Permit No.: SDR10####

Note – This page will be replaced with a copy containing the assigned permit number once coverage is authorized.

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3181

GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

AUTHORIZATION TO DISCHARGE UNDER THE SURFACE WATER DISCHARGE SYSTEM

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD) Chapters 74:52:01 through 74:52:11, operators of storm water discharges from **construction** activities, located in the State of South Dakota are authorized to discharge in accordance with the conditions and requirements set forth herein.

This permit shall become effective on **July 1, 2002**.

This permit and the authorization to discharge shall expire at midnight, **June 30, 2007**.

Signed this **26th** day of **June, 2002**

Authorized Permitting Official

Steven M. Pirner
Secretary
Department of Environment and Natural Resources

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1.0 DEFINITIONS

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

2. **"Control Measures"** as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the state.

3. **"Final Stabilization"** means that either:

   a. all soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70% of the native cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed; or

   b. for individual lots in residential construction, that either: **1)** the permittee has completed final stabilization as specified in part (**a**) above, or **2)** the permittee has established temporary stabilization for an individual lot before the property owner assumes operational control of the property and the permittee informs the property owner of the need for, and benefits of, final stabilization; or

   c. for construction projects on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-construction 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-construction agricultural use must meet the final stabilization criteria in (**a**) or (**b**) above.

4. A **"Larger Common Plan of Development or Sale"** means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan.

5. **"Municipality"** means a city, town, county, district, sanitary district, or other public body created by or under state law with jurisdiction over the disposal of sewage, industrial wastes, or other wastes.

6. **"NOI"** means Notice of Intent to be covered by this permit (See Attachment A of this permit.)

7. **"NOT"** means Notice of Termination (See Attachment B of this permit).

8. **"Operator"** means the owner, party, person, general contractor, corporation, or other entity that has operational control over a construction project. The operator is responsible for ensuring compliance with all conditions of the permit and with development and implementation of the "storm water pollution prevention plan".

9. **"Point Source"** means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

10. **"Pollutant"** is defined at ARSD § 74:52:01:35. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

11. **"Regulated Substance"** means the compounds designated by the department under South Dakota Codified Law, §§ 23A-27-25, 34A-1-39, 34A-6-1.3(17), 34A-11-9, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68, including pesticides and fertilizers regulated by the Department of Agriculture, the hazardous substances designated by the EPA pursuant to section 311 of the Federal Water Pollution Control Act Amendments of 1972, Pub.L. 92-500 as amended by the Clean Water Act of 1977, Pub.L. 95-217, the toxic pollutants designated by Congress or the EPA pursuant to section 307 of the Toxic Substances Control Act, Pub.L. 99-519, the hazardous substances designated by the EPA pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub.L. 96-510, and petroleum, petroleum substances, oil, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock, and any other oil or petroleum substance. This term does not include sewage and sewage sludge.

12. **"Runoff Coefficient"** means the fraction of total rainfall that will appear at the conveyance as runoff.

13. **"Secretary"** means the Secretary of the Department of Environment and Natural Resources or an authorized representative.

14. **"Storm Water"**, for the purpose of this permit, means storm water runoff, snow melt runoff, or surface runoff and drainage associated with construction activity.

15. **"Storm Water Associated with Construction Activity"** means the storm water runoff from construction activities including clearing, grading, and excavating, that result in the disturbance of five or more acres of total land area or which may be part of a larger common plan of development or sale if the larger common plan will ultimately disturb five or more acres of land.

16. **"Storm Water Associated with Small Construction Activity"** means the storm water runoff from construction activities including clearing, grading, and excavating, that result in the disturbance of land equal to or greater than one acre and less than five acres, or that are part of a larger common plan of development or sale; or as defined in 40 CFR § 122.26(b)(15) as promulgated on December 8, 1999.

17. **"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).

18. **"SWD"** means Surface Water Discharge.

19. **"SWPPP"** means Storm Water Pollution Prevention Plan.

20. **"Waters of the State"** means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, but not waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA other than cooling ponds as defined in 40 C.F.R. § 423.11(m) (July 1, 1991).

2.0 COVERAGE UNDER THIS PERMIT

2.1 Permit Area

This permit shall apply to storm water discharges located within the State of South Dakota.

2.2 Discharges Covered

1. This permit shall authorize all discharges of storm water associated with construction activity within the State of South Dakota that will result in the disturbance of five or more acres of total land area and those construction site discharges designated by the Secretary as needing a storm water permit. Discharges identified under Part 2.3 are excluded from coverage.

2. Effective January 1, 2003, this permit shall authorize all discharges of storm water associated with small construction activity within the State of South Dakota.

3. This permit shall only authorize storm water construction discharges that are mixed with a storm water discharge from an industrial source, where:

   a. the industrial source is located on the same site as the construction activity; and

   b. storm water discharges not associated with construction activities are covered by a separate SWD general permit or individual permit.

2.3 Discharges Not Covered. The following storm water discharges from construction sites are not authorized by this permit:

1. **Post Construction Discharges.** This permit does not authorize storm water discharges 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.

2. **Discharges Mixed with Non-Storm Water.** This permit does not authorize discharges that are mixed with sources of non-storm water, other than discharges that are identified in Part 2.2 and Part 3.1 of this permit.

3. **Section 404 Permitted Discharges.** This permit does not authorize activities regulated by a Section 404 federal Clean Water Act permit.

4. **Discharges Threatening Water Quality.** This permit does not authorize storm water discharges from construction sites that the Secretary determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards.

5. **Discharges of Regulated Substances.** This permit does not authorize the discharge of regulated substances resulting from a spill.

2.4 Notice of Intent (NOI). The NOI form shall be signed in accordance with Part 6.7 of this permit and shall include the following information:

1. The name, address, and telephone number of the operator filing the NOI for permit coverage;

2. An indication of whether the operator is a Federal, State, Private, or other public entity;

3. The name (or other identifier), address, county, and legal location (i.e. section, township, range) of the construction project or site;

4. Confirmation that a storm water pollution prevention plan (SWPPP) has been developed or will be developed prior to commencing construction activities (Copies of the SWPPP or the permit should not be included with the NOI submission);

5. The name of the nearest receiving water(s);

6. Estimates of the project start and completion dates, and an estimate of the number of acres of the site on which soil will be disturbed; and,

7. A brief description of the project and construction site activities.

2.5 Obtaining Authorization.

1. A Notice of Intent (NOI) form, included in Attachment A, must be submitted to the address indicated on the NOI form to request coverage under this general permit for storm water discharges from construction sites. This information must be submitted at least 15 days prior to when the operator commences work at the site.

2. For small construction activities already in progress prior to January 1, 2003, the operator must submit a Notice of Intent by January 1, 2003. Small construction activities commencing after January 1, 2003 must submit a NOI at least 15 days prior to when the operator begins any work at the site.

3. Upon receipt of a complete NOI, the Secretary shall make the decision to grant or deny coverage, or request additional information. A letter of authorization shall be sent to the permittee granting coverage under this permit for the storm water discharges from construction activities.

4. A copy of the Department's authorization letter shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit) from the date

construction activities are initiated until final stabilization is achieved and coverage under this permit is terminated.

5. Where a new operator is selected after the submittal of a NOI, the previous operator must submit a Notice of Termination, and the new operator must submit a new NOI.

6. Operators are not prohibited from submitting late NOIs. When a late NOI is submitted, authorization is only for discharges that occur after permit coverage is granted. The Secretary reserves the right to take appropriate enforcement actions for any unpermitted activities that may have occurred between the time construction commenced and authorization of storm water discharges is granted.

2.6 **Additional Notification**. Facilities which are operating under approved local sediment and erosion plans, grading plans, or storm water management plans shall also submit signed copies of the NOI to the local agency approving such plans at least 15 days prior to commencing work, or sooner where required by local rules.

2.7 **Terminating Coverage.**

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) that is signed in accordance with Part 6.7 of this permit. Compliance with this permit is required until a NOT is submitted.

2. All permittees shall submit a NOT within thirty (30) days after one or more of the following conditions have been met:

a. All storm water discharges authorized by this permit are eliminated and final stabilization 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 Part 2.5.5, over all areas of the site that have not been finally stabilized; or

c. All individual lots within a residential construction project have reached final stabilization, as defined in Part 1.3.b.

3.0 SPECIAL CONDITIONS

3.1 **Non-Storm Water Discharges.** The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is identified in the storm water pollution prevention plan with an explanation of pollution prevention measures to be implemented: discharges from fire fighting activities; uncontaminated ground water; and, waters used, as a best management practice, to wash vehicles or control dust.

3.2 **Unauthorized Release of Regulated Substances.** This permit does not authorize the discharge of any regulated substance listed in ARSD § 74:34:01:03, including but not limited to fertilizers, pesticides, and petroleum substances such as oil and gasoline. If a release occurs, the permittee is required to notify the Department of Environment and Natural Resources Ground Water Quality Program at (605) 773-3296 or Emergency Management at (605) 773-3231 within 24 hours of having knowledge of the discharge.

A written report of the unauthorized release of any regulated substance, including quantity discharged and the location of the discharge, must be sent to DENR within 14 days of the discharge.

The storm water pollution prevention plan must identify and address the following measures: ways to prevent the reoccurrence of such releases; the proper response to such releases if and when they do occur; and steps to prevent pollutants from contaminating storm water runoff. The plan shall be modified and changes implemented, as appropriate.

4.0 STORM WATER POLLUTION PREVENTION PLAN

4.1 **Deadlines for Plan Preparation and Compliance.** The storm water pollution prevention plan, also referred to as "the plan", must be developed prior to the start of construction and implemented for all construction activity.

4.2 **Contents of Plan**. The plan shall include, at a minimum, the following items:

1. **Site Description**. Each plan shall provide a description of potential pollutant sources and other information 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 description of the intended sequence 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) at or near the disturbed area that may receive discharges from the project site; and

f. A site map indicating:

(1) drainage patterns and approximate slopes anticipated after major grading activities;
(2) 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; and
(6) locations where storm water is discharged to surface water.

2. **Controls**. The plan shall describe for each major activity identified in the site description: **a)** appropriate control measures; **b)** when they will be implemented during the construction process; and **c)** who is responsible for implementation. The description and implementation of controls shall address the following minimum components:

a. **Erosion and Sediment Controls**.

(1) **Goals and Criteria**.

(a) Erosion and sediment controls must retain sediment on site to the best extent practicable.

(b) 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.

(c) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize offsite impacts. The plan must be modified to prevent further sedimentation off-site.

(d) The design capacity of sediment traps and sedimentation ponds must be included in the plan. At a minimum, sediment must be removed from sediment traps or sedimentation ponds when design capacity has been reduced by 50% or more.

(e) Litter, construction debris, and construction chemicals shall be properly handled to prevent contributing pollutants to storm water discharges.

(f) Offsite material storage areas used solely by the permitted project are considered a part of the project and shall be addressed in the pollution prevention plan.

(2) **Stabilization Practices**. The plan shall include a description and schedule of interim and permanent stabilization practices; a record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated. Site plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized. Stabilization measures shall be initiated as soon as possible, but in no case later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. Initiation of final or temporary stabilization may exceed the 14-day limit if earth-disturbing activities will be resumed within 21 days. All other exceptions must be approved on an individual basis by the Secretary.

(3) **Structural Practices**. The plan shall include a description of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree possible. Placement of structural practices in floodplains and wetlands should be avoided to the degree possible. The installation of these devices may be subject to Section 404 of the federal Clean Water Act.

(a) For common drainage locations, a temporary (or permanent) sediment basin providing at least 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. This requirement does not apply to flows that are either undisturbed or have undergone final stabilization, or where such flows are diverted around

both the disturbed area and the sediment basin. If the required temporary sediment basin or equivalent controls are not attainable, smaller sediment basins and/or sediment traps shall be used.

(b) At a minimum, effective sediment controls are required for all sideslope and downslope boundaries of the construction area.

(c) Use of a combination of sediment and erosion control measure is encouraged to achieve maximum pollutant removal.

b. **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:

(1) 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.

(2) 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 are not responsible for maintenance after storm water discharges associated with construction activity have been eliminated from the site and a NOT has been submitted. 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.

c. **Other Controls**.

(1) The plan shall include a description of procedures to maintain vegetation, erosion and sediment control measures, and other protective measures identified in the site plan. This includes minimizing tracking of sediments off-site and generation of dust.

(2) The plan shall include a description of construction and waste materials expected to be stored on-site, with updates as appropriate. The plan shall also include a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, and spill prevention and response.

d. **Approved Local Plans**. Permittees must include applicable local sediment and erosion requirements in their plan. The plan must be modified when the permittee is notified that the local requirements have changed.

3. **Maintenance**. All erosion and sediment control measures and other protective measures identified in the plan must be maintained in effective operating condition. If site inspections, required by Part 4.2.4 below, identify BMPs that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

4. **Inspections**. The permittee shall ensure that personnel who are familiar with permit conditions and the proper installation and operation of pollution prevention measures conduct an inspection of the site at least once every seven (7) calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater or a snowmelt event that causes surface erosion. Where runoff is unlikely due to winter conditions, such inspections shall be conducted at least once per month. The inspection shall include disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials, structural control measures, and locations where vehicles enter or exit the site. These areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system, and erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly and sediment is not tracked offsite.

A report shall be made summarizing the areas inspected, the name(s) and title(s) of personnel making the inspection, the date(s) of the inspection, major observations, and corrective actions taken. These reports shall be retained as part of the plan for at least three (3) years after the site has reached final stabilization and coverage under the permit has been terminated. Such reports shall identify any incidents of non-compliance.

Based on the results of the inspection, the plan shall be revised and implemented, in no case later than seven (7) calendar days following the inspection. Where an inspection does not identify any incidents of non-compliance, the report shall contain a certification that the site is in compliance with the plan and this permit. The report shall be signed in accordance with the signatory requirements of this permit.

4.3 Signature and Plan Review

1. The plan shall be signed in accordance with the signatory requirements, Part 6.7, and retained on-site for the duration of activity at the permitted location.

2. The permittee shall make plans available upon request to the Secretary, EPA, or, in the case of storm water that discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The Secretary may notify the permittee at any time that the plan does not meet the minimum requirements of this part. This notification will identify the provisions of the permit that are not being met by the plan and identify which provisions require modifications in order to meet the minimum requirements. Within seven (7) days of notification, the permittee shall make the required changes to the plan and shall submit to the Secretary a written certification that the requested changes have been made. The Secretary may take appropriate enforcement action for the period of time the permittee was operating under a plan that did not meet the minimum requirements of this permit.

4.4 **Keeping Plans Current**. The permittee shall amend the 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 proves to be ineffective in eliminating or significantly minimizing pollutants present in the storm water.

5.0 RETENTION OF RECORDS

1. The permittee shall retain on-site, or make readily available, a copy of the plan and DENR's letter granting coverage under this permit from the date of project initiation to the date of final stabilization.

2. The permittee shall retain copies of storm water pollution plans and all reports required by this permit, and records of all data used to complete the NOI and NOT, for a period of at least three (3) years from the date that the site is finally stabilized. This period may be extended by request of the Secretary at any time.

3. All reports and documents required by this permit shall, upon request of the Secretary, be submitted to the South Dakota Department of Environment and Natural Resources at the address below:

South Dakota Department of Environment and Natural Resources
Surface Water Quality Program
523 East Capitol Ave.
Pierre, SD 57501-3181

6.0 STANDARD PERMIT CONDITIONS

6.1 Duty to Comply.

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the South Dakota Water Pollution Control Act and the federal Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal. The permittee shall give the Secretary advance notice of any planned changes at the permitted facility or of an activity that may result in permit noncompliance.

2. Any person who violates a permit condition or makes any false statement, representation, or certification, may be subject to enforcement action under SDCL, Chapter 34A-2.

3. The permittee is responsible for complying with all local ordinances and requirements. Local governments may have additional or more stringent requirements than those included in this permit.

6.2 Continuation of the Expired General Permit. An expired general permit continues in force and effect until a new general permit is issued. Any permittee with coverage under the general permit at the time of expiration will continue to have coverage until a new general permit is issued. Upon the effective date of the new permit, the existing permit will be terminated. To obtain coverage under the new permit, a ***Notice of Intent for Reauthorization*** and ***Certification of Applicant*** must be submitted within 30 days after the issuance of the new permit.

6.3 Need to Halt or Reduce Activity Not a defense. 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.

6.4 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.

6.5 Duty to Provide Information. The permittee shall furnish to the Secretary, within a reasonable time, any information which the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by this permit.

6.6 Other Information. When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI or in any other report to the Secretary, he or she shall promptly submit such facts or information.

6.7 **Signatory Requirements.** All Notices of Intent and Termination, plans, reports, certifications or information submitted to the Secretary, shall be signed and certified by the following signatory official:

1. All NOIs and NOTs shall be signed as follows:

a. For a corporation: by a responsible corporate officer;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Secretary 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 Secretary. The authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company.

b. If an authorization under this section is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new letter of authorization satisfying the requirements of this section must be submitted to the Secretary prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

3. The following certification statement must be included with any documents signed under this section:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

6.8 **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 to which the permittee is or may be subject under Section 311 of the Federal Clean Water Act.

6.9 **Property Rights.** The Secretary's issuance of this permit does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, state or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties. The State does not warrant that the permittee's compliance with this permit and operation under this permit will not cause damage, injury or use of private property, an invasion of personal rights, or violation of federal, state or local laws or regulations. The permittee is solely and severally liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, state or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the permit.

6.10 **Severability.** Any portion of this permit that is found to be void, or is challenged, shall not affect the validity of the various permit requirements that are not void or challenged.

6.11 **Requiring an Individual Permit or an Alternative General Permit.** The Secretary may either deny coverage or require any person requesting coverage under the general permit to apply for, and obtain, an individual Surface Water Discharge permit. Cases where an individual permit may be required include the following:

1. The permittee is not in compliance with the conditions of the general permit;

2. A change has occurred in the availability of demonstrated technologies or practices for the control or abatement of pollutants applicable to construction sites;

3. Effluent limitation guidelines are promulgated for point sources covered by this general permit;

4. A water quality management plan containing requirements applicable to construction sites is approved; and

5. The discharge is a significant contributor of pollution to waters of the state or it presents a health hazard.

6.12 **Proper Operation and Maintenance.** The permittee shall at all times properly operate and maintain all systems of treatment and control which are used to achieve compliance with the conditions of this permit. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

6.13 **Inspection and Entry.** The permittee shall allow the Secretary, the EPA Regional Administrator, or the operator of a municipal separate storm sewer system receiving discharges from the site, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the South Dakota Water Pollution Control Act, any substances or parameters at any location.

6.14 **Permit Actions.** This permit may be modified, revoked and reissued, or terminated by the Secretary for cause. 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.

ATTACHMENT A

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF INTENT (NOI)
to Obtain Coverage Under the SWD General Permit for
Storm Water Discharges Associated with Industrial or Construction Activities

Return to: SD Department of Environment and Natural Resources
Surface Water Quality Program
523 East Capitol Avenue
Pierre, South Dakota 57501-3181
Telephone: (605) 773-3351 or 1-800-SDSTORM

PLEASE PRINT OR TYPE

I. Applicant/Owner Information:

Name _____ Phone _____

Responsible Contact Person _____

Address _____

City _____ State _____ Zip Code _____

Type of Ownership: ☐ Private ☐ Federal ☐ State ☐ Public (Other than Federal or State)

II. Facility/Site Information:

Name _____ Phone _____

Responsible Contact Person _____

Address _____

City _____ State _____ Zip Code _____

III. Type of Permit Requested: Check (X) the appropriate response:

☐ Industrial Activity ☐ Construction Activity

IV. Pollution Prevention Plan

A. Has the Pollution Prevention Plan been developed as Required? Yes ☐ No ☐

If No, when will it be developed? _____

Please note: The plan must be developed before any industrial or construction activity begins

B. Please include a brief description of best management practices being used at the facility/site:

_____

_____

_____

V. Facility/Site Location:

A. Quarter _____ Section _____ Township _____ Range _____

County _____ [*If available*: Latitude _____ Longitude _____]

B. Site/Project Name: _____

C. What is the total area covered by the facility/construction site (in acres) _____

FOR DENR USE ONLY

Postmark Date: _____ Permit Number: _____ Date Permitted: _____

VI. Receiving Waters:

Please list all possible receiving waters of the storm water discharge (if discharging to a Municipal Storm Sewer, indicate which municipality and the ultimate receiving water): _____

_____

_____

_____

VII. Nature of Discharge

A. **Standard Industrial Classification (SIC) codes of this facility** (Include at least one, and up to four, SIC or 6-digit North American Industry Classification (NAIC) codes which best describe the facility. For construction activities, no codes are assigned; therefore, indicate **CO**): _____

_____

B. Please include a brief description of the activities conducted at this facility or construction site: _____

_____

_____

_____

VIII. Operational History (Industrial Only)

Date Constructed: _____

Operational Start-up: _____

Construction Project History (Construction Only)

Project Start Date (MM/DD/YY): _____

Estimated Area of Total Disturbance (in acres): _____

Estimated Completion Date (MM/DD/YY): _____

IX. Existing Environmental Permits

Please check (X) all other Environmental Permits which are held by this facilty/activity. Include permit numbers in the space provided:

- ☐ SWD or NPDES (Discharges to Surface Water) _____
- ☐ UIC (Underground Injection of Fluids) _____
- ☐ RCRA (Hazardous Wastes) _____
- ☐ PSD (Air Emissions from Proposed Sources) _____
- ☐ Other (please specify) _____

X. Certification (Authorized representative should ***initial*** the box)

☐ **I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including revocation of the permit and the possibility of fine and imprisonment for knowing violations. In addition, I certify that I am aware of the terms and conditions of the General Storm Water permit and I agree to comply with those requirements.**

CERTIFICATION OF APPLICANT (COA)

I,_____, the applicant in the above matter after being duly sworn upon oath hereby certify the following information in regard to this application:

South Dakota Codified Laws Section 1-40-27 provides:

"The secretary may reject an application for any permit filed pursuant to Titles 34A or 45, including any application by any concentrated swine feeding operation for authorization to operate under a general permit, upon making a specific finding that:

(1) The applicant is unsuited or unqualified to perform the obligations of a permit holder based upon a finding that the applicant, any officer, director, partner or resident general manager of the facility for which application has been made:

(a) Has intentionally misrepresented a material fact in applying for a permit;

(b) Has been convicted of a felony or other crime involving moral turpitude;

(c) Has habitually and intentionally violated environmental laws of any state or the United States which have caused significant and material environmental damage;

(d) Has had any permit revoked under the environmental laws of any state or the United States; or

(e) Has otherwise demonstrated through clear and convincing evidence of previous actions that the applicant lacks the necessary good character and competency to reliably carry out the obligations imposed by law upon the permit holder; or

(2) The application substantially duplicates an application by the same applicant denied within the past five years which denial has not been reversed by a court of competent jurisdiction. Nothing in this subdivision may be construed to prohibit an applicant from submitting a new application for a permit previously denied, if the new application represents a good faith attempt by the applicant to correct the deficiencies that served as the basis for the denial in the original application.

All applications filed pursuant to Titles 34A and 45 shall include a certification, sworn to under oath and signed by the applicant, that he is not disqualified by reason of this section from obtaining a permit. In the absence of evidence to the contrary, that certification shall constitute a prima facie showing of the suitability and qualification of the applicant. If at any point in the application review, recommendation or hearing process, the secretary finds the applicant has intentionally made any material misrepresentation of fact in regard to this certification, consideration of the application may be suspended and the application may be rejected as provided for under this section.

Applications rejected pursuant to this section constitute final agency action upon that application and may be appealed to circuit court as provided for under chapter 1-26."

Pursuant to SDCL 1-40-27, I certify that I have read the forgoing provision of state law, and that I am not disqualified by reason of that provision from obtaining the permit for which application has been made.

Dated this _____, day of _____, 20____.

NOTE: The Notice of Intent must be signed by the authorized chief elective, an executive officer or a corporate responsible official of the applicant, or by the applicant, if an individual.

Name (print) _____

Title _____

Signature _____

Subscribed and sworn before me this _____ day of _____, 20____.

_____

Notary Public

My commission expires: _____

(SEAL)

PLEASE ATTACH SHEET DISCLOSING ALL FACTS PERTAINING TO SDCL 1-40-27 (1) (a) THROUGH (e).
ALL VIOLATIONS MUST BE DISCLOSED, BUT WILL NOT AUTOMATICALLY RESULT IN THE REJECTION OF AN APPLICATION.

ATTACHMENT B

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF TERMINATION (NOT)
of Coverage Under the SWD General Permit for
Storm Water Discharges Associated with Industrial or Construction Activities

This form is required to be submitted when a discharge permit is no longer required or necessary. Submission of this form shall in no way relieve the permittee of permit obligations required prior to submission of this form. Please submit this form to the following address:

original to: SD Department of Environment and Natural Resources
Surface Water Quality Program
523 East Capitol Avenue
Pierre, South Dakota 57501-3181
Telephone: (605) 773-3351 or 1-800-SDSTORM

PLEASE PRINT OR TYPE

I. Facility Operator Information

Name _____ Phone _____

Street _____

City _____ State _____ Zip Code _____

II. Mailing Address of Facility/Site Location

Name _____ Phone _____

Responsible Contact Person _____

Street _____

City _____ State _____ County _____ Zip Code _____

III. Permit Number: _____

IV. Check the reason for termination of permit coverage:

☐ Storm Water Discharge is no longer occurring. If construction, has the area been restabilized? Please explain: _____

_____

☐ You are no longer the operator of the facility. Please explain: _____

_____

I certify under penalty of law that all storm water discharges associated with industrial or construction activity from the identified facility that are authorized by a SWD general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting the Notice of Termination, I am no longer authorized to discharge storm water associated with industrial or construction activity under this general permit, and that discharging pollutants in storm water associated with industrial or construction activity to waters of the state is unlawful under the federal Clean Water Act, where the discharge is not authorized by a SWD permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the South Dakota Water Pollution Control Act. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

NOTE: NOT must be signed by the authorized chief elective or executive officer of the applicant, or by the applicant, if an individual.

Name (print) _____ Title _____

Signature _____ Date _____

FOR DENR USE ONLY

Permit Number: _____ Postmark Date: _____ Date Terminated: _____

STATEMENT OF BASIS

Permit Type: General Surface Water Discharge Permit for **Construction Activities** in South Dakota

The statements in this document are intended solely as guidance to aid in complying with the Storm Water Regulations. The guidance is not a substitute for reading the "General Permit for Storm Water Discharges Associated with Construction Activities" and understanding all its requirements as they apply to your project or site.

BACKGROUND

In 1987, Congress amended the Clean Water Act to require implementation, in two phases, of a comprehensive national program for addressing storm water discharges. The first phase of the program, commonly referred to as "Phase I," was promulgated on November 16, 1990. Under Phase I, the Environmental Protection Agency (EPA) established the permitting requirements for discharges of "storm water associated with construction activity," which EPA included in its definition of "storm water discharges associated with industrial activity." This definition included point source discharges from construction activities that disturb five or more acres of land. On December 8, 1999, EPA promulgated Phase II of the Storm Water Regulations, which expanded the definition to include point source discharges from small construction activities that disturb between one and five acres of land.

INTRODUCTION

Construction activities have the potential to produce many pollutants that may contaminate storm water runoff. Pollutants such as sediment, pesticides, toxic chemicals, metals, and oil can contaminate storm water and enter waters of the state. Clearing land of grass, trees, shrubs, rocks, and other ground cover can change natural water runoff patterns and increase erosion. Some construction activities require the use of toxic or hazardous materials, which contain metals and other materials that may be harmful to humans, fish, wildlife, and plants. When these materials are not properly handled or stored, the resulting leaks and spills can pollute storm water and can impact drinking water sources and waters protected for recreation, aquatic life, and other beneficial uses.

The intent of the storm water regulations is to improve and protect water quality by reducing or eliminating contaminants in storm water. Storm water runoff consists of rainwater and melted snow that runs off the land and directly, or indirectly by way of storm sewers, enters waters of the state, such as lakes, rivers, streams, wetlands, and ponds. The term "construction activity" includes point source discharges from areas undergoing operations such as clearing, grading, and excavation. Construction activities can include road building, construction of residential houses, office buildings, industrial sites, or demolition. It does not include agricultural activities or maintenance activities.

PERMIT DESCRIPTION

The South Dakota Department of Environment and Natural Resources (DENR) is renewing the general permit for storm water discharges associated with construction activities. This general permit contains requirements that are based on technology considerations, Best Management Practices, and other conditions applicable to the types of storm water generated by construction activities. The proposed permit will replace the current permit, which was issued on November 14, 1995.

Due to the nature of the scheduling of these construction activities, obtaining an individual Surface Water Discharge (SWD) permit may significantly impact the timing of a project because of administrative requirements. Therefore a general permit is being issued for these operations. The general permit regulations of the Administrative Rules of South Dakota (ARSD) § 74:03:18:48, provide for the issuance of general permits where covered facilities:

1. Are within prescribed geographic boundaries;
2. Involve substantially the same types of operations;
3. Discharge the same types of wastes;
4. Require the same effluent limits or operating conditions;
5. Require similar monitoring; and
6. Are more appropriately controlled under a general permit than individual permits.

South Dakota is proposing to issue a general permit under the Surface Water Discharge System for storm water discharges associated with construction activities and small construction activities. The intent of a general permit for storm water associated with these activities is to:

1. Facilitate the scheduling of these activities by reducing the administrative delays in their authorization;
2. Establish uniform criteria for management practices and effluent limits, for discharges from these activities; and
3. Promote consistent permitting with respect to these activities.

COVERAGE UNDER THE GENERAL PERMIT

To obtain coverage under the proposed general permit for discharges associated with construction activities, a Notice of Intent (NOI) form must be submitted to DENR at least 15 days prior to the start of construction. The Secretary then makes the decision to grant or deny coverage, or request additional information. A copy of the NOI form is included in Attachment A of the permit.

For existing construction operations already covered under the current storm water general permit for construction activities, a Notice of Intent (NOI) for Reauthorization and Certification of Applicant (COA) needs to be submitted to continue coverage under this new permit. Coverage under the existing general storm water permit will expire within 30 days of the effective date of the new permit. This will provide a reasonable opportunity to submit a complete Notice of Intent

for Reauthorization under the new general permit, or to properly request termination of coverage under the current permit.

EXEMPTIONS

The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 added an exemption to the storm water regulations for municipalities serving a population less than 100,000 people. Storm water discharges associated with industrial activities (including construction, but excluding airports, steam electric power plants, or uncontrolled sanitary landfills) that are owned or operated by a small municipality were not required to obtain coverage under a storm water permit. However, these facilities are not permanently exempted from the regulation. This exemption expires on March 10, 2003. All required storm water permits must be in place on or before this date.

STORM WATER POLLUTION PREVENTION PLAN

The permittee is required to develop and implement a Storm Water Pollution Prevention Plan prior to the start of construction. This plan details the Best Management Practices (BMPs) the permittee will implement to reduce or eliminate a discharge of pollutants. Permit requirements for the storm water pollution prevention plan were designed for maximum flexibility to allow the development of the needed storm water controls based on the specifics of the site. Some of the factors to consider when developing the plan include: local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; sensitivity of nearby water bodies; safety concerns of the storm water controls (i.e., potential safety hazards of water in storm water retention ponds to humans and wildlife; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

The permit requires that the storm water "controls" be described and implemented as part of the storm water pollution prevention plan. The following information, taken from the "Fact Sheet for the EPA [Region 8] Construction General Permit," describes some examples of pollution prevention measures or best management practices. 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. An electronic version of this document is available from EPA's web site (www.epa.gov/npdes/stormwater), or a hardcopy of the summary document may be obtained from DENR or EPA upon request. A table listing common BMPs and their uses is also included in Attachment A of this Statement of Basis.

Erosion and Sediment Controls

Erosion controls provide the first line of defense in preventing off-site sedimentation and are designed to prevent erosion through protection and preservation of soil. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment

and erosion controls can be further divided into two major classes of controls: stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. 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.

Stabilization Practices

Stabilization of exposed soil is one of the best means to minimize erosion and sedimentation. 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 also be effective, especially when used with vegetation. Stabilization reduces erosion potential by absorbing the force of raindrops that would otherwise erode unprotected soil; by allowing water to infiltrate into the ground instead of running off the surface; and by slowing the velocity of runoff, allowing sediment to filter out before reaching surface waters. Stabilization reduces the levels of suspended sediment in discharges and receiving waters. Examples of stabilization measures include, but are not limited to, those summarized below.

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

- **Permanent Seeding.** Establishing a permanent and sustainable ground cover at a site stabilizes the soil and reduces sediment in runoff. Permanent ground cover also provides aesthetic benefits, in addition to the environmental protection.

- **Mulching.** Mulching is often combined with permanent and temporary seeding. Where temporary or permanent seeding is not yet established or is not feasible, spreading plant residues or other suitable materials on the soil surface can stabilize exposed soil. 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 and rain 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% 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). Sod is also sensitive to climate and may require intensive watering and fertilization.

- **Vegetative Buffer Strips.** Vegetative buffer strips are areas where the natural vegetation has been left undisturbed. They are encouraged in areas 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 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 to more complex measures such as building retaining walls and tree wells.

- **Contouring and Protecting 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, reducing erosion. Minimizing the amount of regrading will also reduce the amount of disturbed soil. Preserving sensitive areas, such as steep slopes and wetlands, should also be a priority. The 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 essential aquatic habitat. This permit does not allow the disturbance of wetlands. The permittee must contact the US Army Corps of Engineers at (605) 224-8531 to determine any requirements for wetlands.

Structural Practices

Structural practices have several objectives. First, structural practices can be designed to divert 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 remove sediment before the runoff leaves the site. Methods for removing sediment from runoff include diverting flows to a trapping or storage device or filtering 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 humans and wildlife. Structural practices include, but are not limited to, those summarized below:

- **Earth Dike.** 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 effective method.

- **Silt Fence.** Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in 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. Silt Fences must be carefully maintained to ensure structural stability and be cleaned of sediment as it accumulates.

- **Drainage Swales.** A drainage swale is a channel lined with grass, riprap, asphalt, concrete or other materials. Swales 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.

- **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.

- **Level Spreader.** Level spreaders are outlets for dikes and flow channels consisting of an excavated depression that converts a concentrated runoff into a diffuse flow and releases it onto areas stabilized by existing vegetation.

- **Subsurface Drain.** 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 Drain.** A pipe slope drain is a temporary runoff conveyance running down a slope to prevent erosion on the face of the slope.

- **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 a storm water outlet can reduce the depth and velocity of water so the flow will not cause scouring or downstream erosion.

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

Storm Water Management Measures

Construction frequently causes significant alterations in the characteristics of the affected land. One such change is a decrease in the overall permeability 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. While this permit only addresses the installation of storm water management controls, the operation and maintenance, and the function, of such structures after construction activities have completed should also be considered. **The county or municipal authority in the area of the construction should always be consulted when drainage changes are anticipated.**

Traditional storm water management controls attempt to limit increases in the amount of runoff and pollution discharged from land impacted by construction. A summary of some storm water management controls is provided below.

- **On-Site Infiltration.** Encouraging infiltration, through measures such as trenches or basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration structures tend to reduce impacts to an area's natural hydrologic characteristics. If properly designed and installed, infiltration structures can reduce high flows, recharge the groundwater, reduce storm water discharge volumes and pollutant loads, and inhibit downstream erosion.

- **Flow Reduction by Vegetation or Natural Depressions.** Vegetation or natural depressions can remove pollutants, improve infiltration, and reduce erosion. The use of vegetation can protect habitats and enhance the appearance of a site. These vegetative measures include grass swales and filter strips as well as trees that are either preserved or planted during construction. Incorporating check dams into flow paths can provide additional infiltration and flow reduction. Given their limited capacity to accept large volumes of runoff, vegetative controls should usually be used in combination with other storm water devices. In general, the costs of vegetative controls are less than for other storm water measures.

- **Outfall Velocity Reduction Devices.** Outfall velocity reduction devices include riprap and stone or concrete flow spreaders. They slow the flow of water discharged from a site, 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. They are most cost-effective when used to control runoff from larger, intensively developed sites. These structures rely on settling and biological processes to remove pollutants. Retention ponds and artificial wetlands can

also become wildlife habitats, recreation and landscape features, and increase local property values. While wetlands can be one of the most effective long-term storm water management measures, they may also cause problems at certain sites. Public safety and sound engineering judgement are stressed in the implementation of any storm water measure, control or best management practice.

- **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 within 24 to 48 hours and to remain dry at other times. These structures can provide pollutant removal efficiencies similar to those of retention ponds. Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.

Housekeeping Best Management Practices (BMPs)

Pollutants can also be discharged in storm water from construction sites because of poor housekeeping. Construction site Storm Water Pollution Prevention Plans (SWPPPs) should address the following to prevent the discharge of pollutants:

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

SELF-MONITORING REQUIREMENTS

The permittee must ensure that qualified personnel inspect the site at least once every seven days and within 24 hours after any rain event that is 0.5 inches or greater or a snowmelt event that causes surface erosion. Where runoff is unlikely due to winter conditions (e.g. the site is covered with snow, ice, or frozen ground), such inspections shall be conducted at least once every month. The inspection shall include all disturbed areas of the construction site that have not been finally stabilized, structural control measures, areas used for storage of materials, and locations where vehicles enter or exit the site. These areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system and erosion. Sediment control measures shall be inspected to ensure that they are operating correctly and that sediment is not tracked offsite. Stabilized areas should also be inspected to ensure that stabilization measures are still in place and effective. For all of these inspections, records must be kept on file and made available upon request.

The department also recommends that permittees perform a "walk through" inspection of the construction site before any anticipated storm event that could potentially cause a significant amount of runoff. These types of inspections help to ensure the effective implementation of sediment and erosion controls.

Based on the results of the inspections, the pollution prevention plan shall be revised and modified as appropriate, and modification of control measures shall be implemented in a timely manner, but in no case more than seven days after the inspection.

This permit does not require effluent monitoring as a permit requirement nor as an application requirement. An adequate, fully implemented Storm Water Pollution Prevention Plan should be sufficient to control water quality impacts. Therefore, sampling and testing of storm water for specific parameters is not required on a routine basis under this permit. However, the Secretary reserves the right to require sampling and testing on a case-by-case basis, in the event that there is reason to suspect that compliance with the storm water pollution prevention plan is a problem, or to measure the effectiveness of the BMPs in removing pollutants in the effluent.

MANAGEMENT REQUIREMENTS

The pollution prevention plan and a copy of DENR's letter granting coverage under this permit must be maintained on site, or made readily available, from the date construction activities are initiated until final stabilization is achieved and coverage under the permit is terminated. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notices of Intent and Termination for this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Secretary at any time.

If requested, the permittee shall submit the storm water pollution prevention plan to the Secretary, EPA, or the local agency approving sediment and erosion control plans, grading plans or storm water management plans. In the case of a storm water discharge to a municipal separate storm sewer system (MS4), the permittee shall submit the storm water pollution prevention plan to the municipal operator of the system upon request.

ADDITIONAL INFORMATION FOR DEVELOPMENTS AND "PHASED" PROJECTS

The permittee, operator, owner, developer, home builder(s), property owners association, etc., separately or collectively, must retain coverage for subdivision developments or other phased developments until <u>all</u> disturbance activity, including individual home construction (if part of the original plan), is complete.

In many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five or more acres (effective January 1, 2003, this will expand to include one or more acres) of total disturbed land. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for

development. All these areas would remain part of the common plan of development or sale until the intended construction is complete. After this initial plan is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development, and would then be subject to the acreage cutoff for storm water permitting purposes.

If individual lots, which were included as a portion of the original common plan, are sold before completion of the entire plan, developers shall ensure that final stabilization is achieved for that lot, as defined in the permit, or that temporary stabilization has been reached prior to transfer of control and that the new owners are informed of the importance of achieving final stabilization on the site. Documentation of any and all transfers should be maintained with the pollution prevention plan, and the plan shall be updated to reflect changes in the covered area. A commercial homebuilder must submit a new Notice of Intent for coverage under the permit for any construction activities occurring within the common plan (for example, construction of "spec" homes).

TERMINATION OF COVERAGE

After construction activities are completed in an area, it must be permanently stabilized as soon as possible to prevent further soil erosion. When construction activities are complete and final stabilization has been achieved, the permittee is required to submit a Notice of Termination to DENR. The Notice of Termination indicates that all earthmoving activities have ended, and the site has achieved final stabilization as required by the permit. Coverage under the permit must be retained until all disturbed areas have achieved final stabilization, as defined in the permit.

ENDANGERED SPECIES

No listed endangered species are expected to be impacted by the activities related to this general permit.

GENERAL PERMIT DURATION

The permit shall be five years in duration. Periodically during the term of this permit and at the time of renewal, the permittee may be requested to reaffirm the eligibility of the permitted site to discharge under this general permit.

PERMIT CONTACT

Any questions pertaining to this Statement of Basis can be directed to Stacy J. Reed, Natural Resources Project Engineer at 1-800-SDSTORM (737-8676).

April 22, 2002

ATTACHMENT A

Best Management Practices

Construction Site Best Management Practices (BMPs)

BEST MANAGEMENT PRACTICE	USES
Block and Gravel Inlet Protection	• Used in small drainage areas before the area has been permanently stabilized • Where there is danger of silting in an inlet
Buffer Zones	• Floodplains, next to wetlands, along stream banks, and on steep, unstable slopes
Check Dams	• Across swales or drainage ditches to reduce the velocity of flow
Dust Control	• Used where open dry areas of soil are anticipated on the site
Drainage Swale or Earth Dike	• Divert upslope flows from disturbed areas and to divert runoff to a stabilized outlet • To reduce the length of slope the runoff will cross • At the perimeter of the construction site to prevent sediment-laden runoff from leaving the site • To direct sediment-laden runoff to a sediment trapping device
Excavated Gravel Inlet Protection	• Used in small drainage areas before the area has been permanently stabilized • Where there is danger of silting in an inlet • Where ponds around the inlet structure could be a problem to traffic on site
Filter Fabric Inlet Protection	• Used in small drainage areas before the area has been permanently stabilized • Where there is danger of silting in an inlet
Geotextiles	• Stabilize the flow on channels and swales • Used on recently planted slopes to protect seedlings until they become established
Mulching	• Areas where slopes are steeper than 2:1 • Where runoff is flowing across the area • When seedings need protection from bad weather
Permanent Seeding and Planting	• Areas where soils are unstable because of their texture, structure, water table, winds, or slopes • Filter strips, buffer areas, vegetated swales, steep slopes, and stream banks

Pipe Slope Drain	• On slopes before permanent storm water drainage structures have been installed • Where diversion measures have been used to concentrate flows • On any slope where concentrated runoff crossing the face of the slope may cause gullies, channel erosion, or saturation of slide-prone soils • As an outlet for a natural drainageway
Silt Fence	• Immediately upstream of the point(s) of runoff discharge from a site before flow becomes concentrated • Below disturbed areas where runoff may occur in the form of overland flow
Stabilized Construction Entrance	• Wherever vehicles are leaving a construction site and enter onto a public road • At any unpaved entrance/exit where there is risk of transporting mud or sediment onto paved roads
Temporary Sediment Trap	• At the outlet of the perimeter controls installed during the first stage of construction • At the outlet of any structure which concentrates sediment-laden runoff, e.g. at the discharge point of diversions, channels, slope drains, or other runoff conveyances • Above a storm water inlet that is in line to receive sediment-laden runoff
Temporary Seeding	• Areas which have been disturbed by construction and which are likely to be redisturbed, e.g. denuded areas, soil stockpiles, dikes, dams, sides of sediment basins, and temporary roadbanks

Information obtained from the Environmental Protection Agency's ***"Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices"*** *(September 1992).*

Response to Comments - Storm Water Construction General Permit

EPA Comments

1. **Definitions (Section 1.0)**

    1) Definition #15 - Storm Water Associated with Construction Activity - could be expanded as such "disturbance of five or more acres of total land area or which may be part of a larger common plan of development or sale" *encompassing five or more acres* - The qualifying size for projects of a common plan of development or sale wasn't clear. This comment is also applicable for Definition #16 - "Storm Water Associated with Small Construction Activity."

This clarification has been made.

    2) Definition #20 - Waters of the state - This definition could be expanded to include the fact that waters of the state *can include dry channels*. In addition, this definition could be broken down to include both receiving waters and ultimate receiving waters, as the NOI requests this information separately.

The definition in the general permit is consistent with the definition of "Waters of the State" as defined in the Administrative Rules of South Dakota. Therefore, the definition will remain as proposed.

2. **Discharges Covered (Section 2.0) -** Unless specified, this permit does not include storm water discharges from support activities related to a construction site (e.g., concrete or asphalt batch plants, equipment staging yards, storage areas, etc.). If the permit is not intended to cover these activities as a whole, it should be noted how the permittee will assume responsibility for these discharges. If the permit is intended to cover support activities, then some sort of mention should be made as to how these discharges are accounted for (i.e., in the pollution prevention plan).

As stated in Section 4.2.2, "Offsite material storage areas used solely by the permitted project are considered a part of the project and shall be addressed in the pollution prevention plan." Concrete or asphalt batch plants require coverage under one of the multimedia (air quality, surface water quality, and minerals & mining) general permits specific to those industrial activities and are not covered under this permit.

3. **Obtaining Authorization (Section 2.5) -** Storm water pollution prevention plans should be fully developed and implemented upon submitting the Notice of Intent to be covered by the general permit. The operator should comply with the terms and schedule of the plan beginning with the initiation of construction activities. It is important to note in section 2.5 that the pollution prevention plan is in fact part of

the authorization process and the pollution prevention plan should be developed as specified in section 4.0.

The storm water pollution prevention plan must be developed and implemented before any land disturbing activities are initiated, but its development is not necessarily required before the submittal of a Notice of Intent (NOI). There are instances where a Notice of Intent is submitted for a project long before a project is initiated, and a plan may not yet be developed. Therefore, it will not be considered a condition of submitting the NOI, but must be developed, as specified in Section 4.0, prior to the start of construction.

4. **Pollution Prevention Plan (Section 4.0)**

1) **The pollution prevention plan should include the location and description of the potential pollution sources. This information is not specifically referenced under the site map or site description requirements.**

The site description and site map requirements are what is required in addition to "a description of potential pollutant sources." Therefore, the potential pollution sources are addressed and are, in fact, the foremost requirement for the pollution prevention plan. Additional requirements will not be listed.

2) Specific limitations could be added to the Pollution Plan section to further clarify some standard practices and procedures specific to the CGP. For example:

    a. Concrete wash water shall not be discharged into state waters / storm systems
    b. The Secretary reserves the right to require sampling and testing
    c. Off-site tracking of sediments should be minimized

As concrete wash water would be considered a non-storm water discharge, it will not be addressed further in the plan requirements.

Section 6.5, Duty to Provide Information, provides a means for the Secretary to require sampling if needed to determine compliance with this permit.

The need to minimize off-site tracking is addressed on Page 10 of the permit in Other Controls.

5. **Standard Permit Conditions (Section 6.0) -** Under section 1, Duty to comply, text similar to the following sentence should be added to clarify the role of local programs: *Terms of this permit do not supercede local regulations.*

The following was added to this section (6.1.3):

> 3. The permittee is responsible for complying with all local ordinances and requirements. Local governments may have additional or more stringent requirements than those included in this permit.

6. **Requiring an Individual Permit (Section 6.11) -** I would recommend adding a #6 case whereby an individual permit may be required – The size of the construction site. In specific cases whereby the size of the construction site or consolidated project may pose specific environmental problems, the SD DENR may want to have the ability to require an individual permit.

The goal of the storm water program and subsequent permits is ultimately the protection of the environment. If all permit conditions are being followed, which should achieve the program goal, project size alone would not justify requiring an individual permit. Therefore, the five provisions already included in this section are sufficient to address conditions where an individual permit may be required.

7. Permit Violations (Section 6.?) - **The proposed permit does not have any resulting enforcement actions. The SD CGP should include information related to violations (i.e., what happens when people fail to comply and when does the SD DENR have the right to modify, suspend or revoke a permit). This information is missing from the permit and will need to be added. This should be broken down to include civil vs. criminal (i.e., negligence/ false statements) penalties, and the right of the Secretary to modify, suspend or revoke a permit.**

On the recommendation of the State Attorney General Office counsel, the previous permit language specifically addressing civil and criminal penalties was modified to what is proposed in Section 6.1.2, which refers to South Dakota Codified Law, Chapter 34A-2.