UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Draft 4/18/2019

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, the Great Lakes Gas Transmission Limited Partnership is authorized by the United States Environmental Protection Agency, Region 5, to discharge to waters of the United States (U.S.) discharges of storm water, trench water, and hydrostatic test water resulting from activities associated with the operation and maintenance of its natural gas pipeline system located within parts of the Leech Lake Indian Reservation (Cass and Itasca Counties) and the Fond du Lac Indian Reservation (St. Louis and Carlton Counties) within Minnesota, in accordance with effluent limitations, monitoring requirements, and other conditions set forth in this permit.

This permit and the authorization to discharge shall expire at midnight, [insert ~5 years from the date of signature]. The permittee shall not discharge after the above date of expiration. In order to receive authorization to discharge beyond the date of expiration, the permittee shall submit such information and forms as are required by EPA no later than 180 days prior to the above date of expiration.

This permit shall become effective on the date of signature.

Signed and Dated _____, 2019

Draft 4/18/2019

_____
Director, Water Division

Table of Contents **Page**

CHAPTER I. AUTHORIZATION UNDER THIS PERMIT

A. Description of Activities

Great Lakes Gas Transmission Limited Partnership (Great Lakes) operates a natural gas pipeline that serves portions of Minnesota. This permit covers activities related to the pipeline that are within the exterior boundaries of the Leech Lake Indian Reservation (Cass and Itasca Counties) and the Fond du Lac Indian Reservation (St. Louis and Carlton Counties).

Reservation	Milepost		Legal Locations		
	Begin	End	Township	Range	Sections
Leech Lake	160.94	203.61	145N	32W	24, 25
			145N	31W	19, 28, 29, 30, 33, 34, 36
			144N	31W	1, 2, 3
			144N	30W	1, 2, 3, 4, 5, 6
			144N	29W	2, 3, 4, 5, 6
			145N	29W	35, 36
			145N	28W	31, 32, 33, 34, 35, 36
			145N	27W	31, 32, 33, 34, 35, 36
			145N	26W	31, 32
			144N	26W	1, 2, 3, 4, 5, 6
			144N	25W	2, 6
			145N	25W	31, 32, 33, 34, 35
Leech Lake	207.10	207.53	144N	27W	26
Fond du Lac	267.53	281.29	50N	19W	22, 25, 26, 27, 36
			49N	19W	1
			49N	18W	6, 7, 8, 15, 16, 17, 22, 23, 26, 35, 36
			48N	18W	1
			48N	17W	5, 6

Great Lakes performs routine maintenance and inspection of the pipeline on a regular basis. Periodically, this results in the need to repair and/or replace portions of the pipeline. During the inspections, water from ground seepage and surface runoff may accumulate in the pipeline trench. When the accumulation hampers inspection, the trench will be dewatered. The end of the pump intake hose will be held above the bottom of the trench to minimize sediment withdrawal. Discharge will be done in a manner that prevents soil erosion and other nuisance conditions, and controls surface runoff. Discharge will be to a well vegetated upland or wetland using a filtration/energy dissipation device, typically either a geotextile filter bag or a straw bale dewatering structure. These devices are designed to prevent erosion and to remove solids/sediments from the discharge.

Where necessary to evaluate pipeline integrity consistent with U. S. Department of Transportation safety requirements, the discharge of hydrostatic test water may be necessary. Hydrostatic testing is a common means of evaluating the integrity of pipelines. During these tests, water is used as the testing medium rather than as a process stream. Because no additives are used, it is anticipated that the water used will not change significantly and thus, will reflect the characteristics of the source from which it was appropriated. Additionally, the permittee may desire to discharge hydrostatic test waters resulting from construction or maintenance projects such as piping modifications at compressor stations, construction of a meter station, or replacement of a section of pipe. Hydrostatic test water will be discharged to waters of the U.S. and/or in the manner described above.

Storm water discharges are expected where pipeline projects and construction activities require significant clearing and grading.

B. Authorization to Discharge

This permit authorizes discharges of uncontaminated trench water, hydrostatic test water, and storm water associated with industrial and construction activities 5 acres and greater as defined at 40 CFR 122.26(b)(14)(x) and from 1 to 5 acres in size as defined at 40 CFR 122.26(b)(15).

This permit DOES NOT authorize: the construction or installation of pipeline facilities; the permittee to work in waters of the U.S.; or the permittee to appropriate waters for hydrotests.

C. Limitations on Storm Water Coverage

The following storm water discharges are not authorized by this permit:

1. Storm water discharges that originate from the site after construction activities have been completed and the site has undergone final stabilization.

2. Storm water discharges mixed with sources of non-storm water (except trench water and hydrostatic test water).

D. Prohibitions

1. **Prohibition on non-storm water discharges.** All discharges covered by this permit shall be composed entirely of storm water, uncontaminated trench dewatering, or hydrostatic test water. This permit does not authorize the discharge of sewage, wash water, scrubber water, spills, oil, hazardous substances, or equipment/vehicle cleaning and maintenance wastewaters to ditches, wetlands, or other waters of the U.S.

2. **Prohibition on the discharge of excessive sediments.** The discharge of sediments is prohibited, except in minor amounts associated with the proper implementation of sound soil erosion and sediment control practices.

3. **Discharges Not in Compliance with Water Quality Standards.** Discharges covered under this permit shall not cause or contribute to a violation of an applicable water quality standard. Where a discharge is determined to cause or contribute to the violation of an applicable Tribal or Minnesota State Water Quality Standard (Class 2 water), EPA, Region 5, will notify the permittee of such violation(s) and the permittee shall take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard, and shall document these actions in a letter to EPA, Region 5. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

4. **Discharges to Municipal Wastewater Treatment Systems.** The permittee shall not transport pollutants to a municipal wastewater treatment system that will interfere with the operation of the treatment system or cause pass-through violations of effluent limits or water quality standards.

5. **Endangered Species.** Discharges and construction activities covered under this permit shall not adversely affect Federal listed endangered and threatened species or designated critical habitat. The permittee shall consult with the U.S. Fish and Wildlife Service (FWS) to review the project area for the presence of federally listed species and critical habitat. The permittee shall use the information provided from the FWS to establish conservation measures that would minimize or avoid impacts on the listed species during project activities. The permittee shall make every attempt to avoid previously identified sensitive biological resources along the pipeline when establishing specific appropriations and discharge locations and implement any mitigation measures identified by the FWS and any additional mitigation measures identified by the Minnesota Department of Natural Resources.

6. **Historic Properties.** Discharges and construction activities covered under this permit shall protect historic properties that are listed or are eligible to be listed in the National Register of Historic Places. The permittee shall make every attempt to avoid previously identified sensitive cultural resources along the pipeline when establishing specific appropriations and discharge locations. If these sites cannot be avoided, there should be mitigation measures taken. Plans should reflect a treatment plan to mitigate potential adverse effects. Should any unreported cultural materials be discovered during project activities, all work shall cease and the Tribal Historic Preservation Officer (THPO) is to

be notified immediately. Should any human remains or suspected human remains be encountered, all work shall cease and the following personnel should be notified immediately in this order: County Sheriff's Office, Office of the State Archeologist, and the THPO.

7. **Water Treatment and/or Chemical Additives(s).** The Permittee has not been approved for the use of water treatment and/or chemical additives.

8. **Outstanding Resource Value Waters/Trout Waters**. Discharges to outstanding resource value waters (ORVW), as defined in Minn. R. 7050.0180 or Tribal Water Quality Standards [ORRW (Ordinance #12/98)], or trout waters as defined in Minn. R. 7050.0420 or Tribal Water Quality Standards (Ordinance #12/98), are prohibited.

9. **Erosion, Flooding, and Nuisance Conditions.** The Permittee shall operate and maintain the discharge operation in such a manner so as to cause no erosion, flooding, or other nuisance conditions in the area of the operation or in the receiving stream.

10. **Construction/Installation.** This permit does not authorize the construction or installation of any pipeline facilities.

11. **Sediment Plumes.** Sediment levels in discharges from trench dewatering activities shall not cause, create, or contribute to a sediment plume in the receiving water.

12. **Water Transfers.** This permit prohibits the transfer of waters of the U.S. from one water body to another.

13. **Direct Discharges.** Direct discharges into waters of the U.S. are prohibited. Because of increase concern over discharge velocity, hydrotest waters must be routed through energy dispersal devices rather than pumped directly into waters of the U.S..

E. Releases in Excess of Reportable Quantities

The discharge of hazardous substances or oil in the storm water, trench water, or hydrostatic test water shall be prevented or minimized. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR part 117 or 40 CFR part 302, occurs during a 24-hour period:

1. The permittee is required to notify the National Response Center (NRC) (800-424-8802) in accordance with the requirements of 40 CFR part 117 and 40 CFR part 302 as soon as he or she has knowledge of the discharge;

2. The permittee shall submit within 14 calendar days of knowledge of the release, a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to minimize the chance of future occurrences to EPA, Region 5; and

3. The permittee must identify measures to prevent the recurrence of such releases and to respond to such releases.

F. Spills

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

G. Advance Notice of Discharge from Hydrostatic Testing or Trench Dewatering

The permittee shall submit a notice to the EPA, Regional office and the Leech Lake Indian Reservation or Fond du Lac Indian Reservation, depending on which reservation the discharge is located within, at the addresses listed below, as early as possible, but not less than thirty (30) days prior to initiating a discharge from hydrostatic testing and discharge from trench water. The notice shall include the following information:

1. The name and location of the water body into which, or location of right-of-way onto which, the test waters will be discharged. The Permittee shall include the county, the closest city/town, and section, township, and range (this information shall be provided even in the event that the test will not result in a discharge to the waters of the U.S.);

2. A map (Quad or topographic) showing the location of the pipeline in relation to any water body and the proposed discharge point;

3. Anticipated date(s) of discharge(s);

4. Anticipated maximum and average discharge flow rates, and estimated total volume of the discharge;

5. Proposed method to prevent/minimize bottom scouring to the receiving water, or soil erosion for right-of-way discharges;

6. The water supply for the test waters, with a copy of any water appropriation permits, if applicable;

7. Water quality data if needed for background credits where the water source is the same as the receiving waterbody (or may be submitted with the discharge report);

8. Proposed treatment method(s) before discharge; and

9. Best management practices (BMPs) to be used to prevent scouring, sediment transport and erosion due to the discharge.

All written correspondence concerning discharges from the facility covered under this permit shall be directed to EPA, Region 5, and the appropriate tribal office at the following addresses:

1. United States Environmental Protection Agency, Region 5
   NPDES Programs Branch (WN-15J)
   Attention: Tribal Permitting
   77 West Jackson Boulevard
   Chicago, Illinois 60604

2. A copy of the written correspondence must also be sent to the Leech Lake Band of Ojibwe, if the discharge will occur within the Reservation, at the following address:

   Division of Resources Management
   Leech Lake Band of Ojibwe
   115 Sixth Street NW
   Cass Lake, MN 56633

3. A copy of the written correspondence must also be sent to the Fond du Lac Band of Chippewa, if the discharge will occur within the Reservation, at the following address:

   Office of Water Protection
   Fond du Lac Reservation
   1720 Big Lake Road
   Cloquet, MN 55720

H. 401 Water Quality Certification

On January 16, 2014 the Fond du Lac Band of Lake Superior Chippewa granted EPA and Great Lake Gas Transmission Limited Partnership CWA § 401 Water Quality Certification with conditions for this permit. This Certification with conditions is incorporated by reference and is attached. In addition to complying with the requirements of this permit, the permittee shall comply with the conditions of the Certification when performing work within the boundaries of the Fond du Lac Reservation.

CHAPTER II.SPECIAL CONDITIONS FOR HYDROSTATIC TEST WATER DISCHARGES

The applicability of this chapter shall be limited to discharges from hydrostatic testing which:

- has been physically cleaned and provided with effluent treatment to ensure there is no discharge of bottom scour, construction debris, raw material, or any waste product at a level which would have an impact on the receiving waters;

- are without water treatment additives. Water treatment additives include any material that is added to water used at the facility or to waste water generated by the facility to condition or treat the water.

As appropriate, the permittee must install and maintain outlet protection measures at the discharge stations to prevent erosion, scouring, sediment transport, flooding, or other nuisance conditions in the area of the discharge or in the receiving stream.

A. Effluent Limitations and Monitoring Requirements

The permittee is authorized to discharge hydrostatic test water. Such discharges shall be limited and monitored by the permittee as specified below:

Parameter	Effluent Limitations		Monitoring Requirement	
	Daily Min.	Daily Max.	Frequency	Sample Type
Total Discharge Volume (MG)		(Report)	Daily	Calculation
Total Suspended Solids		30 mg/l	Daily	Composite
pH (standard units)	6 S.U.	9 S.U.	Daily	Grab
Dissolved Oxygen	5 mg/l		Daily	Grab
Oil & Grease		10 mg/l	Daily	Grab See item #6.b
Chlorine, Total Residual (See item # 7)		0.038 mg/L	Daily	Grab
Treatment System, Discharge and Receiving Water Inspection		(Report)	Continuous	Visual See item # 6

1. Representative samples - Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge to the receiving waters.

2. Monitoring Location - Samples and measurements taken in compliance with the monitoring requirements above shall be taken after treatment and prior to discharge into the receiving waters. For intake credits, receiving water body samples shall be taken mid-stream, mid-depth in the early morning hours. For determining maintenance of background (generally applicable to a discharge to a wetland), monitoring within the water body shall occur before and after the discharge at a point which would represent the discharge's impact on the receiving water body.

3. Monitoring Frequency - The permittee shall take a minimum of three grab samples during each projects discharge. Grab samples shall be taken at the beginning, in the middle and at the end of each discharge event in which monitoring is required. Notwithstanding the foregoing, composite sampling may be used for total suspended solids.

4. Monitoring Methods - The sampling procedures, preservation and handling, and analytical protocol for compliance monitoring shall be in accordance with EPA approved methods, 40 CFR Part 136.

5. Additional Monitoring - If the permittee monitors any pollutant more frequently than required, using EPA approved methods, the results of such monitoring shall be included in the records.

6. Outfall Observation:

   a. The permittee is required to have a representative on site for the duration of the discharge;

   b. The receiving water shall contain no unnatural turbidity, color, oil films, floating solids, foams, settleable solids, or deposits as a result of this discharge; Sampling for Oil and Grease will only be required if the discharge creates a visible color film or sheen on the receiving water surface.

   c. Any unusual characteristics, as described at item 6.b above, shall be recorded detailing the findings of the investigation and the steps taken to correct the condition.

7. The Total Residual Chlorine limit is only applicable if the source water used for the hydrostatic test has been chlorinated.

8. To avoid the transfer of invasive aquatic organisms, the permittee shall not transfer hydrotest influent water from one watershed divide to another. That is, intake from surface water source shall be returned to the same surface water body or water body within the same watershed.

9. For wetland discharges, pH levels in the waste stream shall not affect background. In lieu of monitoring the discharge pH, the permittee may monitor the pH levels in the wetland near the discharge before and after the discharge event. The same shall be done for Dissolved Oxygen (DO) monitoring for wetland discharges, where the discharge DO level is less than 5.0 mg/L.

B. <u>Record Keeping</u>

1. All monitoring data required by Chapter II.A shall be available onsite for inspection for the duration of this permit;

2. The above monitoring data shall be made available to Federal, Tribal, State and local officials within 24 hours of request for the duration of this permit;

3. The permittee shall retain copies of all above monitoring data for a period of at least three years after completion of the construction project.

C. Reporting

The Permittee shall report monitoring results below the reporting limit (RL) of a particular instrument as "<" the value of the RL. For example, if an instrument has a RL of 0.1 mg/L and a parameter is not detected at a value of 0.1 mg/L or greater, the concentration shall be reported as "<0.1 mg/L." "Non-detected," "undetected," "below detection limit," and "zero" are unacceptable reporting results, and are permit reporting violations.

Where sample values are less than the level of detection and the permit requires reporting of an average, the Permittee shall calculate the average as follows:

a. If one or more values are greater than the level of detection, substitute zero for all nondetectable values to use in the average calculation.

b. If all values are below the level of detection, report the averages as "<" the corresponding level of detection.

c. Where one or more sample values are less than the level of detection, and the permit requires reporting of a mass, usually expressed as kg/day, the Permittee shall substitute zero for all nondetectable values.

1. The permittee shall record all monitoring results required by Chapter II.A electronically using NetDMR as described below or other electronic method required by EPA.

2. All monitoring data required by this permit shall be submitted on EPA Form 3320-1 Discharge Monitoring Report (DMR) forms using the electronic DMR (NetDMR), or subsequent internet applications. NetDMR is a web-based application that allows National Pollutant Discharge Elimination System (NPDES) Permittee Users to enter and electronically submit Discharge Monitoring Report (DMR) data through the Central Data Exchange (CDX) to the Integrated Compliance Information System (ICIS). EPA's NetDMR webpage can be found at: https://netdmr.epa.gov/netdmr/public/home.htm

   Please contact, U.S. Environmental Protection Agency, Water Enforcement & Compliance Assurance Branch, Attention: Information Management Specialist - WC-15J, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-0148 if you wish to receive additional NetDMR training.

3. The DMRs shall be signed by a facility's Responsible Official or a Delegated Responsible Official (i.e. a person delegated by the Responsible Official). The Responsible Official of a facility is defined Part II.D.13:

For NetDMR, the person(s) viewing, editing, signing and submitting the DMRs will need to register (if not already done so) for a new account managed by the EPA Region 5. Facility or permittee staff responsible for signing and submitting DMRs on behalf of an organization; A request for signatory privilege requires submission of a Subscriber Agreement to EPA Region 5. Additionally, Delegated Responsible Officials must be delegated by the Responsible Official, either on-line using NetDMR, or on a paper delegation form provided by EPA. For more information and guidance on NetDMR, please view the following web page: https://netdmr.zendesk.com/home

4. DMRs submitted using NetDMR shall be submitted to EPA, Region 5 by the 21st day of the month (April, July, October, January) following the quarter for which the monitoring was completed.

   A paper copy of the submitted EPA 3320-1 DMR shall be maintained onsite for records retention purposes Part II.C.5. For NetDMR users, view and print the DMR from the Submission Report Information page after each original or revised DMR is submitted. Please also mail a copy of the report to the appropriate Tribe at the addresses found in Chapter I.G.

D. Special Conditions

1. Erosion and Sediment Control – The permittee shall employ BMPs [best available technology economically achievable (BAT)] to reduce pollutant levels in the discharge. Energy dispersal devices shall be used to minimize bottom scouring, erosion and sediment transport in, into or near receiving waters. The use of BMPs is a minimum requirement, additional pollutant control technologies are required if necessary to maintain water quality for the protection and propagation of a balanced, indigenous aquatic community.

   Corrective measures shall be taken for any discharge causing or contributing to a noticeable increase in turbidity and/or suspended solids levels to waters of the U.S. or should the discharge cause or create a sediment plume.

2. Facility Operation - the permittee shall all times properly operate and maintain all treatment or control systems installed or used by the permittee.

3. Removed Substances - solids, sludges, filter backwash, or other pollutants removed from or resulting from treatment or control of waste waters shall be disposed of in compliance with applicable law and in such a manner as to prevent any pollutant from such materials from entering receiving waters.

4. Authorization to Discharge - coverage under this chapter shall be limited to discharges to surface water. It shall be the permittee's responsibility to seek, apply for and obtain any additional authorizations necessary to initiate the discharge.

5. The effluent limitations proposed in this permit are based on the technological removal and/or control of pollutant levels in the waste stream(s) and the environmental impacts associated with the discharge activity (i.e., discharge velocity). These are minimum standards required by Sec. 301(b)(1)(A) of the federal Clean Water Act. However, in accordance with Sec. 301(b)(1)(C), discharges must achieve any more stringent limitation, including those necessary to meet water quality standard, established pursuant to any State law or regulations. As such, EPA is not estopped from establishing more stringent effluent limitations, additional or more frequent monitoring, and/or any other restrictions or requirements which might be necessary to protect the receiving stream for its designated uses. Water quality-based effluent limitations shall be developed based upon, but not necessarily limited to, receiving water, discharge volume, projected in-stream volume (biological capability of the receiving stream to accommodate the influx of pollutants), time of year, and discharge duration.

CHAPTER III. SPECIAL CONDITIONS FOR TRENCH WATER DISCHARGES

A. All trench water discharge activities must be discharged in a manner that does not cause nuisance conditions, erosion in receiving channels or on downslope properties, inundation in wetlands causing significant adverse impact to the wetland.

B. The permittee must ensure that discharge points are adequately protected from erosion and scouring. The discharge must be dispersed over natural rock riprap, sand bags, plastic sheeting or other accepted energy dissipation measures.

C. The use of BMPs represents the minimum technology necessary to meet the 'pollutant removal' goal of the CWA. If the BMPs employed to minimize sediment withdrawal prove inadequate to avoid the discharge of pollutants at levels which will cause or contribute to a violation of a water quality standard, additional treatment measures shall be taken.

D. Trench dewatering activities shall be conducted in such a manner as to avoid creating a turbid or sediment laden waste stream.

E. Depending on the discharge rate of the pump and the existing conditions at the construction site, treatment practices such as the following shall be used for sediment control:

   1. Directing the dewatering discharge into an upland area with adequate vegetation which will serve to filter sediment from the water;

   2. Directing the dewatering discharge into a filter sump constructed from silt fence and straw bales. A sump may also be used to contain sediment from the dewatering operations under frozen soil conditions or in areas where vegetation is insufficient to filter the discharge; or

3. Directing the dewatering discharge into a geotextile filter bag. Geotextile filter bags can be substituted for straw bale filtering structures and function in a similar fashion.

4. The end of the pump intake hose shall be held above the bottom of the trench to minimize sediment withdrawal.

CHAPTER IV. SPECIAL CONDITIONS FOR STORM WATER DISCHARGES

To obtain coverage under this permit for a specific construction project, it is the responsibility of the permittee to submit as soon as possible but not less than thirty (30) days prior to the commencement of the construction activity, the following information to the EPA, Regional office and the Leech Lake Indian Reservation or Fond du Lac Indian Reservation, depending on the location of the discharge {at the addresses indicated in Part (IV).C. of this Chapter}:

1. Name, address and telephone number of the construction site operator;

2. Whether the site is located on Federal lands;

3. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude (township and range) of the construction project or site;
4. Whether the site is located on Indian Country lands as defined in this permit and if so, the name of the Reservation;

5. The location where the SWPPP may be viewed and the name and telephone number of a contact person for scheduling viewing times;

6. 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;

7. Estimated project start and completion dates, and total acreage (to the nearest quarter acre) to be disturbed;

8. Whether any listed threatened or endangered species, or designated critical habitat are in the project area to be covered by this permit and what mitigative measures, if any, will be used to ensure no impact;

9. 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 what mitigative measures, if any, will be used to ensure no impact. Previously identified sites that eligibility is undetermined shall be evaluated to determine whether these sites meet National Register of Historic Places eligibility criteria. The survey must meet the requirements of the Secretary of the Interior's Standards for Identification and Evaluation, and should include an evaluation of National Register eligibility for any properties, which are identified;

10. A certification statement signed and dated by an authorized representative as defined in Chapter VI.L, and the name and title of that authorized representative.

The Storm Water Pollution Prevention Plans (SWPPP) includes the Pre-construction Storm Water Pollution Prevention Plan and the Post Construction Storm Water Management Plan as described in Part (I) and (II) of this Chapter, respectively.

When developing a SWPPP, the permittee must determine whether listed endangered or threatened species or critical habitat, or historic properties would be affected by the discharges. Any terms or conditions of a mitigation plan to protect listed species or critical habitat from the discharges must be incorporated into the SWPPP. Any terms or conditions of a mitigation plan to protect historic properties from the discharges must be incorporated into the SWPPP. The permittee must implement the applicable provisions of the SWPPP required under this part as a condition of this permit

The SWPPP shall be signed in accordance with Chapter VI.L, and be retained on-site at the facility which generates the storm water discharge in accordance with Part (IV).B. of this Chapter (Retention of Records) of the permit.

(I). PRE-CONSTRUCTION STORM WATER POLLUTION PREVENTION PLAN

A. General:

The permittee is required to develop and implement a pre-construction storm water pollution prevention plan in accordance with the requirements of this Part for each construction site covered by this permit. The plan must be developed prior to initiation of construction activities and updated as appropriate. Those terms and scheduled activities required prior to the initiation of construction activities and must be in place prior to beginning construction activities. The plan requirements must be incorporated into the project's final plans and specifications and implemented as part of the project.

B. Purpose:

The purpose of the pre-construction storm water pollution prevention plan is to prevent sediment and other pollutants related to construction activities from entering waters of the U.S. during the construction phase. The permittee shall incorporate Best Management Practices (BMPs) into the project's final plans and specifications, which are designed to meet this goal and comply with Parts (I).D. and (I).G. of this Chapter. While the general requirements are identified in Parts (I).D. and (I).G. of this Chapter, it is the permittee's responsibility to select the appropriate BMPs which satisfy these requirements.

C. Assigning Responsibility:

When developing bidding documents or other contracts, the permittee must identify who will implement and manage the erosion and sediment control BMPs before and during construction and ensure that the plan will be implemented and stay in effect until the construction project is complete, and the entire site has undergone final stabilization. In addition, the final plans and

specifications must clearly identify who will be responsible for the maintenance requirements identified in Part (I).G. of this Chapter.

D. <u>Criteria:</u>

1. Criteria for Erosion Control

a. The permittee shall use, where possible, horizontal slope grading, construction phasing, and other construction practices that minimize the potential erosion by limiting the areal extent of exposed soils and the time of exposure of soils to precipitation and runoff to the maximum extent practicable.

b. Unless precluded by snow cover, all exposed soil areas* with a continuous positive slope within 100 lineal feet from waters of the U.S., or from a curb, gutter, storm sewer inlet, temporary or permanent drainage ditch or other storm water conveyance system, which is connected to a water of the U.S., shall have temporary protection (e.g., temporary seeding, straw mulch, wood fiber blanket, wood chips, and erosion netting, erosion control blanket) or permanent cover (e.g., permanent grass seeding, sodding, gravel, asphalt, concrete, etc.) for the exposed soil areas within the following time frames:

Type of Slope	Temporary protection or permanent cover where the area has not been, or will not be, worked by the contractor for:
Steeper than 3:1	7 days
10:1 to 3:1	14 days
Flatter than 10:1	21 days

* For the purposes of this erosion control provision only, exposed soil areas do not include stockpiles or surcharge areas of sand, gravel, aggregate, concrete or bituminous.

c. Sodding of disturbed areas.

Areas where sod fails to become established shall be replaced during the next growing period. Sodding shall be staked as necessary to prevent sloughing (such as on steep slopes).

d. Seeding of disturbed areas. Seeding may be of the following types:

<u>Permanent seeding, including dormant seeding.</u> In areas of dormant seeding, follow-up seeding shall be conducted early in the next growing season to assure establishment of good coverage.

Temporary seeding. Temporary seeding may be used in order to provide a fast-growing vegetative cover prior to establishment of final vegetative stabilization.

e. Maintaining the seed bed. All seeded areas shall be provided with erosion control matting, mulching, or similar protection until vegetation is established. Mulch, matting, etc. shall be replaced as necessary to maintain adequate coverage and to minimize the potential for erosion.

f. The bottom of any temporary or permanent drainage ditch constructed to drain water from a construction site must be stabilized within 100 lineal feet from a water of the U.S. Stabilization must be initiated within 24 hours of connecting the drainage ditch to a water of the U.S., an existing gutter, storm sewer inlet, drainage ditch, or other storm water conveyance system which discharges to waters of the U.S. and completed within five calendar days.

g. Prior to connecting any pipe to a water of the U.S. or drainage ditch, the pipe's outlet must be provided with temporary or permanent energy dissipation to prevent erosion.

2. Criteria for Sediment Control

a. Sediment control best management practices (BMPs), which prevent sediment from entering waters of the U.S., gutters, storm sewer inlets, ditches or other storm water conveyance system, shall be established on all down-gradient perimeters before any up-gradient land disturbing activities begin, and shall remain in place until final stabilization has been established.

b. The permittee shall minimize vehicle tracking of sediment or soil off-site at locations where vehicles exit the construction site onto paved surfaces.

c. Where 10 or more contiguous acres of exposed soil are contributing to a discernible point of discharge, temporary sedimentation basins must be provided prior to the runoff leaving the construction site or entering waters of the U.S.

These sedimentation basins shall comply with the following:

1) Basins shall provide 1800 ft^3 of hydraulic storage/acre drained, below the outlet pipe. For roadways, the use of adjacent drainage ditches with riser pipes to accomplish this is acceptable.

2) Basin outlets shall be designed to prevent short circuiting and the discharge of floating debris. The outlet should consist of a perforated riser pipe wrapped with filter fabric covered with crushed gravel. The perforated riser pipe should be designed to allow complete basin drawdown.

3) Temporary sedimentation basins are recommended, but not required for situations in which:

a) work on existing roadways where the 10 acre disturbed common drainage area is served by an existing storm sewer which is day-lighted off the road's right-of-way; or,
b) proximity to bedrock or vertical relief precludes it; or,
c) final stabilization will be established within 30 days of the initiation of construction activity.

3. Criteria for Other Controls

The Pre-construction Storm Water Pollution Prevention Plan shall include a description of construction and waste materials, fuels, chemicals or other materials expected to be stored onsite which have a potential to be discharged in storm water or otherwise be discharged to waters of the U.S. The Pre-construction Storm Water Pollution Prevention Plan shall 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 measures.

E. Plan Contents:

The Pre-construction Storm Water Pollution Prevention Plan must be prepared for the proposed project. The plan must contain appropriate BMPs which comply with Parts (I).D. and (I).G. of this Chapter and contain standard plans and/or specifications of these BMPs.

1. Standard plans and/or specifications must be provided for all BMPs, selected by the designer to be used on the project, and at a minimum, must include the following:

a. perimeter sediment controls, such as silt fences; and
b. placement and type of temporary cover such as mulch, geotextiles, temporary seeding, etc.

2. Where applicable, standard plans and/or specifications must also be provided for the following:

a. horizontal slope grading
b. proposed stabilized vehicle entrances
c. temporary sedimentation basins
d. storm sewer pipe outlet energy dissipation
e. storm sewer inlet control
f. erosion and sediment control requirements for stockpile area.

F. Final Plans and Specifications:

The above standard plans and/or specifications are to be incorporated into the project's final plans and specifications. In addition, the final plans and specifications shall clearly denote:

1. Location and type or the procedures to establish the location and type of all erosion and sediment control BMPs.

2. Existing and final grades, including dividing lines and direction of flow for all storm water runoff drainage areas located within the project limits.

3. Locations of areas not to be disturbed or areas where construction will be staged to minimize duration of exposed soil areas.

4. All waters of the U.S., including existing wetlands identified on the National Wetlands Inventory Map, within one-half mile from the exposed construction area which will receive direct storm water runoff from the construction site during construction.

   Where waters of the U.S., including wetlands, which will receive the direct runoff will not fit on a plan sheet, they shall be identified with an arrow, indicating both direction and distance.

5. Timing for installation of all erosion and sediment control BMPs required in Part (I).D. of this Chapter.

G. <u>Inspections and Maintenance:</u>

The following inspection and maintenance requirements are to be incorporated into the project's Pre-construction Storm Water Pollution Prevention Plan under Part (I) of this Chapter, and Post Construction Storm Water Pollution Prevention Plan under Part (II) of this Chapter.

1. Except where work has been suspended due to frozen ground conditions, the permittee(s) shall inspect the construction site once every seven (7) days and within 24 hours of the end of a storm event of 0.5 inches or greater. The permittee shall investigate and comply with the following inspection and maintenance requirements:

   a. Inspection Requirement: All erosion and perimeter sediment control BMPs shall be inspected to ensure integrity and effectiveness.

      Maintenance Requirement: All nonfunctional perimeter sediment control BMPs (including those in which the sediment has reached 1/3 of the storage height), shall be repaired, replaced, or supplemented with functional BMPs prior to the next anticipated storm event. All nonfunctional erosion control BMPs shall be repaired, replaced, or supplemented with functional BMPs as soon as field conditions allow access.

   b. Inspection Requirement: All temporary sedimentation basins to ensure effectiveness.

Maintenance Requirement: When the depth of sediment collected in the basin reaches ½ the height of the riser, or ½ the storage volume, the basin shall be drained and the sediment removed. Drainage and removal shall be completed within 72 hours of discovery, or as soon as field conditions allow access.

c. Inspection Requirement: Drainage ditches and other waters of the U.S. for evidence of sediment leaving the site.

Maintenance Requirement: Unless the project has received approval or certification for depositing fill into waters of the U.S., the permittee shall remove all deltas and sediment deposited in drainage ways, catch basins, or waters of the U.S., and restabilize the areas where sediment removal results in exposed soil. The removal and stabilization shall take place within seven (7) days of discovery unless precluded by legal, regulatory, or physical access restraints. If removal and stabilization is precluded within seven (7) days of discovery, removal and stabilization must take place within seven calendar days of obtaining access. The permittee is responsible for contacting all local, regional, state and federal authorities prior to working in waters of the U.S. and receiving any applicable permits.

d. Inspection Requirement: 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.

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 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.

Maintenance Requirement: Tracked sediment shall be removed from paved surfaces, which do not drain back into the construction site, within 24 hours of discovery.

2. Where parts of the construction site have undergone final stabilization, but work remains on other parts of the site, inspections of the stabilized areas may be reduced to once per month.

3. Where work has been suspended due to frozen ground conditions, the inspections and maintenance required in Part (I).G.1 of this Chapter above shall take place as soon as weather conditions warrant or prior to resuming construction.

4. Unless required to remain in place by the owner or local permitting authority, all temporary synthetic, structural, and non-biodegradable erosion and sediment control BMPs shall be removed after the site has undergone final stabilization.

5. After the entire project has undergone final stabilization, all temporary sedimentation basins to be used as permanent water quality management basins must be cleaned out by the permittee to provide the sediment storage capacity required in Part (I).D.2.c.2 of this Chapter. Permittees are responsible for the maintenance of water quality management BMPs until construction is complete, the site has undergone final stabilization, and a written notice of termination has been submitted to the Agency.

6. Reporting and records keeping requirements: all inspections shall be documented by a written report of all inspections which shall contain the following:

   a. Date and time of inspections
   b. Findings of inspections, any comments concerning the effectiveness of in-place erosion control and vegetation measures
   c. Corrective actions taken (including dates and times)
   d. Documentation of changes to the Storm Water Pollution Prevention Plan made during construction
   e. Date of all rainfall events.

(II). POST CONSTRUCTION STORM WATER MANAGEMENT PLAN

A. General:

The permittee is required to develop and implement a Post Construction Storm Water Management Plan in accordance with the requirements of this part for each construction site covered by this permit. The plan must be developed prior to the initiation of construction activities and updated as appropriate. Those terms and scheduled activities required prior to the initiation of construction activities must be completed before beginning construction activities. The plan requirements must be incorporated into the project's final plans and specifications and implemented as part of the project.

B. Purpose:

The goal of the Post Construction Storm Water Management Plan is to protect waters of the U.S. from pollutants generated from a project's ultimate development's impervious surfaces, change in land use, or changed ground cover.

C. Assigning Responsibility:

When developing bidding documents or other contacts, the owner must identify who will maintain the water quality management BMPs until construction is complete, all maintenance activities required in Part (I).G. of this Chapter are complete, the site has undergone final stabilization, and a written notice of termination has been submitted to the Agency.

D. Plan Contents:

The Post-Construction Storm Water Management Plan must be prepared for the proposed project. The plan must contain appropriate BMPs which satisfy the above goal and contain standard plans and/or specifications of these BMPs. These standard plans and specifications must be incorporated into the project's final plans and specifications. At a minimum, the plan must contain:

1. Land feature changes (in acres) for both before and after construction:

    a. Total project area;
    b. Total impervious surface area of project;
    c. Total pervious area of project;
    d. Total estimated impervious surface area of ultimate development;
    e. Total estimated pervious area of ultimate development;

2. Standard plans and/or specifications of permanent erosion and sediment control BMPs below:

    a. Sediment Control

        Where a project's ultimate development replaces surface vegetation with one or more acres of cumulative impervious surface and all runoff has not been accounted for in a local unit of government's existing storm water management plan or practice, the runoff shall be discharged to a wet sedimentation basin prior to entering waters of the U.S.

        1) Proposed Development

            Except as provided in 2) below ("Reconstruction or Work on Existing Roadways"), the wet sedimentation basin shall be based on the project's ultimate development and comply with the following requirements:

a) The basin's hydraulic volume shall be sufficient to capture a ½ inch of runoff from the impervious watershed area.
b) Basins shall also provide a minimum of 250 $ft.^3$ dead sediment storage volume below the basin's hydraulic volume/impervious acre drained.
c) Basin inlets shall be placed above the sediment storage volume.
d) Basin outlets shall be designed to remove all suspended solids greater than five microns with a settling velocity of 1.3×10^{-4} ft/sec.
e) Basin outlets shall also be designed to prevent short circuiting and the discharge of floating debris.
f) Basins must provide spillways to accommodate storm events in excess of the basin's hydraulic design.

2) Reconstruction or Work on Existing Roadways

While recommended, the above provision will not be required for work on existing roadways where:

a) the drainage area is served by an existing storm sewer which is day-lighted off the road's right-of-way; or,
b) proximity to bedrock or vertical relief precludes it; or,
c) existing right-of-way precludes it.

For these situations, however, the permittee will be required to incorporate other sedimentation or treatment devices (i.e., grass swales, smaller sediment basins, etc.).

b. Permanent Erosion Control

1) All drainage ditches constructed to drain water from the site after construction is complete must be stabilized.

2) All pipe outlets must be provided with permanent energy dissipation where the pipe's outlet velocity will exceed the permanent cover's erosive velocity.

c. Treatment

The owner is required to provide treatment of storm water through the use of BMPs such as grass swales, wetlands constructed for the purpose of treating storm water, and the planting or development of emergent vegetation around the perimeter of the wet sedimentation basin's sediment storage volume.

E. Final Plans and Specifications:

The above standard plates and/or specifications are to be incorporated into the project's final plans and specifications. In addition, the final plans and specifications shall clearly denote:

1. Location and type of all permanent erosion and sediment control BMPs.

2. The plan sheets must clearly identify all waters of the U.S., including wetlands identified on the National Wetlands Inventory Map within and one-half mile from the construction area which will receive direct storm water runoff from the construction site after construction is complete. Where the waters of the U.S. which will receive the direct runoff and will not fit on the plan sheet, the resource shall be identified with an arrow, indicating both direction and distance.

3. Methods to be used for final stabilization of all exposed soil areas. For linear utility and roadway projects, final stabilization is not required on agricultural land which will be tilled within one year of project completion.

(III). AMENDMENTS

A. Changes to the pre-construction storm water pollution prevention plan made during construction to accommodate phased construction, sequenced work, timing issues, or changed site conditions are allowable provided all of Part (I) of this Chapter is complied with.

B. Changes to the post construction storm water management plan made during construction to accommodate changed site conditions are allowable provided all of Part (II) of this Chapter is complied with.

C. The permittee shall amend the SWPPP to improve the control of discharges of sediment and other materials, if the SWPPP fails to reduce the impacts of pollutants carried by construction site storm water runoff.

D. If EPA notifies the permittee that changes are needed to the SWPPP, the permittee shall amend the SWPPP to improve the control of discharges of sediment and other materials. The permittee shall submit, within the date specified in the notice, an amended SWPPP.

(IV). RETENTION OF RECORDS

A. Documents:

The permittee shall retain copies of all reports required and records of all application data to be covered by this permit, for a period of at least three years after completion of the construction project.

B. Plans and Inspection:

1. The project's final plans and specifications which incorporate the requirements of the Pre-construction Storm Water Pollution Prevention Plan under Part (I) and Post Construction Storm Water Management Plan under Part (II) and all inspection reports under Part (I).G.6 of this Chapter must be:

   a. available at the construction site in either the field office, or, inspector's vehicle, or contractor's vehicle, and,

   b. available for inspection for the duration of this permit.

2. The following plans/records must be made available to Federal, Tribal, State and local officials within 24 hours of request for the duration of the permit:

   a. Pre-construction Storm Water Pollution Prevention Plan developed in accordance with Part (I) of this Chapter (if a separate document from the project's final plans and specifications).

   b. Post Construction Storm Water Management Plan developed in accordance with Part (II) of this Chapter.

   c. All inspection reports.

   d. All documents under Part (IV).A of this Chapter.

3. The permittee shall keep all copies of the SWPPP, all changes to the SWPPP, and all inspection reports for three years after completion of the construction projects.

C. Address:

All written correspondence concerning discharges from the facility covered under this permit shall be directed to EPA, Region 5, and the appropriate tribal office at the addresses found in Chapter I.G.

CHAPTER V. REOPENER CLAUSE

A. If there is evidence indicating that trench water, storm water, or hydrostatic test water discharges authorized by this permit are significant contributors to violations of applicable water quality standards, the permit may be modified to include different limitations and/or requirements.

B. This permit may be modified or revoked and reissued based on new information provided by the U.S. Fish and Wildlife Service.

C. This permit may be modified or revoked and reissued based on new information provided by the THPO and SHPO.

D. Facilities that discharge to an impaired surface water, or to a watershed or drainage basin that contains impaired waters, may be required, at some future date, to comply with additional permits, or permit requirements, based on the conclusions of any applicable EPA approved Total Maximum Daily Load (TMDL) studies and their associated implementation plans.

CHAPTER VI. STANDARD PERMIT CONDITIONS

A. 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.

1. 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.

2. 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.

3. 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).

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. Toxic Pollutants

Notwithstanding Paragraph F, above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

H. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

I. 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.

J. Inspection and Entry

The permittee shall allow EPA, an affected Tribe, 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:

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

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

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

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

K. Monitoring and Records

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Flow Measurements- Appropriate flow measurement devices or methods for calculating total volume shall be consistent with accepted scientific practices and shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges.

3. 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.

4. Records of monitoring information shall include:
   - ✶ The date, exact place, and time of sampling or measurements;
   - ✶ The individual(s) who performed the sampling or measurements;
   - ✶ The date(s) analyses were performed
   - ✶ The individual(s) who performed the analyses;
   - ✶ The analytical techniques or methods used; and
   - ✶ The results of such analyses.

5. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.

6. 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.

L. Signatory Requirements

1. All SWPPPs, reports, certifications, or other information required by this permit must be signed and certified as follows:

   A. 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.

   B. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

   C. For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. 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).

2. All SWPPPs, reports, certifications, or other information required by this permit must be signed by a person described in Chapter VI.L.1 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

A. The authorization is made in writing by a person described in Chapter VI.L.1 above;

B. 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

C. The signed and dated written authorization is included in the SWPPP. A copy must be submitted to EPA, if requested.

3. 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."

4. 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.

M. Reporting Requirements

1. 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:

A. 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

B. 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);

C. 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;

2. 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.

3. 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.)

4. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

A. 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.

B. 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.

C. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by EPA in the permit.

5. 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.

6. 24-hour reporting.

   A. 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.

   B. The following shall be included as information which must be reported within 24 hours under this paragraph.

      i. Any unanticipated bypass which exceeds any effluent limitation in the permit. (See 40 CFR §122.41(g).)

      ii. Any upset which exceeds any effluent limitation in the permit

      iii. 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).)

   C. EPA may waive the written report on a case-by-case basis for reports under Chapter VI.M.6.ii if the oral report has been received within 24 hours.

7. Other noncompliance. The permittee shall report all instances of noncompliance not reported under Chapter VI.M.4, Chapter VI.M.5, and Chapter VI.M.6, at the time monitoring reports are submitted. The reports shall contain the information listed in Chapter VI.M.6.

8. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Permitting Authority, it shall promptly submit such facts or information.

9. Availability of Reports. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Permit Issuing Authority. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

N. Bypass

1. Definitions.

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

   B. 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.

2. 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 Chapter VI.N.3 and Chapter VI.N.4.

3. Notice–

   A. 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.

   B. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Chapter VI.M.6 (24-hour notice).

4. Prohibition of bypass.

   A. Bypass is prohibited, and EPA may take enforcement action against a permittee for bypass, unless:

      i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

      ii. 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

      iii. The permittee submitted notices as required under Chapter VI.N.3.

B. EPA may approve an anticipated bypass, after considering its adverse effects, if EPA determines that it will meet the three conditions listed above in Chapter VI.N.4.A.

O. Upset

1. 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.

2. 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 Chapter VI.O.3 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.

3. 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:

   A. An upset occurred and that the permittee can identify the cause(s) of the upset;

   B. The permitted facility was at the time being properly operated; and

   C. The permittee submitted notice of the upset as required in Chapter VI.M.6.B.ii of this Part (24-hour notice).

   D. The permittee complied with any remedial measures required under Chapter VI.D.

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

P. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

Q. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

R. State/Tribal Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable law or regulation under authority preserved by section 518 of the Act.

2. No condition of the permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

S. Transfer of Ownership or Control

In the event of any change in control or ownership of facility from which the authorized discharge emanates, the permittee shall notify the succeeding owner or controller of the existence of this permit by letter, a copy of which shall be forwarded to EPA Regional office. In the event of name changes, the permittee shall notify the EPA Regional office and seeks permit modification.

T. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" (Chapter VI.N), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

CHAPTER VII. DEFINITIONS

A. 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 U.S. 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.

B. Commencement of Construction Activities means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

C. Concentration Measurements

1. The "30-day average concentration", other than for fecal coliform bacteria, is the sum of the concentrations of all daily discharges sampled and/or measured during a consecutive 30 day period on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such period (arithmetic mean of the daily concentration values). The daily

concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during a calendar day. The 30-day average count for fecal coliform bacteria is the geometric mean of the counts for samples collected during a consecutive 30 day period. This limitation is identified as "30-day Average" or "Daily Average" in the permit and the average monthly concentration value is reported under the "Average" column under "Quality" on the DMR.

2. The "7-day average concentration", other than for fecal coliform bacteria, is the sum of the concentrations of all daily discharges sampled and/or measured during a consecutive 7 day period on which daily discharges are sampled and measured divided by the number of daily discharges sampled and/or measured during such period (arithmetic mean of the daily concentration value). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during that calendar day. The 7-day average count for fecal coliform bacteria is the geometric mean of the counts for samples collected during a consecutive 7 day period. This limitation is identified as "7-day Average" in the permit and the highest 7-day average concentration value is reported under the "Maximum" column under "Quality" on the DMR.

3. The "maximum daily concentration" is the concentration of a pollutant discharge during a calendar day. It is identified as "Daily Maximum" in of the permit and the highest such value recorded during the reporting period is reported under the "Maximum" column under "Quality" on the DMR.

D. 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.

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

F. Director means the Regional Administrator of the United States Environmental Protection Agency or an authorized representative.

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

H. 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.

I. 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.

J. Eligible means qualified for authorization to discharge storm water under this permit.

K. Energy Dissipation means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to; aprons, riprap, splash pads, and gabions which are designed to prevent erosion.

L. Exposed Soil Areas means all areas of the construction site where the perennial vegetation (including trees, shrubs, and brush) has been removed. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site.

M. 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.

N. Final Stabilization means that either:

1. All soil disturbing activities at the site have been completed and a uniform (e.g,, evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or goetextiles) have been employed. In such parts of the country, background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches). Establishing at least 70% of the natural cover of the native vegetation meets the vegetative cover criteria for final stabilization (e.g., if the native vegetation covers 50% of the ground, 70% of 50% would require 35% total cover for final stabilization; on a beach with no natural vegetation, no stabilization is required); or

2. For individual lots in residential construction by either: (a) The homebuilder completing final stabilization as specified above, or (b) the homebuilder establishing 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. (Homeowners typically have an incentive to put in the landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off sidewalks and driveways.); or

3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturb that were not previously used for agricultural activities, such as buffer strips immediately adjacent to ``water of the U.S.,'' and area which are not being returned to their

preconstruction agricultural use must meet the final stabilization criteria (1) or (2) above.

O. Impervious Surface means a constructed hard surface that either prevents or retards the entry of water into the soil and cause water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.

P. Indian Country lands as defined 18 United States Code 1151 includes, inter alia, all lands within the limits of any Indian reservation and all dependent Indian communities.

Q. 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.

R. Other Measurements

1. The effluent flow expressed as M^3/day (MGD) is the 24-hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in Part I of the permit the flow rate values are reported in the "Average" column under "Quantity" on the DMR.

2. An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.

3. Where monitoring requirements for pH, dissolved oxygen or fecal coliform bacteria are specified in Part I of the permit, the values are generally reported in the "Quality of Concentration" column on the DMR.

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

T. Permanent Stabilization means the establishment of permanent vegetative or non-vegetative cover.

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

V. 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.

W. 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.

X. Pollutant of concern, for the purpose of this permit, includes sediment or a parameter that addresses sediment (e.g., total suspended solids, turbidity or siltation) that has been identified as a cause of a water quality impairment.

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

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

AA. Sediment means the product of an erosion process; solid material both mineral and organic, that is in suspension, is being transported, or has been moved by water, air, or ice, and has come to rest on the earth's surface either above or below water level.

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

CC. Storm Water Associated with Industrial Activity is defined at 40 CFR 122.26(b)(14) and 40 CFR 122.26(b)(15) and incorporated here by reference. Most relevant to this permit is 40 CFR 122.26(b)(14)(x), which relates to construction activity including clearing, grading and excavation activities that result in the disturbance of five (5) or more acres of total land area, or are part of a larger common plan of development or sale, and 40 CFR 122.26(b)(15), which relates to construction activity that result in the disturbance of between one (1) and five (5) acres.

DD. Temporary Stabilization means the establishment of temporary vegetative cover as an interim measure to prevent erosion during the period before permanent stabilization can be accomplished, or during periods prior to final grading.

EE. Toxic Pollutant means any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.

FF. Types of Samples

1. Composite Sample: A "composite sample" as required by this permit is a combination of three individual representative samples taken at the beginning, middle, and end of a discharge. The reported value is the average of the three samples.

2. Grab Sample: A "grab sample" is a single influent or effluent portion of at least 100 ml which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

GG. Waters of the U.S. means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term "waters of the United States" means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this section, of waters identified in paragraphs (1)(i) through (iii) of this section;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are

an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes.* Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.
(B) *Carolina bays and Delmarva bays.* Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.
(C) *Pocosins.* Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.
(D) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.
(E) *Texas coastal prairie wetlands.* Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (v) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.]

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;
(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;
(C) Artificial reflecting pools or swimming pools created in dry land;
(D) Small ornamental waters created in dry land;
(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;
(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and
(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) *Adjacent.* The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or

neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring.* The term *neighboring* means:

> (A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;
> (B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;
> (C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary* and *tributaries.* The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man - altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) *Wetlands.* The term *wetlands* 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.

(v) *Significant nexus.* The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term "in the region" means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water's effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

(A) Sediment trapping,
(B) Nutrient recycling,
(C) Pollutant trapping, transformation, filtering, and transport,
(D) Retention and attenuation of flood waters,
(E) Runoff storage,
(F) Contribution of flow,
(G) Export of organic matter,
(H) Export of food resources, and
(I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.