

NPDES General Permit for Storm Water Discharges From Construction Activities - Fact Sheet Table of Contents

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I. Introduction

The United States Environmental Protection Agency (EPA) is reissuing the general permit that authorizes the discharge of pollutants in storm water discharges associated with construction activity (also known as the “construction general permit” or “CGP”). The CGP, upon reissuance, covers storm water discharges associated with both small and large construction activity. Small construction activity is added in response to the Phase II Storm Water Regulations promulgated on December 8, 1999 (64 FR 68722). Specifically, the Phase II regulations add permitting requirements for storm water discharges from construction activities that disturb from one to five acres. Phase I Storm Water Regulations promulgated on November 16, 1990 (55 FR 47990) established permitting requirements for storm water discharges from construction activities that disturb five acres or more. 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.

Appendix B contains a list of areas eligible for coverage under the CGP. Individual permit numbers exist for each eligible area, as noted in Appendix B. However, the CGP 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” or the “CGP” apply to the common language of each of the separate general permits.

This CGP replaces two previous Construction General Permits that were issued for five-year terms by EPA Regions 1, 2, 3, 7, 8, 9, and 10 in February 1998 (63 FR 7858) and by EPA Region 6 in July 1998 (63 FR 36490), respectively. EPA public noticed a draft CGP on December 20, 2002 (67 FR 78116). This final CGP is based on that draft, taking into account comments received. Details of comments received and EPA response to those comments are provided in the administrative record.

The most significant changes from the 1998 CGP include:

- Modified permit to include all areas in the country for which EPA is the permitting authority, except for Region 4 that continues to operate under a Regional-specific permit. This included removal of certain areas for which EPA is no longer the permitting authority (e.g., the States of Maine and Arizona are now authorized to administer the NPDES permitting program).
- Modified permit coverage to include small construction activities, and to identify waiver opportunities for small construction activities based on low rainfall erosivity, TMDLs, and equivalent analyses in accordance with EPA’s regulations.
- Added uncontaminated excavation dewatering and irrigation runoff as allowable non-storm water discharges.
- Added restrictions on, and documentation of requirements for, discharges to waters with Total Maximum Daily Loads (TMDLs) approved or established by EPA.
- Removed state and county Endangered Species Act (ESA) appendix of Federally-listed or proposed species.
- Added new options for authorization procedures and NOI submission deadlines to accommodate new seven-day reviews of NOIs by U.S. Fish & Wildlife Service and National Marine Fisheries Service.
- Modified information required on NOI form to require:
 - applicable permit number,
 - U.S. Internal Revenue Service Employer Identification Number (EIN), where applicable,
 - methodology for determining latitude and longitude,
 - name of Indian reservation, where applicable,
 - address of SWPPP location (changed from optional to required) and contact person,
 - whether the discharge is consistent with the assumptions and requirements of applicable EPA approved or established TMDLs,
 - specification of the criterion the operator certified for ESA eligibility, and the specific permit tracking number of an operator certifying under another operator’s eligibility determination.

- Updated NOI submission deadlines to account for ongoing projects.
- Added language to support the ability of operators to submit NOIs and NOTs using EPA’s electronic NOI system when it becomes available.
- Clarified procedure for operator to delineate on the SWPPP areas of the project where no further requirements apply following final stabilization.
- Clarified documentation requirements for ESA eligibility, and added documentation requirements for permit eligibility for waters that have an established TMDL.
- Modified inspection provisions to include option for weekly site inspections and guidelines for inspection of utility line installation, pipeline construction, and other linear construction activities.
- Provided further clarification on stabilization requirements for project areas where construction has temporarily ceased.
- For clarification purposes, added definitions for the following terms:
 - “Arid Areas”
 - “Eligible”
 - “Federal Facility”
 - “Indian Country”
 - “Large construction Activity”
 - “New Project”
 - “Ongoing Project”
 - “Permitting Authority”
 - “Project Area”
 - “Receiving Water”
 - “Semi-Arid Areas”
 - “Site”
 - “Small Construction Activity”
 - “Storm Water Discharge-Related Activity”
 - “Total Maximum Daily Load” or “TMDL”
 - “Wetland”

The final CGP contains individual permit numbers for the following areas:

Region 1: The State of New Hampshire; Indian Country in 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: The District of Columbia and Federal facilities in the State of Delaware.

Region 5: Indian Country in the States of Michigan, Minnesota, and Wisconsin, except the Sokaogon Chippewa (Mole Lake) Community.

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 Groups 13 and 46, and SIC codes 492X and 5171) and point source discharges associated with agricultural production, services, and silviculture (includes SIC Groups 01, 02, 07, 08, and 09), 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. Answers to Common Questions

In this section, EPA provides answers to some of the more common questions on the construction storm water permitting program. It is intended to help permittees understand the permit. Be aware these answers are general 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 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 will, 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 refer 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). Also, it does not include activities under a State or Federal reclamation program to return an abandoned property into an agricultural or open land use.

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 coverage under this 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 coverage under this permit. Many local governments have separate requirements for soil and erosion control from construction projects. There may be other federal, state, tribal, or local requirements 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 Appendix D of the 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 that will ultimately disturb 5 or more acres (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 one or both parts of the definition 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 (SWPPP) for the site or other permit conditions (e.g., general contractor). 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.”

In many instances, there may be more than one party at a site performing tasks related to “operational control” and hence, more than one operator must submit an NOI. 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 all needing permit coverage. Exactly who is considered an operator is largely controlled by how the “owner” of the project chooses to structure the contracts with the “contractors” hired to design and/or build the project. The following are three general operator scenarios (variations on any of these 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” is the only party that needs permit coverage, 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 one company (i.e., a contractor) to design the project and oversee all aspects of the construction project, including preparation and implementation of the SWPPP and compliance with the permit (e.g., a “turnkey” project). Here, the contractor would likely 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, which is the most common scenario, both parties need to apply for 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). EPA anticipates that this will be the case for many, if not 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, a 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.

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. "Common plan" 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 permit coverage.

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" permit coverage may still be 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, 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 beforehand exactly how many acres will be disturbed, or whether some activities will ever occur. 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 than 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 need to apply for permit coverage. 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 "conceptual" phases of development to be separate "common plans" provided the 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 available 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 be considered part of a larger “common plan,” can actually be treated as separate projects for the purposes of permitting:

- A. A public entity (e.g., a municipality, state, tribe, or federal agency) need not consider all 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, county, or city could be considered separate “common plans.” Only the interconnected parts of a 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.)
- B. Where discrete construction projects within a larger common plan of development or sale are located 1/4 mile or more 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 1/2 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 generally 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 the CGP to determine if you are eligible for the permit. The text of the permit also explains, for example what must be included in your SWPPP 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 regard to protection of endangered species, total maximum daily loads, etc.

Third - you will need to prepare your SWPPP. You will also need to include a copy of the CGP and documentation of your eligibility in your SWPPP.

Fourth - you will need to fill out an NOI form and submit it to EPA at least seven days before you start construction.

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 Appendix A of the CGP. For the purpose of these discussions, “structure” is used not only in the more traditional sense of “buildings,” but also refers to other things that would 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 condition (e.g., tilled land, grass rangeland, agricultural buffer strip, etc). 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 requires 70 percent coverage of the “natural” vegetative cover in that part of the country. If the natural vegetation in your area covers 50 percent of the land, final stabilization is achieved when coverage of 35 percent or more of the land is achieved (70 percent of 50 percent). 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. Long-term, semi-permanent erosion control practices combined with seeds that would establish vegetative stabilization (e.g., properly secured seed impregnated erosion control mats, etc.) could also be used as “final stabilization.” To qualify as “long-term,” the erosion control practice must be selected, designed, and installed so as to provide at least three years of erosion control.

EPA believes, where the environmental threat is low (i.e., in arid and semi-arid climes), that “final stabilization” can also include techniques that employ re-vegetation combined with other stabilization measures. “Other stabilization measures” in this context include what are known as “temporary degradable rolled erosion control products,” a.k.a., “erosion control blankets” (ECBs) along with an appropriate seed base. With proper selection (degradability, application, siting, etc), design, and installation, ECBs can be very effective in preventing the

detachment and transportation of soil until they naturally degrade and vegetation has assumed this function. Therefore, upon proper selection, design, and installation of the combination ECB-seed technique in arid or semi-arid areas, a permittee can be considered to have achieved final stabilization and can terminate permit coverage. If more than 3 years (i.e., three growing seasons) is required to establish the 70 percent of the natural vegetative cover, this technique cannot be used or cited for fulfillment of permit termination requirements prior to actual establishment of vegetative cover.

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 (NOI) before taking over operational control.

In many instances, operational control changes, but only for a portion of the site. In these instances, the new operator must:

1. submit an NOI; and
2. develop and implement their own SWPPP or adopt the SWPPP of the previous operator if it's still applicable (with appropriate revisions)

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, demolish, or replace a structure (e.g., building, road, pad, pipeline, transmission line, etc.) to trigger the need for permit coverage. 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 well pad of 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. Repaving is routine maintenance unless underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation. Where clearing, grading, or excavating (i.e., down to bare soils) takes place, permit coverage is required if more than one acre is disturbed. Reworking planters that are part of the landscaping at a building is landscape maintenance and not construction. Applying daily cover at a landfill is part of the operation of a landfill and not construction.

Does the exclusion of "Routine Maintenance" Apply to all Construction Activity?

Yes. The definition of small construction at 40 CFR §122.26(b)(15)(i) includes the phrase "Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility" EPA has revised the definition of "large construction" in this permit to include similar language. However, the term "routine maintenance" should not be confused with activities such as repairs, replacement, and other types of non-routine maintenance that require permit coverage where more than one acre is disturbed.

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 for which you are considered the operator in any given project. The site map you develop for the SWPPP 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.

A complete NOI must be sent at least seven days before work begins on the site. The address for submitting NOIs is found in Part 2 of the CGP. You must also look in Part 9 of the permit to determine if copies of the NOI form must 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 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 (e.g., potential hazards of water in storm water retention ponds to the safety of children; 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 (e.g., 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 example, the general contractor 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 the new permit conditions in order to transition coverage from the old permit. This will likely include 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 percent revegetation) of the portion of the site for which you are responsible; (2) another operator/permittee has assumed control, according to Subpart 5.1.B 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); (3) coverage under an alternative NPDES permit has been obtained for the discharge; or (4) for residential construction only, you have completed temporary stabilization and the residence has been transferred to the homeowner.

Is Coverage Required for Oil and Gas Construction?

EPA received numerous comments concerning the applicability of the construction permit requirements, which were modeled after residential and commercial construction, to oil and gas construction. The oil and gas industry noted that a residential or commercial project typically has a definite plan of development that involves a planning phase, a construction phase and termination of the construction, while an oil and gas construction project is typically on a very tight schedule and moves very quickly from planning to construction because both the access to mineral rights and the availability of drilling rigs are on schedules.

EPA believes sediment from oil and gas sites can be a problem, but realizes that this type of construction may require different controls than residential and commercial construction. EPA has extended the permit application deadline for oil and gas construction activity disturbing 1 to 5 acres from March 10, 2003 to March 10, 2005. See 68 *Federal Register* 11325. The two-year postponement will allow for time for EPA to analyze and better evaluate: the impact of the permit requirements on the oil and gas industry; the appropriate BMPs for preventing contamination of storm water runoff resulting from construction association with oil and gas exploration, production, processing, or treatment operations or transmission facilities; and the scope and effect of 33 U.S.C. 1342(l)(2) and other storm water provisions of the CWA.

The two-year postponement applies only to "small" oil and gas construction projects. Large construction has been regulated as an industrial activity under CWA section 402(p)(6) since promulgation of the Phase I storm water rule. Large construction activity was covered under the 1998 CGP and must now obtain permit coverage under the 2003 CGP.

Do I Need to Have Coverage Under the MSGP and the CGP for Mining Activity?

Coverage under the CGP is required for the construction or exploration phase, and coverage under the multi-sector general permit (MSGP) is required for the active mining phase. This is due to EPA's concern that the initial clearing, grading, or excavation on a site could escape permit coverage under the MSGP for mining activities (e.g., Sector G -Metal Mining) despite the significant pollutant discharges that may result. Members of the mining industry have requested to be covered by only one permit for any and all earth disturbances. To allow this, EPA may need to modify the MSGP. As part of the next MSGP reissuance, EPA will consider the effectiveness and justification for addressing different mining phases in two different permits, including whether all mining and mining-related activities (from exploration and construction to reclamation) should be placed in the MSGP. At present, however, discharges relating to the exploration and construction phases of mining operations must be covered by the CGP, while discharges from active mining activities must be covered under the MSGP.

III. Coverage Provided by General Permits

Section 402(p) of the Clean Water Act (CWA) provides that storm water discharges associated with industrial activity that discharge 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).

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 including discharges from construction activity (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 or "large" 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, known as 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; less than one acre if part of a larger common plan of development or sale that disturbs between one and five acres; and other construction activities designated by EPA 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)). However, the Phase II rule allows for the exclusion of certain sources from permit coverage 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.

All large construction activities, regulated under 40 CFR §122.26(b)(14)(x), are 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 activities, regulated under 40 CFR §122.26(b)(15)(i), that disturbs less than one acre but are 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.

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 generally 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.

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 the 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 (i.e., CGP and the qualifying program). 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 that are in compliance with the terms and conditions of this permit will not cause unreasonable degradation of the marine environment. As such, this permit is consistent with provisions specified in 40 CFR §125.123(a).

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 the 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 (also known as the “national construction general permit”), issued February 17, 1998, was for use in the states, territories and Indian country in EPA Regions 1, 2, 3, 7, 8, 9, and 10 where EPA was the NPDES permitting authority. EPA Region 4 issued its permit on March 31, 1998 (63 FR 15621) that was modified on April 28, 2000 (65 FR 25122). EPA Region 6 issued its permit 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 all states, territories, and Indian country where EPA is the NPDES permitting authority, except in EPA Region 4. Operators of construction projects in EPA Region 4 should continue to seek coverage under the appropriate permit, either the Region 4 CGP, another applicable EPA permit, or a state permit.

Operators of construction projects in EPA Region 6, previously not covered under the national construction general 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 in Region 6 where EPA is the permitting authority must re-apply for coverage under this CGP (see Subpart 1.2 of the CGP for locations where EPA is the Permitting Authority). Operators of construction projects in Texas, other than oil, gas, and pipeline construction, must seek coverage under Texas’ permit. More information is available for Texas operators at: www.tceq.state.tx.us/index.html. Operators of discharges in 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 Groups 13 and 46, and SIC codes 492X and 5171) and point source discharges associated with agricultural production, services, and silviculture Includes SIC Groups 01, 02, 07, 08, and 09), and discharges in the 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 must seek coverage under this CGP or, if appropriate, submit a waiver certification form. EPA Region 6 is hereby providing notice pursuant to Subpart VI.B.4 of the Region 6 permit 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.

IV. Summary of Options for Controlling Pollutants

EPA is providing the following information on controlling pollutants in storm water discharges to assist permittees in preparing SWPPPs. Most controls for construction activities can be categorized in either of two groups: (1) erosion and sediment controls and (2) 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 BMPs, such as materials management and litter control.

1. 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. Typically, a combination of stabilization practices and structural practices (as well as storm water management and housekeeping measures) are necessary throughout the site to provide adequate water quality protection. 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.

A. 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 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.

- 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 percent effective in reducing erosion.¹
- 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.
- 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.
- 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 percent 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
- 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.
- 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

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

²Ibid.

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.

- **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.

B. 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.

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

2. 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 flood control requirements (that 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.

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.

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.

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.

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 BMP.

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.

3. 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 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.

V. 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.

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 Municipal Separate Storm Sewer System (MS4). EPA is also making this permit available, consistent with 40 CFR §122.26(b)(15(ii)), for storm water discharges from any other construction activity designated by EPA 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. 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).

One significant change from the 1998 CGP to the 2003 CGP is that EPA now presents permit language in a more reader-friendly, plain language format. In several places in the CGP, EPA has replaced the terms “operator”, “applicant”, and “permittee” with the easier-to-understand terms of “you” or “your.” As such, once an operator requests coverage under the CGP, the CGP is worded to speak directly to that operator, who is now the permittee.

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 SWPPP.

1.2 Permit Area

As noted above, the CGP is actually a compilation of numerous identical permits, each with its own NPDES permit number. Each separate CGP 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.). A list of each of these areas, along with the associated NPDES permit number, is provided in Appendix B of the permit. Each permittee will be assigned a tracking number associated with the appropriate NPDES permit number when his or her Notice of Intent (NOI) is received and processed by EPA.

This permit modifies the area of available coverage from the February 1998 CGP and is now available for all areas, except those within EPA Region 4, for which EPA is the permitting authority. Specifically, this permit includes those activities previously covered by the EPA Region 6 CGP (63 FR 36489, July 6, 1998), adds Indian Country in EPA Region 5, and clarifies those oil and gas related activities in Oklahoma for which EPA remains the permitting authority. This permit excludes those areas that have recently been authorized to administer the NPDES Permitting Program (i.e., the State of Maine and the State of Arizona). EPA will continue to be the permitting authority for Indian Lands in the State of Arizona.

State Coastal Zone Management Act (CZMA) certification was not received from Massachusetts in time for that state to be included in this permit. As such, large construction activities in Massachusetts covered under the 1998 CGP will continue to be covered under that permit. EPA will reissue the CGP for Massachusetts for large and small construction activities at a later date, and will include any state-specific modifications or additions as part of the State's CZMA certification process.

1.3 Eligibility

This section of the permit describes those requirements that are a pre-condition to obtaining coverage under the CGP. Specifically, only construction activities that meet the eligibility conditions in Subpart 1.3 can be covered by this permit. As such, if an operator is not eligible for coverage under the CGP, but files an NOI requesting coverage, then any discharges are considered to be unpermitted and in violation of the Clean Water Act. However, once eligibility has been attained, if the operator does not comply with the requirements of the CGP, the operator may be in violation of the CGP for otherwise eligible discharges.

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 (Subpart 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 the construction site with NPDES CGP coverage; 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 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 Subpart 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 Subpart 1.3.B of the CGP. Two additional sources have been added since the 1998 CGP. Specifically, the permit includes uncontaminated excavation dewatering and landscape irrigation. These two sources were added to address concerns of operators that certain uncontaminated site discharges were not covered under the 1998 CGP and may need coverage under an additional NPDES permit.

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 achieved 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 those 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*. Federal regulations at 40 CFR §122.4(d) provide that no permit may be issued if the “conditions cannot ensure compliance with the applicable water quality requirements.” Unlike individual permits that include requirements tailored to site-specific considerations, 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 certify that they meet the eligibility conditions and implement requirements that will ensure compliance with the conditions of the permit. The permit requirements are intended to ensure that those seeking coverage under this general permit select, install, implement, and maintain BMPs at their construction site that will be adequate and sufficient to meet water quality standards for all pollutants of concern.

For the CGP, eligibility provisions do not hinge on the operator making a determination of compliance with applicable water quality standards. Rather, the permit limits operators from obtaining coverage under this permit if EPA makes such a determination. In those instances when EPA does make such a determination, EPA may require the operator to obtain coverage under an individual permit or may allow coverage under the CGP provided that the operator includes appropriate controls and implementation procedures in its SWPPP. As is required in Subpart 4.5 of the CGP, operators are required to select, install, implement, and maintain BMPs that minimize pollutants in the discharge. Except where specifically required by EPA to perform additional measures, these BMPs will be considered as stringent as necessary to ensure that discharges do not cause or contribute to an excursion above any applicable state water quality standard. As such, EPA expects that compliance with the terms of the general permit will ensure compliance with water quality standards.

1.3.C.5 *Discharging into Receiving Waters With an EPA Approved or Established Total Maximum Daily Load (TMDL) Analysis*.

A Total Maximum Daily Load (TMDL) is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Under current regulations and EPA program guidance (40 CFR §130.2 and §130.7), states establish TMDLs that include wasteload allocations from point sources, and load allocations from non-point sources and natural background conditions. Wasteload allocations are defined as the portion of a receiving water's loading capacity that is allocated to point sources dischargers. TMDLs are established at levels necessary to attain and maintain the applicable narrative and numerical water quality standards with seasonal variations and a margin of safety that take into account any lack of knowledge concerning the relationship between effluent limitations and water quality. TMDLs are developed on a pollutant- and waterbody-specific basis. In some instances, TMDLs may combine multiple pollutants into one set of TMDL documents; however, the specific TMDL wasteload and load allocations are to be pollutant-specific. States are responsible for establishing TMDLs, which EPA approves. In some instances, EPA establishes the TMDLs. Once established or approved by EPA, TMDLs are implemented through water quality management plans and through NPDES permits. NPDES regulations, at 40 CFR §122.44(d)(1)(vii)(B), require that EPA ensure that NPDES permit limits are consistent with the assumptions and requirements of any available wasteload allocation pursuant to 40 CFR §130.7. Generally, this requires EPA to ensure that NPDES permits incorporate applicable assumptions and requirements detailed in TMDLs approved or established by EPA.

Those seeking coverage under the CGP are responsible for determining whether specific conditions, over and above other requirements of the CGP, have been identified by the TMDL authority as necessary to ensure consistency with the assumptions and requirements of TMDLs approved or established by EPA. There may be

documents accompanying the TMDL (e.g., an implementation plan) or other documents that indicate the TMDL writer's intent to allocate a load for an individual discharger or for a class of dischargers. To the extent such documents are available, the operator should consider these materials when determining whether your discharge will be consistent with the TMDL. EPA encourages the operator to contact the authority that established the TMDL -- in most cases, the states -- to seek clarification if significant concerns exist over whether its activity will be consistent with a TMDL.

Consistent with EPA regulations and guidance, the CGP requires that the operator determine whether an EPA approved or established TMDL exists that specifically addresses its discharge and if so, take necessary actions to be consistent with the assumptions and requirements of that approved TMDL. To make this determination, the operator will need to (1) determine the waterbody into which it discharges, (2) identify if there is an approved TMDL for that waterbody, (3) determine if that TMDL includes specific requirements (e.g., wasteload allocation or load allocation) applicable to its construction site, and (4) if so incorporate those requirements into the SWPPP and implement necessary steps to comply with them. EPA generally agrees that construction activities should not be delayed because the TMDL authority failed to specify all sources of loading in the TMDL. EPA is not requiring that construction activities be delayed until such time as a TMDL can be revised. EPA has utilized a framework that allows the construction site operator to obtain clarification from the TMDL authority on discharge provisions that would allow authorization under the CGP. EPA established a website at www.epa.gov/npdes/stormwater/cgp that includes links to state TMDL information and contacts. EPA expects that permittees can access that website and identify either (1) the steps needed to be consistent with the assumptions and requirements of the TMDL or (2) a state or regional contact for making this determination. The operator may access that site or contact their state environmental agency or EPA region directly to make this determination. For construction activity authorized by EPA Region 8, TMDL information and contacts are available at: www.epa.gov/region08/water/stormwater/index.html. For more information on EPA's National TMDL program, including state and regional contacts, state maps showing impaired waterbodies, and example TMDLs, visit: www.epa.gov/owow/tmdl.

EPA recognizes that TMDLs vary in the complexity of their assumptions and quantification. In the process of determining whether or not an operator is consistent with the TMDL, the state or regional TMDL contact may request additional information. The TMDL may include details regarding recommended implementation activities that include certain narrative provisions 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. In addition, some States may include implementation provisions in their TMDLs, although EPA regulations do not require this, and EPA does not approve or disapprove TMDLs based on these implementation provisions. However, any implementation language included in the TMDL that applies to construction general permit discharges should be considered part of the TMDL for the purposes of determining consistency of the SWPPP with the TMDL. Further, EPA is clarifying that if the TMDL includes load allocations that the permitting jurisdiction later determines is for a discharge subject to this permit, then the load allocation is considered to be a wasteload allocation, and the SWPPP needs to demonstrate consistency with any specific requirements implementing this load allocation.

As described in the permit, EPA will begin with the general assumption that where EPA has approved a TMDL that does not include a specific allocation for storm water discharges, or where the TMDL authority clarifies that it did not include a specific allocation for storm water or for construction activities, adherence to a SWPPP that meets the requirements of the CGP will be consistent with the assumptions and requirements of such TMDLs. Inferring that the TMDL authority did not intend to make it impossible to permit storm water discharges in the absence of any discussion on this topic in the TMDL is reasonable because both construction activity and rainfall are so ubiquitous that it is unlikely that a policymaker would make such a significant decision consciously through silence. EPA will generally assume that such discharges were accounted for by the author of the TMDL, even if such discharges are not addressed specifically. Therefore, in the situation where an EPA approved or established TMDL has not specified a wasteload allocation for construction storm water discharges, but has not specifically excluded these discharges, compliance with a SWPPP that meets the requirements of the CGP will generally be assumed to be consistent with the approved TMDL. Similarly, where an EPA approved or established TMDL has specified a general wasteload allocation for construction storm water discharges, but no specific requirements for individual construction sites have been identified, either in the TMDL, a watershed plan, or other similar document, then compliance with a SWPPP that meets the requirements of the CGP will generally be assumed to be consistent with the approved TMDL. If the EPA approved or established TMDL specifically precludes such discharges, the operator is not eligible for coverage under the CGP. In selecting this approach, EPA is trying to balance the need to include permit conditions consistent with TMDLs with the need to clearly define permittee responsibilities.

1.3.C.6 *Endangered and Threatened Species and Critical Habitat Protection*. Before submitting an NOI, the operator must ensure and document that discharges are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or result in the adverse modification or destruction of habitat that is Federally-designated as critical under the Endangered Species Act (ESA).

The U. S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are responsible for administration of the ESA and as such are responsible for maintaining a list of protected species and critical habitat. Once listed as endangered or threatened, a species is afforded the full range of protections available under the ESA, including prohibitions on killing, harming or otherwise taking a species. In certain instances, FWS or NMFS may establish a critical habitat for a threatened or endangered species as a means to further protect those species. Critical habitat are areas determined to be essential for the conservation of a species and may not necessarily be in an area currently occupied by the species. Some, but not all, listed species have designated critical habitat. Exact locations of such critical habitat are provided in the Services regulations at 50 CFR Parts 17 and 226.

EPA has developed a four-step process (Appendix C) to make this determination. 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 Appendix C of the permit for the ESA Review Procedures to determine eligibility prior to submittal of the NOI. EPA strongly recommends that the operator follow the Appendix C procedures at the earliest possible stage to ensure that measures to protect listed threatened and endangered species and designated critical habitat are incorporated early in the planning process. At a minimum, the operator must document fully the procedures used to determine eligibility prior to submittal of the NOI.

This permit provides for the possibility of multiple permittees at a construction site. Operators should be aware that in many cases they can meet the CGP eligibility requirements by relying on another operator’s certification of eligibility as specified in Criterion F under Subpart 1.3.C.6 of the CGP.

By certifying eligibility under Criterion F of Subpart 1.3.C.6, the operator agrees to comply with any measures or controls upon which the other operator’s certification under Criterion A, B, C, D, or E of Subpart 1.3.C.6 was based. This situation will typically occur where a developer or primary contractor, conducts a comprehensive assessment of effects on listed species and critical habitat for the entire construction project, certifies eligibility under Criterion A, B, C, D, or E and that certification is relied upon by other operators (i.e., contractors) at the site. However, operators that consider relying on another operator’s certification should carefully review that certification and any supporting information, and assess whether there is any 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 (due, for example, to a new species listing or critical habitat designation). If an operator does not believe that the other operator’s certification provides adequate coverage for the operator’s storm water discharges and storm water discharge-related activities or for the operator’s particular project area, the operator must provide its own independent certification under Criterion A, B, C, D, or E.

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the storm water discharge-related activities and the type of receiving water. Given the number of construction activities potentially covered by the CGP, no specific method to determine whether listed species may be located in the project area is required for coverage under the CGP.

It is important to note that discussion or formal or informal consultation with FWS and/or NMFS should begin prior to submission of a permit application if the applicant is unclear about whether he or she can satisfy Appendix C without FWS and/or NMFS input.

The operator also has an independent ESA obligation to ensure that its activities do not result in any prohibited “takes” of listed species.³ Many of the measures required in the CGP and in these instructions to protect species may also assist operators in ensuring that their construction activities do not result in a prohibited take of species in violation of section 9 of the ESA. Operators who plan construction activities in areas that harbor endangered and threatened species are advised to ensure that they are protected from potential takings liability under ESA section 9 by obtaining either an ESA section 10 permit or by requesting formal consultation under ESA section 7 (as described in more detail in Step Four of the ESA Review Procedures in Appendix C of the CGP). Operators

³ Section 9 of the ESA prohibits any person from “taking” endangered wildlife (e.g., harassing or harming it). See ESA Sec 9; 16 U.S.C. §1538. The FWS has extended generally that prohibition to threatened wildlife by regulation at 50 CFR §17.31. This prohibition applies generally to all entities including private individuals, businesses, and governments. Section 9(a)(2) details the prohibited acts relating to endangered plants, which primarily apply on federal lands or to actions prohibited by State law.

who seek protection from takings liability should be aware that it is possible that some specific construction activities may be too unrelated to storm water discharges to be afforded incidental take coverage through an ESA section 7 consultation that is performed to meet the eligibility requirements for CGP coverage. In such instances, operators should apply for an ESA section 10 permit. Where operators are not sure whether to pursue a section 10 permit or a section 7 consultation for takings protection, they should confer with the appropriate FWS or NMFS office.

EPA received concurrence from FWS under section 7 of the Endangered Species Act on the construction general permit in a letter dated June 4, 2003 and received concurrence from NMFS in a letter dated June 20, 2003. In addition to ESA, the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth a number of new mandates for 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 §600.910 as any impact that "reduces quality and/or quantity of EFH", and may include "direct or indirect physical, chemical or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat and other ecosystem components."

This permit controls storm water discharges from small construction activities in addition to continuing to cover large construction activities. As noted earlier, the permit requires the development and implementation of a SWPPP to control pollutants in the discharges. This SWPPP must protect water quality in the affected waters, including designated aquatic life uses in those waters. Since the SWPPPs adequately protect water quality, including aquatic life, EPA has determined that the permit issuance will not adversely affect EFH. As such, in accordance with 50 CFR §600.920, EPA is not consulting with NMFS concerning this action.

1.3.C.7 Historic Properties. [Reserved] Operators are reminded that they must comply with applicable state, tribal, and local laws concerning the protection of historic properties and places. EPA is continuing discussions with the Advisory Council on Historic Preservation and may modify the CGP at a later date based on those discussions.

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 VI 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 Appendix D.

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 Appendix D.

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 Subpart 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 copy of the NOI form is available on EPA's NPDES website at: (www.epa.gov/npdes/stormwater/cgp).

EPA is presently in the process of developing an electronic NOI system that will allow you to complete and submit your NOI to EPA electronically. If EPA makes that, or other NOI options available, you may take advantage of those options to satisfy the NOI use requirements. Information on the availability of that system is found at www.epa.gov/npdes/stormwater/cgp.

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.

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 Authorization to Discharge Date

This permit is considered to be issued on the date it is noticed in the *Federal Register* and will be effective for five years from that date, ending at midnight on the anniversary of publication. Operators are authorized to discharge storm water from construction activities under the terms and conditions of this permit after submission of a complete and accurate NOI to EPA. The specific date of your authorization, however, is dependent upon your date and mode of submission.

- A. The first 90 days following the effective date of the CGP is the period during which ongoing or new construction operators transition to coverage under the new permit. There will be a 7 day waiting period, commencing on the date of postmark of the mailed NOI form, after which discharges associated with construction activities can commence, unless otherwise notified as per Subpart 2.1.C. The 7-day waiting period provides EPA, FWS and NMFS an opportunity to evaluate NOIs, and possibly delay authorization, for potential permit eligibility concerns (see Part 1.3), as part of a commitment to increase oversight of dischargers.
- B. For NOIs submitted after the 90-day transition period, there will be a 7-day waiting period (see Subpart 2.1.A of this fact sheet), commencing on the date the NOI is posted in EPA's NOI database (signifying a complete NOI was received by EPA), unless otherwise notified as per Subpart 2.1.C. By this time, eNOI submittal will be available. At the end of the 7-day review period, the NOI database will indicate if authorization has been delayed.

Submitting an NOI via EPA's electronic filing system will be the easiest and quickest way to obtain permit coverage because the system will automatically process the information, disallow incomplete submissions, and flag certain entries as possibly incorrect. Shortly after transmission of an eNOI to EPA, the database can be accessed to verify receipt and posting of information. The 7-day NOI review period will typically begin the day a complete eNOI is transmitted. To submit eNOIs and access the NOI database, go to www.epa.gov/npdes/stormwater/cgp. When using eNOI submittal, EPA will not separately mail you a notification regarding permit status, except as per Subpart 2.1.C.

After the initial 90-day permit term, for NOIs that are mailed to EPA, the 7-day review period commences only after EPA manually inputs your complete and accurate NOI information into the NOI database. While EPA will attempt to post NOIs in the database as timely as possible, the Agency cannot provide a set turn-around time for doing so, due to the unpredictable nature of the mail and the varying volume of forms submitted. An incomplete NOI will require EPA to mail a notification of incompleteness and will cause further delay. As with previous permits, a letter will be sent to the operator acknowledging receipt of a complete NOI and the date of posting in the database. Seven days following the date the NOI was posted in the database, NOI status can

be viewed on-line (the preferred way). Authorization status can also be obtained from the EPA Storm Water Notice Processing Center via email (epanoi@ctgusa.com), or telephone (866-352-7755), but EPA cannot guarantee a timely reply due to potential volume of inquiries. In lieu of this time-consuming process, EPA recommends use of eNOI submittal and NOI database queries.

- C. During the 7-day NOI review period following either NOI submittal (for the initial 90 days of the permit), or NOI posting in the NOI database (for post 90 day submittals), EPA may notify the NOI submitter that additional action must be taken before discharge authorization is obtained, based on concerns regarding eligibility as described in Subpart 1.3. When the NOI database is operational, all notifications of delays will be posted on the website by the seventh day, and will be followed by a mailed notification. For non-eNOI submissions, EPA will attempt to contact the NOI submitter directly with information about delays as soon as possible (telephone, fax, email), in addition to the database posting, but it is the submitter's responsibility to ensure that authorization has been granted.

Actions to be taken depend on the nature of the eligibility concerns (e.g. water quality, impaired receiving waters, endangered species). Additional actions may include a request to review the SWPPP, endangered species documentation or other information; the need for consultation with FWS or NMFS; a requirement to make revisions to the SWPPP; or having to submit an application for an individual permit as per Subpart 4.2. For sake of expediency in obtaining coverage, any requests should be complied with as soon as possible. When so notified that additional actions must be taken, discharges are not authorized until notified of such by EPA.

2.2 Notice of Intent Contents

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 instead use the forms as described in Subpart 4.2 of the permit.

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

- The applicable permit number for which coverage is being requested. This is the number from Appendix B of the CGP that correlates to the authorities of EPA to regulate discharges in the operator's State.
- The operator's, name, address, telephone number and U.S. Internal Revenue Service (IRS) Employer Identification Number (EIN). Generally, an EIN, also known as the taxpayer ID number, is required for all persons that have employees or operate a business as a corporation or partnership. More details are available from the IRS.
- 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 with finding latitudes and longitudes is provided in the instructions to the NOI form. For operators with multiple projects, purchase of a portable Global Positioning System (GPS) unit that provides read-outs of the latitude and longitude may be useful. GPS units designed for recreational use (e.g., boating, hiking) can cost less than \$100.
- Whether the site is located in Indian country, and, if so, the name of the Reservation where the project is located. For lands that are not part of a Reservation, the tribal affiliation is not required to be provided.
- Verification that the SWPPP has been prepared in advance of filing the NOI and the location of where the plan can be viewed.
- The name(s) of the water of the United States to which construction activities discharge. For discharges through a municipal separate storm sewer system (MS4), the NOI must include the name of the water to which the MS4 discharges.
- An indication whether the discharge is consistent with the assumptions and requirements of applicable EPA established or approved TMDLs (consistent with the discussion regarding eligibility provisions for Subpart 1.3.C.5).
- 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 end 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. The end date should be when final

stabilization is expected to be attained. Acreage may be determined by dividing square footage by 43,560, as demonstrated in the following example:

Convert 100,000 ft² to acres:

- ▶ Divide 100,000 ft² by 43,560 square feet per acre:
 - ▶ $100,000 \text{ ft}^2 \div 43,560 \text{ ft}^2/\text{acre} = 2.30 \text{ acres}$. Report 2.25 acres on the NOI Form.
- Whether any listed threatened or endangered species or designated critical habitat, described in more detail in Appendix C 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 Appendix C for instructions).
 - 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 and certified in accordance with the signatory requirements of 40 CFR §122.22. A complete description of these signatory requirements is provided in Appendix G of the general permit.

2.3 Submission Deadlines

- A. Operators of new projects (i.e., construction activity commenced after the effective date of this permit) must submit the NOI form at least seven days prior to commencement of construction activities. For the first 90 days after the issuance date of this permit, NOIs must be submitted at least seven days prior to commencement of construction based on the postmark date. For NOIs submit after the first 90 days, coverage cannot commence until seven days after the NOI is posted on EPA's NOI processing website. In both instances, EPA may, including upon notice from FWS or NMFS, delay authorization simply by notifying the operator of such a delay. In these instances, authorization is not granted until the operator is re-notified by EPA of eligibility.

EPA modified the submission deadline for NOIs from two days in advance of commencement of construction activity to seven days prior to commencement of construction activity. The 7-day waiting period provides EPA, FWS and NMFS with the opportunity to scrutinize NOIs for potential permit eligibility concerns, as part of these Agencies' commitment to increase oversight of dischargers. Two days did not provide time to review these submissions. Operators are still responsible for submitting complete and accurate NOIs (including eligibility of permit coverage) and are not authorized if the NOI is incomplete or inaccurate. An informal review of existing state NPDES construction general permits found that a large number of states do have a delay established in the NOI review process. This leads EPA to believe that construction activities can, in fact, operate successfully under a regulatory review process that will delay permit coverage by a period of seven days or more.

During the 7-day NOI review period following either NOI submittal (for the initial 90 days of the permit), or NOI information posting in the NOI database (for the post 90-day submittals), EPA may notify an applicant that some additional action must be taken before discharge authorization is obtained, based on eligibility concerns. Actions to be taken depend on the nature of the concerns (e.g. water quality, impaired receiving waters, endangered species, historic property). Additional actions may include a request to review an applicant's SWPPP, endangered species documentation or other information; the need for individual consultation with FWS or NMFS; making revisions to the SWPPP; or having to submit an application for an individual permit as per Subpart 4.2. For sake of expediency in obtaining coverage, the applicant should comply with any request as soon as possible. When notified that authorization to discharge will be delayed, an applicant cannot discharge until given explicit notice by EPA that the delay has been lifted.

- B. EPA is allowing operators of construction projects that received authorization under one of the 1998 CGPs 90 days after the effective date of this permit 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, a new NOI is not required to be submitted provided that the NOT is submitted consistent with the requirements of the 1998 CGP. In addition, the 2003 CGP provides these existing large construction operators 90 days to update their SWPPPs 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.
- C. EPA is requiring operators of construction projects that commenced operation prior to the effective date of this permit but that did not receive authorization to discharge under the 1998 CGP, to prepare and comply with an interim SWPPP consistent with the applicable requirements of the 1998 CGP. Operators of these ongoing projects are required to submit an NOI for coverage under the 2003 CGP no later than 90 days after the

effective date of this permit. In addition, the 2003 CGP requires these operators to update their interim SWPPP prior to the submission of the NOI such that the SWPPP is consistent with the 2003 CGP at the time of NOI submission. If the operator is eligible to submit a NOT (e.g., construction is finished and final stabilization has been achieved) prior to NOI submission, the interim SWPPP is not required to be updated.

The Agency anticipates that submitting NOIs via EPA's electronic filing system will be the easiest and quickest way to obtain permit coverage because the system will automatically process the information, disallow incomplete submissions, and may flag certain entries that could be incorrect. A short time after an eNOI is transmitted to EPA, applicants can access the database to see if their NOI was received and the information was properly posted. The 7-day NOI review period (explained in Subpart A above) will typically begin the day a complete NOI is transmitted. To submit eNOIs and access the NOI database, go to www.epa.gov/npdes/stormwater/cgp.

For those choosing to submit NOIs by mailing, the 7-day evaluation period commences after EPA receives a complete and accurate NOI form and the information is manually input into the NOI database. While EPA will strive to post an applicant's NOI information in the database as timely as possible, the Agency cannot provide a set turn-around time for doing so, owing to the vagaries of mailing and possible volume of forms submitted. An incomplete NOI may require EPA to mail a notification of incompleteness. Only after an applicant's complete NOI information set is input to the database can the 7-day review period commence. As with previous permits, a letter will be sent acknowledging receipt of a complete NOI, the date the NOI information was posted in the database, and the authorization tracking number. In lieu of this time-consuming process, EPA recommends applicants avail themselves of eNOI submittal.

In any of the above situations, permit coverage may be delayed past the 7-day waiting period upon notification as per Subpart 2.4C.

- D. If an NOI is submitted after construction activity has begun, the operator is authorized for discharges consistent with the authorization to discharge and submission deadlines detailed in Subparts 2.1 and 2.3 of the CGP but in no cases less than seven days after submission of a complete and accurate NOI to EPA. The Agency may seek enforcement action for any unpermitted discharges or permit non-compliance that occur between the time construction begins and discharge authorization.

2.4 Where to Submit

EPA operates a Storm Water Notice Processing Center that handles all NOIs and NOTs 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

EPA Storm Water Notice Processing Center
Mail Code 4203M
U.S. EPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Overnight/Express Mail Delivery

EPA Storm Water Notice Processing Center
Room 7420
U.S. EPA
1201 Constitution Avenue, NW
Washington, DC 20004

EPA believes with the advent of the electronic NOI (eNOI) system, expected to be available 90 days after effective date of this permit, mailing hard copies of NOI forms will be the least favored method to acquire permit coverage. With the eNOI system, all complete NOIs submitted will be automatically input into an NOI database which can be accessed by any interested party. Benefits of electronic NOI submittals include quicker processing of applicant information and the capability for missing or, in some cases, incorrect entries to be detected more quickly, thereby helping to prevent non-authorization or delays in authorization. To submit eNOIs and access the NOI database, go to www.epa.gov/npdes/stormwater/cgp.

3. Storm Water Pollution Prevention Plans (SWPPPs)

3.1 Storm Water Pollution Prevention Plan Framework

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. You are required to implement the SWPPP during construction activity, that EPA defines as from commencement of construction activity until final stabilization. EPA defines both of these terms in Appendix A of the CGP.

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 operator’s 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 waters of the United States 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; and (8) if applicable, locations where final stabilization has been accomplished and no further construction-phase permit requirements apply. Site maps should also include other major features and potential pollutant sources, such as locations of impervious structures and soil storage piles.
- D. **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 critical to 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. Placement of structural controls in flood plains should be avoided.
- 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 when you develop 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 SWPPP should 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 percent 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 focus primarily on storm water management of post-construction flow, EPA encourages sites 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 to paved surfaces 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 (for example, 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 section V.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 storm event whenever practicable. If maintenance before the next 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 regarding the protection of endangered species and critical habitat. Documentation must include:

- information on whether federally-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 Appendix C of the permit;
- confirmation of delivery of NOI to EPA or to EPA's electronic NOI system. This may include an overnight, express or registered mail receipt acknowledgment, or electronic acknowledgment from EPA's electronic NOI system;
- any correspondence for any stage of project planning between the operator and FWS, EPA, or NMFS regarding listed species and critical habitat, including any notification that delays authorization to discharge; and
- a description of any measures necessary to protect endangered or threatened species or critical habitat. Failure to implement these measures will result in ineligibility of coverage under this permit.

3.8 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 Storm Water Notice 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.

3.9 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 a construction site is located in an area covered by such a local program, then 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.

3.10 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 fewer inspections would be required under the option described in Subpart 3.10.A.1 as compared to the option provided in Subpart 3.10.A.2. 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 Subpart 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 3.10.A and 3.10.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. EPA is not specifying any inspector license or certification requirements at this time.
- 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 waters of the U.S. 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 that may increase 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, and the approximate amount of rainfall for each storm event (in inches),
 - Weather information and a description of any discharges occurring at the time of the inspection,
 - 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 must contain a certification that the site is in compliance with the SWPPP and this permit. Finally, the report must be signed in accordance with the signatory requirements in section 11 of Appendix G of the CGP.

3.11 Maintaining an Updated Plan

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 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 storm event whenever practicable. 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.

3.12 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 display 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 MS4 receiving discharges from the site; and representatives of the FWS or the NMFS. 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 and certified in accordance with the signatory requirements in the Standard Permit Conditions section of the permit (Appendix G).

3.13 Management Practices

- A. Control measures must be properly selected and installed in accordance with sound engineering practices and relevant manufacturers specifications.
- B. Off-site accumulations of sediment must be regularly removed to minimize impacts.
- C. Litter, construction debris, and construction chemicals must be prevented from entering a receiving water.
- D. 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.
- E. A combination of sediment and erosion control measures should be used to achieve maximum pollutant removal.

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 that 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.

- F. 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 that 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).

3.14 Documentation of Permit Eligibility Related to Total Maximum Daily Loads

Subpart 1.3.C.5 of the CGP requires that operators determine if any discharges from the site are consistent with the assumptions and requirements of applicable EPA established or approved TMDLs for the receiving water into which they discharge. To make such a determination, operators can access EPA's NPDES website at www.epa.gov/npdes/stormwater/cgp or contact the state environmental agency directly. Subpart 3.14 of the permit requires documentation of this determination.

If EPA has approved or established a TMDL for the waterbody into which you discharge, you must document if the TMDL requires actions on your part, over and above any requirements of the CGP, necessary to be consistent with the assumptions and requirements of such 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. If the TMDL specifically identifies measures or controls, the operator must incorporate these in to its SWPPP. If specific measures or controls are not required in the TMDL, the operator should document this in the SwPPP. Operators should access EPA's website at www.epa.gov/npdes/stormwater/cgp to find CGP-specific TMDL information for all states and EPA regions covered by the CGP. This approach should identify any BMPs and/or other controls that ensure those discharges will be consistent with the provisions of the EPA approved or established TMDL. The operator must document the rationale for the selected approach.

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 a Notice of Termination;
- 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 excursion), 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 Subpart 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 Attainment of Water Quality Standards After Authorization

NPDES regulations at 40 CFR §122.44(d) state that permits must contain conditions to achieve water quality standards. When EPA determines a discharge will cause or contribute to an excursion above WQS, including failure to protect and maintain existing designated uses of receiving waters, EPA will require the operator to take one of 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
- Cease discharges from construction activity and apply for an individual permit according to Subpart 4.2 of the permit.

If a supplemental BMP action plan is required, EPA expects the operator to vigilantly and in-good-faith follow and document the process for BMP selection, installation, implementation and maintenance, and cooperate to eliminate the identified problem within a time frame stipulated by EPA.

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 SWPPP according to requirements in the general permit. The permit language is included to ensure that those seeking coverage under this general permit select, install, implement, and maintain 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 selected, installed, implemented, and maintained do provide effluent quality that can meet WQS. However, because proper selection, installation, implementation, and maintenance are so critical to the success of BMP effectiveness, simply "installing BMPs" at a construction site will often not provide adequate water quality protection. Therefore the CGP requires operators to select, install, implement, and maintain BMPs that minimize pollutants in the discharge. Unless notified otherwise by EPA, compliance with this requirement will be assumed to be as stringent as necessary to ensure that discharges do not cause or contribute to an excursion above any applicable water quality standard.

5. Termination of Coverage

Permittees must submit a completed Notice of Termination (NOT) that is signed and certified according to Appendix G, Section 11 of the permit when one or more of the conditions contained in Subpart 5.1 of the permit have been met. NOTs must be submitted using the form provided by EPA (found in Appendix F of the permit), or a photocopy thereof, and sent to the address specified in the CGP. NOTs provide EPA with a useful mechanism to track the status of projects which are actively covered by the permit.

The NOT includes:

- Your NPDES permit tracking number for the storm water discharge;
- Your basis for submission of the NOT, including: final stabilization has been achieved on all portions of the site for which you are 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;
- Your name, address, telephone number and U.S. Internal Revenue Service (IRS) Employer Identification Number (EIN);
- 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; and
- A certification statement, signed and dated by an authorized representative as defined in Appendix G, Section 11 and the name and title of that authorized representative.

The NPDES permit tracking number is not the same number that was reported on the NOI form. The NOI contains the NPDES permit number as identified in the CGP (e.g., NHR100000) while the NPDES permit tracking number is that number provided by the EPA Storm Water Notice Processing Center acknowledging receipt of a complete NOI. The permit tracking numbers are assigned sequentially as NOIs are received by the EPA Storm Water Notice Processing Center (e.g., NHR1000001, NHR1000002, etc).

The NOI also requests that the operator provide a fax number and an E-mail address. While these two fields are not required to be completed, EPA anticipates that this information provides the most efficient means for corresponding with permittees. Finally, EPA is in the process of developing an electronic NOT system that will allow you to complete and submit your NOT to EPA electronically. If EPA makes that, or other NOT options available, you may take advantage of those options to satisfy the NOT use requirements. Information on the availability of that system is found at www.epa.gov/npdes/stormwater/cgp.

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). You must submit an NOT within 30 days after another operator assumes your liabilities. That new operator must submit an NOI for coverage consistent with Subpart 2.2.D. If you submit and are covered by a low erosion potential or TMDL waiver, continued compliance with the permit is not necessary nor is submittal of an NOT.

You may face enforcement action if an NOT is submitted without meeting one of the requirements in Subpart 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 Subpart 5.3 of the permit.

6. Retention of Records

The permit requires that all records and reports required by the CGP be retained, including SWPPPs and information used to complete the NOI, for at least three years from the termination of coverage or expiration of the permit. This period may be extended by request of EPA.

7. 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 endangered and threatened species and critical habitat protection (e.g., based on consultation with FWS or NMFS) or historic preservation requirements 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 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.

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 references those conditions in Appendix G of the CGP.

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

Section 401 of the CWA (See also 40 CFR §122.44(d)(3)) and §124.53(a) 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 completed for this permit. Similarly, the Coastal Zone Management Act (CZMA) (See 40 CFR §122.49(d)) requires that all Federal licensing and permitting actions be reviewed for consistency with each approved State coastal zone management plan. This permit also includes the results of that effort.

State Coastal Zone Management Act (CZMA) certification was not received from Massachusetts in time for that state to be included in this permit. As such, large construction activities in Massachusetts covered under the 1998 CGP will continue to be covered under that permit. EPA will reissue the CGP for Massachusetts for large and small construction activities at a later date, and will include any state-specific modifications or additions as part of the State's CZMA certification process.

Permit conditions that apply only to construction projects located in a specific state, Indian country or other area are in Part 9 of the permit. These conditions are modifications or additions to analogous conditions in Parts 1 through 8 of the CGP, and reflect additional requirements arising from the state section 401 or CZMA certification processes.

VI. Appendices

1. Definitions and Acronyms

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 or one of the appendices of the 1998 permit were moved to the definition section. New terms defined in this permit include: eligible, federal facility, Indian country, large construction activity, municipal separate storm sewer system, new project, ongoing project, project area, receiving water, site, small construction activity, storm water discharge-related activity, and total maximum daily load. Definitions of these terms were added for clarity of permit conditions. The permit also contains a list of acronyms found in the permit which aids in the understanding of the permit and its requirements.

2. Small Construction Waivers and Instructions

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 quality⁴.

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. Information on use of the waivers is presented in Appendix D of the CGP.

3. Standard Permit Conditions

Duty To Comply

The operator 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.

Duty to Reapply

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

Need to Halt or Reduce Activity Not a Defense

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

⁴For 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)

Duty to Mitigate

The operator must 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.

Proper Operation and Maintenance

The operator must properly operate and maintain all equipment and treatment systems used 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 operator must provide appropriate laboratory controls and quality assurance procedures as necessary. Backup systems are required when needed to ensure compliance.

Permit Actions

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

Property Rights

The operator does not convey any 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.

Duty to Provide Information

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

Inspection and Entry

The operator 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.

Monitoring and Records

Samples must be representative of the monitored activity. Records must be retained for 3 years 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.

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.

Reporting Requirements

- Planned changes. Notice must be given to EPA as soon as possible of any planned physical alterations and/or additions to the site. This notice is required if the site changes to meet the criteria for a new source or the nature and concentration of pollutants are affected.
- Anticipated noncompliance. The operator must give advance notice of any conditions that may result in noncompliance.
- Permit Transfers. The permit is not transferable except after written notice to EPA. EPA may require modification or revocation and reissuance as necessary.

- Monitoring reports. Reports must be submitted on a DMR or on an EPA-specified form. 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.
- Compliance schedules. Reports required by a compliance schedule in the permit must be submitted within 14 days of the due date.
- Twenty-four hour reporting. The operator must report any noncompliance that may endanger human health or the environment within 24 hours after becoming aware of the circumstance. Within 5 days, you must provide a written submission containing the information outlined in 40 CFR §122.41(l)(6)(ii) unless the requirement is waived by EPA.
- Other noncompliance. The operator must report all instances of noncompliance not reported under other specific reporting requirements at the time monitoring reports are submitted.
- Other information. Where the operator becomes aware of a failure to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to EPA, the operator must promptly submit such facts or information.

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 alternative, and the proper notification was submitted.

Upset

An upset can be used as an affirmative defense in actions brought to the permittee for noncompliance. The operator (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.