

**National Pollutant Discharge Elimination System
General Permit for Discharges from
Large and Small Construction Activities
(Draft)**

This permit provides Authorization To Discharge Under the National Pollutant Discharge Elimination System, in compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.).

Operators of construction activities are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein provided that: the construction activities are located in an area specified in Subpart 1.2, the discharges are eligible for permit coverage as specified in Subpart 1.3, a complete and accurate Notice of Intent (NOI) is submitted in accordance with Subpart 2.1, and a storm water pollution prevention plan (SWPPP) is developed and implemented in accordance with Part 3. Permit coverage is required from the “commencement of construction activities” until “final stabilization” as defined in Part 10.

This permit shall become effective on February 18, 2003.

This permit and the authorization to discharge shall expire at midnight, February 17, 2008.

Signed and issued this ____ day of _____, 200_.

(Signature of Water Management Permitting Authority or Regional Administrator)

This signature is for the permit conditions in Parts 1 through 11 and for any additional conditions which apply to facilities located in the corresponding State, Indian Country, or other area.

NPDES General Permit for Storm Water Discharges From Construction Activities

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Part 1 : COVERAGE UNDER THIS PERMIT

1.1 Introduction

This Construction General Permit (CGP) authorizes storm water discharges from large and small construction-related activities that result in a total land disturbance of equal to or greater than one acre, where those discharges enter surface waters of the United States or a storm drain leading to surface waters of the United States.

The goal of this permit is to reduce or eliminate storm water pollution from construction activity by requiring that operators plan and implement appropriate pollution control practices to prevent exceedances of surface water quality standards caused by storm water runoff.

1.2 Permit Area

Operators of large and small construction activities within the areas listed below may be eligible to obtain coverage under this permit. The permit language is structured as if it were a single permit, with State, Indian Country, or other area-specific conditions specified in Part 7. Permit coverage for storm water discharges from construction activity occurring within the following areas is provided by legally separate and distinctly numbered permits:

EPA Region 1: CT, MA, ME, NH, RI, VT

The States of Connecticut, Rhode Island, and Vermont are the NPDES Permitting Authority for the majority of discharges within their respective states. The State of Maine is the NPDES Permitting Authority for all discharges within that state.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
CTR10000I	Indian Country within the State of Connecticut
MAR100000	Commonwealth of Massachusetts, except Indian Country
MAR10000I	Indian Country within the Commonwealth of Massachusetts
NHR100000	State of New Hampshire
RIR10000I	Indian Country within the State of Rhode Island
VTR10000F	Federal Facilities in the State of Vermont

EPA Region 2: NJ, NY, PR, VI

The State of New York is the NPDES Permitting Authority for the majority of discharges within that state. The State of New Jersey and the Virgin Islands are the NPDES Permitting Authority for all discharges within their respective states.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
NYR10000I	Indian Country within the State of New York
PRR100000	The Commonwealth of Puerto Rico

EPA Region 3: DE, DC, MD, PA, VA, WV

The State of Delaware is the NPDES Permitting Authority for the majority of discharges within that state. Maryland, Pennsylvania, Virginia, and West Virginia are the NPDES Permitting Authority for all discharges within these states.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
DCR100000	The District of Columbia
DER10000F	Federal Facilities in the State of Delaware

EPA Region 4: AL, FL, GA, KY, MS, NC, SC, TN

Coverage Not Available. Construction activities in Region 4 must obtain permit coverage under an alternative permit.

EPA Region 5: IL, IN, MI, MN, OH, WI

The States of Michigan, Minnesota, and Wisconsin are the NPDES Permitting Authority for the majority of discharges within their respective states. The States of Illinois, Indiana, and Ohio are the NPDES Permitting Authorities for all discharges within those states.

Permit No.	Areas of coverage/where EPA is Permitting Authority
MIR10000I	Indian Country within the State of Michigan
MNR10000I	Indian Country within the State of Minnesota
WIR10000I	Indian Country within the State of Wisconsin

EPA Region 6: AR, LA, OK, TX, NM (except see Region 9 for Navajo lands, and see Region 8 for Ute Mountain Reservation lands)

The States of Louisiana, Oklahoma, and Texas are the NPDES Permitting Authority for the majority of discharges within their respective state. The State of Arkansas is the NPDES Permitting Authority for all discharges within that state.

Permit No.	Areas of coverage/where EPA is Permitting Authority
LAR15000I	Indian Country within the State of Louisiana
NMR150000	The State of New Mexico, except Indian Country
NMR15000I	Indian Country within the State of New Mexico, except Navajo Reservation Lands that are covered under Arizona permit AZR10000I and Ute Mountain Reservation Lands that are covered under Colorado permit COR10000I.
OKR15000I	Indian Country within the State of Oklahoma
OKR15000F	Discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC codes 1311, 1381, 1382, 1389, and 5171), and point source discharges associated with agricultural production, services, and silviculture.
TXR15000F	Discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly TNRCC), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.
TXR15000I	Indian Country within the State of Texas.

EPA Region 7: IA, KS, MO, NE (except see Region 8 for Pine Ridge Reservation Lands)

The States of Iowa, Kansas, and Nebraska are the NPDES Permitting Authority for the majority of discharges within their respective states. The State of Missouri is the NPDES Permitting Authority for all discharges within that state.

Permit No.	Areas of coverage/where EPA is Permitting Authority
IAR10000I	Indian Country within the State of Iowa
KSR10000I	Indian Country within the State of Kansas
NER10000I	Indian Country within the State of Nebraska, except Pine Ridge Reservation lands (see Region 8)

EPA Region 8: CO, MT, ND, SD, WY, UT (except see Region 9 for Goshute Reservation and Navajo Reservation Lands), the Ute Mountain Reservation in NM, and the Pine Ridge Reservation in NE.

The States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming are the NPDES Permitting Authority for the majority of discharges within their respective states.

Permit No.	Areas of coverage/where EPA is Permitting Authority
COR10000F	Federal Facilities in the State of Colorado, except those located on Indian Country
COR10000I	Indian Country within the State of Colorado, as well as the portion of the Ute Mountain Reservation located in New Mexico
MTR10000I	Indian Country within the State of Montana
NDR10000I	Indian Country within the State of North Dakota, as well as that portion of the Standing Rock Reservation located in South Dakota (except for the portion of the lands within the former boundaries of the Lake Traverse Reservation which is covered under South Dakota permit SDR10000I listed below)
SDR10000I	Indian Country within the State of South Dakota, as well as the portion of the Pine Ridge Reservation located in Nebraska and the portion of the lands within the former boundaries of the Lake Traverse Reservation located in North Dakota (except for the Standing Rock Reservation which is covered under North Dakota permit NDR10000I listed above)
UTR10000I	Indian Country within the State of Utah, except Goshute and Navajo Reservation lands (see Region 9)
WYR10000I	Indian Country within the State of Wyoming

EPA Region 9: CA, HI, NV, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in ID, and the Fort McDermitt Reservation in OR.

The States of Arizona, California and Nevada are the NPDES Permitting Authority for the majority of discharges within their respective states. The State of Hawaii is the NPDES Permitting Authority for all discharges within that state.

Permit No.	Areas of coverage/where EPA is Permitting Authority
ASR100000	The Island of American Samoa
AZR10000I	Indian Country within the State of Arizona, as well as Navajo Reservation lands in New Mexico and Utah

CAR10000I	Indian Country within the State of California
GUR100000	The Island of Guam
JAR100000	Johnston Atoll
MWR100000	Midway Island and Wake Island
NIR100000	Commonwealth of the Northern Mariana Islands
NVR10000I	Indian Country within the State of Nevada, as well as the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah

EPA Region 10: AK, WA, ID (except see Region 9 for Duck Valley Reservation Lands), and OR (except see Region 9 for Fort McDermitt Reservation).

The States of Oregon and Washington are the NPDES Permitting Authority for the majority of discharges within their respective states.

Permit No.	Areas of coverage/where EPA is Permitting Authority
AKR100000	The State of Alaska, except Indian Country
AKR10000I	Indian Country within the state of Alaska
IDR100000	The State of Idaho, except Indian Country
IDR10000I	Indian Country within the State of Idaho, except Duck Valley Reservation lands (see Region 9)
ORR10000I	Indian Country within the State of Oregon, except Fort McDermitt Reservation lands (see Region 9)
WAR10000F	Federal Facilities in the State of Washington, except those located on Indian Country
WAR10000I	Indian Country within the State of Washington

1.3 Eligibility

Permit eligibility is limited to discharges from “large” and “small” construction activities as defined in Part 10. This general permit contains eligibility restrictions, as well as permit conditions and requirements. An operator must review the eligibility restrictions to certify to eligibility. Satisfaction of some of the eligibility provisions may involve an operator taking certain actions, which may not necessarily be conditions and requirements of the permit but instead conditions of eligibility. In such cases, the permittee must continue to satisfy those eligibility provisions to maintain permit authorization. If a permittee does not maintain the actions that were a pre-condition to eligibility, then resulting discharges may constitute unpermitted discharges. By contrast, a permittee who does not comply with the requirements of the general permit may violate the general permit for its otherwise eligible discharges.

A. Allowable Storm Water Discharges.

Subject to compliance with the terms and conditions of this permit, an operator of construction activity covered under this permit is authorized to discharge pollutants in:

1. Storm water runoff associated with large and small construction activities as defined in Part 10;
2. Discharges designated by EPA as needing a storm water permit under 40 CFR §122.26(a)(1)(v), §122.26(b)(15)(ii) or §122.26(a)(9);
3. Discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:
 - a. The support activity is directly related to a construction site required to have NPDES permit coverage for discharges of storm water associated with construction activity;
 - b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and
 - c. Appropriate controls and measures are identified in a SWPPP covering the discharges from the support activity areas.
4. Non-storm water discharges as noted in Subpart 1.3.B or otherwise specifically allowed by the permit; and
5. Discharges comprised of a discharge listed above commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

B. Allowable Non-Storm Water Discharges.

Operators covered under this permit are also authorized for the following non-storm water discharges, provided the non-storm water component of the discharge is in compliance with Subpart 3.5 (Non-Storm Water Discharge Management):

1. Discharges from fire-fighting activities;
2. Fire hydrant flushings;
3. Waters used to wash vehicles where detergents are not used;
4. Water used to control dust in accordance with Subpart 3.4.G;
5. Potable water including uncontaminated water line flushings;
6. Routine external building wash down that does not use detergents;
7. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
8. Uncontaminated air conditioning or compressor condensate;

9. Uncontaminated ground water or spring water;
10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
11. Uncontaminated excavation dewatering

C. *Limitations on Coverage*

1. This permit does not authorize post-construction discharges that originate from the site after construction activities have been completed and the site has undergone final stabilization, including any temporary support activity. Post-construction storm water discharges from industrial sites may need to be covered by a separate NPDES permit.
2. This permit does not authorize discharges mixed with non-storm water. This exclusion does not apply to discharges identified in Subpart 1.3.B, provided the discharges are in compliance with Subpart 3.5 (Non-Storm Water Discharge Management).
3. This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative permit in accordance with Subpart 4.2.
4. To be eligible to discharge under this permit, you must design and implement Best Management Practices (BMPs) at your construction site that will be adequate and sufficient to meet water quality standards. This permit does not authorize discharges that will cause or contribute to non-attainment of water quality standards, including failure to protect and maintain existing designated uses of receiving waters. EPA may require an application for an individual permit or alternative general permit to authorize discharges of storm water from any activity that EPA determines to cause or contribute to an exceedance of water quality standards or that EPA determines to cause or contribute to the loss of a designated use of receiving waters. EPA believes that TMDLs, when established or approved, will provide operators with information as to what constitutes “adequate and sufficient BMPs.”
5. *Discharging into Receiving Waters With a Total Maximum Daily Load Analysis:*

Discharges to waters for which there is a total maximum daily load (TMDL) allocation for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) are not eligible for coverage under this permit unless you develop and certify a SWPPP that is consistent with the assumptions and requirements in the approved TMDL. To be eligible for coverage under this general permit, operators must incorporate into their SWPPP any conditions applicable to their discharges necessary for consistency with the assumptions and requirements of the TMDL within any timeframes established in the TMDL. If a specific numeric wasteload allocation has been established that would apply to the project’s discharges, the operator must incorporate that allocation into its SWPPP and implement necessary steps to meet that allocation.

6. *Endangered and Threatened Species and Critical Habitat Protection*
 - a. Coverage under this permit is available only if your storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to jeopardize the continued existence of any species that are listed as endangered or threatened (“listed”) under the Endangered Species Act (ESA) or result in the adverse modification or destruction of habitat that is designated as critical under the ESA (“critical habitat”).

- b. Operators are not eligible to discharge if the discharges or discharge-related activities would cause a prohibited “take” of endangered or threatened species (as defined under section 3 of the ESA and 50 CFR 17.3), unless such takes are authorized under sections 7 or 10 of the ESA.
- c. “Discharge-related activities” are defined in Part 10.
- d. Determining Eligibility: The operator must use the process in Addendum A (ESA Screening Process) to determine eligibility *PRIOR* to submittal of the NOI. An operator must meet one or more of the following five criteria (A-E) for the entire term of coverage under the permit:

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

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

- i. Addressed the effects of the project’s storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat, and
- ii. The consultation resulted in either:
 - a. Biological opinion finding no jeopardy to listed species or destruction/adverse modification of designated critical habitat, or
 - b. written concurrence from the Service with a finding that the storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to adversely affect listed species or critical habitat; or

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

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

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

Applicants must comply with any applicable terms, conditions, or other requirements developed in the process of meeting the eligibility requirements of the criteria in Subpart 1.3.C.6 above to

remain eligible for coverage under this permit. Such terms and conditions must be documented and incorporated into the applicant's storm water pollution prevention plan.

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

7. *Historic Properties*

- a. To be eligible for coverage under this permit, operators must meet one or more of the following three criteria (A-C) pursuant to the National Historic Preservation Act:

Criterion A. The operator has evaluated the effects of storm water discharges and allowable non-storm water discharges on properties that are listed or are eligible for listing and does not have reason to believe that construction activities will affect a property that is listed or has been officially reviewed and determined to be eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior. Also, the operator has no knowledge of any properties that may be eligible for listing occurring on the construction site; or

Criterion B. The operator has obtained and is in compliance with a written agreement with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) that outlines all measures to be taken to mitigate or prevent adverse effects to historic property; or

Criterion C. The project's storm water discharges, allowable non-storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Criteria A-B which included your construction activities. By certifying eligibility under this Subpart, the operator agrees to comply with any measures or controls upon which the other operator's certification was based.

- b. Addendum B of this permit provides references to assist you with determining eligibility under this provision.

1.4 Waivers for Certain Small Construction Activities

Three scenarios exist under which operators of small construction activity (see definition in Part 10) may be waived from the requirements in a general permit. These exemptions are predicated on certain criteria being met and proper notification procedures being followed. Details of the waiver options and procedures for requesting a waiver are provided in Addendum C.

PART 2: AUTHORIZATIONS FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITY

It is the responsibility of those individuals wishing to obtain coverage under this general permit to submit a complete and accurate Notice of Intent (NOI) form, as described in Subpart 2.1. Where the operator changes or another is added during the construction project, the new operator must also submit an NOI in accordance with Subpart 2.1.

2.1 Discharge Authorization

- A. It is the responsibility of the operator to submit a complete and accurate NOI for coverage under this permit, using the form provided in Addendum D (or a photocopy thereof). If EPA notifies dischargers (either directly, by public notice, or by making information available on the Internet) of other NOI form options (e.g., electronic submission of forms), you may take advantage of those options to satisfy the NOI use and submittal requirements of Part 2.

*Note: Until the revised NOI form is published as final in the **Federal Register**, operators must use EPA's existing NOI form [EPA Form 3510-6 (8-98)] to apply for permit coverage.*

- B. If you are the operator of the construction activity, you must provide the following information on the NOI form:
1. Name, address and telephone number of the construction site operator;
 2. Whether the site is a Federal project or location on Federal lands;
 3. Nature of construction project (e.g., commercial, industrial, residential, agricultural, oil and gas , or mining project);
 4. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction project or site;
 5. Whether the site is located on Indian Country and if so, the name of the Reservation or for lands that are not part of a Reservation, the Tribal affiliation;
 6. The location where the SWPPP may be viewed and the name and telephone number of a contact person for scheduling viewing times;
 7. Name of the receiving water(s) or if the discharge is through a municipal separate storm sewer system, the name of the municipal operator of the storm sewer;
 8. Indication whether the discharge is to a water body with an approved TMDL and if so, if the TMDL is for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation);
 9. Estimated project start and completion dates, and total acreage (to the nearest quarter acre) to be disturbed by the operator submitting this NOI and whether this project is part of a larger common plan of development or sale and if so, whether the larger common plan is considered large construction (greater than 5 acres) or small construction (1-5 acres);
 10. Whether any listed threatened or endangered species, or designated critical habitat are in the project area to be covered by this permit, and affirm eligibility for permit coverage based on the instructions in Addendum A;
 11. Whether any historic property listed or eligible for listing on the National Register of Historic Places is located on the construction site or in proximity to the discharge, and affirm eligibility for permit coverage based on the instructions in Addendum B;

12. A certification statement, signed and dated by an authorized representative as defined in Subpart 8.11, and the name and title of that authorized representative.

2.2 Submission Deadlines

- A. NOIs must be submitted prior to commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).
- B. Large Construction
 1. *Ongoing Projects:* Operators of ongoing large construction projects as of the effective date of this permit that received authorization to discharge for these projects under the 1998 construction general permit (63 FR 7858, February 17, 1998 for EPA Regions 1, 2, 3, 7, 8, 9, and 10 and 63 FR 36489, July 6, 1998 for EPA Region 6) must:
 - a. Submit an NOI consistent with Subpart 2.1 within 90 days of the effective date of this permit (or by July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires). If the permittee is eligible to submit a Notice of Termination (e.g., construction is finished and final stabilization has been achieved) before the 90th day (or by July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires), a new NOI is not required to be submitted, provided that the Notice of Termination is submitted in compliance with Part 5;
 - b. For the first 90 days from the effective date of this permit (or until July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires), comply with the terms and conditions of the 1998 construction general permit (63 FR 7858, February 17, 1998 for EPA Regions 1, 2, 3, 7, 8, 9, and 10 and 63 FR 36489, July 6, 1998 for EPA Region 6) they were previously authorized under; and
 - c. Update their SWPPP, as necessary, to comply with the requirements of Part 3 within 90 days after the effective date of this permit (or by July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires).
 2. *New Projects:* Operators of large construction projects that commence construction after the effective date of this permit must submit an NOI prior to commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

C. Small Construction

1. *Ongoing Projects:* Operators of ongoing small construction projects as of March 10, 2003 must:
 - a. Submit an NOI consistent with Subpart 2.1. by March 10, 2003;
 - b. Develop and implement a SWPPP to comply with the requirements of Part 3 within 90 days after the effective date of this permit. If the construction is completed and final stabilization achieved before the 90th day, development of a SWPPP is not required.
2. *New Projects:* Operators of small construction projects that commence construction after the effective date of this permit must submit an NOI prior to commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

D. *Change in Operator:* For construction projects where the operator changes, including instances where an operator is added after an NOI has been submitted, the new operator must submit an NOI prior to assuming operational control over site specifications or commencing work on-site.

E. *Late Notifications:* Operators are not prohibited from submitting NOIs after initiating clearing, grading, excavation activities, or other construction activities. When a late NOI is submitted, authorization for discharges occurs no earlier than the postmark date of the NOI. The Agency reserves the right to take enforcement for any unpermitted discharges or permit noncompliance that occur between the time construction commenced and discharge authorization.

2.3 Where to Submit

Complete and accurate NOIs as detailed in Subpart 2.1 must be sent to the following address:

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

Overnight/Express Mail Delivery
Storm Water Notice of Intent
Room 7329
U.S. EPA
1201 Constitution Avenue
Washington, DC 20004

2.4 Effective Date of Permit Coverage

- A. The operator of a construction activity is authorized to discharge storm water from those construction activities under the terms and conditions of this permit immediately (i.e., the NOI postmark date) upon submission of a complete and accurate NOI to EPA (but in no event earlier than the effective date of the permit), except as noted in Subpart 2.2.B.1. Discharges are not authorized if your NOI is incomplete or incorrect or if your discharge(s) was not eligible for coverage by the permit.
- B. Where appropriate to facilitate the implementation of the permit's requirements for the protection of endangered and threatened species, EPA may publish a notice in the Federal Register that identifies, by geographic area or other readily ascertainable criteria, a category of construction activity that:
 1. Is not authorized to discharge under this permit until the expiration of a specified waiting period or until the applicant receives notification of inclusion in the permit; or

2. Can obtain permit coverage only under the eligibility criteria specified by the Permitting Authority.
- C. During a waiting period as specified under Subpart 2.4.B.1, EPA may evaluate the NOI and, if appropriate, notify the operator that the NOI does not meet the permit eligibility criteria, and discuss steps needed to obtain permit coverage.

Part 3.0 STORM WATER POLLUTION PREVENTION PLANS

3.1 Storm Water Pollution Prevention Plan Requirements

- A. A Storm Water Pollution Prevention Plan (SWPPP) must be prepared prior to commencement of construction activity. At least one SWPPP must be developed for each construction project covered by this permit and prepared in accordance with good engineering practices.
- B. The SWPPP must:
1. Identify all potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site;
 2. Describe practices to be used to reduce pollutants in storm water discharges from the construction site; and
 3. Assure compliance with the terms and conditions of this permit.
- C. Once a definable area has been finally stabilized, you may mark this on your SWPPP and no further SWPPP or inspection requirements apply to that portion of the site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally stabilized; one mile of a roadway or pipeline project is done and finally stabilized; etc).
- D. The operator must implement the SWPPP as written from commencement of construction activity until final stabilization is complete (as defined in Part 10).

3.2 Requirements for Different Types of Operators

A permittee may meet one or both of the operational control components in the definition of operator found in Part 10. Either Subpart 3.2.A or 3.2.B will apply, depending on the type of operational control one exerts over the site. Subpart 3.2.C applies to all permittees having control over only a portion of a construction site.

- A. Operators with operational control over construction plans and specifications must ensure that:
1. The project specifications meet the minimum requirements of this Subpart and all other applicable permit conditions;
 2. The SWPPP indicates the areas of the project where the operator has operational control over project specifications, including the ability to make modifications in specifications;
 3. All other permittees implementing portions of the SWPPP (or their own SWPPP) who may be impacted by a change to the construction plan are notified of such changes in a timely manner; and
 4. The SWPPP indicates the name of the party(ies) with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions.

- B. Operators With Control Over Day-to-Day Activities must ensure that:
 - 1. The SWPPP meets the minimum requirements of this Part and identifies the parties responsible for implementation of control measures identified in the plan;
 - 2. The SWPPP indicates areas of the project where you have operational control over day-to-day activities;
 - 3. The SWPPP indicates the name of the party(ies) with operational control over project specifications (including the ability to make modifications in specifications).

- C. Operators With Control Over Only a Portion of a Larger Project (e.g., one of four homebuilders in a subdivision) are responsible for compliance with all applicable terms and conditions of this permit as it relates to your activities on your portion of the construction site, including protection of endangered species, critical habitat, and historic properties, and implementation of BMPs and other controls required by the SWPPP. You must ensure either directly or through coordination with other permittees, that your activities do not render another party's pollution control ineffective. **You must either implement your portion of a common SWPPP or develop and implement your own SWPPP.**

For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site to prepare and participate in a comprehensive SWPPP is encouraged. Individual operators at a site may, but are not required to, develop separate SWPPPs that cover only their portion of the project provided reference is made to other operators at the site. In instances where there is more than one SWPPP for a site, cooperation between the permittees is encouraged to ensure the storm water discharge controls and other measures are consistent with one another (e.g., provisions to protect listed species and critical habitat).

3.3 Pollution Prevention Plan Contents: Site and Activity Description

- A. The SWPPP must identify all operators for the project site, and the areas of the site over which each operator has control.

- B. The SWPPP must describe of the nature of the construction activity, including:
 - 1. The function of the project (e.g., low density residential, shopping mall, highway, etc.)
 - 2. The intended sequence and timing of activities that disturb soils at the site;
 - 3. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities, including off-site borrow and fill areas;
 - 4. A general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with enough detail to identify the location of the construction site and the receiving waters within one mile of the site;

- C. The SWPPP must contain a legible site map, showing the entire site, identifying:
 - 1. Directions of storm water flow and approximate slopes anticipated after major grading activities;
 - 2. Areas of soil disturbance and areas that will not be disturbed;

3. Locations of major structural and nonstructural controls identified in the SWPPP;
 4. Locations where stabilization practices are expected to occur;
 5. Locations of off-site material, waste, borrow or equipment storage areas;
 6. Locations of all surface water bodies (including wetlands);
 7. Locations where storm water discharges to a surface water; and
 8. Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply.
- D. The SWPPP must identify the nearest receiving water(s), as defined in Part 10, at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project.
- E. The SWPPP must identify the location and description of any storm water discharge associated with industrial activity other than construction at the site. This includes storm water discharges from dedicated asphalt plants and dedicated concrete plants, that are covered by this permit.

3.4 Pollution Prevention Plan Contents: Controls to Reduce Pollutants

- A. The SWPPP must include a description of all pollution control measures (i.e., best management practices, or BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. For each major activity identified in the project description; the SWPPP must clearly describe appropriate control measures, the general sequence during the construction process in which the measures will be implemented; and which operator is responsible for the control measure's implementation.
- B. The SWPPP must include a description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Use of impervious surfaces for stabilization should be avoided.
- C. The following records must be maintained as part of the SWPPP:
1. Dates when major grading activities occur;
 2. Dates when construction activities temporarily or permanently cease on a portion of the site; and
 3. Dates when stabilization measures are initiated.
- D. The SWPPP must include a description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site.
- E. The SWPPP must include a description of all post construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such measures must be designed and installed in accordance with applicable federal, local, state or tribal requirements.
- F. The SWPPP must describe measures to prevent the discharge of solid materials, including building materials, to waters of the United States, except as authorized by a permit issued under section 404 of the CWA.

- G. The SWPPP must describe measures to minimize, to the extent practicable, off-site vehicle tracking of sediments and the generation of dust.
- H. The SWPPP must include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP must 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 practices.
- I. The SWPPP must include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

3.5 Non-Storm Water Discharge Management

The SWPPP must identify all allowable sources of non-storm water discharges listed in Subpart 1.3.B of this permit that are combined with storm water discharges associated with construction activity at the site, except for flows from fire fighting activities. Non-storm water discharges should be eliminated or reduced to the extent feasible. The SWPPP must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

3.6 Maintenance of Controls

- A. All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If site inspections required by Subpart 3.11 identify BMPs that are not operating effectively, maintenance must be performed before the next anticipated storm event, or to the extent practicable to maintain the continued effectiveness of storm water controls.
- B. If existing BMPs need to be modified or if additional BMPs are necessary for any reason, implementation must be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, the situation must be documented in the SWPPP and alternative BMPs must be implemented as soon as practicable.
- C. Sediment from sediment traps or sedimentation ponds must be removed when design capacity has been reduced by 50 percent.

3.7 Documentation of Permit Eligibility Related to Endangered Species

The SWPPP must include documentation supporting a determination of permit eligibility with regard to Endangered Species, including:

- A. Information on whether listed endangered or threatened species, or designated critical habitat may be in the project area;
- B. Whether such species or critical habitat may be adversely affected by storm water discharges or storm water discharge-related activities from the project;
- C. Results of the Addendum A listed species and critical habitat screening determinations; and
- D. A description of measures necessary to protect listed endangered or threatened species, or critical habitat, including any terms and conditions that are imposed under the eligibility requirements of Subpart 1.3.C.6.

The permittee must describe and implement such measures to maintain eligibility for coverage under this permit.

3.8 Documentation of Permit Eligibility Related to Historic Places

The SWPPP must include documentation supporting a determination of permit eligibility with regard to Historic Properties, including:

- A. Information on whether storm water discharges or storm water discharge-related activities from the site would have an effect on a property that is listed or eligible for listing on the National Register of Historic Places;
- B. Where effects may occur, any written agreements that have been made by the owner/operator with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other Tribal leader to mitigate those effects; and
- C. A description of measures necessary to avoid or minimize adverse impacts on places listed, or eligible for listing, on the National Register of Historic Places, including any terms or conditions that are imposed under (other plans) the eligibility requirements of Subpart 1.3.C.7. The measures must include procedures for properties discovered during the course of construction. The permittee must describe and implement such measures to maintain eligibility for coverage under this permit.

3.9 Copy of Permit Requirements

Copies of this permit and of the signed and certified NOI form that was submitted to EPA must be included in the SWPPP. Also, upon receipt, a copy of the letter from the NOI Processing Center notifying you of their receipt of your administratively complete NOI must also be included as a component of the SWPPP.

3.10 Applicable State, Tribal, or Local Programs

The SWPPP must be consistent with all applicable federal, State or Tribal, or local requirements for soil and erosion control and storm water management, including updates to the SWPPP as necessary to reflect any revisions to applicable federal, State or Tribal, or local requirements for soil and erosion control.

3.11 Inspections

- A. Inspections must be conducted in accordance with one of the two schedules listed below. You must specify in your SWPPP which schedule you will be following.
 - 1. At least once every 7 calendar days, OR
 - 2. At least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.
- B. Inspection frequency may be reduced to at least once every month if:
 - 1. The site has been temporarily stabilized,
 - 2. Runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or the ground is frozen), or
 - 3. Construction is occurring during seasonal arid periods in arid areas and semi-arid areas.

- C. A waiver of the inspection requirements is available until one month before thawing conditions are expected to result in a discharge if all of the following requirements are met:
1. The project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month);
 2. Land disturbance activities have been suspended; and
 3. The beginning and ending dates of the waiver period are documented in the SWPPP.
- D. Inspections must be conducted by qualified personnel (provided by the operator or cooperatively by multiple operators). “Qualified personnel” means a person knowledgeable in the principles and practice of erosion and sediment controls, such as a licensed professional engineer or other knowledgeable person who possesses the skills to assess conditions at the construction site that could impact storm water quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the construction activity.
- E. Inspections must include all areas of the site disturbed by construction activity and areas used for storage of materials that are exposed to precipitation. Inspectors must look for evidence of, or the potential for, pollutants entering the storm water conveyance system. Sedimentation and erosion control measures identified in the SWPPP must be observed to ensure proper operation. Discharge locations must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters, where accessible. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site must be inspected for evidence of offsite sediment tracking.
- F. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Subpart 3.11.E above. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 mile above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25 mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25 mile segment to either the end of the next 0.25 mile inspected segment, or to the end of the project, whichever occurs first.
- G. For each inspection required above, the operator must complete an inspection report. At a minimum, the inspection report must include:
1. The inspection date;
 2. Names, titles, and qualifications of personnel making the inspection;
 3. Weather information for the period since the last inspection (or since commencement of construction activity if the first inspection), including a best estimate of the beginning of each storm event, duration of each storm event, time elapsed since the last storm event, and approximate amount of rainfall for each storm event (in inches);

4. Location(s) of discharges of sediment or other pollutants from the site;
5. Location(s) of BMPs that need to be maintained;
6. Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
7. Location(s) where additional BMPs are needed that did not exist at the time of inspection; and
8. Corrective action required including any changes to the SWPPP necessary and implementation dates.

A record of each inspection and of any actions taken in accordance with this Part must be retained as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The inspection reports must identify any incidents of non-compliance with the permit conditions. Where a report does not identify any incidents of non-compliance, the report must contain a certification that the construction project or site is in compliance with the SWPPP and this permit. The report must be signed in accordance with Subpart 8.11 of this permit.

3.12 Maintaining an Updated SWPPP

- A. The SWPPP, including the site map, must be amended whenever there is a change in design, construction, operation, or maintenance at the construction site that has a significant effect on the discharge of pollutants to the waters of the United States that has not been previously addressed in the SWPPP.
- B. The SWPPP must be amended if during inspections or investigations by site staff, or by local, State, Tribal or Federal officials, it is determined that the discharges are causing water quality exceedances or the SWPPP is ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the construction site.
- C. Based on the results of an inspection, the SWPPP must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP must be completed within seven (7) calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Subpart 3.6.B.

3.13 Signature, Plan Review and Making Plans Available

- A. A copy of the SWPPP (including a copy of the permit) must be retained at the construction site (or other location easily accessible during normal business hours to EPA, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; the operator of a municipal separate storm sewer receiving discharges from the site; and representatives of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service) from the date of commencement of construction activities to the date of final stabilization. Permittees with day-to-day operational control over SWPPP implementation must have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.
- B. A sign or other notice must be posted conspicuously near the main entrance of the construction site. If displaying near the main entrance is infeasible, the notice can be posted in a local public building such as the town hall or public library. The sign or other notice must contain the following information:

1. A copy of the completed Notice of Intent as submitted to the EPA NOI Processing Center at the address specified in Subpart 2.2; and
2. If the location of the SWPPP or the name and telephone number of the contact person for scheduling SWPPP viewing times has changed (i.e., is different than that submitted to EPA in the NOI), the current location of the SWPPP and name and telephone number of a contact person for scheduling viewing times.

For linear projects, the sign or other notice must be posted at a publicly accessible location near the active part of the construction project (e.g., where a pipeline project crosses a public road).

- C. SWPPPs must be made available upon request to EPA; a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; the operator of a municipal separate storm sewer receiving discharges from the site; and representatives of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. The copy of the SWPPP that is required to be kept on-site or locally available must be made available, in its entirety, to the EPA staff for review and copying at the time of an on-site inspection.
- D. All SWPPPs must be signed in accordance with Subpart 8.11.

3.14 Management Practices

- A. Erosion and sediment controls should be designed to retain sediment on-site.
- B. All control measures must be properly selected, installed, and maintained in accordance with manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the operator must replace or modify the control for site situations as soon as practicable.
- C. If sediment escapes the construction site, offsite accumulations of sediment must be removed at a frequency sufficient to minimize offsite impacts.
- D. Litter, construction debris, and construction chemicals exposed to storm water must be prevented from becoming a pollutant source in storm water discharges.
- E. Except as provided below, stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.
 1. Where stabilization by the 14th day is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable.
 2. Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 14 days, temporary stabilization measures do not have to be initiated on that portion of the site.
 3. In arid, semiarid, and drought-stricken areas where initiating perennial vegetative stabilization measures is not possible with 14 days after construction activity has temporarily or permanently ceased, final vegetative stabilization measures must be initiated as soon as practicable.

- F. Any structural practices to retain storm runoff onsite should be located in upland areas. A combination of sediment and erosion control measures are required to achieve maximum pollutant removal.
1. Sediment Basins: For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage area from a 2-year, 24-hour storm, or equivalent control measures, must be provided where attainable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, must be provided where attainable until final stabilization of the site. When computing the number of acres draining into a common location, it is not necessary to include flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the operator may consider factors such as site soils, slope, available area on site, etc. In any event, the operator must consider public safety, especially as it relates to children, as a design factor for the sediment basin, and alternative sediment controls must be used where site limitations would preclude a safe design.
 2. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions).
 3. For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from a 2-year, 24-hour storm or 3,600 cubic feet of storage per acre drained is provided.
- G. Velocity dissipation devices must be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

3.15 Documentation of Permit Eligibility Related to Total Maximum Daily Loads

The SWPPP must include documentation supporting a determination of permit eligibility with regard to waters that have an established TMDL, including:

- A. Information on whether storm water discharges from the site enter a water body with an approved TMDL;
- B. Identification of the pollutants that the TMDL addresses, specifically whether the TMDL addresses sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation);
- C. Identification of whether the operator's discharge is identified, either specifically or generally, in the TMDL and any associated assumptions and allocations identified for the discharge; and
- D. Measures taken by the operator to ensure that its discharge of pollutants from the site is consistent with the assumptions and allocations of the TMDL.

PART 4: SPECIAL CONDITIONS, MANAGEMENT PRACTICES AND OTHER NON-NUMERIC LIMITATIONS

4.1 Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedure Act and remain in force and effect. Any operator who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

- A. Reissuance or replacement of this permit, at which time the operator must comply with the NOI conditions of the new permit to maintain authorization to discharge; or
- B. The operator's submittal of a Notice of Termination; or
- C. Issuance of an individual permit for the project's discharges; or
- D. A formal permit decision by the Permitting Authority to not reissue this general permit, at which time operators must seek coverage under an alternative general permit or an individual permit.

4.2 Requiring an Individual Permit or an Alternative General Permit

- A. EPA may require any person covered by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition EPA to take action under this paragraph. When EPA requires a permittee authorized to discharge under this permit to apply for an individual NPDES permit, EPA will notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications must be submitted to the address indicated in Subpart 6.2 of this permit. EPA may grant additional time to submit the application upon request of the operator. If a permittee fails to submit in a timely manner an individual NPDES permit application as required by EPA, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by EPA as the deadline for application submittal.
- B. Any permittee covered by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. In such cases, a permittee must submit an individual application in accordance with the requirements of 40 CFR §122.26(c)(1)(ii), with reasons supporting the request, to EPA at the EPA Regional address listed in Addendum D of this permit. The request may be granted by issuance of an individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.
- C. When an individual NPDES permit is issued to a permittee otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by EPA.

- D. The procedures in Subparts 4.2.A, 4.2.B, and 4.2.C do not apply where an operator does not meet the general permit eligibility requirements described in Subpart 1.3.

4.3 Releases in Excess of Reportable Quantities

The discharge of hazardous substances or oil in storm water discharge(s) from the construction site must be prevented or minimized in accordance with the SWPPP. This permit does not relieve the owner/operator of the federal reporting requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 relating to spills or other releases of oils or hazardous substances.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117 or 40 CFR Part 302, occurs during a 24-hour period:

- Notice must be provided to the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area call 202–426–2675) in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 as soon as site staff have knowledge of the discharge; and
- SWPPPs must be modified as required under Part 3 within 7 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. Plans must identify measures to prevent the reoccurrence of such releases and to respond to such releases.

4.4 Spills

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

4.5 Non-Attainment of Water Quality Standards After Authorization

At any time after authorization, EPA may determine that your storm water discharges may cause, have reasonable potential to cause, or contribute to non-attainment of any applicable water quality standard. If EPA makes such determination, EPA may notify you in writing. In response, you must develop a supplemental BMP action plan describing SWPPP modifications pursuant to Part 3.12 to address the identified water quality concerns; submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or submit an individual permit application according to Subpart 4.2. If EPA's written notification requires a response, failure to respond in a timely manner constitutes a permit violation. All responses provided under this part must include a signed certification consistent with Subpart 8.11.

PART 5: TERMINATION OF COVERAGE

5.1 Requirements

Permittees may only submit a Notice of Termination (NOT) after one or more of the following conditions have been met:

- A. Final stabilization has been achieved on all portions of the site for which the operator is responsible;
- B. Another operator has assumed control according to Subpart 8.11.C over all areas of the site that have not been finally stabilized;
- C. Coverage under an alternative NPDES permit has been obtained; or

- D. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

The NOT must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates at midnight of the day the NOT is signed.

5.2 Submitting a Notice of Termination

It is the responsibility of the operator to submit a complete and accurate Notice of Termination (NOT), using the form provided in Addendum E (or a photocopy thereof). If EPA notifies dischargers (either directly, by public notice, or by making information available on the Internet) of other NOT form options (e.g., electronic submission of forms), you may take advantage of those options to satisfy the NOT use and submittal requirements of Part 5.

*Note: Until the revised NOT form is published as final in the **Federal Register**, operators must use EPA's existing NOI form [EPA Form 3510-7 (8-92)] to apply for permit coverage.*

- A. The Notice of Termination must include the following information:
1. The NPDES permit tracking number for the storm water discharge identified by the Notice of Termination;
 2. The basis for submission of the NOT, including: final stabilization has been achieved on all portions of the site for which the permittee is responsible; another operator/permittee has assumed control over all areas of the site that have not been finally stabilized; coverage under an alternative NPDES permit has been obtained; or for residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner;
 3. The name, address and telephone number of the permittee submitting the Notice of Termination;
 4. The name of the project and street address (or a description of location if no street address is available) of the construction site for which the notification is submitted;
 5. The latitude and longitude of the project site; and
 6. A certification statement, signed and dated by an authorized representative as defined in Subpart 8.11 and the name and title of that authorized representative.
- B. For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the portion of the construction site where the operator had control have been finally stabilized as defined in Part 10, or that all storm water discharges associated with construction activities have otherwise been eliminated from the portion of the construction site where the operator had control.

5.3 Where to Submit

All NOTs must be submitted to the following address:

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

Overnight/Express Mail Delivery
Storm Water Notice of Intent
Room 7329
U.S. EPA
1201 Constitution Avenue
Washington, DC 20004

PART 6: RETENTION OF RECORDS

6.1 Documents

Copies of the SWPPP and all documentation required by this permit, including records of all data used to complete the NOI to be covered by this permit, must be retained for a period of at least three years from the date of final stabilization of the site. This period may be extended by request of EPA at any time.

6.2 Addresses

All written correspondence concerning discharges covered under this permit, excluding NOIs and NOTs, must be sent to one of the following addresses:

[To be addressed in final permit.]

Part 7: PERMIT CONDITIONS APPLICABLE TO SPECIFIC STATES, INDIAN COUNTRY, OR TERRITORIES

[To be addressed in final permit through 401 certification process.]

Part 8: STANDARD PERMIT CONDITIONS

8.1 Duty To Comply

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

- A. The permittee must comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- B. The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as

amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$27,500 per day for each violation).

The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- C. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR Part 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$27,500). Pursuant to 40 CFR Part 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$137,500).

8.2 Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

8.3 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.

8.4 Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

8.5 Proper Operation and Maintenance

The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

8.6 Permit Actions

This permit may be modified, revoked and reissued, or terminated 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.

8.7 Property Rights

This permit does not convey any property rights of any sort, or any exclusive privileges.

8.8 Duty to Provide Information

The permittee shall furnish to EPA, within a reasonable time, any information which EPA 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 EPA upon request, copies of records required to be kept by this permit.

8.9 Inspection and Entry

The permittee shall allow EPA, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- A. 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;
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

8.10 Monitoring and Records

- A. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- B. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of EPA at any time.
- C. Records of monitoring information shall include:
 - 1. The date, exact place, and time of sampling or measurements;
 - 2. The individual(s) who performed the sampling or measurements;
 - 3. The date(s) analyses were performed
 - 4. The individual(s) who performed the analyses;
 - 5. The analytical techniques or methods used; and
 - 6. The results of such analyses.
- D. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the permit.
- E. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

8.11 Signatory Requirements

- A. All Notices of Intent must be signed and certified as follows:
 - 1. For a corporation: By a responsible corporate officer. For the purpose of this Part, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - 2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
 - 3. For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having

responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

- B. All NOTs, SWPPPs, reports, certifications, or other information required by this permit must be signed by a person described in Subpart 8.11.A above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
1. The authorization is made in writing by a person described in Subpart 8.11.A;
 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
 3. The signed and dated written authorization is included in the SWPPP. A copy must be submitted to EPA, if requested.
- C. **Changes to Authorization.** If an authorization under Subpart 2.1 is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new NOI satisfying the requirements of Subpart 2.1 must be submitted to EPA prior to or together with any reports, information, or applications to be signed by an authorized representative. The change in authorization must be submitted within the time frame specified in Subpart 2.3, and sent to the address specified in Subpart 2.4.
- D. Any person signing documents under the terms of this permit shall make the following certification:
- “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 gathered and evaluated 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.”
- E. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

8.12 Reporting Requirements

- A. **Planned changes.** The permittee shall give notice to EPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR §122.29(b); or
 2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR §122.42(a)(1)
 3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

- B. Anticipated noncompliance. The permittee shall give advance notice to EPA of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- C. Transfers. This permit is not transferable to any person except after notice to EPA. EPA may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See 40 CFR §122.61; in some cases, modification or revocation and reissuance is mandatory.)
- D. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - 1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by EPA for reporting results of monitoring of sludge use or disposal practices.
 - 2. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by EPA.
 - 3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by EPA in the permit.
- E. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- F. Twenty-four hour reporting.
 - 1. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - 2. The following shall be included as information which must be reported within 24 hours under this paragraph.
 - a. Any unanticipated bypass which exceeds any effluent limitation in the permit. (See 40 CFR §122.41(g).)
 - b. Any upset which exceeds any effluent limitation in the permit
 - c. Violation of a maximum daily discharge limitation for any of the pollutants listed by EPA in the permit to be reported within 24 hours. (See 40 CFR §122.44(g).)
 - 3. EPA may waive the written report on a case-by-case basis for reports under Subpart 8.12.F.2 if the oral report has been received within 24 hours.
- G. Other noncompliance. The permittee shall report all instances of noncompliance not reported under Subparts 8.12.D, 8.12.E, and 8.12.F, at the time monitoring reports are submitted. The reports shall contain the information listed in Subpart 8.12.F.
- H. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Permitting Authority, it shall promptly submit such facts or information.

8.13 Bypass

- A. Definitions.
 - 1. Bypass means the intentional diversion of waste streams from any portion of a treatment facility
 - 2. Severe property damage means substantial physical damage to property, damage to the 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.
- B. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Subparts 8.13.C and 8.13.D.
- C. Notice—
 - 1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
 - 2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Subpart 8.12.F (24-hour notice).
- D. Prohibition of bypass.
 - 1. Bypass is prohibited, and EPA may take enforcement action against a permittee for bypass, unless:
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The permittee submitted notices as required under Subpart 8.13.C.
 - 2. EPA may approve an anticipated bypass, after considering its adverse effects, if EPA determines that it will meet the three conditions listed above in Subpart 8.13.D.1.

8.14 Upset

- A. Definition. 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.
- B. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Subpart 8.14.C are 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.
- C. Conditions necessary for a demonstration of upset. 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 that the permittee can identify the cause(s) of the upset;
 - 2. The permitted facility was at the time being properly operated; and
 - 3. The permittee submitted notice of the upset as required in Subpart 8.12.F.2.b of this Part (24 hour notice).

4. The permittee complied with any remedial measures required under Subpart 8.4.

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

Part 9: REOPENER CLAUSE

9.1 Procedures for Modification or Revocation

Permit modification or revocation will be conducted according to 40 CFR §122.62, §122.63, §122.64 and §124.5.

9.2 Timing of Permit Modification

EPA may elect to modify the permit prior to its expiration (rather than waiting for the new permit cycle) to comply with any new statutory or regulatory requirements, such as for effluent limitation guidelines, that may be promulgated in the course of the current permit cycle.

Part 10: DEFINITIONS

“Arid Areas” means areas with an average rainfall of 0 to 10 inches.

“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 United States. BMPs also include treatment requirements, operating procedures, and practice to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“Control Measure” 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 United States.

“Commencement of Construction Activities” means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material).

“CWA” means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.

“Discharge” when used without qualification means the “discharge of a pollutant.”

“Discharge of Storm Water Associated with Construction Activity” as used in this permit, refers to a discharge of pollutants in storm water runoff from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

“Discharge-related activities” as used in this permit, include: activities that cause, contribute to, or result in storm water point source pollutant discharges, including but not limited to: excavation, site development, grading and other surface disturbance activities; and measures to control storm water including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

“Eligible” means qualified for authorization to discharge storm water under this general permit.

“Facility” or “Activity” means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

“Final Stabilization” means that:

1. All soil disturbing activities at the site have been completed and either of the two following criteria are met:
 - a. a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or
 - b. equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
2. When background native vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted as follows: if the native vegetation covers 50 percent of the ground, 70 percent of 50 percent ($0.70 \times 0.50 = 0.35$) would require 35 percent total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.
3. For individual lots in residential construction, final stabilization means that either:
 - a. The homebuilder has completed final stabilization as specified above, or
 - b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.
4. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to “water of the United States,” and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) or (3) above.

“Large Construction Activity” is defined at 40 CFR §122.26(b)(14)(x) and incorporated here by reference. A large construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than five acres of land or will disturb less than five acres of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than five acres.

“Large and Medium Municipal Separate Storm Sewer System” means all municipal separate storm sewers that are either:

1. Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or
2. Located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or
3. Owned or operated by a municipality other than those described in paragraphs 1 and 2 of this definition and that are designated by EPA as part of the large or medium municipal separate storm sewer system.

“Operator” for the purpose of this permit and in the context of storm water associated with construction activity, means any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit

conditions). This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of "owner or operator" and "facility or activity" are applied to discharges of storm water associated with construction activity.

"Owner or operator" means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

"Permitting Authority" means the United States Environmental Protection Agency, EPA, a Regional Administrator of the Environmental Protection Agency or an authorized representative.

"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.

"Pollutant" is defined at 40 CFR §122.2. 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.

"Receiving water" means the "Water of the United States" as defined in 40 CFR §122.2 into which the regulated storm water discharges directly.

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

"Regulated Small Municipal Separate Sewer System" means all municipal separate storm sewers that are not already defined as medium or large. Regulated small MS4s are automatically designated if they are located in "urbanized areas" defined by the Bureau of the Census based on the last decennial census. Other small MS4s located outside urbanized areas may be designated on a case-by-case basis by EPA if it determines that the MS4s discharges cause or have a potential to cause an adverse impact on water quality.

"Semi-Arid Areas" means areas with an average annual rainfall of 10 to 20 inches.

"Small Construction Activity" is defined at 40 CFR §122.26(b)(15) and incorporated here by reference. A small construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than one (1) acre and less than five (5) acres of land or will disturb less than one (1) acre of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one (1) acre and less than five (5) 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.

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

"Storm Water Pollution Prevention Plan" or "SWPPP" means a plan that includes site map(s), an identification of construction/contractor activities that could cause pollutants in the storm water, and a description of measures or practices to control these pollutants.

"Waters of the United States" is as defined at 40 CFR §122.2.

"Wetland" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

PART 11: ACRONYMS

BMP - Best Management Practices
CGP - Construction General Permit
CFR - Code of Federal Regulations
CWA - Clean Water Act
EPA - United States Environmental Protection Agency
FWS - United States Fish and Wildlife Service
MS4 - Municipal Separate Storm Sewer System
MSGP - Multi-Sector General Permit
NMFS - United States National Marine Fisheries Service
NOI - Notice of Intent
NOT - Notice of Termination
NPDES - National Pollutant Discharge Elimination System
SHPO - State Historic Preservation Officer
SWPPP - Storm Water Pollution Prevention Plan
THPO - Tribal Historic Preservation Officer
TMDL - Total Maximum Daily Load
WQS - Water Quality Standards

Addendum A–Endangered Species Act Instructions for Operators

A. Background

To meet its obligations under the Clean Water Act and the Endangered Species Act (ESA), as codified at 40 CFR §122.49(c), the Environmental Protection Agency (EPA) is seeking to ensure the activities regulated by the Construction General Permit (CGP) are protective of listed endangered and threatened species and designated critical habitat. To ensure that those goals are met, construction site operators must assess the impacts of their storm water discharges and storm water discharge-related activities on Federally listed endangered and threatened species (“listed species”) and designated critical habitat (“critical habitat”) by following Steps One through Five listed below. EPA strongly recommends that operators follow these steps at the earliest possible stage to ensure that measures to protect listed threatened and endangered species and designated critical habitat are incorporated early in the planning process. At a minimum, the procedures must be followed and fully documented prior to submittal of the NOI.

Operators also have an independent ESA obligation to ensure that their activities do not result in any prohibited “takes” of listed species.¹ Many of the measures required in the CGP and in these instructions to protect species may also assist operators in ensuring that their construction activities do not result in a prohibited take of species in violation of section 9 of the ESA. Operators who plan construction activities in areas that harbor endangered and threatened species are advised to ensure that they are protected from potential takings liability under ESA section 9 by obtaining either an ESA section 10 permit or by requesting formal consultation under ESA section 7 (as described in more detail in Step Five below). Operators who seek protection from takings liability should be aware that it is possible that some specific construction activities may be too unrelated to storm water discharges to be afforded incidental take coverage through an ESA section 7 consultation that is performed to meet the eligibility requirements for CGP coverage. In such instances, operators should apply for an ESA section 10 permit. Where operators are not sure whether to pursue a section 10 permit or a section 7 consultation for takings protection, they should confer with the appropriate U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) office.

This permit provides for the possibility of multiple permittees at a construction site. Operators should be aware that in many cases they can meet the CGP eligibility requirements by relying on another operator’s certification of eligibility as specified in Criterion E under Subpart 1.3.C.6 of the CGP. However, other certifications must apply to the operator’s project area and must address the effects from the operator’s storm water discharges and storm water discharge-related activities on listed species and critical habitat.

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

¹ Section 9 of the ESA prohibits any person from “taking” a listed species (e.g., harassing or harming it) unless: (1) The taking is authorized through a “incidental take statement” as part of undergoing ESA Sec. 7 formal consultation; (2) where an incidental take permit is obtained under ESA Sec. 10 (that requires the development of a habitat conservation plan); or (3) where otherwise authorized or exempted under the ESA. This prohibition applies to all entities including private individuals, businesses, and governments.

operator's particular project area, the operator must provide its own independent certification under Criterion A, B, C, or D.

B. Procedures

Operators must meet at least one of the five criteria in Subpart 1.3.C.6 to be eligible for coverage under this permit. Failure to continue to meet at least one of these criteria during the term of the permit will render a permittee ineligible for coverage under this permit, causing coverage under the permit to lapse. Operators must follow the procedures in this addendum to assess the potential effects of their storm water discharges and storm water discharge-related activities on listed species and their critical habitat. When evaluating these potential effects, operators need to evaluate the entire project area.

For purposes of this Addendum, the term "project area" is inclusive of the term "Action Area." Action area is defined in 50 CFR §402.02 as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. This includes areas beyond the footprint of the construction area that may be affected by storm water discharges and storm water discharge related activities.

The project area consists of:

- The areas on the construction site where storm water discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, site development, or other ground disturbance activities occur) and the immediate vicinity.
Example(s)
 1. Where bald eagles nest in a tree that is on or bordering a construction site and could be disturbed by the construction activity.
 2. Where grading causes storm water to flow into a small wetland or other habitat that is on the site that contains listed species.
- The areas where storm water discharges flow from the construction site to the point of discharge into receiving waters.
Example(s)
 1. Where storm water flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as amphibians) are found in the ditch, swale, or gully.
- The areas where storm water from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge.
Example(s)
 1. Where storm water from construction activities discharges into a stream segment that is known to harbor listed aquatic species.
- The areas where storm water BMPs will be constructed and operated, including any areas where storm water flows to and from BMPs.
Example(s)
 1. Where a storm water retention pond would be built.
- The areas upstream and /or downstream from construction activities discharges into a stream segment that may be affected by the said discharges.
Example(s)
 1. Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.

To make this assessment, operators must follow the steps outlined below prior to completing and submitting the Notice of Intent (NOI) form. Operators who are eligible and able to certify eligibility under Criterion B, C, or E of Subpart 1.3.C.6 because of a previously issued ESA section 10 permit, a previously completed ESA section 7 consultation, or because the operator's activities were already addressed in another operator's certification of eligibility may proceed directly to Step Five.

Step One: Determine if Designated Critical Habitat for Listed Species are Present in the Project Area

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

Applicants must determine whether their project area is in designated critical habitat. To make this determination, applicants should do one or more of the following, as appropriate:

- Contact Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) in-person, in-writing, via telephone or Internet. A link to FWS and NMFS offices is available on EPA's web site at www.epa.gov/npdes/stormwater. Additionally, FWS and NMFS support a number of regional Internet sites that maintain up-to-date lists of listed threatened and endangered species and critical habitat, or
- Contact appropriate State or Tribal Natural Heritage Centers in-person, in-writing, via telephone or Internet. These centers compile and disseminate information on Federally listed species and critical habitat. A link to these centers is available at www.epa.gov/npdes/stormwater. Many of these centers will provide site-specific information on the presence of listed species in a project area. Some of these centers will charge a fee for researching data requests although many centers also maintain Internet sites with current information on listed species and critical habitat.
- Review the applicable Service regulations at 50 CFR Parts 17 and 226 that specify critical habitat (which can be found in many larger libraries as well as on the Government Printing Office website at www.access.gpo.gov) in lieu of or in addition to contact with the Services or Natural Heritage Centers.

If no designated critical habitat are located in the project area, then the operator does not need to consider impacts to critical habitat when following Steps Two through Five. Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, meeting the eligibility requirements of this permit may require measures to protect critical habitat that are separate from those to protect listed species.

Step Two: Determine if Listed Threatened or Endangered Species are Present in the Project Area

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the storm water discharge-related activities and the type of receiving water. Given the number of construction activities potentially covered by the CGP, no specific method to determine whether listed species may be located in the project area is required for coverage under the CGP. Instead, operators must use the method that allows them to determine, to the best of their knowledge, whether listed species are located in their project area. To determine if listed threatened or endangered species are present in the project area, operators must:

- Conduct visual inspections: This method may be particularly suitable for construction sites that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat, or for construction activities that discharge directly into municipal storm water collection systems.
- Contact Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) in-person, in-writing, via telephone or Internet. A link to FWS and NMFS offices is available on EPA's web site at www.epa.gov/npdes/stormwater. Additionally, FWS and NMFS support a number of regional Internet sites that maintain up-to-date lists of listed threatened and endangered species and critical habitat. Many

endangered and threatened species are found in well-defined areas or habitats. Such information is frequently known to State, Tribal, or Federal wildlife agencies.

- Contact appropriate State or Tribal Natural Heritage Centers in-person, in-writing, via telephone or Internet. These centers compile and disseminate information on Federally listed species and critical habitat. A link to these centers is available at www.epa.gov/npdes/stormwater. Many of these centers will provide site-specific information on the presence of listed species in a project area. Some of these centers will charge a fee for researching data requests although many centers also maintain Internet sites with current information on listed species and critical habitat. The Natural Heritage Centers inventory species and their locations and maintain lists of sightings and habitats.
- Conduct a formal biological survey. In some cases, particularly for larger construction sites with extensive storm water discharges, biological surveys may be an appropriate way to assess whether species are located in the project area and whether there are likely adverse effects to such species. Biological surveys are frequently performed by environmental consulting firms. A biological survey may in some cases be useful in conjunction with Steps Three, Four, and Five of these instructions.
- Conduct an environmental assessment under the National Environmental Policy Act (NEPA). Some construction activities may require environmental assessments under NEPA. Such assessments may indicate if listed species are in proximity to the project area. Coverage under the CGP does not trigger such an assessment because the CGP does not regulate any dischargers subject to New Source Performance Standards under section 306 of the Clean Water Act, and is thus statutorily exempted from NEPA. See CWA section 511(c). However, some construction activities might require review under NEPA because of Federal funding or other Federal involvement in the project.

If listed threatened or endangered species or critical habitat are present in the project area, then the operator must look at impacts to species and/or habitat when following Steps Two through Four. Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, meeting the eligibility requirements of this CGP may require measures to protect critical habitat that are separate from those to protect listed species.

If listed endangered or threatened species or designated critical habitat are not present in the project area, then the operator does not need to consider impacts to species or habitat and does not need to proceed through Steps Three through Five and can certify accordingly in the NOI.

Step Three: Determine if the Construction Activity's Storm Water Discharges or Storm Water Discharge-Related Activities Are Likely to Adversely Affect Listed Threatened or Endangered Species or Designated Critical Habitat

To receive CGP coverage, operators must assess whether their storm water discharges or storm water discharge-related activities may adversely affect listed threatened or endangered species or designated critical habitat. "Storm water discharge-related activities" include:

- Activities that cause, contribute to, or result in point source storm water pollutant discharges, including but not limited to excavation, site development, grading, and other surface disturbance activities; and
- Measures to control storm water discharges including the siting, construction, operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

Potential adverse effects from storm water discharges and storm water discharge-related activities include:

- *Hydrological.* Storm water discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.

Construction activity itself may also alter drainage patterns on a site where construction occurs that can impact listed species or critical habitat.

- *Habitat.* Excavation, site development, grading, and other surface disturbance activities from construction activities, including the installation or placement of storm water BMPs, may adversely affect listed species or their habitat. Storm water may drain or inundate listed species habitat.
- *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. If the operator is having difficulty in determining whether his or her project is likely to adversely affect listed species or critical habitat, then the appropriate office of the FWS, NMFS or Natural Heritage Center should be contacted for assistance. If adverse effects are not likely, then the operator should make the appropriate certification on the revised NOI form and apply for coverage under the CGP. If adverse effects are likely, the operator must follow Step Four.

Step Four: Determine if Measures Can Be Implemented to Avoid Any Likely Adverse Effects

If an operator makes a preliminary determination that adverse effects are likely to occur, it can still receive coverage under Criterion D of Subpart 1.3.C.6 of the CGP if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for CGP coverage. These measures may involve relatively simple changes to construction activities such as re-routing a storm water discharge to bypass an area where species are located, relocating BMPs, or by changing the “footprint” of the construction activity. Operators should contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate the likelihood of adverse impacts to listed species and/or critical habitat. (See 50 CFR §402.13(b)). This can entail the initiation of informal consultation with the FWS and/or NMFS (described in more detail in Step Five).

If operators adopt measures to avoid or eliminate adverse effects, they must continue to abide by those measures during the course of CGP coverage. These measures must be described in the SWPPP and are enforceable CGP conditions and/or conditions for meeting the eligibility criteria in Subpart 1.3. If appropriate measures to avoid the likelihood of adverse effects are not available to the operator, the operator must follow Step Five.

Step Five: Determine if the Eligibility Requirements of Criterion B, C, or E of Subpart 1.3.C.6 Can Be Met

Where adverse effects are likely, the operator must contact the FWS and/or NMFS. Operators may still be eligible for CGP coverage if any likely adverse effects can be addressed through meeting Criterion B, C, or E of Subpart 1.3.C.6 of the CGP. These criteria are as follows:

1. An ESA Section 7 Consultation Is Performed for the Operator’s Activity (See Criterion B of Subpart 1.3.C.6 of the CGP).

Formal or informal ESA section 7 consultation is performed with the FWS and/or NMFS that addresses the effects of the operator’s storm water discharges and storm water discharge-related activities on listed species and designated critical habitat. The formal consultation must result in either a “no jeopardy opinion” or a “jeopardy opinion” that identifies reasonable and prudent alternatives to avoid jeopardy that are to be implemented by the operator. The informal consultation must result in a written concurrence by the Service(s) on a finding that the operator’s storm water discharge(s) and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat (for informal consultation, see 50 CFR §402.13).

Most consultations are accomplished through informal consultation. By the terms of this CGP, EPA has automatically designated operators as non-Federal representatives for the purpose of conducting informal consultations. See Subpart 1.3.C.6 and 50 CFR §402.08 and §402.13. When conducting informal ESA section 7 consultation as a non-Federal representative, operators must follow the procedures found in 50 CFR Part 402 of the ESA regulations. Operators must notify FWS and/or NMFS of their intention and agreement to conduct consultation as a non-Federal representative.

Consultation may occur in the context of another Federal action at the construction site (e.g., where ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project or where a NEPA review is performed for the project that incorporates a section 7 consultation). Any terms and conditions developed through consultations to protect listed species and critical habitat must be incorporated into the SWPPP. As noted above, operators may, if they wish, initiate consultation with the Services at Step Four.

Whether ESA section 7 consultation must be performed with either the FWS, NMFS or both Services depends on the listed species that may be affected by the operator's activity. In general, NMFS has jurisdiction over marine, estuaries, and anadromous species. Operators should also be aware that while formal section 7 consultation provides protection from incidental takings liability, informal consultation does not.

2. An Incidental Taking Permit Under Section 10 of the ESA is Issued for the Operators Activity (See Criterion C of Subpart 1.3.C.6 of the CGP).

The operator's construction activities are authorized through the issuance of a permit under section 10 of the ESA and that authorization addresses the effects of the operator's storm water discharge(s) and storm water discharge-related activities on listed species and designated critical habitat. Operators must follow FWS and/or NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR §17.22(b)(1) for FWS and §222.22 for NMFS). Application instructions for section 10 permits for FWS and NMFS can be obtained by accessing the FWS and NMFS websites (www.fws.gov and www.nmfs.noaa.gov) or by contacting the appropriate FWS and NMFS regional office.

3. The Operator is Covered Under the Eligibility Certification of Another Operator for the Project Area (See Criterion E of Subpart 1.3.C.6 of the CGP).

The operator's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Criterion B or C of Subpart 1.3.C.6 which also included the operator's project area. By certifying eligibility under Criterion E of Subpart 1.3.C.6, the operator agrees to comply with any measures or controls upon which the other operator's certification under Criterion B, C, or D of Subpart 1.3.C.6 was based. Certification under Criterion E of Subpart 1.3.C.6 is discussed in more detail in Part A of this addendum.

The operator must comply with any terms and conditions imposed under the eligibility requirements of Criterion A through E to ensure that its storm waters discharges and storm water discharge-related activities are protective of listed species and/or critical habitat. Such terms and conditions must be incorporated in the project's SWPPP. If the eligibility requirements of Subpart 1.3.C.6 cannot be met, then the operator is not eligible for coverage under the CGP. Such operators may consider applying to EPA for an individual permit.

Addendum B - Historic Properties Guidance

Operators must determine whether their storm water discharges, allowable non-storm water discharges, or construction of best management practices (BMPs) to control such discharges, has the potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places. Operators should first determine whether there are any historic properties or places listed on the National Register or if any are eligible for listing on the register.

Due to the large number of entities seeking coverage under this permit and the limited number of personnel available to State and Tribal Historic Preservation Officers nationwide to respond to inquiries concerning the location of historic properties, EPA suggests that operators first access the “National Register of Historic Places” information listed on the National Park Service's web page (www.cr.nps.gov/nr). Addresses for State Historic Preservation Officers and Tribal Historic Preservation Officers can be found there as well. In instances where a Tribe does not have a Tribal Historic Preservation Officer, operators should contact the appropriate Tribal government office when responding to this permit eligibility condition. Operators may also contact city, county or other local historical societies for assistance, especially when determining if a place or property is eligible for listing on the register.

The following three scenarios describe how operators can meet the permit eligibility criteria for protection of historic properties under this permit:

- (1) If historic properties are not identified in the area of the operator’s storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges (e.g., diversion channels or retention ponds), then the operator has met the permit eligibility criteria under Part 1.3.C.7;
- (2) If historic properties are identified but it is determined that they will not be affected by the discharges or construction of BMPs to control the discharge, the operator has met the permit eligibility criteria under Part 1.3.C.7; or
- (3) If historic properties are identified in the area of the operator’s storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges, and it is determined that there is the potential to adversely affect the property, the operator can still meet the permit eligibility criteria under Part 1.3.C.7 if he/she obtains and complies with a written agreement with the appropriate State or Tribal Historic Preservation Officer which outlines measures the operator will follow to mitigate or prevent those adverse effects. The contents of such a written agreement must be included in the operator’s storm water pollution prevention plan.

In situations where an agreement cannot be reached between an operator and the State or Tribal Historic Preservation Officer, operators should contact the Advisory Council on Historic Preservation (1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004, Telephone: (202) 606-8503/8505, Fax: (202) 606-8647/8672, E-mail: achp@achp.gov).

The term “adverse effects” includes but is not limited to damage, deterioration, alteration or destruction of the historic property or place. EPA encourages operators to contact the appropriate State or Tribal Historic Preservation Officer as soon as possible in the event of a potential adverse effect to a historic property.

Operators are reminded that they must comply with applicable State, Tribal and local laws concerning the protection of historic properties and places.

Addendum C - Small Construction Waivers and Instructions

As the operator of a small construction activity, you may be able to qualify for a waiver in lieu of needing to obtain coverage under this general permit based on: (1) a low rainfall erosivity factor or (2) a TMDL or equivalent analysis that determines allocations for small construction sites are not needed. Only one operator need submit a permit waiver certification for a single construction site. Other same-site operators can rely on the original certification of eligibility for the waiver. Procedures for obtaining a permit waiver are detailed below.

It is the responsibility of those individuals wishing to obtain a waiver from coverage under this general permit to submit a complete and accurate waiver certification form as described below. Where the operator changes or another is added during the construction project, the new operator must also submit a waiver certification form to be authorized.

A. Rainfall Erosivity Waiver

Under this scenario the small construction project's rainfall erosivity factor calculation ("R" in the Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity. The operator must certify to the Permitting Authority that construction activity will occur only when the rainfall erosivity factor is less than 5. The period of construction activity begins at initial earth disturbance and ends with final stabilization. Where vegetation will be used for final stabilization, the date of installation of a stabilization practice that will provide interim non-vegetative stabilization can be used for the end of the construction period, provided the operator commits (as a condition of waiver eligibility) to periodically inspect and properly maintain the area until the criteria for vegetative final stabilization as defined in the construction general permit have been met. If use of this interim stabilization eligibility condition was relied on to qualify for the waiver, signature of the waiver form with its certification statement constitutes acceptance of and commitment to complete the final stabilization process. The operator must submit a waiver certification form to EPA prior to commencing construction activities.

Note: The rainfall erosivity factor "R" is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUBLE), pages 21–64, dated January 1997; United States Department of Agriculture (USDA), Agricultural Research Service.

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

If you are the operator of the construction activity and eligible for a waiver based on low erosivity potential, you must provide the following information on the Waiver Certification form in order to be waived from permitting requirements:

1. Name, address and telephone number of the construction site operator(s);
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction project or site;

3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest acre) to be disturbed;
4. The rainfall erosivity factor calculation that applies to the active construction phase at your project site; and
5. A statement, signed and dated by an authorized representative as provided by 40 CFR §122.22, that certifies that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five.

[Low Erosivity Waiver Form and instructions are under development. New form will be included in final permit or subsequent Federal Register notice.]

Note: If the R factor is 5 or greater, you cannot apply for the permitting waiver, and must apply for permit coverage as per Subpart 2.1 of the construction general permit, unless you qualify for the Water Quality Waiver as described below.

If your small construction project continues beyond the projected completion date given on the Permit Waiver Certification, you must recalculate the rainfall erosivity factor for the new project duration. If the R factor is below five (5), you must update all applicable information on the Permit Waiver Certification form and retain a copy of the revised form as part of the site SWPPP. The new Permit Waiver Certification form must be submitted prior to the projected completion date listed on the original NOI submission to assure your exemption from permitting requirements is uninterrupted. If the new R factor is five (5) or above, you must submit an NOI as per Subparts 2.1 and 2.3.

B. TMDL Waiver

This waiver is available if EPA has established or approved a TMDL that addresses the pollutant(s) of concern and has determined that controls on storm water discharges from small construction activity are not needed to protect water quality. The pollutant(s) of concern include sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. Information on TMDLs that have been prepared is available from EPA online at <http://www.epa.gov/owow/tmdl/> and from State and Tribal water quality agencies.

If you are the operator of the construction activity and eligible for a waiver based on compliance with a TMDL, you must provide the following information on the Waiver Certification form in order to be waived from permitting requirements:

1. Name, address and telephone number of the construction site operator(s);
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction project or site;
3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest acre) to be disturbed;
4. The name of the water bodies that would be receiving storm water discharges from your construction project;
5. The name and approval date of the TMDL;
6. A statement, signed and dated by an authorized representative as provided by 40 CFR §122.22(a), that certifies that the construction activity will take place and that the storm water discharges will occur, within the drainage area addressed by the TMDL.

C. Equivalent Analysis Waiver

This waiver is available when a TMDL for the pollutants of concern has not been established. The operator can develop an equivalent analysis that determines allocations for his small construction site for the pollutant(s) of concern or determines that such allocations are not needed to protect water quality. This waiver requires a small construction operator to develop an equivalent analysis based on existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety.

If you are a construction operator who wants to use this waiver, you must develop your equivalent analysis and provide the following information on the Waiver Certification form in order to be waived from permitting requirements:

1. Name, address and telephone number of the construction site operator(s);
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction project or site;
3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest acre) to be disturbed;
4. The name of the water bodies that would be receiving storm water discharges from your construction project;
5. Your equivalent analysis;
6. A statement, signed and dated by an authorized representative as provided by 40 CFR §122.22(a), that certifies that the construction activity will take place and that the storm water discharges will occur, within the drainage area addressed by the equivalent analysis.

D. Waiver Deadlines and Submissions

1. Waiver Certification forms must be submitted prior to commencement of construction activities.
2. Operators submitting an equivalent analysis must wait for EPA to review and approve their analysis before starting construction.
3. Late Notifications: Operators are not prohibited from submitting Permit Waiver Certifications after initiating clearing, grading, excavation activities, or other construction activities. The Agency reserves the right to take enforcement for any unpermitted discharges or permit noncompliance that occur between the time construction commenced and waiver authorization is granted.

Submittal of a Permit Waiver Certification is an optional alternative to obtaining a permit for discharges of storm water associated with small construction activity, provided you qualify for the waiver. Any discharge of storm water associated with small construction activity not covered by either a permit or a waiver may be considered an unpermitted discharge under the Clean Water act. As mentioned above, the Permitting Authority reserves the right to take enforcement for any unpermitted discharges or permit noncompliance that occur between the time construction commenced and either discharge authorization is granted or a complete and accurate Permit Waiver Certification is submitted. The Permitting Authority may notify any operator covered by a waiver that they must apply for a permit. The Permitting Authority may notify any operator who has been in non-compliance with a waiver that they may no longer use the waiver for future projects. Any member of the public may petition the Permitting Authority to take action under this provision by submitting written notice along with supporting justification.

Complete and accurate Waiver Certifications must be sent to the following address:

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

Overnight/Express Mail Delivery
Storm Water Notice of Intent
Room 7329
U.S. EPA
1201 Constitution Avenue
Washington, DC 20004

Addendum D - Notice of Intent Form and Instructions

From the effective date of this permit, operators are to use the Notice of Intent Form contained in this Addendum to obtain permit coverage.

[Notice of Intent Form to be included in final permit.]

Addendum E - Notice of Termination Form and Instructions

From the effective date of this permit, operators are to use the Notice of Termination Form contained in this Addendum to terminate permit coverage.

[Notice of Termination Form to be included in final permit.]