition to continuing to cover large construction activities. As noted earlier, the permit would require the development and implementation of a SWPPP to control pollutants in the discharges. Since the SWPPPs are geared toward reducing pollutants in the discharges, EPA believes that the permit issuance will improve EFH, and there will be no adverse impact on EFH. As such, in accordance with 50 CFR 600.920, EPA is not requesting a consultation with NMFS at this time.

VI. Historic Property Protection

The National Historic Preservation Act (NHPA) of 1966, as amended, establishes a national historic preservation program for the identification and protection of historic properties and resources. Under the NHPA, identification of historic properties is coordinated by the State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs) or other Tribal Representatives (in the absence of a THPO). The Tribal

Government and SHPO should be consulted for those Tribes which do not have THPO status. Section 106 of the NHPA requires Federal agencies to take into account the effects of their actions (also known as "Federal undertakings" in the NHPA regulations) on historic properties that are listed or eligible for listing on the National Register of Historic Places and to seek comments from an independent reviewing agency, the Advisory Council on Historic Preservation (ACHP).

The term "Federal undertaking" is defined in the existing NHPA regulations to include any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects for that project, activity, or program. See 36 CFR 800.2(a). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 800.2(e).

Federal undertakings include the EPA's issuance of general NPDES permits. In light of NHPA requirements, EPA included a provision in the eligibility requirements of the 1997 proposed CGP for the consideration of the permit's effects on historic properties. Due to comments received on the proposed permit, EPA reserved this section in the final 1998 CGP. EPA is proposing requirements in this permit and will continue to discuss the appropriate conditions with the Advisory Council on Historic Preservation (NCHP), the National Conference of State Historic Preservation Officers (NCSHPO), and Tribes, regarding the possible development of a comprehensive and efficient approach to ensure that effects to historic properties are given appropriate consideration while ensuring undue burdens are not imposed on applicants and regulatory authorities.

The proposed provisions provide that an applicant is eligible for permit coverage only if: (1) the operator has evaluated the effects of his discharges on properties that are listed or are eligible for listing and does not have reason to believe that construction activities will affect such properties; (2) the operator has obtained and is in compliance with a written agreement with the SHPO or THPO that outlines all measures to be taken to mitigate or prevent adverse effects to historic property; or (3) the project's discharges, and discharge- related activities were already addressed in another operator's certification of eligibility.

When applying for permit coverage, applicants are required to certify in the NOI that they are in compliance with one of the eligibility requirements. Permit coverage is only available if storm water and allowable non-storm water discharges and "discharge-related activities" do not affect historic properties. "Discharge-related activities" are defined to include activities which cause, contribute to, or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction and operation of BMPs to control, reduce of prevent pollution in the discharges. Discharge-related activity is included to ensure compliance with NHPA requirements to consider the effects of activities which are related to the activity which is permitted, i.e., the storm water and non-storm water discharges.

VII. Waivers for Certain Small Construction Activities

Regulations for Phase II of the NPDES Storm Water Program were published on December 8, 1999 (64 FR 68722). Phase II was in response to the Congressional mandate at Clean Water Act § 402(p)(6) that the Agency "...shall issue regulations...which designate storm water discharges...to be regulated to protect water quality and ...establish a comprehensive program to regulate such designated sources." Under Phase II, EPA designated small construction projects disturbing at least one but less than five acres, but by providing for two types of waivers acknowledged that not every construction project in the 1-5 acre range would pose a potential threat to water quality[3].

[3]For more background on designation of small construction activity and available waivers, see discussion on "Discharges Associated with Small Construction Activity" starting on page 68771 of the December 8, 1999, Federal Register (64 FR 68771)

EPA adopted two types of waivers within the definition of small construction at 40 CFR §122.26(b)(15). The Rainfall-Erosivity Waiver at 40 CFR §122.26(b)(15)(i)(A) is based on the "R" factor from the Revised Universal Soil Loss Equation (RUSLE) and applies to projects where (and when) negligible rainfall/runoff-erosivity is expected. The Water Quality Waivers at 40 CFR §122.26(b)(15)(i)(B) are essentially based on an analysis that storm water discharges from small construction activities would not be expected to cause or contribute to exceedances of WQS. The water quality waivers anticipated that the analysis would demonstrate that storm water controls for small construction were not needed based on 1) a Total Maximum Daily Load for impaired waters or 2) for non-impaired waters that do not require a TMDL, an equivalent analysis that either determined pollutant load allocations for small construction or determined that such load allocations were not necessary.

While the criteria for the Rainfall-Erosivity Waiver were built into the definition of "storm water discharge associated with small construction activity" itself, only the broad outline of the Water Quality Waivers was included in the rule. The details of the Water Quality Waivers were expected to be included in a water quality analysis that would take place independently.

Low Rainfall Erosivity Waiver

In order to qualify for the Low Rainfall Erosivity Waiver, the small construction project's rainfall erosivity factor calculation ("R" in the Revised Universal Soil Loss Equation) must be less than 5 during the period of construction activity. The "R" factor is dependent on the location, date, and duration of the project. The operator must certify to EPA that construction activity will occur only in a time period when the rainfall erosivity factor is less than 5. The period of construction activity begins at initial earth disturbance (clearing, grading, or excavating) and ends with final stabilization. Where vegetation will be used for final stabilization, the date of installation of a stabilization practice that will provide interim non-vegetative stabilization can be used for the end of the construction period, provided the operator commits (as a condition of waiver eligibility) to periodically inspect and properly maintain the area until the criteria for vegetative final stabilization as defined in the construction general permit have been met. If use of this interim stabilization eligibility condition is relied on to qualify for the waiver, signature of the waiver form with its certification statement would constitute acceptance of and commitment to complete the final stabilization process.

Methods for determining the R factor for a small construction site are provided in detail on an EPA Fact Sheet (Low Rainfall Erosivity Waiver (Fact Sheet 3.1) that is currently under revision. EPA is also evaluating a calculator that could be used in several ways. As envisioned, the calculator would easily determine the "R" factor for a specific location and time period. It would also be useful in determining the time periods during which construction activity could be waived from permit coverage. Construction operators may find that moving their construction activity by a few weeks or expediting site stabilization will allow them to be waived. A calculator could also interpolate between the "R" factor distribution numbers used in the USDA Handbook for two week periods. Interpolating to day-by-day erosivity factors allows for waivers for many one or two week construction projects. It is also possible that consideration of the slope at the construction site could be taken into account by the calculator, since construction on a flat area is less likely to result in storm water run-off and an adjustment to "R" factors can be allowed under RUSLE.

TMDL Waiver

If a water was listed as impaired and construction site runoff was identified by the State, Tribe, or EPA as a potential source of the impairment, a water quality waiver would not be available unless a TMDL established or approved by EPA addressed the pollutant(s) of concern and determined that controls on storm water discharges from small construction activity were not needed to protect water quality. TMDLs are developed in accordance with a formal methodology, public review, and approval procedures adopted by EPA, the States, and Tribes and governed by regulations at 40 CFR 130.7. The formal TMDL process specifies the maximum amount of a pollutant that a waterbody can receive and still meet WQS, and allocates pollutant loadings among point and nonpoint pollutant sources. All TMDLs would be done outside the context of the permit or the waiver and only become available for use for potential waivers after they had been finalized. This is not to say that appropriate

controls could not be required under a permit to allow discharges to occur on an impaired water prior to the TMDL, but only that the regulations do not allow a water quality waiver in such circumstances. Information on TMDLs that has been prepared is available from EPA online at http://www.epa.gov/owow/tmdl/ and from State and Tribal water quality agencies. The "R" Factor Waiver would still be available to eligible dischargers on impaired waters.

Equivalent Analysis Waiver

When a TMDL has not been established, the language in 40 CFR §122.26(b)(15)(i)(B) provides for an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or determines that such allocations are not needed to protect water quality. The pollutant of concern for construction is typically sediment so this waiver is applicable in areas where there is no TMDL for sediment. This waiver requires a small construction operator to develop an equivalent analysis based on existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety.

Waiver Deadlines and Submissions

Forms for the waivers and instructions are under development. A decision on whether there will be a separate form for each type of waiver or whether one form will be used for two or more of the waivers has not yet been made. Waiver forms will be included with the final permit or in a subsequent Federal Register notice. The certification forms will require the following information:

1. Name, address and telephone number of the construction site operator(s);
2 Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction project or site;
3 Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest acre) to be disturbed;
4. The name of the water bodies that would be receiving storm water discharges from your construction project;
5. For "R Factor" Waivers: the rainfall erosivity factor calculation that applies to the active construction phase at your project site.
6. For the TMDL Waiver, Equivalent Analysis Waiver, and Water Quality-Based Waiver for Short Term Construction: Whether your waiver eligibility is claimed under an approved TMDL (include name/date of the TMDL) or because you are submitting an equivalent analysis.
7. A statement, signed and dated by an authorized representative as provided by 40 CFR §122.22(a), that certifies that the construction activity will take place and that the storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis and in accordance with all conditions for waiver eligibility.

The Waiver Certification forms would need to be submitted prior to commencement of construction activities. Operators submitting an equivalent analysis must wait for EPA to review and approve their analysis before starting construction. The Agency reserves the right to take enforcement for any unpermitted discharges or permit noncompliance that occur between the time construction commenced and waiver authorization is granted. While no final decision has been made, it is possible that the waiver forms will be submitted to the Storm Water Notice of Intent Processing Center in Washington, DC.

Submittal of a Permit Waiver Certification is an optional alternative to obtaining a permit for discharges of storm water associated with small construction activity, provided you qualify and choose to comply with waiver conditions. Any discharge of storm water associated with small construction activity not covered by either a permit or a waiver may be considered an unpermitted discharge under the Clean Water Act. As mentioned above, EPA reserves the right to take enforcement for any unpermitted discharges or permit noncompliance that occur between the time construction commenced and either discharge authorization is granted or a complete and accurate Permit Waiver Certification is submitted. EPA may notify any operator covered by a waiver that they must apply for a permit. EPA may notify any operator who has been in non-compliance with a waiver that they

may no longer use the waiver for future projects. Any member of the public may petition EPA to take action under this provision by submitting written notice along with supporting justification.

VIII. Section 401 and Coastal Zone Management Act Certifications

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State/Tribe in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process has been initiated for all States, Indian Country, and Federal facilities covered by today's general permits. Any additional State/Tribal permit conditions will be contained in the final permit. The Coastal Zone Management Act (CZMA) requires that all Federal licensing and permitting actions be reviewed for consistency with each approved State coastal zone management plan. EPA has initiated this review.

IX. Frequently Asked Questions

The following are answers to some of the more common questions on the construction storm water permitting program. They are intended to help construction operators understand the permit. Be aware these answers are fairly broad and may not take into account all scenarios possible at construction sites.

WHAT IS THE GOAL OF THIS PERMIT?

The goal of this permit is to protect the quality and beneficial uses of the Nation's surface water resources from pollution in storm water runoff from construction activities. To achieve this goal, the permit requires operators to plan and implement appropriate pollution prevention and control practices for storm water runoff during the construction period. These Best Management Practices (BMPs) are aimed primarily at controlling erosion and sediment transport, but would also include controls, including good housekeeping practices, aimed at other pollutants such as construction chemicals and solid waste (e.g., litter). As used in this permit, the terms "Construction and Construction-related activities" include all clearing, grading, excavation, and stockpiling activities that will result in the disturbance of one or more acres of land area.

WHAT TYPES OF CONSTRUCTION ACTIVITIES MAY NEED A STORM WATER PERMIT?

Any construction activity that is, or is part of, a "common plan" of development or sale that will disturb one or more acres and has the potential to have a discharge of storm water to a water of the United States must either have a permit OR have qualified for a waiver. These regulated discharges are broken into two categories: "Large" and "Small". A large construction activity is one that will disturb, or is part of a "common plan" that will cumulatively disturb, five or more acres. A small construction activity is one that will disturb, or is part of a "common plan" that will cumulatively disturb, one or more acres.

Construction and construction-related activities refers to the actual earth disturbing construction activities and those activities supporting the construction project such as construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), measures used to control the quality for storm water associated with construction activity, or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants). It does not refer to construction activities unrelated to earth disturbing activities such as interior remodeling, completion of interiors of structures, etc. "Construction" does not include routine earth disturbing activities that are part of the normal day-to-day operation of a completed facility (e.g., daily cover for landfills, maintenance of gravel roads or parking areas, landscape maintenance, etc.) nor activities under a State or Federal reclamation program to return an abandoned facility property to an agricultural or open land use (as opposed to demolition of something in order to build something new).

ARE THERE SITUATIONS WHERE A PERMIT IS NOT NEEDED?

If all of the storm water from the construction activity is captured on-site and allowed to evaporate, soak into the ground on-site, or is used for irrigation, you do not need a permit. Under the Clean Water Act, it is illegal to have a point source discharge of pollutants to a water of the United States that is not authorized by a permit. If there is a potential for a discharge, you need to apply for a permit. Therefore, the best management practices that you use to keep the storm water on your site must be effective under any size storm. You may also have an obligation to the State/Tribe concerning discharges to ground water or impoundment of runoff (e.g., water rights).

IF A CONSTRUCTION ACTIVITY DOES NOT ADVERSELY IMPACT WATER QUALITY IS COVERAGE UNDER THE CONSTRUCTION GENERAL PERMIT STILL NECESSARY?

Waivers are possible only for discharges of storm water associated with SMALL construction activity (i.e., construction disturbing less than 5 acres). These waivers are authorized by federal regulation at 40 CFR §§122.26(b)(15)(i)(A) & (B) and are explained in Addendum C of this permit. Waivers are not available for any construction activity disturbing 5 acres or greater, or less than 5 acres if part of a common plan of development or sale (or if designated for permit coverage by EPA).

WITH ALL THE PEOPLE INVOLVED IN A CONSTRUCTION PROJECT, HOW DO I KNOW IF I AM THE ONE THAT NEEDS TO APPLY FOR THE PERMIT?

You must apply if you meet either of the two parts of the definitions of "Operator." This means you should apply for permit coverage if you have operational control over either the construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., owner or developer of project), or you have day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (e.g., general contractor). However, where your activity is part of a larger common plan of development or sale, you are only responsible for the portions of the project for which you meet the definition of "operator."

There may be more than one party at a site performing the tasks relating to "operational control." Depending on the site and the relationship between the parties (e.g., owner, developer, general contractor), there can either be a single party acting as site operator and consequently be responsible for obtaining permit coverage, or there can be two or more operators with all needing permit coverage. Exactly who is considered an operator is largely controlled by how the "owner" of the project chooses to structure their contracts with the "contractors" hired to design and/or build the project. The following are three general operator scenarios (variations on any of the three are possible, especially as the number of "owners" and contractors increases):

- **"Owner" as sole permittee.** The property owner designs the structures for the site, develops and implements the SWPPP, and serves as general contractor (or has an on-site representative with full authority to direct day-to-day operations). The "Owner" can be the only party that needs a permit, in which case everyone else on the site may be considered subcontractors and not need permit coverage.

- **"Contractor" as sole permittee.** The property owner hires a construction company to design the project, prepare the SWPPP, and supervise implementation of the plan and compliance with the permit (e.g., a "turnkey" project). Here, the contractor would be the only party needing a permit. It is under this scenario that an individual having a personal residence built for his own use (e.g., not those to be sold for profit or used as rental property) would not be considered an operator. EPA believes that the general contractor, being a professional in the building industry, should be the entity rather than the individual who is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing a SWPPP. However, individuals would meet the definition of "operator" and require permit coverage in instances where they perform general contracting duties for construction of their personal residences.

- **Owner and contractor as co-permittees.** The owner retains control over any changes to site plans, SWPPPs, or storm water conveyance or control designs; but the contractor is responsible for overseeing

actual earth disturbing activities and daily implementation of SWPPP and other permit conditions. In this case, both parties may need coverage.

However, you are probably not an operator and subsequently do not need permit coverage if:

- You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (i.e., if the contractor directs your activities on-site, you probably are not an operator); or

- your activities on site result in earth disturbance and you are not legally a subcontractor, *but* a SWPPP specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities may have on storm water quality (i.e., another operator has assumed responsibility for the impacts of your construction activities). This particular provision will apply to most utility service line installations.

In addition, for purposes of this permit and determining who is an operator, "owner" refers to the party that owns the structure being built. Ownership of the land where construction is occurring does not necessarily imply the property owner is an operator (e.g., a landowner whose property is being disturbed by construction of a gas pipeline). Likewise, if the erection of a structure has been contracted for, but possession of the title or lease to the land or structure is not to occur until after construction, the would-be owner may not be considered an operator (e.g., having a house built by a residential homebuilder).

MY PROJECT WILL DISTURB LESS THAN ONE ACRE, BUT IT *MAY* BE PART OF A "LARGER COMMON PLAN OF DEVELOPMENT OR SALE." HOW CAN I TELL AND WHAT MUST I DO?

In many cases, a common plan of development or sale consists of many small construction projects. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would *remain* part of the common plan of development or sale until the intended construction occurs.

If your smaller project is part of a larger common plan of development or sale that collectively will disturb one or more acres (e.g., you are building on 6 half-acre residential lots in a 10-acre development or are putting in a fast food restaurant on a 3/4 acre pad that is part of a 20 acre retail center) you need permit coverage. The "common plan" in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit.

However, where only a small portion of the original common plan of development remains undeveloped and there has been a period of time where there is no ongoing construction activities (i.e., all areas are either undisturbed or have been finally stabilized), you may re-evaluate your individual project based on the acreage remaining from the original "common plan." If less than five but more than one acre remains to build out the original "common plan" a permit is still required, but you can treat your project as part of a "small" construction activity and may be eligible for the waivers available for small construction activities (e.g., one of six lots totaling 2 acres in a 50 acre subdivision can be treated as part of a 2 acre rather than 50 acre "common plan"). If less than one acre remains of the original common plan, your individual project may be treated as part of a less than one acre development and no permit would be required.

WHEN CAN YOU CONSIDER FUTURE CONSTRUCTION ON A PROPERTY TO BE PART OF A SEPARATE PLAN OF DEVELOPMENT OR SALE?

After the initial "common plan" construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development. For example, after a house is built and occupied, any future construction on that lot (e.g., reconstructing after fire, adding a pool

or parking area for a boat, etc.), would stand alone as a new "common plan" for purposes of calculating acreage disturbed to determine if a permit was required. This would also apply to similar situations at an industrial facility, such as adding new buildings, a pipeline, new wastewater treatment facility, etc. that was not part of the original plan.

WHAT IF THE EXTENT OF THE COMMON PLAN OF DEVELOPMENT OR SALE IS CONTINGENT ON FUTURE ACTIVITIES?

EPA recognizes that there are situations where you will not know up front exactly how many acres will be disturbed, or whether some activities will even occur with certainty. If you are not sure exactly how many acres will be disturbed, you should make the best estimate possible and may wish to overestimate to ensure you do not run into the situation where you should have a permit, but don't. For example, if you originally estimated less that 5 acres would actually be disturbed and took advantage of the "R" Factor waiver, but you actually disturbed 5.5 acres, you would lose your waiver and would have to go through the permit process mid-stream. This could result in delays in obtaining permit authorization and costs associated with contract changes to implement permit requirements - in addition to being liable for any unpermitted discharges.

If you have a long range master plan of development where some portions of the master plan are a conceptual rather than a specific plan of future development and the future construction activities would, if they occur at all, happen over an extended time period, you may consider the "conceptional" phases of development to be separate "common plans" provided the "conceptual phase" has not been funded and periods of construction for the physically interconnected phases will not overlap. For example, a university or an airport may have a long-range development concept for their property, with future development based largely on future needs and availability of funding. A school district could buy more land than needed for a high school with an indefinite plan to add more classrooms and a sports facility some day. An oil and gas exploration and production company could have a broad plan to develop wells within a lease or production area, but decisions on how many wells would be drilled within what time frame and which wells would be tied to a pipeline would be largely driven by current market conditions and which, if any, wells proved to be commercially viable.

WHAT IF THE "COMMON PLAN OF DEVELOPMENT OR SALE" ACTUALLY CONSISTS OF NON-CONTIGUOUS SEPARATE PROJECTS?

There are several situations where discrete projects that could conceivably be considered part of a larger "common plan" can actually be treated as separate projects for the purposes of permitting.:

B. A public body (e.g., a municipality, State, Tribe, or Federal Agency) need not consider all their construction projects within their entire jurisdiction to be part of an overall "common plan." For example, construction of roads or buildings in different parts of a state, city, military base, university campus, etc. can be considered as separate "common plans." Only the interconnected parts of single project would be considered to be a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.)

C. Where discrete construction projects within a larger common plan of development or sale are located at least 1/4 mile apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan"is not concurrently being disturbed. For example, two oil and gas well pads separated by 1/4 mile could be treated as separate "common plans." However, if the same two well pads and an interconnecting access road were all under construction at the same time, they would need to be considered as part of a single "common plan" for permitting purposes. If a utility company was constructing new trunk lines off an existing transmission line to serve separate residential subdivisions located more than 1/4 mile apart, the two trunk line projects could be considered to be separate projects.

WHAT DO YOU NEED TO DO TO APPLY FOR PERMIT COVERAGE?

First - you will need a copy of this permit language - you will need it to determine if you are eligible for the permit; what must be included in your pollution prevention plan, and what you need to do in order to comply with the permit.

Second - you need to determine if you are eligible to use the permit. You will need to document how you determined your eligibility with regards to protection of endangered species, historic properties, etc.

Third - you will need to prepare your Storm Water Pollution Prevention Plan. You will also need to include a copy of the permit language and documentation on your eligibility determination(s) in your Plan.

Fourth - you will need to fill out the NOI form and submit it before you start construction (so you can be covered in the event it rains the day you break ground). If online entry of NOI information becomes available during the life of the permit, you will be able to use that option.

WHAT ARE MY OPTIONS FOR MEETING THE "FINAL STABILIZATION" CRITERIA?

In most cases, you can terminate permit coverage as soon as the portion(s) of the project for which you are an operator are finally stabilized. A definition of "Final Stabilization" is in the permit and is required only of areas that are not otherwise covered by some sort of structure. For the purpose of these discussions, "structure" is not only used in the more traditional sense of "buildings," but to also refer to other things built on the ground whose intended purpose would require it to remain in a non-vegetated condition after construction has ended. Examples of "structures" include: buildings; parking lots; roads; gravel equipment pads, sidewalks, runways, etc. All other disturbed areas must be finally stabilized by either vegetative or non-vegetative practices, except disturbed areas on lands that will be returned to an agricultural use such as cropland, rangeland, or silviculture need only be returned to the preexisting agricultural use condition (e.g., tilled land, grass rangeland, agricultural buffer stip, etc.) and where a residential homeowner has decided to install their lawn themselves, only temporary stabilization is required. Perennial vegetation could include grasses, ground covers, trees, shrubs, etc. Vegetative final stabilization only requires getting to 70% of the "natural" vegetative cover in that part of the country. If the natural cover is only 50%, you only have to get back to 35% cover (70% of 50%). Non-vegetative stabilization could include rip-rap, gravel, gabions, etc. Impervious cover such as concrete or asphalt should be avoided as a final stabilization technique. Semi-permanent low or no maintenance erosion control practices combined with seeds that would take hold the next growing season (e.g., properly secured seed impregnated erosion control mats, etc.) could also be used as "final stabilization.

WHAT IF THE OPERATOR(S) CHANGES BEFORE THE PROJECT IS COMPLETED?

If operational control changes, the old operator submits a Notice of Termination (NOT) and the new operator submits a Notice of Intent before taking over operational control.

WHAT IF EARTH DISTURBANCE IS A NORMAL PART OF THE POST-CONSTRUCTION USE OF THE SITE?

The earth disturbing activity has to be part of a project to build a structure (e.g., building, road, pad, pipeline, transmission line, etc.) or demolish an exiting structure in order to build a new one on a piece of land in order to trigger the need for a permit for the discharge of storm water associated with industrial activity. Earth disturbance that is a normal part of the long-term use or maintenance of the property is not covered by the construction general permit. For example, re-grading a dirt road or cleaning out a roadside drainage ditch to maintain its "as built" state is road maintenance and not construction. Restoring the original well pad in order to work over an existing oil or gas well is operation of a well and not construction. Re-grading and re-graveling a gravel parking lot or equipment pad is site maintenance and not construction. Reworking planters that are part of the landscaping at a building is landscape maintenance and not construction. Applying daily cover at a landfill is simply part of

operating a landfill and not construction. Cleaning out a drainage ditch to restore its original grade and capacity is ditch maintenance and not construction.

HOW MANY NOTICES OF INTENT (NOIs) MUST I SUBMIT? WHERE AND WHEN ARE THEY SENT?

You only need to submit one NOI to cover all activities on any one common plan of development or sale. The site map you develop for the storm water pollution prevention plan identifies which parts of the overall project are under your control. For example, if you are a homebuilder in a residential development, you need submit only one NOI to cover all your lots, even if they are on opposite sides of the development.

The NOI must be postmarked before you begin work on site. The address for submitting NOIs is found in the instruction portion of the NOI form and in Part 2.3. of the CGP. You must also look in Part 11 of the permit to determine if copies of the NOI form are to be sent to a State or Indian Tribe.

DO I HAVE FLEXIBILITY IN PREPARING THE STORM WATER POLLUTION PREVENTION PLAN (SWPPP) AND SELECTING BEST MANAGEMENT PRACTICES (BMPs) FOR MY SITE?

Storm water pollution prevention plan requirements were designed to allow maximum flexibility to develop the needed storm water controls based on the specifics of the site. Some of the factors you might consider include: more stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby water bodies; safety concerns of the storm water controls (e.g., potential hazards of water in storm water retention ponds to the safety of children; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

The approach and BMPs used for controlling pollutants in storm water discharges from small construction sites may vary from those used for large sites since their characteristics can differ in many ways. Operators of small sites may have more limited access to qualified design personnel and technical information. Sites may also have less space for installing and maintaining certain BMPs. A number of structural BMPs (mulching, use of inlet protection, or silt fence) and non-structural BMPs (minimizing disturbance, good housekeeping) have shown to be efficient, cost effective, and versatile for small construction site operators to implement. As is the case with large construction sites, erosion and sediment control at small construction sites is best accomplished with proper planning, installation, and maintenance of controls.

MUST EVERY PERMITTEE HAVE HIS OR HER OWN SEPARATE SWPPP OR IS A JOINT PLAN ALLOWED?

The only requirement is that there be at least one SWPPP for a site that incorporates the required elements for all operators, but there can be separate plans if individual permittees so desire. EPA encourages permittees to explore possible cost savings by having a joint SWPPP for several operators. For example, the prime developer could assume the inspection responsibilities for the entire site, while each homebuilder shares in the installation and maintenance of sediment traps serving common areas.

IF A PROJECT WILL NOT BE COMPLETED BEFORE THIS PERMIT EXPIRES, HOW CAN I KEEP PERMIT COVERAGE?

If the permit is reissued or replaced with a new one before the current one expires, you will need to comply with whatever conditions the new permit requires in order to transition coverage from the old permit. This usually includes submitting a new NOI. If the permit expires before a replacement permit can be issued, the permit will be administratively "continued." You are automatically covered under the continued permit, without needing to submit anything to EPA, until the earliest of:

1. The permit being reissued or replaced;
2. Submittal of a Notice of Termination (NOT);

3. Issuance of an individual permit for your activity; or
4. EPA issues a formal decision not to reissue the permit, at which time you must seek coverage under an alternative permit.

WHEN CAN I TERMINATE PERMIT COVERAGE? CAN I TERMINATE COVERAGE (i.e., LIABILITY FOR PERMIT COMPLIANCE) BEFORE THE ENTIRE PROJECT IS FINISHED?

You can submit an NOT for your portion of a site providing: (1) You have achieved final stabilization (e.g., 70% revegetation) of the portion of the site for which you are a permittee (including, if applicable, returning agricultural land to its pre-construction agricultural use); (2) another operator/ permittee has assumed control according to Subpart 8.11.C of the permit over all areas of the site that have not been finally stabilized for which you are responsible (for example, a developer can pass permit responsibility for lots in a subdivision to the homebuilder who purchases those lots, providing the homebuilder has filed his or her own NOI); or (3) for residential construction only, you have completed temporary stabilization and the residence has been transferred to the homeowner.