

Permit No.: NDR10-0000

Effective Date: October 11, 2004

Expiration Date: September 30, 2009

AUTHORIZATION TO DISCHARGE UNDER THE
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33-16-01 of the North Dakota Department of Health rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

facilities both qualifying for and satisfying the requirements identified in Part I of this permit are authorized to discharge storm water associated with **CONSTRUCTION ACTIVITY** to waters of the state

in accordance with effluent limitations, monitoring requirements, and other conditions set forth in this permit.

This permit and the authorization to discharge shall expire at midnight,

September 30, 2009.

/signed/

Dennis R. Fewless, Director
Division of Water Quality

October 8, 2004
Date

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PART I - PERMIT COVERAGE AND LIMITATIONS

A. Discharges Covered

1. This permit applies to all areas within the jurisdiction of the state of North Dakota.
2. This permit applies to storm water discharges associated with large construction activity and with small construction activity as defined in 40 C.F.R. part 122.26(b)(14)(x) and (b)(15), respectively.
 - a. Large construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than five (5) acres and includes the disturbance of less than five (5) 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 (5) acres or more.
 - b. Small construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than one (1) acre, and includes the disturbance of less than one (1) 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 (5) acres.
3. Storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) may be covered by this permit as part of a related construction site.
4. Certain non-storm water discharges from facilities covered by this permit and meeting the requirements specified in Part II.A.

B. Discharges Not Covered

1. Storm water discharges associated with industrial activity from any source other than construction activities described in Part I.A.
2. Post-construction discharges from industrial activity that originate from the site after construction activities have been completed and final stabilization at the site is achieved. Industrial and post-construction storm water discharges may need to be covered by a separate storm water permit.
3. The placement of fill into waters of the state requiring local, state, or federal authorizations (such as U.S. Army Corps of Engineers Section 404 permits).
4. This permit does not substitute for obligations under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), or National Historic Preservation Act (NHPA), it is your responsibility to ensure the project and resulting discharges comply with the respective requirements.
5. Discharges to waters for which there is a total maximum daily load (TMDL) allocation for sediment and/or parameters associated with sediment transport are not covered unless you develop a SWPP plan that is consistent with the assumptions, allocations and requirements in the approved TMDL. If a specific numeric wasteload allocation has been established that would apply to the project's discharges, the permittee(s) must incorporate that allocation into its SWPP plan and implement necessary steps to meet that allocation.
6. Storm water discharges that the Department determines will cause, or have the reasonable potential to cause or contribute to, violations of water quality standards.

C. Obtaining Coverage and Authorization Effective Date

1. To obtain authorization under this general permit for storm water discharges you must submit a complete application and develop a Storm Water Pollution Prevention (SWPP) plan in accordance with Part II.C of this permit. A plan must be in place as a condition of this permit and a copy of the plan must be retained by the operator of the facility. A copy of the plan must be submitted with the application for certain facilities as described in Part I.D.
2. Permit coverage will become effective 7 days after you submit a complete application unless otherwise notified by the Department (based on the earlier of postmarked date or department date-stamp).
3. Upon the effective date of permit coverage you, as the permit applicant, are authorized to discharge storm water from eligible activities under the terms and conditions of this permit.

D. Application Contents

1. You may use a Notice of Intent (NOI) form for Construction Activity (or photo copy thereof) to complete your application. The NOI form (or a replacement application form) will be available on the state's website at <http://www.health.state.nd.us/wq/Storm>.

2. Large Construction Activity Coverage

Large construction activity involves land disturbance of equal to or greater than 5 acres. Large construction activity also includes the disturbance of less than 5 acres 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 5 acres.

- a. The owner or the owner jointly with the operator (usually the general contractor) shall submit a completed application for this permit. The owner is responsible for compliance with all terms and conditions of this permit. The operator has day to day supervision of construction activities and is jointly responsible with the owner for compliance with the permit conditions as they pertain to the construction activities delegated to the operator.
- b. The application for large construction activity shall contain, at a minimum, the following information:
 - (1) Owner name, mailing address and phone number;
 - (2) Project contact name and phone number;
 - (3) Project/site name;
 - (4) Project/site location (street address; section, township, range; or latitude and longitude), county;
 - (5) A brief description of the construction activity;
 - (6) The anticipated starting date and the anticipated completion date for the project;
 - (7) The estimated total area of disturbance in acres;
 - (8) Name of receiving water(s) or the name of the municipal storm sewer system and receiving water(s);
 - (9) List of contractors/subcontractors working at the site (if known);
 - (10) The signature of the applicant(s), owner (and operator if co-applicants) signed in accordance with Part IV.E of this permit.

- c. A storm water pollution prevention plan (Part II.C) for the project must be prepared and available for review by the Department at the time of application. A partially complete plan is acceptable when it clearly identifies the item(s) to be completed, the person(s) responsible for completing the item(s) and the deadline for completing the item(s). The SWPP plan must be completed prior to the start of construction.
- d. You must include a copy of the Storm Water Pollution Prevention (SWPP) plan if the project involves 50 or more acres; or the project will have a discharge point located within 2000 ft of, and flow to, a water body listed as impaired under section 303(d) of the Federal CWA due to sediment or parameters associated with sediment transport (see 303(d) List on Department's web site).

3. Small Construction Activity Coverage

Small construction activity involves land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes 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.

- a. An operator must submit one single NOI form to the Department to obtain coverage for storm water discharges from all of their small construction sites. An operator is the individual who has day to day supervision and control of activities occurring at the construction sites and is responsible for compliance with all terms and conditions of this permit. This can be the owner, developer, the general contractor or, in some circumstances, the agent of one of these parties.
 - b. The application for small construction activity shall contain, at a minimum, the following information:
 - (1) Name and mailing address of the owner or operator;
 - (2) Contact name and phone number;
 - (3) A brief description of the construction activity type;
 - (4) The signature of the applicant(s), signed in accordance with Part IV.E of this permit.
 - c. The application for small construction activity shall be submitted to the Department prior to the start of construction. The operator is responsible for implementing a storm water pollution prevention plan (Part II.C) for all their small construction sites. The operator shall provide a copy of the SWPP plan to the Department upon request.
 - d. Operators of small construction activity shall maintain an up-to-date record of site locations they operate. Operators are required to submit an Annual Location Record (see Part III.D) to the Department by January 31.
4. Completed applications, and any reports required by this permit shall be submitted, by mail or hand delivery, to:
- North Dakota Department of Health
Division of Water Quality
1200 Missouri Avenue
PO Box 5520
Bismarck, ND 58506-5520
5. Local Authority. This permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control discharges of storm water to storm sewer systems or other water courses within their jurisdiction.

E. Notice of Termination (NOT)

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) or other written request identifying the facility, reason why the permit is no longer needed and signed in accordance with Part IV-E of this permit. Compliance with the conditions of this permit is required until a NOT is submitted.
2. Permittees may only submit a NOT after one of the following conditions have been met.
 - a. Final stabilization (see Part II.E and definitions) has been achieved on all portions of the site for which the permittee is responsible.
 - b. Another operator/permittee has assumed control, in accordance with the Transfer provisions (Part IV.M), over all areas of the site that have not been finally stabilized.
 - c. For residential construction only, temporary erosion protection and down gradient perimeter control for individual lots has been completed and the residence has been transferred to the homeowner. Additionally, the Permittee must distribute a "homeowner factsheet" to the homeowner to inform the homeowner of the need for, and benefits of, final stabilization.
3. Operators of small construction activity are not required to submit NOTs for their individual small construction sites, however, final stabilization is required on all sites. If an operator ceases all of its small construction activity and wishes to terminate coverage under the permit, an NOT must be submitted along with the Annual Location Record (see Part III.B) that certifies final stabilization has been completed on its small construction sites.

F. Transfer of Ownership or Control

1. When the owner or operator of a construction project changes, the new owner or operator must submit a written request for permit transfer/modification within 7 days of assuming control of the site or commencing work on-site, or of the legal transfer, sale or closing on the property. Late submittals will not be rejected; however, the department reserves the right to take enforcement for any unpermitted discharges or permit noncompliance. For storm water discharges from construction activities where the owner or operator changes, the new owner or operator can implement the original SWPP plan created for the project or develop and implement their own SWPP plan. Permittee(s) shall ensure either directly or through coordination with other operators that their SWPPP meets all terms and conditions of this permit and that their activities do not interfere with another party's erosion and sediment control practices.
2. For the transfer of properties in a development (e.g., an original developer sells portions of the property to various homebuilders) the new owner(s) must obtain permit coverage for the property by one of the following methods.
 - a. If the new owner or operator has existing permit coverage for small construction, the new operator can begin activities on individual lots or tracts of less than 5 acres under the provisions for small construction. The new operator must comply with the permit conditions and enter the site on the location record within 7 days of the transfer.
 - b. If the new owner does not have applicable permit coverage or the tract consists of 5 or more acres, a new application must be filed by the new owner or operator within 7 days of the transfer.

PART II – STORM WATER DISCHARGE REQUIREMENTS

A. Prohibition of Non-Storm Water Discharges

The discharge of wastewater from processing operations or sanitary facilities is not authorized by this permit. The following non-storm water discharges may be authorized if the non-storm water sources are identified in the SWPP plan with a description of the pollution prevention measures to be implemented: fire-fighting, fire hydrant flushing, potable water line flushing, infrequent building and equipment wash down without detergents, uncontaminated foundation drains, springs, lawn watering and air conditioning condensate.

B. Releases in Excess of Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302. Any release of a hazardous substance, including a release in a storm water discharge, must be reported to the agencies identified in Part IV.F. The discharge of hazardous substances in storm water discharges shall be minimized in accordance with the applicable SWPP Plan for the facility. Should a reportable quantity release occur, the SWPP Plan shall be revised to prevent the recurrence of such a release.

C. Storm Water Pollution Prevention Plans

All facilities covered by this permit shall prepare and implement Storm Water Pollution Prevention (SWPP) Plans prior to beginning any construction requiring this permit. The SWPP plan and revisions are subject to review by the Department. The objectives of the plan are to identify potential sources of sediment or other pollution from construction activity and to ensure practices are used to reduce the contribution of pollutants from construction site runoff. Storm water management measures developed under other regulatory programs can be included in the SWPP plan or incorporated by reference.

The SWPP plan must incorporate the guidelines provided in Appendix 1, to the extent practicable, and shall include the following information.

1. **Site Description.** Each plan shall provide a description of the construction site and potential pollutant sources as indicated below:
 - a. A description of the overall project and the type of construction activity;
 - b. Estimates of the total area of the site and the total area that is expected to be disturbed by excavation, grading, grubbing, or other activities during the life of the project;
 - c. A proposed timetable of activities that disturb soils for major portions of the site;
 - d. A description of the soil within the disturbed area(s);
 - e. The name of the surface water(s) or municipal storm sewer systems at or near the disturbed area that may receive discharges from the project site; and

- f. A site map indicating:
 - (1) Drainage patterns including flow direction, dividing lines, and the existing and final grades
 - (2) Construction site boundaries and areas of soil disturbance;
 - (3) Location of major structural and nonstructural controls identified in the plan;
 - (4) Location of areas where stabilization practices are expected to occur;
 - (5) Surface waters, including an aerial extent of wetland acreage;
 - (6) Locations where storm water is discharged to surface water;
 - (7) Where included as part of the project, the site maps for offsite concrete/asphalt batch plants, equipment staging areas, borrow sites or excavated fill material disposal.
2. **Operational Controls.** The plan shall describe the Best Management Practices (BMPs) used in day to day operations on the project site that reduce the contribution of pollutants in storm water runoff.
 - a. Good housekeeping practices to maintain a clean and orderly facility. Litter, debris, chemicals and parts must be handled properly to minimize the exposure to storm water. This includes measures to reduce and clean up vehicle tracking of sediment off-site and generation of dust.
 - b. Preventive maintenance practices must be followed. Routine inspections and maintenance are necessary to ensure the proper operation of storm water management devices (oil water separators, catch basins, and silt fences) as well as equipment used at a site.
 - c. Spill prevention and response procedures must be developed where potential spills can occur. Where appropriate, specific handling procedures, storage requirements, spill containment and cleanup procedures shall be identified.
 - d. Employee training informs personnel of their responsibility in implementing the practices and controls included in the plan such as spill response, good housekeeping, and sediment control practices.
3. **Erosion and Sediment Controls.** An erosion and sediment control plan shall be developed to identify the appropriate control measures and when they will be implemented during the project for each major phase of site activity. The erosion and sediment control plan must conform to the guidelines provided in Appendix 1. The basic elements for erosion and sediment controls are indicated below.
 - a. Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins, and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions.
 - b. Temporary erosion protection (such as cover crop planting or mulching) or permanent cover must be provided for the exposed soil areas where activities have been completed or temporarily ceased. These areas include graded slopes, pond embankments, ditches, berms and soil stockpiles.
 - c. All control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.

- d. If sediment escapes from the site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts. The plan must be modified to prevent further sediment deposition off-site.
4. **Storm Water Management.** The plan shall include a description of practices that will be installed during the construction process to control pollutants in storm water discharges occurring after construction operations have been completed. Such practices may include:
 - a. Storm water ponds; flow reduction by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems which combine several practices. The plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.
 - b. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to minimize erosion and protect the receiving water. Under this permit, permittees are responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site and until the submittal of a NOT. However, post-construction storm water BMPs that discharge pollutants from point sources once construction is completed, may in themselves, need authorization under a separate permit.
 5. **Maintenance.** All erosion and sediment control measures and other protective measures identified in the plan must be maintained in effective operating condition. The plan must indicate, as appropriate, the maintenance or clean out interval for sediment controls. If site inspections, required in this permit, identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished as soon as practicable.
 6. **Inspections.** The plan must provide for site inspections to monitor the condition of storm water discharge outlets and effectiveness of BMPs. The permittee shall ensure that personnel conducting site inspections are familiar with permit conditions and the proper installation and operation of control measures. Site inspections shall be conducted according to the schedule outlined in Part III.
 7. **Plan Review and Revisions.**
 - a. The plan shall be signed in accordance with the signatory requirements, Part IV-E, and retained on-site for the duration of activity at the permitted location.
 - b. The permittee shall make plans available upon request to the Department, EPA, or, in the case of discharges to a municipal separate storm sewer system, to the operator of the municipal system.
 - c. The permittee shall amend the SWPP plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the state. The plan shall also be amended if the plan is found to be ineffective in controlling pollutants present in storm water.

D. Additional Terms and Conditions

1. If any measurable quantity of sediment leaves the site because of structural failure or lack of design capacity of the BMPs, the sediment shall be placed back on the site or properly disposed of, as soon as conditions allow. Under no conditions shall the sediment be washed into the storm sewers or drainage ways.
2. Concrete wash water shall not be discharged to waters of the state, storm sewer systems or allowed to drain onto adjacent properties.
3. Bulk storage structures for petroleum products and other chemicals shall have adequate leak and spill protection to prevent any spilled materials from entering waters of the state.
4. The storm water controls are expected to withstand and function properly during precipitation events of up to the 2 year, 24 hour storm event. Visible or measurable erosion which leaves the construction site from such storm events should be minimal. The 2 year, 24 hour rainfall event in North Dakota ranges from about 1.9 inches in the west to 2.3 inches in the east.
5. Dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) related to the permitted activity must be managed with the appropriate BMPs, such that the discharge does not adversely affect the receiving water or downstream landowners. The Permittee(s) must operate the discharge to minimize the release of sediment and provide energy dissipation measures to adequately protect the outlet from erosion. The dewatering is limited to storm water and small amounts of ground water that may collect on a site and those sources identified in Part II.A. A separate permit must be obtained for the release of water from other sources.
6. All storm water discharges must comply with the requirements, policies, or guidelines, of municipalities and other local agencies. Any discharges of storm water to storm drainage systems or other water courses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NDPDES permits, must comply with their local requirements.

E. Final Stabilization

The Permittee(s) must ensure final stabilization of the site. The Permittee(s) should submit a NOT within 30 days after final stabilization is complete, or another owner/operator (Permittee) has assumed control according to Part I.D over all areas of the site that have not undergone final stabilization. Final stabilization can be achieved in one of the following ways.

1. All soil disturbing activities at the site have been completed and all soils must be stabilized by a uniform perennial vegetative cover with a density of 70 percent over the entire pervious surface area, or other equivalent means necessary to prevent soil failure under erosive conditions and;
 - a. All drainage ditches, constructed to drain water from the site after construction is complete, must be stabilized to preclude erosion;
 - b. All temporary synthetic, and structural erosion prevention and sediment control BMPs (such as silt fence) must be removed as part of the site final stabilization; and
 - c. The Permittee(s) must clean out all sediment from conveyances and from temporary sedimentation basins that are to be used as permanent water quality management basins. Sediment must be stabilized to prevent it from being washed back into the basin, conveyances or drainageways discharging off-site or to surface waters. The cleanout of permanent basins must be sufficient to return the basin to design capacity.

2. For residential construction only, final stabilization has been achieved when temporary erosion protection and down gradient perimeter control for individual lots has been completed and the residence has been transferred to the homeowner. Additionally, the Permittee must distribute a "homeowner factsheet" to the homeowner to inform the homeowner of the need for, and benefits of, final stabilization.

PART III SELF MONITORING AND REPORTING

A. Inspection Requirements

1. Inspections shall be performed by or under the direction of the permittee at least once every 14 calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24-hour period during active construction. The permittee shall have the option of maintaining a rain gauge at their site or utilizing the nearest National Weather Service precipitation gauge station. Any gauge station used shall be located within 10 miles of the storm water discharge.
2. All inspections and maintenance conducted during construction must be recorded in writing and these records must be retained in accordance with Part IV.D. Records of each inspection and maintenance activity shall include:
 - a. Date and time of inspections;
 - b. Name of person(s) conducting inspections;
 - c. Findings of inspections, including recommendations for corrective actions;
 - d. Corrective actions taken (including dates, times, and party completing maintenance activities);
 - e. Date and amount of all rainfall events greater than 1/2 inch (0.5 inches) in 24 hours; and
 - f. Documentation that the SWPP plan has been amended when substantial changes are made to the erosion and sediment controls or other BMPs in response to inspections.
3. Where parts of the construction site have undergone final stabilization, but work remains on other parts of the site, inspections of the stabilized areas may be reduced to once per month. Completed areas that have been stabilized but do not meet the 70% perennial vegetative cover criteria for final stabilization are also eligible for once per month inspections. Inspections may be suspended where work has been suspended due to frozen ground conditions. The required inspections and maintenance must resume as soon as runoff occurs at the site or prior to resuming construction, whichever comes first.
4. There may be times when a site inspection may not be practical at the specified time. Adverse climatic conditions, such as flooding, high winds, tornadoes, electrical storms, etc., may prohibit inspections. Should this occur, the permittee must make a record of the description of why the inspection(s) could not be performed at the designated time. Any available documentation of the events which did not allow for the inspection should also be available.
5. A permittee may submit an alternative inspection plan for long, narrow, linear construction projects such as pipeline or utility line installation, and similar projects in remote areas where vehicle traffic is restricted or could compromise native vegetation or stabilization measures. A copy of the SWPP plan and proposed inspections plan shall be submitted to the Department 30 days prior to implementing an alternative inspection plan. Any alternative plan must provide for the timely recognition and repair of erosion and sediment damage.

B. Annual Location Record - (Small Construction Activity only)

Operators of Small Construction Activity shall maintain a Location Record that shows the locations they operated small construction activity.

1. Contents of the Location Record

The Location Record shall contain the following:

- a. Permit number;
- b. Name and mailing address of the owner or operator;
- c. Name of each small construction site;
- d. Location of each site (street address, latitude and longitude, or legal land description of township, range, section, and 1/4 section);
- e. Start date of each site;
- f. The estimated area of total disturbance, in acres, of each site;
- g. Status of each site (in progress, grading complete, final stabilization date).

2. Submittal

A copy of the Annual Location Record shall be submitted to the Department by January 31 of each year, covering the small construction sites operated during the preceding calendar year (January 1 through December 31). The report shall be submitted to the Department at the following address:

North Dakota Department of Health
Division of Water Quality
1200 Missouri Avenue
PO Box 5520
Bismarck, ND 58506-5520

PART IV – STANDARD CONDITIONS

- A. **Duty to Comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the Department advance notice of any planned changes at the permitted facility or of any activity which may result in permit noncompliance.
- B. **Operation and Maintenance.** The permittee shall at all times maintain in good working order, and operate as efficiently as possible, all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit and with the requirement of the SWPP Plans. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.
- C. **Duty to Provide Information.** The permittee shall furnish to the Department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.
- D. **Records Retention.** All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the Department or EPA.

E. **Signatory Requirements.** All applications, reports or information submitted to the Department shall be signed and certified.

1. All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (a) The authorization is made in writing by a person described above and submitted to the Department; and
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization under item 2 above is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

- F. **Immediate Notification.** The permittee shall report any noncompliance of discharge which may seriously endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstance. The report shall be made to the EPA, Region VIII, National Emergency Response Center, at 1-800-424-8802 and the State of North Dakota, Division of Emergency Management, 1-800-472-2121. In addition, a written submission to both the Department and EPA shall be provided within five days of the time that the permittee became aware of the circumstances. The submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the estimated time noncompliance is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- G. **Bypassing.** Any bypass is prohibited except where unavoidable to prevent loss of life, personal injury, or severe property damage, and there were no feasible alternatives to the bypass. The permittee shall provide notification of unanticipated bypasses as may be required by Part IV.F, Immediate Notification. If, for other reasons, a bypass is considered necessary, a request to bypass shall be submitted, at least 15 days in advance if possible, to the Department. No bypass of this type shall occur until permission has been obtained from the Department.
- H. **Upset Conditions.** An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph are not met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final

administrative action subject to judicial review.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

1. An upset occurred and the permittee can identify its cause(s);
2. The permitted facility was, at the time, being properly operated;
3. The permittee submitted notice of the upset as may be required under Part IV.F, Immediate Notification; and
4. The permittee complied with any remedial measures required under Part IV.I, Duty to Mitigate.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

- I. **Duty to Mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the Department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.
- J. **Removed Materials.** Collected screening, grit, solids, sludge, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering waters of the state or creating a health hazard.
- K. **Right of Entry.** The permittee shall allow Department and EPA representatives, at reasonable times and, if requested, upon the presentation of credentials, to inspect any facilities or equipment (including monitoring and control equipment), to sample discharges, and to have access to and copy any records required to be kept by this permit. For facilities which discharge to a municipal or other separated storm sewer, this shall also pertain to authorized representatives of the municipal operator or the separate storm sewer receiving the discharge.
- L. **Availability of Reports.** Except for data determined to be confidential under 40 CFR, Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.
- M. **Transfers.** This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent Department approval. The Department may require the new operator to file a new application as stated in Part I.D, or apply for a transfer or modification as stated in Part I.F. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the Department of the possible change.
- N. **New Limitations or Prohibitions.** The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307 (a), of Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations, even if the permit has not yet been modified to incorporate the requirements.

- O. **Permit Actions.** This permit may be modified, revoked and reissued, or terminated for cause. Also, if there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain an individual permit or coverage under an alternative general permit in accordance with this Part. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. The following pertains to individual or alternative general permits:
1. The Department may, at any time and by written notification only, require any person authorized by this permit to apply for and obtain either an individual NDPDES permit or to seek coverage under an alternative NDPDES general permit. Any person covered by this general permit may request to be excluded from such coverage by either applying for an individual NDPDES permit, or filing a Notice of Intent to be covered under an alternative NDPDES general permit.
 2. When an individual NDPDES permit is issued to a person otherwise subject to this permit or the person is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the individual permittee is automatically terminated upon the effective date of the individual permit or the date of approval for coverage under the alternative general permit. When an individual NDPDES permit is denied to a person otherwise subject to this permit, or the person is denied for coverage under an alternative NDPDES general permit, the applicability of this permit remains in effect, unless otherwise specified by the Department.
- P. **Need to Halt or Reduce.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- Q. **State Laws.** Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.
- R. **Oil and Hazardous Substance Liability.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 311 of the Act.
- S. **Property Rights.** The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges; nor does it authorize any injury to private property or any invasion of personal rights; nor any infringement of federal, state, or local laws or regulations.
- T. **Severability.** The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

PART V - DEFINITIONS

"303d List" or Section 303d List" means a list of North Dakota's water quality-limited waters needing total maximum daily loads or TMDLs developed to comply with section 303d of the Clean Water Act. A copy of the list is available on the state's web site at:

http://www.health.state.nd.us/wq/sw/Z7_Publications/A_Publications.htm

"BMP" or "Best Management Practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Common Plan of Development or Sale" means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

"Construction Activity" means construction activity as defined in 40 C.F.R. part 122.26(b)(14)(x) and small construction activity as defined in 40 C.F.R. part 122.26(b)(15). This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated storm water runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling and excavating. Construction activity includes the disturbance of less than one acre 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 one (1) acre or more

"Department" means the North Dakota Department of Health, Division of Water Quality.

"Energy Dissipation" means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.

"Final Stabilization" means that:

1. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70 percent of the native cover for unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
2. For areas with an average annual rainfall of less than 20 inches only, all soil disturbing activities at the site have been completed and temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent vegetative coverage within three years without active maintenance.
3. For soil disturbing activities on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-disturbance agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "waters of the state," and areas which are not being returned to their pre-disturbance agricultural use must meet the final stabilization criteria in (1) or (2) above.

"Large Construction Activity" means land disturbance of equal to or greater than 5 acres. Large construction activity also includes 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 five acres.

"Normal Wetted Perimeter" means the area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur once every year.

"Non-Storm Water Discharges" means discharges other than storm water. The term includes both process and non-process sources. Process waste water sources that require a separate NDPDES permit include, but are not limited to industrial processes, domestic facilities and cooling water. Non-storm water sources that may be addressed in this permit include, but are not limited to: fire hydrant flushing and testing, potable water line flushing, infrequent building and pavement washdowns without detergents, uncontaminated foundation drains, springs, lawn watering and air conditioning condensate.

"Operator" means the person (usually the general contractor), designated by the owner, who has day to day operational control and/or the ability to modify project plans and specifications related to the SWPP plan. The person must be knowledgeable in those areas of the permit for which the operator is responsible and must perform those responsibilities in a workmanlike manner.

"Owner" means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the construction activity.

"Permanent Cover" means final stabilization. Examples include grass, gravel, asphalt, and concrete.

"Severe Property Damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant Materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

"Significant Spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

"Small Construction Activity" means land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes 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.

"Stabilized" means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding alone is not stabilization.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Associated with Industrial Activity" means storm water runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR § 122.26(b)(14).

"Storm Water Associated with Small Construction Activity" means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes 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. 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.

(ii) Any other construction activity designated by EPA or the Department, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the state.

"Temporary Erosion Protection" means methods employed to prevent erosion. Examples of temporary cover include: straw, wood fiber blanket, wood chips, and erosion netting.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Waters of the state" means any and all surface waters that are contained in or flow in or through the state of North Dakota as defined in NDCC 61-28-02. This definition includes all water courses, even if they are usually dry.

Appendix 1 - Erosion and sediment control guidelines for construction activity

The following are guidelines for designing, implementing and maintaining effective erosion and sediment controls.

- 1) Temporary (or permanent) sediment basins must be provided, where practical, when ten (10) or more acres of disturbed area drain to a common location prior to the runoff leaving the site or entering surface waters. The Permittee is encouraged, but not required, to install temporary sediment basins where appropriate in areas with steep slopes or highly erodible soils even if less than ten (10) acres drains to one area. The design and construction of the basins must include following:

The basins shall be sized to provide 3,600 cubic feet of storage below the outlet pipe per acre drained to the basin. Alternative designs may be used which provide storage below the outlet for a calculated volume of runoff from a 2 year, 24 hour storm and provides not less than 1800 cubic feet of storage below the outlet pipe from each acre drained to the basin.

Basin outlets must be designed to avoid short-circuiting and the discharge of floating debris. The basin must be designed with the ability to allow complete basin drawdown (e.g., perforated riser pipe wrapped with filter fabric and covered with crushed gravel, pumps or other means) for maintenance activities. The drawdown should be designed to release the storage volume in a 24 hour or longer period. The basin must have a stabilized emergency overflow to prevent failure of pond integrity. Energy dissipation must be provided for the basin outlet.

- 2) Where a temporary sediment basin is not practical due to site limitations or the nature of disturbance (such a developing a roadway, pipeline, or diversion) a combination of measures must be used to provide equivalent sediment control for all down slope boundaries of the construction area and for side slope boundaries as deemed appropriate by individual site conditions. Equivalent sediment controls include such things as smaller sediment basins, and/or sediment traps, silt fences, vegetative buffer strips. In determining whether installing a sediment basin is attainable, the permittee must consider public safety and may consider factors such as soils, slope, and available area on site.
- 3) Provide temporary erosion protection or permanent cover for the exposed soil areas where activities have been completed or temporarily ceased. For those areas with a continuous positive slope within 200 lineal feet of a surface water, temporary erosion protection or permanent cover must be applied within 21 days of completing or ceasing earth moving activities. These areas include pond embankments, ditches, berms and soil stockpiles. Temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) are exempt from this requirement.
- 4) Temporary soil stockpiles must have effective sediment controls, and cannot be placed in surface waters, including storm water conveyances such as curb and gutter systems, or conduits and ditches.
- 5) The normal wetted perimeter of any temporary or permanent drainage ditch that drains water from a construction site, or diverts water around a site, must be stabilized within 200 lineal feet from the property edge, or from the point of discharge to any surface water. Stabilization should be completed within 24 hours of connecting to a surface water.
- 6) Pipe outlets must be provided with temporary or permanent energy dissipation within 24 hours of connection to a surface water.

- 7) In order to maintain sheet flow and minimize rills and/or gullies, there should be no unbroken slope length of greater than 75 feet for slopes with a grade of 3:1 or steeper.
- 8) Temporary or permanent drainage ditches and sediment basins that are designed as part of a treatment system (e.g., ditches with rock check dams) require sediment control practices only as appropriate for site conditions.

The following are maintenance and operation considerations for effective sediment and erosion control:

- 1) All erosion prevention and sediment control BMPs must be inspected to ensure integrity and effectiveness. All nonfunctional BMPs must be repaired, replaced, or supplemented with functional BMPs. The Permittee(s) must investigate and comply with the following inspection and maintenance requirements:
 - All silt fences must be repaired, replaced, or supplemented when they become nonfunctional or the sediment reaches 1/3 of the height of the fence. These repairs must be made within 24 hours of discovery, or as soon as field conditions allow access.
 - Temporary and permanent sedimentation basins must be drained and the sediment removed when the depth of sediment collected in the basin reaches 1/2 the storage volume. Drainage and removal must be completed within 72 hours of discovery, or as soon as field conditions allow access.
- 2) Surface waters, including drainage ditches and conveyance systems, must be inspected for evidence of sediment being deposited by erosion. The Permittee(s) must remove all deltas and sediment deposited in surface waters, including drainage ways, catch basins, and other drainage systems, and restabilize the areas where sediment removal results in exposed soil. The removal and stabilization should take place within seven (7) days of discovery unless precluded by legal, regulatory, or physical access constraints. The Permittee shall use all reasonable efforts to obtain access. If precluded, removal and stabilization should take place within seven (7) calendar days of obtaining access. The Permittee is responsible for contacting all local, regional, state and federal authorities and receiving any applicable permits, prior to conducting any work.
- 3) Construction site vehicle exit locations must be inspected for evidence of off-site sediment tracking onto paved surfaces. Accumulations of tracked sediment must be removed from all off-site paved surfaces, within 48 hours, or if applicable, within a shorter time specified by local authorities.

Appendix 2 - Basic storm water pollution prevention measures for small construction sites

These guidelines are intended to serve as a set of operating procedures for small construction activity. For residential or commercial building sites involving one (1) acre or less, the guidelines may serve as a generic SWPP plan by itself or as the majority of the plan with site specific considerations attached as appropriate.

Housekeeping and Standard Operating Practices

1) Minimize sediment and dirt deposits on streets.

If sediment escapes the construction site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts (e.g., fugitive sediment in streets could be washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).

Vehicle tracking of sediment from the construction site must be minimized by BMPs such as a designated vehicle entrance to the building site and providing aggregate surface on the entrance (driveway) as soon as practical. The building site operator is responsible for (or making the arrangements for) street sweeping and/or scraping if BMPs are not adequate to prevent sediment from being tracked onto the street from his/her building site(s).

2) Properly handle construction debris and waste materials.

Provide appropriate container(s) on-site (or centrally located for several sites) for storing construction debris and other wastes until disposal. Litter and debris shall be picked-up regularly to reduce the chance for materials to be carried off the site by wind or water. Waste shall be disposed-of at a facility appropriate for the type of waste collected.

Liquid or soluble materials including oil, fuel, paint and any other hazardous substances must be properly stored, to prevent spills, leaks or other discharges. Restricted access to storage areas must be provided to prevent vandalism. Storage and disposal of hazardous waste must be in compliance with applicable regulations.

Concrete wash water shall not be discharged to any waters of the state, storm sewer systems or allowed to drain onto adjacent properties. Wash water disposal must be limited to a defined area of the site or to an area designated by the developer for cement washout. The area(s) must be sufficient to contain the wash water and residual cement.

3) Storm water inlet protection.

All storm drain inlets in the immediate vicinity of the building site must be protected by appropriate BMPs during construction until all sources with potential for discharging to the inlet have been stabilized. Grate covers and other means of sediment capture at the inlet are a last line of control. Sediment and erosion control practices must also be used on the building site. Inlet covers or barriers must conform to local ordinances or regulations. In general inlet barriers need to provide for drainage adequate to prevent excessive roadway flooding.

Maintenance and cleaning of inlet protection devices including on-site sediment and erosion controls must be performed in a timely manner.

4) Inspections shall be performed as outlined in the construction storm water permit.

Stage-Specific Controls (Minimum Considerations)

- 1) Excavation soil piles and other temporary soil stockpiles must have silt fence or other effective **sediment controls**, and cannot be placed in **surface waters**, including **storm water** conveyances such as **curb and gutter systems**. The silt fence or other barrier material must be placed between the curb (or other type of storm conveyance) and pile site and the ends must extend back away from the curb to form a generally semi-circular shape. Only a minimal amount of stockpile material should be placed directly against the fence and in no case shall it be more than 1/6 the height of the exposed fence height.

The barrier shall be installed prior to beginning stockpiling and shall be maintained until such time that the piles will be removed. The barriers may be removed to allow backfilling operations or to obtain material from other stockpiles. If all of the material is not removed in one operation or removal will be suspended for more than 7 days, the barrier must be reinstalled.

- 2) Rough graded building sites. Sediment and erosion controls shall be used as appropriate to reduce erosion and the amount of sediment deposited in the street (or other storm conveyance if present). Minimum considerations include:
 - a. Maintaining a 3 to 4 foot wide by 3 to 4 inch drop edge on the back side of the curb and sidewalk (if installed) when the slope of the lot is perpendicular to the curb. For sites where the slopes are appreciably parallel to the street, provide a barrier at the lot edge to curtail down cutting along the curb.
 - b. If boulevard areas have been seeded to temporary cover, maintain cover as much as possible during the building process.
 - c. Temporary Erosion Protection methods may be used as an alternative or replacement to the practices mentioned above to prevent erosion. Examples of temporary cover include: straw, wood fiber blanket, wood chips, and erosion netting.
 - d. Provide splash pads and/or downspout extensions for roof drains sufficient to prevent erosion from roof runoff.
- 3) Final stabilization. Provide final stabilization or landscaping as soon as practical in the building process. Due to varying preferences of buyers, the methods also vary at this stage. Generally one of the following should describe the final stabilization.
 - a. Sod is installed.
 - b. The site is finish graded and seed and/or mulch are applied immediately following the finish grading and topsoil placement.
 - c. If the home buyer (or other building occupant) prefers to complete landscaping, temporary erosion and sediment controls should be left in place and the home buyer shall be provided information ("homeowner factsheet") on the purpose of such controls.

The responsibility under the construction storm water permit does not end until final stabilization has been achieved. Final stabilization is considered achieved when perennial vegetation is established at 70% of preexisting levels over the entire area (excluding paved or roofed areas); or:

For residential construction only, temporary erosion protection and down gradient perimeter control for individual lots has been completed and the residence has been transferred to the homeowner. Additionally, the homeowner is provided with a "homeowner factsheet" informing the homeowner of the need for, and benefits of, final stabilization.

Site specific considerations

- 1) Site map. For residential building sites which are part of a locally approved development, a building lot sitemap is not required unless:
 - a. Requested by local authorities.
 - b. The site requires specific control measures to protect adjoining water bodies.
 - c. The building site involves more than one (1) acre.
 - d. The developer requests one to ensure practices are used as a matter of policy, or to protect structures that have been or are being built to manage storm water from the development as a whole.

- 2) Typically there are multiple operators involved with construction activity in residential developments that may need to place (or may have placed) sediment and erosion controls in or near your work areas. As an operator of a small construction site, you must coordinate with other operators to ensure that your activities (including the removal or modification of existing BMPs) do not interfere with another party's erosion and sediment control practices.